

Consequences of Constitutional Ignorance: The Impending Military-AI Complex

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ABSTRACT

This essay examines the emergence of the military-artificial intelligence (“AI”) complex, a phenomenon that extends President Dwight D. Eisenhower’s warning about the military-industrial complex to a new technological era. It explores how the Biden administration’s National Security Memorandum (“NSM”) has placed AI at the forefront of national defense strategy, consolidating power among a small group of AI companies while sidelining societal advancements such as autonomous vehicles and healthcare innovations. Through historical analogies to the Cold War nuclear arms race, the essay highlights the risks of unchecked AI militarization, including threats to civil liberties, international stability, and economic sustainability.

The analysis is structured in three parts. The first discusses the structural implications of the NSM, focusing on its priorities and the challenges posed by an increasingly concentrated AI industry. The second explores constitutional checks, such as the Army Clause and state militias, intended to prevent an overpowering federal military presence. The third critiques the erosion of these safeguards due to indefinite appropriations, reduced electoral accountability, and the rise of private defense contractors.

The essay argues for a policy redirection toward competitive markets, peaceful applications of AI, and rigorous vetting processes. By prioritizing public welfare over militarization, the United States can responsibly navigate the AI era—balancing innovation, security, and democratic accountability.

I. INTRODUCTION

“[N]o one involved in the writing or ratification of the Constitution argued for a large standing force.”¹ Given that fact, it comes as no surprise that the Founders only allowed for the creation of a federal military force subject to several safeguards. They expected the judicial branch to strictly enforce

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¹ GIAN GENTILE ET AL., 1 THE EVOLUTION OF U.S. MILITARY POLICY FROM THE CONSTITUTION TO THE PRESENT 18 (RAND 2020).

limitations on any federal forces. They assumed voters would oppose representatives who flouted constitutional restrictions on the Army, especially in the event that doing so would enlarge the power of the federal government vis-à-vis their respective state. Finally, they suspected that states would maintain and defend their militias out of concern for an unchecked, rogue central army. Jointly, these checks were intended to render any standing force a temporary, small one. Decades later, however, the checks on the federal government's military power have become moot due to ongoing ignorance of the letter and spirit of the Army Clause.

A failure to enforce the forgotten, hard-fought checks set forth in the Army Clause has allowed military power to surge and civil control over the federal government to wane. Briefly, ignorance of the Army Clause's constraints gave rise to the military industrial complex in the 20th Century and now, the military-artificial intelligence ("AI") complex.

Invocation of the military-industrial complex, a term popularized by President Dwight D. Eisenhower but descriptive of the close relationship between the federal government and private actors since at least World War I, typically involves a warning of the undue concentration of power in the hands of a few entities entwined with the nation's defense systems. Today, this warning has evolved into an even graver concern: the emergence of a military-AI complex. This essay explores the constitutional, political, and societal implications of this transformation, emphasizing how constitutional ignorance has eroded vital checks designed to restrain federal military power. By examining the Biden Administration's National Security Memorandum ("NSM") and the broader implications of placing AI at the center of the nation's military strategy, this Article seeks to bridge historical concerns with contemporary risks, ultimately arguing for a redirection of U.S. AI policy toward public welfare rather than unchecked militarization.

The Article is divided into three main parts. Part I examines the foundational elements of the NSM, tracing its origins, objectives, and the structural risks it introduces by consolidating power among a handful of AI giants. It examines how this policy prioritizes military AI applications over societal advancements, such as autonomous vehicles or healthcare innovations, and the potential consequences for civil liberties and international stability. Through historical analogies to the Cold War nuclear arms race, this Part underscores the risks of escalating an AI arms race without robust safeguards.

Part II delves into the constitutional mechanisms designed by the Founders to prevent an overpowering federal military presence. In particular, it analyzes the Army Clause and the three checks therein that the Founders expected would prevent the central government from attaining too much military power. This Part illustrates how historical and contemporary trends—such as indefinite appropriations, diminished public oversight, and the rise of private defense contractors—have undermined these constitutional constraints.

Part III critiques the systematic disregard for the checks the Founders tirelessly debated with respect to the Army Clause. This Part details the erasure of the temporal limit on military appropriations, the erosion of electoral and

fiscal accountability, and the elimination of state militias. Additionally, it considers how the growing influence of AI in military strategy further displaces state and public roles in shaping national defense priorities.

Three major themes anchor the analysis. First, the historical perspective situates contemporary AI policy within a broader narrative of constitutional ignorance. The Founders' skepticism of standing armies and centralized power resonates in debates over the unchecked expansion of the military-AI complex. Second, the Article highlights the tension between innovation and accountability. While advancements in AI promise transformative societal benefits, their prioritization for defense by federal officials risks reinforcing inequalities and undermining democratic oversight. Third, the Article advocates for a policy redirection grounded in lessons from history. By fostering a competitive and dynamic AI ecosystem, prioritizing peaceful AI applications, and establishing rigorous vetting standards, the United States can lead in the AI era.

In sum, this Article aims to illuminate the dangerous trajectory of U.S. military policy at its intersection with AI technologies, offering a roadmap for how principled recalibration can restore constitutional fidelity and direct AI development toward human flourishing. By reconnecting with the Founders' vision of limited federal military power and embracing AI development that prioritizes the general welfare over unchecked militarization, the nation can navigate the complex balance between security imperatives and democratic values. Through historical examination, constitutional analysis, and policy critique, this Article challenges the prevailing narrative of inevitable military-technological fusion and instead advocates for a return to the forgotten wisdom embedded in our founding document—wisdom that, if heeded, could redirect America's technological prowess toward genuine innovation rather than concentrated power; toward cooperation among U.S. allies rather than tit-for-tat regulations; and toward strengthened democratic oversight rather than potential constitutional erosion.

II. THE IMPENDING MILITARY-AI COMPLEX

Ike warned this would happen.² He foresaw the “potential for the disastrous rise of misplaced power” as a result of private industry capturing an “immense military establishment.”³ What he couldn't have known was that the military-industrial complex would transform into the military-AI complex. The NSM promulgated in 2024 by the Biden administration,⁴ however, will establish just that if left in place or if its underlying goals and actions shape future executive action by the Trump administration.

² President Dwight D. Eisenhower, Farewell Address (Jan. 17, 1961).

³ *Id.*

⁴ Memorandum on Advancing the United States' Leadership in Artificial Intelligence; Harnessing Artificial Intelligence to Fulfill National Security Objectives; and Fostering the Safety, Security, and Trustworthiness of Artificial Intelligence, 2024 DAILY COMP. PRES. DOC. 1 (Oct. 24, 2024) [hereinafter Biden NSM].

Whether President Trump follows through on the NSM in his second term is an open question. On the one hand, Trump seems keen to erase and move on from all instances of the prior administration's AI policies. Shortly after returning to office, Trump rescinded the Biden executive order that called for the NSM.⁵ His administration has likewise replaced other Biden-era AI policies.⁶ On the other hand, the administration has repeatedly emphasized a desire for the United States to lead in AI innovation and to achieve "AI dominance."⁷ Implementation of the NSM would further that goal given its specific focus on the federal government investing in and procuring the latest AI models.⁸ So, while the NSM may not persist in the same form under Trump, it seems likely to carry on in substance. That said, if the second Trump administration wants to avoid concentrating power in the hands of a few AI actors, then it may want to prioritize policies that account for an AI industry that is currently marked by a high degree of power concentration. A more sustainable, beneficial approach would instead focus the nation's AI policy on transformative scientific and peaceful applications and encourage more competition in the industry.

The Biden administration issued the NSM pursuant to its October 2023 executive order on AI.⁹ The NSM sets forth three objectives. First, ensure the United States leads in developing "safe, secure, and trustworthy AI."¹⁰ Realization of this end involves the federal government actively aiding private actors in acquiring the resources and talent necessary to create frontier AI models.¹¹ Second, incorporate those AI advances into the work of the government itself, with a specific focus on enhancing national security through strategic adoption of AI.¹² Third, maintain the federal government's ongoing attempts to create international governance frameworks around the development and use of AI.¹³

A wide range of agency actions outlined in the NSM give a sense of how the Biden administration planned to achieve those goals and, perhaps, what administrative actions we may see in the lame-duck period or in the next administration. For example, the Department of State, Department of Defense ("DOD"), and Department of Homeland Security received direction to explore

⁵ Exec. Order No. 14179, 90 Fed. Reg. 58499 (Jan. 23, 2025) [hereinafter Trump AI EO].

⁶ See *White House Releases New Policies on Federal Agency AI Use and Procurement*, WHITE HOUSE (Apr. 7, 2025), <https://www.whitehouse.gov/articles/2025/04/white-house-releases-new-policies-on-federal-agency-ai-use-and-procurement> [https://perma.cc/MR7W-SVNM] (replacing Biden-era guidance for agency adoption of AI).

⁷ Trump AI EO, *supra* note 5; see Kevin Frazier, *Vance Outlines an America First, America Only AI Agenda*, LAWFARE (Mar. 19, 2025, at 14:46 CT), <https://www.lawfaremedia.org/article/vance-outlines-an-america-first-america-only-ai-agenda> [https://perma.cc/58PC-R6KM] (analyzing recent remarks on AI by Vice President J.D. Vance).

⁸ Biden NSM, *supra* note 4.

⁹ *Id.*

¹⁰ *Id.* § 2(a).

¹¹ *Id.*

¹² *Id.* § 2(b).

¹³ Biden NSM, *supra* note 4, § 2(c).

ways for the federal government to recruit and retain AI experts from around the world.¹⁴ The DOD and Department of Energy (“DOE”) faced a mandate to “design and build facilities capable of harnessing frontier AI for relevant scientific research domains and intelligence analysis.”¹⁵ The NSM also called on a number of actors, such as the DOD, to make substantial investments in AI technologies.¹⁶ In short, the NSM marked the “nation’s first-ever strategy for harnessing the power and managing the risks of AI to advance our national security.”¹⁷

The NSM makes clear that the federal government plans not only to invest in AI but also to deploy it as a means of achieving national security aims.¹⁸ Here is a sample of the Biden administration’s thinking:

If the United States Government does not act with responsible speed and in partnership with industry, civil society, and academia to make use of AI capabilities in service of the national security mission—and to ensure the safety, security, and trustworthiness of American AI innovation writ large—it risks losing ground to strategic competitors.¹⁹

The Biden administration qualified these lofty goals with a disclaimer, which reads: “[T]he United States Government must also protect human rights, civil rights, civil liberties, privacy, and safety, and lay the groundwork for a stable and responsible international AI governance landscape.”²⁰ It is unclear how the government will establish such protections. National Security Adviser Jake Sullivan admitted that “innovation has never been predictable, but the degree of uncertainty in AI development is unprecedented.”²¹ The high degree of uncertainty makes it difficult to ensure civil liberties and human rights in the unfettered pursuit of AI technology. Even today’s simple AI systems have already facilitated biased decision-making.²²

What is not subject to interpretation is that frontier AI technology is now at the core of the nation’s defense policy. Sullivan confirmed as much in his

¹⁴ *Id.* § 3.1.

¹⁵ *Id.* § 3.1(e)(i).

¹⁶ *Id.*

¹⁷ Jake Sullivan, Assistant to the President for Nat’l Sec. Affairs (APNSA), *Remarks by APNSA Jake Sullivan on AI and National Security*, WHITE HOUSE (Oct. 24, 2024), <https://bidenwhitehouse.archives.gov/briefing-room/speeches-remarks/2024/10/24/remarks-by-apnsa-jake-sullivan-on-ai-and-national-security> [https://perma.cc/DE5V-5T3Z] [hereinafter Sullivan on NSM].

¹⁸ Biden NSM, *supra* note 4.

¹⁹ *Id.* § 1(f).

²⁰ *Id.* § 1(h).

²¹ Sullivan on NSM, *supra* note 17.

²² See, e.g., Paul W. Grimm et al., *AI in the Courts: How Worried Should We Be?*, 107 JUDICATURE 66 *passim* (2024); Patrick Thibodeau, *Judge Allows AI lawsuit Against Workday to Proceed*, TECHTARGET (July 15, 2024), <https://www.techtargget.com/searchhrsoftware/news/366593351/Judge-allows-AI-lawsuit-against-Workday-to-proceed> [https://perma.cc/TZ8F-6TCY].

remarks on the NSM. He said, “[i]n this age, in this world, the application of artificial intelligence will define the future, and our country must once again develop new capabilities, new tools, and . . . new doctrine.”²³

A handful of actors stand to dominate this new defense priority. Anthropic, OpenAI, Google DeepMind, and a small group of other big tech companies operate at the frontier of AI development.²⁴ Their position is entrenched because of a high barrier to entry. The resources required to train leading models are exorbitant and growing—perhaps by a margin of 2.4 times per year.²⁵ Expedited procurement procedures called for by the NSM will allow these companies to exploit the fact that they alone have developed the sorts of foundational models that the government may be seeking.²⁶ Other, smaller labs are simply too far behind in the development process to meaningfully compete with these AI giants in the short to medium term. By way of example, it cost Google upward of \$100 million to train its Gemini-Ultra model.²⁷ Upstarts do not have that kind of money. This dynamic all but guarantees the unaccountable concentration of power Eisenhower feared.

Sullivan touted Eisenhower presiding over an era that required “new strategies, new thinking, and new leadership.”²⁸ Despite Sullivan mentioning Eisenhower in his remarks, he and other members of the Biden administration failed to heed Ike’s advice and mirror his willingness to break with conventional thinking. A review of the lengthy NSM suggests that the authors attempted to gloss over the fact that rapid investment in weapons of unknown, yet massive, capabilities has been tried before. In celebrating the fact that the U.S.’s national security institutions “have historically triumphed during eras of technological transition,” the NSM omits mention of the arguably wasteful period of nuclear weapon development well after the weapons had served their deterrence purpose.²⁹ Instead, the memo paints a rosier picture: “To meet changing times, [national security institutions] developed new capabilities, from submarines and

²³ Sullivan on NSM, *supra* note 17.

²⁴ See Will Knight, *The AI Race Has Gotten Crowded—and China Is Closing In on the US*, WIRED (Apr. 7, 2025, at 06:00 CT), <https://www.wired.com/story/stanford-study-global-artificial-intelligence-index/> [<https://perma.cc/7Y79-LK68>] (discussing the companies developing leading AI models).

²⁵ Ben Cottier et al., *The Rising Costs of Training Frontier AI Models*, ARXIV (Feb. 7, 2025), <https://arxiv.org/abs/2405.21015> [<https://doi.org/10.48550/arXiv.2405.21015>]; cf. Dylan Patel et al., *DeepSeek Debates: Chinese Leadership On Cost, True Training Cost, Closed Model Margin Impacts*, SEMIANALYSIS (Jan. 31, 2025), <https://semanalysis.com/2025/01/31/deepseek-debates> [<https://perma.cc/M7Z3-UNGJ>] (reviewing claims by DeepSeek that it managed to train a highly-capable model for a mere \$6 million).

²⁶ Biden NSM, *supra* note 4. Note that the Trump administration has also called for expedited AI procurement processes across the federal government. Memorandum from Russel Vought, Dir., Off. of Mgmt. & Budget for the Heads of Exec. Departments & agencies, M-25-22 (Apr. 3, 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-22-Driving-Efficient-Acquisition-of-Artificial-Intelligence-in-Government.pdf> [<https://perma.cc/X2EZ-R8UT>].

²⁷ Shana Lynch, *AI Index: State of AI in 13 Charts*, STANFORD UNIV.: HUM.-CENTERED A.I. (Apr. 15, 2024), <https://hai.stanford.edu/news/ai-index-state-ai-13-charts> [<https://perma.cc/87HP-7MN8>].

²⁸ Sullivan on NSM, *supra* note 17.

²⁹ Biden NSM, *supra* note 4, § 1(b).

aircraft to space systems and cyber tools.”³⁰ The only explicit mention of nuclear anything is with respect to nuclear propulsion.

The NSM fails to confront the dozens of disclosed “near misses” of all-out nuclear war during the Cold War, like the Cuban Missile Crisis. In the same way that the United States relentlessly added to its nuclear stockpile for much of the Cold War, the NSM does not consider a Plan B. The only path forward is armament with occasional considerations of civil rights, human rights, and civil liberties.³¹ Rather than thoroughly analyzing when and to what extent the Intelligence Community should acquire and use AI, the NSM takes adoption as a given and instead instructs the Intelligence Community to consider the constitutionality of different use cases.³² Rather than evaluate means to avoid a prolonged AI arms race, it calls on the federal government to cooperate with allies in the co-development and co-deployment of AI capabilities.³³ And, rather than facilitate an iterative, reversible adoption of AI by different agencies, it sets a default of ever-greater integration of AI into agency tasks and operation.³⁴ The cumulative result is a government that is especially reliant on AI working as intended, continuing to improve, and improving at a rate greater than that achieved by adversaries. In the context of national security, this sort of bet on a resource-intensive and poorly understood technology exposes the American people to tremendous risk in the event of a technical or financial collapse of the AI ecosystem.

In the aftermath of the Cuban Missile Crisis, President John F. Kennedy recognized just how wasteful it was of the United States to double down on nuclear weapons.³⁵ While he noted that “the expenditure of billions of dollars every year on weapons acquired for the purpose of making sure we never need to use them is essential to keeping the peace,” Kennedy also lamented that the “acquisition of such idle stockpiles—which can only destroy and never create—is not the only, much less the most efficient, means of assuring peace.”³⁶ This realization led to action. Months after the Cuban Missile Crisis, Kennedy announced the Nuclear Test Ban Treaty.³⁷ He turned one of the most dangerous

³⁰ *Id.*

³¹ *See id.* § 2(b) (calling for the government’s AI policies to advance democratic values, such as human rights).

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ President John F. Kennedy, Commencement Address at American University in Washington (June 10, 1963), AM. PRESIDENCY PROJECT [hereinafter, Kennedy at American], <https://www.presidency.ucsb.edu/documents/commencement-address-american-university-washington> [https://perma.cc/9ETM-QUM6].

³⁶ *Id.*

³⁷ President John F. Kennedy, Radio and Television Address to the American People on the Nuclear Test Ban Treaty (July 26, 1963), JOHN F. KENNEDY PRESIDENTIAL LIBR. & MUSEUM, <https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/nuclear-test-ban-treaty-19630726> [https://perma.cc/9ETM-QUM6].

events in American history into an opportunity to mutually lower the odds of destruction and reduce wasteful spending.

Now, as was the case then, militarization of advanced technology with an eye toward war has become the default strategy. It is not the best one, though. The pursuit of peace may be the more difficult route because “frequently the words of the pursuer fall on deaf ears.”³⁸ However, once again, “we have no more urgent task,” as Kennedy pointed out in 1963.³⁹

The Trump administration need not and should not abandon efforts to accelerate AI. AI directed toward the public good, such as disease detection or hastening the transition to autonomous vehicles (“AVs”), can produce immense human flourishing.⁴⁰ AI directed predominantly toward national security will delay the realization of those ends.⁴¹ It is true that some commercial and public applications of AI may occur from exploring the use of AI in a national security setting. It is also true that those applications are even more likely if they become the primary focus of AI labs and national policy. More than 42,000 people died in motor vehicle accidents in 2022.⁴² AI has enabled AV companies to drastically improve the sophistication and reliability of their vehicles.⁴³ A national focus on accelerating AV progress through AI resources could save thousands of lives in the relatively short term.⁴⁴ Similar stories can be told with respect to AI-informed cancer treatments⁴⁵ and improved predictions of extreme weather.⁴⁶ If the government oriented its AI strategies around these applications, the improvement in average well-being could be significant.

³⁸ Kennedy at American, *supra* note 35.

³⁹ *Id.*

⁴⁰ See Kevin Frazier, *A Constitutional Mandate to Adopt AVs*, 82 WASH. & LEE L. REV. ONLINE 272, 313 (2025) (summarizing how greater adoption of AVs could save thousands of lives per year); Jenna Kurtzweil, *New AI Model Draws Treasure Maps to Diagnose Disease*, BECKMAN INST. FOR ADVANCED SCI. & TECH., U. ILL. URBANA-CHAMPAIGN (Mar. 4, 2024), <https://beckman.illinois.edu/about/news/article/2024/03/04/new-ai-model-draws-treasure-maps-to-diagnose-disease> [<https://perma.cc/FK7W-V5HH>] (sharing breakthrough in using AI to detect tumors).

⁴¹ Cf. Patrick Tucker, *Is ‘Big AI’ Beating ‘small AI’—and What Does it Mean for the Military?*, DEFENSE ONE (Oct. 7, 2024), <https://www.defenseone.com/technology/2024/10/big-ai-prevailing-over-small-ai-and-what-does-mean-military/400111> [<https://perma.cc/5Q5J-K46A>] (observing that reliance on massive AI models requires significant resources that could otherwise sustain other AI projects).

⁴² *Fatality Facts 2023: Yearly snapshot*, INS. INST. FOR HIGHWAY SAFETY, <https://www.iihs.org/topics/fatality-statistics/detail/yearly-snapshot> [<https://perma.cc/PR9Q-GP2G>] (last visited Sep. 25, 2025).

⁴³ Frazier, *supra* note 40, at 313.

⁴⁴ *Id.*

⁴⁵ *Study Demonstrates How AI Can Develop More Personalised Cancer Treatment Strategies*, UNIV. OF OXFORD (June 17, 2024), <https://www.ox.ac.uk/news/2024-06-17-study-demonstrates-how-ai-can-develop-more-personalised-cancer-treatment-strategies> [<https://perma.cc/G26B-33SB>].

⁴⁶ Andrew R. Chow, *How Meteorologists Are Using AI to Forecast Hurricane Milton and Other Storms*, TIME (Oct. 9, 2024, at 17:23 EDT), <https://time.com/7081372/ai-hurricane-forecasting/> [<https://perma.cc/Z2SY-3C5B>].

An alternative set of principles grounded in the lessons of the past should guide the use of AI for national security. First, government adoption of AI should facilitate a competitive AI market. A broader range of AI labs competing for government contracts will give the government and, by extension, the people a greater choice of models based on factors such as civil liberties, human rights, and AI safety. This would reduce the odds of yet another defense sector being dominated by a handful of companies that may not be as stable as hoped. For example, excessive reliance on Boeing placed the nation in an unfortunate position and one it could have avoided if this principle had been adopted sooner.⁴⁷ The Congressional Research Service recently published a report analyzing the threats to national security posed by Boeing's ongoing financial and other struggles.⁴⁸ Boeing accounts for 3.3 percent of U.S. defense contracts.⁴⁹ It is one of just three suppliers competing to launch U.S. national security satellites.⁵⁰ It ranks as the fourth-largest Defense Department contractor.⁵¹ Congress now has to weigh some serious options to stave off the worst outcomes should Boeing go bankrupt. One option involves Congress overseeing Boeing's defense program. Another would task Congress with monitoring Boeing's finances and operations. These and other options all could have been mitigated by insisting on a principle of competition. Second, de-escalation rather than peace through AI acceleration should guide relations with China and other adversaries.⁵² A hawkish mentality may score political points, but we should strive to rise above petty politics when thinking about the best use cases of this incredible technology. The end of the Cold War and an overall reduction in the risk of nuclear war turned, in part, on a willingness by the United States and U.S.S.R. to scale back their respective weapons programs.⁵³ Ideally, this AI era will skip the build-out phase and start with a default of de-escalation. This approach would steer valuable, finite resources away from the continual build-out of ever more sophisticated AI-based weapons and lower the odds of global tensions from reaching a boiling point.

⁴⁷ Dylan Malyasov, *Boeing's Defense Failures: Billions Lost, Deadlines Missed*, DEFENCE BLOG (Mar. 2, 2025), <https://defence-blog.com/boeings-defense-failures-billions-lost-deadlines-missed/> [https://perma.cc/Z2SY-3C5B].

⁴⁸ JENNIFER DIMASCIO & ALEXANDRA G. NEENAN, DEFENSE IMPLICATIONS OF CHALLENGES AT BOEING 1, (Cong. Rsch. Serv., CRS Report for Congress Order Code IN12455, Nov. 4, 2024), available at <https://www.congress.gov/crs-product/IN12455> [https://perma.cc/BEB3-ZKAN]; see Bill Chappell, *How Bad is Boeing's 2024 so far? Here's a Timeline*, NPR (Mar. 20, 2024, at 05:01 ET), <https://www.npr.org/2024/03/20/1239132703/boeing-timeline-737-max-9-controversy-door-plug> [https://perma.cc/X6DU-3YM9] (enumerating Boeing's struggles).

⁴⁹ DIMASCIO & NEENAN, *supra* note 48, at 1.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See generally Dan Hendrycks, Eric Schmidt & Alexandr Wang., *Deterrence with Mutual Assured AI Malfunction (MAIM)*, SUPERINTELLIGENCE STRATEGY, <https://www.nationalsecurity.ai/chapter/deterrence-with-mutual-assured-ai-malfunction-maim> [https://perma.cc/4APT-AAWQ] (last visited Sep. 23, 2025, at 13:43 CT) (exploring different strategies to reduce an AI-driven conflict between the US and China).

⁵³ See *The History of Nuclear Proliferation*, COUNCIL ON FOREIGN REL. (June 27, 2025), <https://education.cfr.org/learn/timeline/history-nuclear-proliferation> [https://perma.cc/WMN4-JGM2].

Third, to the extent AI informs weapons systems and other national security aims, the government should rely only on thoroughly vetted models. The NSM instead calls for the government to develop and deploy leading AI models. Frontier AI models contain many unsuspected unknowns—risks that researchers have not studied nor even anticipated. As discussed by Ashley Deeks, AI weapons systems may interact with one another in unpredictable and uncontrollable ways.⁵⁴ Advanced AI weapons systems may also ‘go rogue’ and commit unauthorized attacks.⁵⁵ Commitment to using only rigorously tested, perhaps slightly less advanced models would help prevent such outcomes.

The path forward for U.S. AI policy requires a shift away from unchecked militarization and toward applications that maximize the general welfare by accelerating scientific progress. While the NSM’s objectives underscore the need for American leadership in AI, focusing primarily on AI for defense risks escalating tensions and consolidating power within a small circle of influential tech companies. Lessons from the Cold War remind us that relentless arms races come with severe risks—ones that cannot be mitigated by superficial nods to civil liberties. Instead, the next administration should prioritize competitive markets, peaceful applications, and rigorous vetting of AI systems before deployment. By emphasizing these principles, the United States can harness AI’s transformative potential in a deliberate fashion. The ultimate measure of AI policy success lies not in military supremacy but in achieving a more innovative and more prosperous society.

Avoiding a military-AI complex not only makes good policy but also aligns with constitutional principles. A review of the original understanding of the intended scope and use of federal military power bolsters the case for a different policy approach to AI. Recognition of both the checks the Founders imposed on the federal government and the army, and the subsequent deterioration of those checks, makes clear that development of a military-AI complex would mark an unconstitutional development. If the people and their officials want to maintain such a dynamic between the federal government and AI labs while also adhering to the Constitution, then they must amend the Constitution. The alternative—continued constitutional ignorance under which lawyers, jurists, lawmakers, and defense contractors simply ignore the Army Clause’s checks—flies in the face of the Rule of Law and the principles the Founders carefully weaved into the Constitution.

III. INTENDED CHECKS ON A STANDING ARMY AND FEDERAL MILITARY POWER

Avoiding the creation of a military-AI complex would prevent placing further pressure on a constitutional order that was not designed for a permanent standing army, let alone one reliant on unaccountable private actors. The so-called Army Clause aimed to strike a balance in a contentious debate. On the

⁵⁴ Ashley Deeks et al., *Lawfare Daily: Ashley Deeks and Mark Klamber on AI and National Security*, LAWFARE (June 5, 2024, at 08:01 CT), <https://www.lawfaremedia.org/article/lawfare-daily--ashley-deeks-and-mark-klamber-on-ai-and-national-security> [<https://perma.cc/R8J6-VBU3>].

⁵⁵ Michael T. Klare, *The Pentagon's Rush to Deploy AI-Enabled Weapons Is Going to Kill Us All*, THE NATION (Dec. 6, 2023), <https://www.thenation.com/article/world/the-pentagons-rush-to-deploy-ai-enabled-weapons-is-going-to-kill-us-all/> [<https://perma.cc/T9EM-QEM2>].

one hand, the Constitution must be read as a direct response to the real and perceived failures of the Articles of Confederation.⁵⁶ On the other, it must be situated in the debate between the Anti-Federalists and Federalists as to how to establish a limited government capable of being held accountable by the people. The former goal required an expansion of centralized authority.⁵⁷ The latter tilted against too much authority, especially without responsive checks on that authority.

Opposition to a standing army pervaded the Constitutional Convention as well as the ratification debates. Samuel Adams warned that a "standing [a]rmy, however necessary it may be at sometimes, is always dangerous to the liberties of the people."⁵⁸ The basis of Adams' fear turned on the likelihood that soldiers would regard themselves as existing outside of and beyond the rest of the citizenry.⁵⁹ Still, the delegates could not ignore the threats to the nation's longevity posed by three credible actors: foreign adversaries, especially France and Great Britain; internal mobs, as demonstrated by Shays Rebellion; and, Native Americans.⁶⁰

In the context of the Army Clause, that debate required correcting the flaws of relying on state militias to address national security concerns while also preventing a standing army from threatening individual liberty.⁶¹ A slew of factors led the Framers to err on the side of enlarging the army, rather than standardizing and professionalizing state-based and state-run militias. They justified that choice by pointing to three checks on the army: first, a time limit on appropriations to support and raise that army; second, an electoral check on any Congress that authorized such appropriations; and third, federalism as manifested by the greater size and substantial energy of state militias as well as by citizen loyalty to their respective states.

A. *The Appropriations Check*

The plain text of the Army Clause—"The Congress shall have Power to . . . raise and support armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years"—includes the first substantive check on the army. The clause provides Congress with exclusive authority to "raise and support armies," but aims to meaningfully check that discretion by imposing a funding limitation on that power. One delegate claimed this would mark the "best guard" against any dangers brought on by a standing army.⁶²

⁵⁶ See Michael J. Malbin, *Conscription, the Constitution, and the Framers: An Historical Analysis*, 40 *FORDHAM L. REV.* 805, 809 (1972).

⁵⁷ See *id.* at 809–10 (asserting that the Articles of Confederation failed to ensure common defense).

⁵⁸ RUSSELL F. WEIGLEY, *HISTORY OF THE UNITED STATES ARMY* 75 (Louis Morton ed., 1967).

⁵⁹ *Id.*

⁶⁰ GENTILE ET AL., *supra* note 1, at 12.

⁶¹ Malbin, *supra* note 56, at 810, 812–13.

⁶² Cong. Rsch. Serv., *ArtI.S8.C12.2.2 Debate over the Army Clause at the Federal Convention*, CONSTITUTION ANNOTATED, https://constitution.congress.gov/browse/essay/artI-S8-C12-2-2/ALDE_00000081 [<https://perma.cc/6JEQ-KHFZ>].

Not all agreed. Members of the Founding Generation, building on the views of many Englishmen before them,⁶³ foresaw that the funding check may not serve its intended purpose.⁶⁴ Federalists and, in particular, Anti-Federalists realized that a standing army, once established, would be difficult to break up. Federal Farmer, a pseudonym for an Anti-Federalist, recognized that "[w]hen an army shall once be raised for a number of years, it is not probable that it will find much difficulty in getting congress to pass laws for applying monies to its support."⁶⁵

Tellingly, other creative compromises were set forth but ignored. Federal Farmer called for a cap on the maximum number of troops that could be maintained during peacetime as well as during war, absent a "special majority" of Congress agreeing to an exception and all additional troops being raised by state legislatures.⁶⁶ Brutus suggested that Congress reach a two-thirds majority before it could raise an army beyond what was minimally required for defense of the nation.⁶⁷ Another delegate to the Constitutional Convention offered a similar approach to that of Federal Farmer. He suggested inserting a ceiling of two or three thousand troops in the Clause.⁶⁸

The creativity did not end there. John Dickenson, another delegate, introduced the possibility of having a quarter of all state-based militias operate under the authority of a central government on a rotating basis.⁶⁹ He suggested it as a compromise in response to two ideas: One delegate floated a requirement that all state militias adhere to federal standards, unless the state had set forth standards of their own,⁷⁰ while another called for not only the universal

⁶³ See, e.g., CATO [Thomas Gordon, John Trenchard, and Walter Moyle], A DISCOURSE OF STANDING ARMIES; SHEWING THE FOLLY, USELESNESS, AND DANGER OF STANDING ARMIES IN GREAT BRITAIN 8 (1722) ("If we are to be govern'd by Armies, it is all one to us, whether they be Protestant or Popish Armies; the Distinction is ridiculous, like that between a good and a bad Tyranny . . .").

⁶⁴ Cf. Stephen P. Halbrook, *The Standing Army-Militia Debate: A Legacy that Endures*, LIBERTY FUND (Sep. 6, 2016), <https://oll.libertyfund.org/publications/liberty-matters/2016-09-06-the-standing-army-militia-debate-a-legacy-that-endures> [<https://perma.cc/ZK72-JGKJ>] ("It is difficult to overestimate the influence of anti-army protagonists on the American Founders, who defeated the most powerful army in the world.").

⁶⁵ FEDERAL FARMER, NO. 3 (1787), reprinted in 3 THE FOUNDERS' CONSTITUTION 132, 132 (Philip B. Kurland & Ralph Lerner eds., 1987).

⁶⁶ Griffin Bovée, *Standing Armies: The Constitutional Debate*, J. AM. REVOLUTION (May 8, 2018), <https://allthingsliberty.com/2018/05/standing-armies-the-anti-federalists-and-federalists-constitutional-debate> [<https://perma.cc/3UGA-LBTK>].

⁶⁷ *Id.*

⁶⁸ STEVE P. MULLIGAN, THE ARMY CLAUSE, PART 2: DRAFTING AND RATIFICATION HISTORY (Cong. Rsch. Serv., CSR Report for Congress Order Code LSB11205, July 22, 2024), available at https://www.congress.gov/crs_external_products/LSB/HTML/LSB11205.web.html [<https://perma.cc/WPA9-7P3R>].

⁶⁹ Lawrence Goldstone, *Lawrence Goldstone—Arms and the Common Man: Standing Army, Militia, and the Second Amendment in the United States*, L. & HIST. REV., <https://lawandhistoryreview.org/article/lawrence-goldstone-arms-and-the-common-man-standing-army-militia-and-the-second-amendment-in-the-united-states> [<https://perma.cc/DNQ7-CBVL>] (last visited Jan. 15, 2026, at 20:41 ET).

⁷⁰ THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 330–31 (Max Farrand ed., 1911).

application of federal standards to all militia but also for all militia to come under federal control.⁷¹

James Madison, a Federalist, may not have endorsed such proposals but he did share some of the concerns animating the Anti-Federalists. Madison knew armies could be “inauspicious to [the nation’s] liberties.”⁷² Unlike the Anti-Federalists, he assumed the limits set forth in the Army Clause would have a meaningful effect on Congress.⁷³ The American people, per Madison, would use the ballot to quash any efforts to unnecessarily, yet steadily increase the size of the army.⁷⁴ His thinking went that every two years the people would determine whether the army had become “burdensome to the properties and ominous to the liberties of the people” and vote accordingly.⁷⁵ Any greater check on Congress’s ability to raise an army might imperil the nation itself.⁷⁶ He regarded maintenance of a fighting force as a precondition for the nation’s longevity. Per Madison, “[i]f one nation maintains constantly a disciplined army, ready for the service of ambition or revenge, it obliges the most pacific nations who may be within the reach of its enterprises to take corresponding precautions.”⁷⁷ What’s more, he feared that a blatantly inadequate army would, like honey to a bear, draw the attention of foreign adversaries.⁷⁸

Other delegates used the specter of a feeble nation, a fear that was top of mind in the wake of Shays’ Rebellion, to double down on the need for a strong, central army. One line of argument centered on the inability of states to competently respond to, let alone stay aware of, the manifold threats facing the nation. Pinkney, for instance, suspected that states would realize the “necessity” of surrendering control over the nation’s defense to a central authority.⁷⁹ Another line of argument emphasized that the nature of the threats facing the country warranted a substantial, reliable army. Pinkney tapped into this argument as well by predicting anarchy without the creation of such a force.⁸⁰ Mason alleged that too onerous restrictions on standing armies in times of peace “might be unsafe.”⁸¹

The delegates dismissed more creative, heightened checks on raising and supporting an army and instead opted to gamble on the temporal funding

⁷¹ *Id.* at 331.

⁷² THE FEDERALIST NO. 41 (James Madison).

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ THE FEDERALIST NO. 41 (James Madison).

⁷⁸ James Madison, General Defense of the Constitution, Address at the Virginia Ratifying Convention (June 6, 1788), in *DEBATES AND OTHER PROCEEDINGS OF THE CONVENTION OF VIRGINIA* (David Robertson, 2d. ed. 1805).

⁷⁹ THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 70, at 331.

⁸⁰ *Id.*

⁸¹ *Id.* at 616.

restriction as a key way to curb the temptation to perpetually maintain and enlarge an army.⁸² The need for a positive appropriation at the outset of any conflict was supposed to serve as a major check on the size of the army and the discretion of the executive, as commander in chief, to unnecessarily prolong a conflict.⁸³ It appears that they also forecasted that two-year funding increments would prevent the army from ever becoming too large. Madison sought only a regular army “equal to the resources of the country[.]”⁸⁴ This two-year window was also meant to align with another check: electoral pressure.

B. *The Electoral Check*

Rather than adopt the one-year limit on appropriations that the British placed on military funding,⁸⁵ the Founders considered⁸⁶ and rejected that proposal in favor of a time period that aligned with biennial elections.⁸⁷ Hamilton countered concerns that the Constitution unduly checked the army by emphasizing that the ability to raise and support an army was vested in a legislature “to be a popular body, consisting of the representatives of the people periodically elected.”⁸⁸

Two assumptions undergird the efficacy of this check. Hamilton expected that the people would pay close attention to congressional appropriations to the army.⁸⁹ He likewise must have expected that the people would succeed in voting out members of Congress who misused that power. These assumptions initially held true.

When Congress authorized its first expansion of the military in 1797,⁹⁰ it had an immediate and recognized effect on voters. Congress turned to a stamp tax as well as a graduated tax on houses to raise the requisite funds.⁹¹ The former directly altered daily life for early Americans. Compliance with the tax

⁸² Halbrook, *supra* note 64 (“George Mason and his Anti-Federalist colleagues failed to have the Constitution amended to require that two-thirds of both houses of Congress would be necessary to keep up a standing army.”); THE FEDERALIST No. 24 (Alexander Hamilton) (anticipating that the two-year limit would be “a great and real security against the keeping up of troops without evident necessity.”).

⁸³ Lucas Issacharoff & Samuel Issacharoff, *Constitutional Implications of the Cost of War*, 83 U. CHI. L. REV. 169, 169–70 (2016).

⁸⁴ THE FEDERALIST No. 46 (James Madison).

⁸⁵ STEVE P. MULLIGAN, *supra* note 68, at 2.

⁸⁶ THE RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 70, at 334.

⁸⁷ *Id.* at 509. This timing also reflected a concern that Congress only met every one year. A one-year limit would therefore pose a logistical challenge. *Id.*

⁸⁸ THE FEDERALIST No. 24 (Alexander Hamilton).

⁸⁹ Cf. Matthew Underwood, “Jealousies of a Standing Army”: *The Use of Mercenaries in the American Revolution and Its Implications for Congress’s Role in Regulation Private Military Firms*, 106 NW. U. L. REV. 317, 326 (2012) (asserting that at least some citizens were attentive to the strengths and limitations of the nation’s security forces).

⁹⁰ Paul Douglas Newman, *The Federalists’ Cold War: The Fries Rebellion, National Security, and the State, 1787-1800*, 67 PA. HIST. J. MID-ATL. STUD. 63, 87 (2000).

⁹¹ *Id.*

involved printing “certain legal transactions to appear on government-issued stamped paper.”⁹² The latter involved a direct levy on the people, which previously had only been instituted by state and local governments.⁹³ This tax thus represented the first “unavoidable duty” by the federal government. Previously, Americans could lessen their federal tax burden by opting not to buy certain products or to otherwise reduce the quantity of products purchased.⁹⁴ The people took notice of their new financial burden. Paul Newman recounts that older citizens, reminded of the taxes imposed by the British, “verbally accosted assessors as ‘damned stampers’ and ‘Tory rascals,’ donned tri-colored ‘liberty caps,’ and danced around ‘liberty poles’ in open defiance.”⁹⁵

Widespread attention to the taxes and the associated popular uproar entrenched Republican and Federalist positions.⁹⁶ The Republicans capitalized on that opposition at the polls in 1800. “The Federalists’ defeat in 1800, in part, can be attributed to their inability to convince a majority of the electorate . . . that the French threat demanded the sacrifice of their personal liberties, or the use of standing armies against them.”⁹⁷ Likewise, they wrongly assumed that the American people regarded support of a “powerful and energetic national government” as a core governmental value.⁹⁸ The election of 1800 demonstrated that under specific conditions the Constitution’s temporal cap on army appropriations could indeed function as intended. More specifically, such a check worked when the nation had a limited budget, Congress had to ask the people to front the costs of war, and the people were well aware of that burden.⁹⁹

C. *The Federalism Check*

Federalism, grounded in loyalty to one’s state and state-operated militias, was expected to provide the third check on the army.¹⁰⁰ Madison addressed concerns about a standing army maintained by the central government by making a strong case for the power of states, notwithstanding the Army Clause’s provisions.¹⁰¹ This power emerged from two sources. States maintained militias that in the aggregate would drastically outnumber federal forces.¹⁰² Popular support for states, greater in comparison to popular backing of the federal

⁹² *Id.*

⁹³ *Id.* at 88.

⁹⁴ *Id.* at 87–88.

⁹⁵ Newman, *supra* note 91, at 89.

⁹⁶ *Id.* at 92; see Issacharoff & Issacharoff, *supra* note 83, at 190 (“[t]he new tax was met with stark popular opposition.”).

⁹⁷ Newman, *supra* note 91, at 95.

⁹⁸ *Id.*

⁹⁹ See Issacharoff & Issacharoff, *supra* note 83, at 190.

¹⁰⁰ *Contra* Robert Leider, *Federalism and the Military Power of the United States*, 73 VAND. L. REV. 989, 1001–09 (2020) (contending that the text of the Constitution effectively nationalized the militia).

¹⁰¹ THE FEDERALIST NO. 46 (James Madison).

¹⁰² *Id.*

government, would ensure militias remained well-funded and well-staffed.¹⁰³ Back of the envelope math by Madison helps explain his skepticism of concerns about an excessively large and influential federal army: he envisioned a federal army of no more than 30,000 men and tallied somewhere around 500,000 men in state militias.¹⁰⁴ Hamilton similarly assumed that a small standing army would exist under the Army Clause.¹⁰⁵ He reasoned that anything larger would be unnecessary because European adversaries would have to travel across the ocean prior to mounting any threat, leaving plenty of time for the United States to scale up its defenses.¹⁰⁶

The Founding Generation also assumed that militias made up of everyday citizens would fiercely defend their states,¹⁰⁷ which served as another check against the possibility that professional, federal soldiers would be detached from their communities.¹⁰⁸ Though many Founders, including the most fervent supporters of militias, questioned the efficacy of militias in actual combat,¹⁰⁹ they nevertheless preferred the risk of inadequate, state-based militias to a larger standing army that would threaten civil liberties.¹¹⁰

One final check imposed by the states on federal military forces reflected the practical reality that in the event Congress sought to “raise” an army it would inevitably have to rely on individuals trained by and beholden to state militias.¹¹¹ These militiamen, unlike professional troops, would have strong ties to their respective communities and, consequently, lower odds of committing “feats of cruelty exercised on their innocent fellow citizens.”¹¹² In addition to the safeguard provided by republic values, some members of the Founding Generation identified another check grounded in state power: refusing to mobilize the militia when called for by the federal government. By way of example, the Governor of Massachusetts did not heed the President’s call for

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ THE FEDERALIST NO. 8 (Alexander Hamilton).

¹⁰⁶ *Id.*

¹⁰⁷ *Cf. The Federalist Farmer No. XVIII (1788), in 2 THE COMPLETE ANTI-FEDERALIST 339* (Herbert J. Storing, ed., 1981) (contending that militias made up of the people would render the maintenance of regular troops unnecessary in most situations).

¹⁰⁸ GENTILE ET AL., *supra* note 1, at 13.

¹⁰⁹ Earl F. Martin, *America's Anti-Standing Army Tradition and the Separate Community Doctrine*, 76 MISS. L.J. 135, 166–68 (2006).

¹¹⁰ *Id.* at 167; compare Leider, *supra* note 100, at 1002–03 (observing that a comparison of state control over militias under the Articles of Confederation exceeded the level of control afforded to them under the Constitution) with David Yassky, *The Second Amendment: Structure, History, and Constitutional Change*, 99 MICH. L. REV. 588, 606–07 (2000) (maintaining that the Constitution perpetuated a high degree of state control over their respective militias).

¹¹¹ GENTILE ET AL., *supra* note 1, at 17.

¹¹² *Essays of Philadelphienis*, INDEPENDENT GAZETTER, Nov. 1787–Apr. 1788 in Earl Martin, *America's Anti-Standing Army Tradition and the Separate Community Doctrine*, 76 MISS. L.J. 135, 182 n.215 (2006).

militia at the height of the War of 1812.¹¹³ The Governor of Connecticut did the same.¹¹⁴ In other instances, militiamen strictly adhered to the limited role set out for such forces under the Constitution. The New York militia, for instance, adopted a narrow reading of “to repel [i]nvasions” in justification of their refusal to battle the British in Canada.¹¹⁵ Compliance with the territorial restrictions on the militia carried on for much of the 20th Century. Militiamen also refused to enter Mexico during the Mexican War in the 1840s.¹¹⁶

The individuals who pushed back on the assumptions underlying the idea that any standing army would not be a threat and, therefore, insisted on zero congressional control of militias did not win the debate—at least not at the Convention. An anonymous Anti-Federalist warned that even a “select” federal force could lead to the neglect of state militias.¹¹⁷ Their suggestion that the army only be allowed to form for specific and time-limited engagements failed to gain traction.¹¹⁸ They also failed to prevent Congress from having some control over state militias: Per the “militia clause” of the Constitution, Congress may “organiz[e], arm[], and disciplin[e], the militia[.]”¹¹⁹ Nevertheless, concerns as to whether the Constitution properly threaded the needle between federal needs and state sovereignty were largely assuaged by the Bill of Rights.¹²⁰

The Second and Third Amendments of the Bill of Rights evidence that concerns about state control over their respective militias and the possibility of the central government wielding a massive standing army pervaded ratification conventions.¹²¹ In particular, the Second Amendment characterized the pervasive idea that state militias aligned better with the republican spirit of the time. As summarized by H. Richard Uviller & William G. Merkel, that Amendment was intended to “buttress[] community security and reduc[e] the sway of a dangerous, potentially usurpatory standing army.”¹²² In other words, the Amendment empowered states by responding directly to “classically

¹¹³ Frederick Bernays Wiener, *The Militia Clause of the Constitution*, 54 HARV. L. REV. 181, 188 (1940).

¹¹⁴ *Id.* Whether this was a permissible use of state power was contested by many supporters of the central government. Leider, *supra* note 100, at 1012–13. Still, the highest state court in Massachusetts agreed on the legality of the tactic. *Id.* at 1011–12.

¹¹⁵ Wiener, *supra* note 113, at 189.

¹¹⁶ *Id.*

¹¹⁷ *The Federalist Farmer No. XVIII (1788)*, in 2 THE COMPLETE ANTI-FEDERALIST, *supra* note 108, at 341.

¹¹⁸ *Id.*

¹¹⁹ U.S. CONST. art. I, § 8, cl. 16.

¹²⁰ GENTILE ET AL., *supra* note 1, at 17.

¹²¹ See Martin, *supra* note 109, at 170–71 (providing an overview of the substance and spirit of debates over the Army Clause at state ratifying conventions); *id.* at 186–89, 192 (analyzing the purpose for and popular expectations of the Second and Third Amendments).

¹²² H. Richard Uviller & William G. Merkel, *Muting the Second Amendment: The Disappearance of the Constitutional Militia*, in THE SECOND AMENDMENT IN LAW AND HISTORY 148, 149 (Carl T. Bogus ed., 2000).

republican fears of centrally controlled standing armies.”¹²³ The hope was that support for state militias would result in a “balanced, constitutional rule.”¹²⁴

IV. HOW CONSTITUTIONAL IGNORANCE DESTROYED THE CHECKS ON FEDERAL MILITARY POWER

For a long time, Americans had little cause to fear abuse of the Army Clause. For more than a century, the army maintained by the federal government stuck to a limited role during peacetime.¹²⁵ Eventually, though, these checks related to the Army Clause proved inconsequential. Generations of lawyers, jurists, and policymakers opted to ignore the letter and spirit of the Army Clause, which chipped away at the limitations the Framers anticipated would check the federal government’s military power.

A. *Perpetual Appropriations*

Fidelity to the two-year limit on appropriations under the Army Clause quickly disappeared.¹²⁶ Removal of this check may not have posed too much of a problem with respect to thwarting the development of an unchecked, expansive military had the nation’s financial capacity remained constant over time. The weak American economy in the 1790s would have provided the people with little fear of a sizable investment in the army, given other concerns.¹²⁷ During the Founding Era, for instance, the Framers acknowledged that they lacked the financial means to sustain a standing army or at least one of the magnitude required to take on an adversary like Great Britain.¹²⁸ When the executive sought to enlarge the army, Congress commonly pushed back for lack of funds.¹²⁹ In the event Congress did appropriate funds, the people immediately felt the financial burden and acted on it at the polls.¹³⁰

In stark contrast to the late 1790s when Congress had to make an affirmative appropriation to enlarge the army, the modern military operates with an effectively permanent budget (and necessarily so based on the nature of

¹²³ H. Richard Uviller & William G. Merkel, *Scottish Factors and the Origins of the Second Amendment: Some Reflections on David Thomas Konig's Rediscovery of the Caledonian Background to the American Right to Arms*, 22 L. & HIST. REV. 169, 170 n.2 (2004).

¹²⁴ *Id.*

¹²⁵ EDWARD M. COFFMAN, *THE OLD ARMY: A PORTRAIT OF THE AMERICAN ARMY IN PEACETIME, 1784-1898*, at 3–6 (1986).

¹²⁶ *Cf.* Martin, *supra* note 109, at 187 (discussing how in 1792 Congress authorized a third-year enlistment for soldiers recruited to the national Army).

¹²⁷ GENTILE ET AL., *supra* note 1, at 25; *see* Leider, *supra* note 100, at 997 (noting a “practical objection” among the Founders related to the expense of maintaining a standing army).

¹²⁸ GENTILE ET AL., *supra* note 1, at 17.

¹²⁹ Martin, *supra* note 109, at 193, 195.

¹³⁰ Joseph J. Thorndike, *How the First Federal Property Tax Sparked an Armed Rebellion*, TAX NOTES (Dec. 9, 2024), <https://www.taxnotes.com/featured-analysis/how-first-federal-property-tax-sparked-armed-rebellion/2024/12/06/7nyp9> [<https://perma.cc/T6TS-DWD2>].

warfare and national security).¹³¹ No longer is there a regular debate about the scope and purpose of any one military appropriation.¹³² This reality has stark ramifications. For one, the seemingly endless allocation of funds toward the army and, more generally, national security escapes popular attention or, minimally, popular understanding.¹³³ Most Americans support increased spending on national security.¹³⁴ Whether this support would persist if Americans knew the cost of maintaining the current size of the armed forces remains unclear. The Institute for Policy Studies estimated that the average taxpayer paid more than \$1,000 to Pentagon contractors in 2022.¹³⁵ Yet, tax bills do not come with receipts. Taxpayers face one bill and, when given the chance to vote on budgetary issues, vote on broad proposals to alter total spending, more so than to address the levels of specific appropriations.

Even if they did take note of the fact that Congress has evaded the two-year spending limit, generations of lawyers in the executive branch have upheld such spending as constitutional. In 1904, the Solicitor-General Henry Hoyt narrowly read the Army Clause to permit Congress to make payments related to the army for longer than two years. Per Hoyt, the appropriations limit only applied to “the strict sense of the word support.”¹³⁶ All other appropriations, such as those “for the various means which an army may use in military operations, or which are deemed necessary for the common defense,” did not have to comply with the two-year limit.¹³⁷ This narrow reading has persisted. In 1948, Attorney General Thomas Clark likewise adopted a narrow reading of the clause.¹³⁸ He identified no legal objection to the Air Force procuring “aircraft and aeronautical equipment to remain available until expended.”¹³⁹ Put differently, Clark saw no constitutional hurdles to Congress investing in the future expansion of the armed forces.

This interpretation eviscerated the financial safeguards imposed by the drafters. A plain reading of the clause also clashes with the narrow reading adopted by Hoyt and perpetuated by generations of lawyers and jurists since.

¹³¹ Edward F. Sherman, *Legal Inadequacies and Doctrinal Restraints in Controlling the Military*, 49 IND. L.J. 539, 555 (1974).

¹³² Cf. Leider, *supra* note 100, at 1000 (suggesting that a temporal limit on appropriations would facilitate regular debate among Congress).

¹³³ Emily Wielk & Rachel Synderman, *Do You Know Where Your Federal Tax Dollars Go?*, BIPARTISAN POL’Y CTR. (Jan. 31, 2024), <https://bipartisanpolicy.org/blog/do-you-know-where-your-tax-dollars-go-tr/> [<https://perma.cc/R3SQ-GXUX>].

¹³⁴ *Little Public Support for Reductions in Federal Spending*, PEW RSCH. CTR. (Apr. 11, 2019), <https://www.pewresearch.org/politics/2019/04/11/little-public-support-for-reductions-in-federal-spending/> [<https://perma.cc/ABT2-NGJY>].

¹³⁵ Lindsay Koshgarian, Ashik Siddique & Alliyah Lusuegro, *Tax Day 2023: Where Your 2022 Tax Dollars Went*, INST. FOR POL’Y STUD. (Apr. 17, 2023), <https://ips-dc.org/report-2023-tax-day-receipt/> [<https://perma.cc/7F65-XDZT>].

¹³⁶ Time Limit on Appropriations for the Army, 25 Op. Att’y Gen. 105, 108 (1904).

¹³⁷ *Id.*

¹³⁸ Time Limits on Army Appropriations, 40 Op. Att’y Gen. 555 (1948).

¹³⁹ *Id.*

Dictionary definitions of “support” around the time of ratification suggest that support includes the sorts of means “necessary for the common defense” that Hoyt read out of the clause. “Support,” per Samuel Johnson’s 1773 dictionary, refers to (1) act or power of sustaining; (2) prop; sustaining power; (3) necessities of life; (4) maintenance; supply.¹⁴⁰ A 1795 dictionary likewise offered a broad definition of “support”: “the act of supporting, a prop, a supply; the necessities of life, a maintenance.”¹⁴¹ When policymakers aimed to create or initiate some action or investment, they relied on words other than “support.” For instance, Congress passed an act in 1789 to “establish and support lighthouses, beacons, buoys, and public piers,”¹⁴² which covered both the initial construction of those pieces of infrastructure as well as the “necessary support, maintenance, and repairs[.]”¹⁴³

“Raise” pertained to a distinct action. Again, per Johnson, “raise” meant, in relevant part, “(3) to erect; to build up; (5) to amplify; to enlarge; (13) to bring into being; (19) to collect; to assemble; to levy.”¹⁴⁴ Notably, on the latter definition, Johnson provided the example of raising incessant armies.¹⁴⁵

Contemporary action by Congress further illustrates that “support” had a distinct meaning from raise. The Fifth Congress applied “support” in a way indicative of a broader meaning that ensures the continuation of something. For example, in “an act for additional appropriation to provide and support a naval armament,” Congress allocated incremental funds for military equipment—namely, a “sum, not exceeding one hundred and fifteen thousand eight hundred and thirty-three dollars, to complete and equip for sea[.]”¹⁴⁶ The Act also covered investments in force capacity—allowing for the “pay and subsistence, for the term of one year, of the officers and crews” intended to serve on the new frigates.¹⁴⁷ This meaning of “support” predated the ratification of the Constitution and remained the same for decades to follow. When the Continental Congress sought to provide more flour to soldiers, they agreed to a resolution “to lay up magazines of provisions for the support of the army[.]”¹⁴⁸

¹⁴⁰ *Support*, SAMUEL JOHNSON’S DICTIONARY, <https://johnsonsdictionaryonline.com/views/search.php?term=support> [https://perma.cc/HRG2-YGDC] (last visited Jan. 1, 2026, at 15:16 CT).

¹⁴¹ JOHN ASH, THE NEW AND COMPLETE DICTIONARY OF THE ENGLISH LANGUAGE (1795).

¹⁴² Amy H. Edwards, *Shining a Light on Montauk Point Lighthouse in Honor of Lighthouse Day*, NATIONAL ARCHIVES (Aug. 2, 2018), <https://unwritten-record.blogs.archives.gov/2018/08/02/shining-a-light-on-montauk-point-lighthouse-in-honor-of-lighthouse-day/> [https://perma.cc/B3KD-TXQB].

¹⁴³ Act of Aug. 7, 1789, ch. 9, 1789.

¹⁴⁴ *Raise*, SAMUEL JOHNSON’S DICTIONARY, <https://johnsonsdictionaryonline.com/views/search.php?term=raise> [https://perma.cc/JML9-KNJ3] (last visited Jan. 1, 2026, at 15:18 CT).

¹⁴⁵ *Id.*

¹⁴⁶ Act of Mar. 27, 1789, ch. 23, 1789.

¹⁴⁷ *Id.*

¹⁴⁸ JOURNALS OF THE CONTINENTAL CONGRESS, 1774–1789, at 166 (Johnson Reprint Corp. 1968) (1778).

A review of popular sentiments toward standing armies bolsters a broad interpretation of the intended limits imposed by the Army Clause's two-year limitation. Stephanie A. Levin recounts, "[t]he popular appeal [of the Anti-Federalists'] arguments [against a national standing army] can be gauged by the considerable effort which the authors of the Federalist Papers devoted to responding to this . . . critique."¹⁴⁹ As previously noted, Madison, emphasized that the limit on appropriations was one of several forceful checks on any such standing army.¹⁵⁰ Hamilton likewise attempted to assuage popular concerns by predicting that a standing army would be relatively small given the nation's distance from its potential foreign adversaries.¹⁵¹ He also cited the temporal restraint on appropriations as a barrier to the formation of an oppressive standing army.¹⁵²

Other widely read outlets shared a similar message. The *Philadelphia Independent Gazetteer* ran an article contending that "[a] standing army is not granted or intended [by the Constitution and, specifically, the Army Clause] for there can be no provision for its continuing three years, much less for its permanent establishment."¹⁵³ The *New York Journal* shared a similar message.¹⁵⁴ Concerns about a standing army also appeared in the *Maryland Gazette*¹⁵⁵ and, of course, in many Anti-Federalist papers, which received widespread consideration.¹⁵⁶ More generally, this generation of Americans was "obsessed" with the issue of how to establish a sufficient counterweight to the possibility of a standing army operated by the central government.¹⁵⁷ The idea that the ratifying public would somehow agree to a loophole in which the Army Clause allowed for the perpetual funding of a standing army lacks any basis in the popular understanding of the Clause and its purpose.

Evidence of an expansive, rather than narrow, understanding of "support" appears for decades following the ratification. Noah Webster, for instance, offered yet another expansive definition of "support" in his 1828 dictionary.¹⁵⁸ Later, in 1833, Joseph Story set forth a similar interpretation of the

¹⁴⁹ Stephanie A. Levin, *The Deference That is Due: Rethinking the Jurisprudence of Judicial Deference to the Military*, 35 VILL. L. REV. 1009, 1049 (1990).

¹⁵⁰ THE FEDERALIST NO. 41 (James Madison).

¹⁵¹ THE FEDERALIST NO. 8 (Alexander Hamilton).

¹⁵² THE FEDERALIST NO. 24 (Alexander Hamilton).

¹⁵³ Tench Coxe, *An American Citizen: An Examination of the Constitution of the United States*, TEACHING AM. HIST. (Oct. 21, 1788), <https://teachingamericanhistory.org/document/an-american-citizen-an-examination-of-the-constitution-of-the-united-states-iv/> [<https://perma.cc/Y392-2FF6>].

¹⁵⁴ A Son of Liberty, N.Y. J., Nov. 8, 1787, at 1 (warning about the possibility of a standing army under the proposed Constitution).

¹⁵⁵ A Farmer, *Essay V*, MD. GAZETTE, Mar. 28, 1788.

¹⁵⁶ Martin, *supra* note 109, at 180–81.

¹⁵⁷ See H. Richard Uviller & William G. Merkel, *The Militia and the Right to Arms, or, How the Second Amendment Fell Silent* at 37–68 (2003) (detailing public sentiment related to the militia during the Revolutionary Era); see Martin, *supra* note 109, at 172 (acknowledging "the low place that standing armies occupied with the public").

¹⁵⁸ NOAH WEBSTER, A DICTIONARY OF THE ENGLISH LANGUAGE VOL. 2 at SUP (1828).

appropriations limitation.¹⁵⁹ According to Story, the idea that Congress had "unlimited power to raise and support armies" based solely on their determination that the general welfare so required would constitute a "despotic" power.¹⁶⁰ That said, he was well aware of the fact that the central government would need sufficient flexibility to raise forces to provide for the common defense.¹⁶¹ Though such flexibility could carry the threat of oppression, Story's concerns were assuaged, in part, by that power being "limited by the necessity . . . of biennial appropriations."¹⁶² Implicit to Story's interpretation is that the entirety of Congress's power was cabined by the temporal limit.

Congress eventually acquiesced to military demands for long-term sources of funding. Technological demands necessitated that Congress not only increase military spending but also invest in private companies capable of producing the latest innovations at scale. As early as the 1880s, Congress realized that the federal government was no longer up to the task of producing the quality and quantity of armaments perceived to be necessary for the common defense.¹⁶³ Under the "New Navy" program, Congress departed from its historical reliance on the War and Navy Departments to produce most, if not all, military goods and instead altered the procurement process to allow for more military goods to be sourced from private actors.¹⁶⁴

This alteration quickly led to some of the troubling aspects of the military industrial complex that carry on through today. In seemingly no time, former government workers opted to join the private sector in an attempt to benefit from this new reliance on private actors.¹⁶⁵ Congress enacted legislation in 1896 to try to stop that revolving door.¹⁶⁶ Hindsight suggests Congress fell short of its expectations. Around the same time, a lobbying force that relentlessly advocated for peacetime preparation for war developed.¹⁶⁷ This specific lobby later managed to direct more and more federal funds toward private research and development efforts.¹⁶⁸ The justification for such investment only grew as technological supremacy became more correlated with military dominance.¹⁶⁹

Budgeting "reforms" instituted by Robert McNamara in the Kennedy Administration exploited and enlarged the loophole identified by Hoyt and doubled down on public investment in private R&D. McNamara introduced

¹⁵⁹ JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES §§ 1177–78 (1833).

¹⁶⁰ *Id.* § 1177.

¹⁶¹ *Id.* § 1178.

¹⁶² *Id.*

¹⁶³ Bruce G. Brunton, *Institutional Origins of the Military-Industrial Complex*, 22 J. ECON. ISSUES 599, 601–02 (1988).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at 602.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Brunton, *supra* note 163, at 602.

¹⁶⁹ *Id.*

"multi-year programming, which projected the total costs of forces and weapons systems, including systems still in a development phase, at least five years ahead."¹⁷⁰ The change had several ramifications on the level of appropriations as well as the process for establishing whether such appropriations were necessary, wise, or both. With respect to the former, the change "tended to result either in increased overall budgets or in major eleventh-hour cuts."¹⁷¹ On the latter point, "the major substantive issues in the budget . . . are settled privately between the Pentagon and the White House[.]"¹⁷² A "transaction nexus of groups" emerges from and seeks to perpetuate this approach.¹⁷³ "[M]ilitary officers and procurement officials, congressmen as authorizers of funds, and private firms as recipients of contracts" have benefited from the transition to private procurement from public procurement.¹⁷⁴ The related incentives cut against the public's interest and, as discussed in more detail below, frustrate the accountability the Founders assumed would ensure enforcement of the Army Clause.

The control (and accountability) intended to come from the Army Clause's appropriation restrictions has been further lessened by congressional deference to the military as to how and when to spend funds. Consider that the Department of Defense may "move funds between line items within an appropriation" in what's known as a reprogramming action and may even "move funds between appropriations through transfer authorities."¹⁷⁵ As specified by Chris Mirasola, the former permits the DOD to take funds intended for education benefits and move them to retirement contributions, for example.¹⁷⁶ The latter may, per one such statutory authority, allow for the transfer of up to \$6 billion to a "higher priority" item upon "unforeseen military requirements" unfolding.¹⁷⁷ Though \$6 billion may seem like a trash bag in a landfill—Mirasola notes that such a transfer would amount to less than 1.0 percent of the DOD's budget¹⁷⁸—this discretion flies in the face of the transparency and accountability central to the Army Clause.

Indefinite investment in military means frustrates another intended check by making it impossible to have a real debate as to whether to retain the military for another two-year period. Alexander Hamilton explained that this provision, commonly referred to as the Army Clause, would require Congress "to deliberate

¹⁷⁰ Adam Yarmolinsky, *Civilian Control: New Perspectives for New Problems*, 49 IND. L.J. 654, 663 (1974).

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ Brunton, *supra* note 164, at 600–01.

¹⁷⁴ *Id.*

¹⁷⁵ Chris Mirasola, *Domestic Military Deployments and the Limitations of Appropriations Law*, LAWFARE (Sep. 19, 2024, at 15:00 CT), <https://www.lawfaremedia.org/article/domestic-military-deployments-and-the-limitations-of-appropriations-law> [<https://perma.cc/2LYJ-DHJH>].

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

upon the propriety of keeping a military force on foot" at least once every two years, "come to a new resolution on the point," and "declare their sense of the matter by a formal vote in the face of their constituents."¹⁷⁹ No such debate is possible today. Massive companies have developed to fulfill the military's demand for the latest military technology.¹⁸⁰ A failure by Congress to fund the military's requests would imperil the financial well-being of firms of local and national economic significance as well as run the risk of sparking concerns of China and other foreign adversaries racing ahead technologically.¹⁸¹ These firms, their employees, and the surrounding communities need more than a two-year time horizon of assurances of significant funding.

Militarization of AI has exacerbated the sources of pressure on the two-year appropriation limit. The overriding source of pressure is a "preparedness ethos" that has sustained calls for increased militarization since the Founding.¹⁸² A so-called AI Arms Race has taken off, as detailed above.¹⁸³ The purported need to lead in AI development and, specifically, military applications of AI places further pressure on Congress's ability to adhere to the Army Clause. Due to "military threat inflation," Congress has cause to do whatever it is told will stymie the success of China and others.¹⁸⁴ A lack of federal technological capacity means that Congress must turn to private actors to meet the military's AI goals.¹⁸⁵ Those private companies demand reliable, long-term funding to pursue leading AI research and development.¹⁸⁶ What's more, the nature of AI R&D

¹⁷⁹ THE FEDERALIST NO. 26 (Alexander Hamilton).

¹⁸⁰ Stephen Semler, *How the Military-Industrial Complex Gets Its Power and Harms Workers*, in 6 *Graphs*, JACOBIN (Oct. 13, 2022), <https://jacobin.com/2022/10/pentagon-budget-military-contractors-lobbyists-biden> [<https://perma.cc/Y5CG-3NVJ>]; William D. Hartung & Benjamin Freeman, *The Military Industrial Complex Is More Powerful Than Ever*, THE NATION (May 9, 2023), <https://www.thenation.com/article/world/military-industrial-complex-defense/> [<https://perma.cc/G485-T4G5>]; Roberto J. González, *How Big Tech and Silicon Valley are Transforming the Military-Industrial Complex*, WATSON INST.: COSTS OF WAR (Apr. 17, 2024), <https://costsofwar.watson.brown.edu/sites/default/files/papers/Silicon-Valley-MIC.pdf> [<https://perma.cc/4WH8-AY8J>].

¹⁸¹ Hartung & Freeman, *supra* note 180.

¹⁸² Brunton, *supra* note 164, at 601; *see* THE FEDERALIST NO. 8 (Alexander Hamilton); *see also* Martin, *supra* note 109, at 177 (detailing Hamilton's fears of foreign and domestic threats as well as his doubts as to the capacity of the militia).

¹⁸³ *See* González, *supra* note 181 (discussing how years of "AI hype" by various tech leaders has convinced military leaders to view AI systems as "indispensable warfighting tools").

¹⁸⁴ Dan Grazier, *China Threat Inflation and America's Nonsensical Plans*, PROJECT GOV'T OVERSIGHT (Dec. 7, 2022), <https://www.pogo.org/reports/china-threat-inflation-and-americas-nonsensical-plans> [<https://perma.cc/V4P4-GLEZ>].

¹⁸⁵ *See* Marta Biino, *US defense agencies, industry expands AI use with tech companies' backing*, SEMAFOR (Nov. 18, 2022, at 09:54 CT), <https://www.semafor.com/article/11/18/2024/us-military-expands-ai-use-with-tech-companies-backing> [<https://perma.cc/NU2V-72A2>]; Paul Lushenko & Keith Carter, *A New Military-Industrial Complex: How Tech Bros are Hying AI's Role in War*, BULL. ATOMIC SCIENTISTS (Oct. 7, 2024), <https://thebulletin.org/2024/10/a-new-military-industrial-complex-how-tech-bros-are-hying-ais-role-in-war/> [<https://perma.cc/3R2R-9438>].

¹⁸⁶ González, *supra* note 181 ("Between 2019 and 2022, U.S. military and intelligence agencies awarded major tech firms contracts with ceilings worth at least \$53 billion combined."); *see* Jason Nelson, *How the US Military Says Its Billion Dollar AI Gamble Will Pay Off*, DECRYPT (Nov. 16,

means that Congress must ensure the durability of a fragile AI supply chain or risk losing the aforementioned race to adversaries. This task comes with a massive price tag and will necessarily render Congress captive to the actors shaping and controlling that supply chain.¹⁸⁷

Many recipients of congressional funding are start-ups, who without federal support might not have economic cause for pursuing AI tools for military purposes.¹⁸⁸ The net result is that Congress is a central funder in an resource-intensive industry—a role that it cannot renege on without causing widespread, negative, economic consequences.¹⁸⁹ So long as Congress is bankrolling a portion of a growing segment of the economy, it seems unlikely that the two-year appropriations limit will provide a meaningful restraint on the burgeoning defense sector. Put differently, Congress has a substantial and ongoing interest in the vibrancy of an important sector of the economy.

B. *Elimination of Electoral Pressure*

The Army Clause's intended check on a standing army has also been hindered by reduced public accountability over military spending. Since the Founding, Congress has granted the President increasingly more authority over the army, thereby reducing the ability of the people to directly hold their elected representatives accountable for army-related laws and developments. Perceived inadequacies with responsiveness and capacity of the army motivated early Congresses to statutorily grant the President greater authority to rapidly address internal unrest.¹⁹⁰ A flurry of legislative action from 1792 to 1807 cut against constitutional assumptions about the balance of power between states and the federal government as well as about the balance of power between Congress and the President.¹⁹¹

Under the 1792 Calling Forth Act, Congress exercised its exclusive authority to “provide for calling forth the militia” by granting the President the power to call forth state militias in response to insurrections and invasions and to enforce

2024), <https://decrypt.co/291349/how-the-u-s-military-says-its-billion-dollar-ai-gamble-will-pay-off> [<https://perma.cc/7FLJ-7WGX>].

¹⁸⁷ See Ryan Heath, *China Fears are Driving a New "AI Industrial Complex"*, AXIOS (Jan. 23, 2024), <https://www.axios.com/2024/01/23/china-taiwan-nvidia-ai-chatgpt-industrial-complex> [<https://perma.cc/7TXM-3HM8>]; see, e.g., Press Release, U.S. Department of Commerce, Biden-Harris Administration Announces CHIPS Incentives Award with TSMC Arizona to Secure U.S. Leadership in Advanced Semiconductor Technology (Nov. 16, 2024), <https://www.commerce.gov/news/press-releases/2024/11/biden-harris-administration-announces-chips-incentives-award-tsmc> [<https://perma.cc/3URA-A98L>] (announcing \$6.6 billion in funding for a semiconductor company).

¹⁸⁸ See González, *supra* note 181.

¹⁸⁹ Jacob Larson et al., *The Evolution of Artificial Intelligence (AI) Spending by the U.S. Government*, BROOKINGS (Mar. 26, 2024), <https://www.brookings.edu/articles/the-evolution-of-artificial-intelligence-ai-spending-by-the-u-s-government/>; Eric Schmidt, *War in the Age of AI Demands New Weaponry*, FIN. TIMES (Sep. 21, 2024), <https://www.ft.com/content/fe136479-9504-4588-869f-900f2b3452c4?syn-25a6b1a6=1> [<https://perma.cc/3B8N-JHM3>].

¹⁹⁰ GENTILE ET AL., *supra* note 1, at 20–27 (providing an overview of the Uniform Militia Act of 1792, the 1792 Calling Forth Act, the 1795 Calling Forth Act, and the 1807 Insurrection Act).

¹⁹¹ *Id.* at 20.

the law.¹⁹² In other words, by the Second Congress, the people already saw a diminishment in their capacity to constrain federal use of military power. This Act marked “a significant departure from the militia envisioned by the Constitution, because the Framers’ debates showed that Congress, and not the President,” should exclusively wield that power.¹⁹³ While this grant of power was countered by the requirement the President first receive a court order,¹⁹⁴ the net result of the Act was still reduced control by the people.

Two years later, the people again saw Congress surrender a portion of its Army Clause authority to the executive. Concern for the stability of the nation and trust in the executive animated passage of the 1795 Calling Forth Act.¹⁹⁵ Congress freed the President of the need to receive judicial approval prior to calling forth the militia when responding to civil disturbances.¹⁹⁶ In doing so, Congress effectively ceded its exclusive power to call forth the militia, despite the drafters having intentionally confined that power to the legislature just six years earlier. The Act also blurred the constitutionally significant difference between militias and the army. “Many of the Framers envisioned the local militias as the tool of choice for dealing with local civil matters and domestic matters,” whereas the army would defend the nation’s borders and, when necessary, partner with local militias to fend off foreign forces.¹⁹⁷ Subsequent congressional acquiescence to presidential use of the militias and legislation meant that by 1807 the constitutional distinction between the instances under which the militia and army could be called had collapsed.¹⁹⁸ The dilution of the significance of militias as well as greater presidential control over them cumulatively deprived the people of powers and oversight set forth in the Constitution.

Popular control over congressional use of the Army Clause has further diminished as private contractors wield greater influence over elections. A voter in 1800 had significant incentives to closely analyze congressional activity with respect to the Army Clause. Given that all men between 18 and 45 had to enroll with their state militia and that the president had received broad discretion to call forth such militias,¹⁹⁹ the white men who were permitted to vote theoretically had several reasons to oppose candidates keen to expand the nation’s standing army.

¹⁹² An Act Providing for Calling Forth the Militia to Execute the Laws of the Union, Suppress Insurrections, and Repel Invasions, 1 Stat. 264 (1792) (prior to 1795 Amendment, *infra* note 195).

¹⁹³ GENTILE ET AL., *supra* note 1, at 24.

¹⁹⁴ An Act Providing for Calling Forth the Militia to Execute the Laws of the Union, Suppress Insurrections, and Repel Invasions, 1 Stat. 264 (1792) (prior to 1795 Amendment, *infra* note 195).

¹⁹⁵ GENTILE ET AL., *supra* note 1, at 25.

¹⁹⁶ An Act Providing for the Authority for Calling Forth the Militia to Execute the Laws of the Union, Suppress Insurrections, and Repel Invasions; and to Repel the Act Now in Force for Those Purposes, 2 Stat. 424 (1795) (prior to Insurrection Act of 1807).

¹⁹⁷ GENTILE ET AL., *supra* note 1, at 26.

¹⁹⁸ Stephen I. Vladeck, Note, *Emergency Power and the Militia Acts*, 114 YALE L.J. 149, 157–61, 162–66 (2004).

¹⁹⁹ GENTILE ET AL., *supra* note 1, at 23.

Modern voters in 2024 faced far different incentives and acted accordingly. No longer did the average voter have to fear being called into military service in any way, shape, or form.²⁰⁰ Many voters had cause to support an expansion of the nation's armed forces: defense contractors operate plants and manufacturing centers around the United States.²⁰¹ Those contractors and the rest of the defense sector employ more than four million people or about 2.5 percent of all employed Americans.²⁰² Each of those individuals may err on the side of supporting congressional investment in national security and, in particular, may welcome efforts to spread investment over as long a time horizon as possible. A vote for a stronger, larger national security apparatus would also align with the current posture of both parties.²⁰³

Even voters keen to oppose candidates entwined with the military industrial complex may struggle to identify whether candidate A or B is less beholden to the defense sector. Whereas many interest groups have developed scorecards on specific policy issues that help voters assess the policy positions of candidates,²⁰⁴ no specific military industrial complex scorecard exists.²⁰⁵

Not only do many voters lack an incentive to enforce the two-year limitation or simply a return to more modest military spending, but also those that do pay attention to such issues have low odds of actually steering electoral outcomes.

²⁰⁰ Katherine Schaeffer, *The Changing Face of America's Veteran Population*, PEW RSCH. CTR. (Nov. 8, 2023), <https://www.pewresearch.org/short-reads/2023/11/08/the-changing-face-of-americas-veteran-population/> [https://perma.cc/6WF5-L3AN] ("In 1980, about 18% of U.S. adults were veterans, but that share fell to 6% in 2022."); see Wes O'Donnell, *Why the U.S. Will Not Re-Institute the Military Draft*, AM. MIL. UNIV. EDGE (Jan. 16, 2020), <https://amuedge.com/why-the-u-s-will-not-re-institute-the-military-draft/> [https://perma.cc/5S8J-5ZZ2]; but see Taren Sylvester & Katherine Kuzminski, *Preparing for the Possibility of a Draft Without Panic, War on the Rocks*, WAR ON THE ROCKS (Aug. 8, 2024), <https://warontherocks.com/2024/08/preparing-for-the-possibility-of-a-draft-without-panic/> [https://perma.cc/WT23-X5XU] (contending that U.S. allies and adversaries have increasingly been contemplating the use of a military draft).

²⁰¹ Hartung & Freeman, *supra* note 180; see Issacharoff & Issacharoff, *supra* note 83, at 185 ("An old quip has it that the ideal military weapon is one that has components manufactured in all 435 congressional districts.").

²⁰² Semler, *supra* note 181. Calculations available upon request. As of October 2024, approximately 161 million Americans were employed. BUREAU LAB. & STAT., *The Employment Situation - October 2024* (Nov. 1, 2024), https://www.bls.gov/news.release/archives/empisit_11012024.pdf [https://perma.cc/7YWD-VLJ7].

²⁰³ Cf. Michael E. O'Hanlon, *The Partially Convergent Trump and Harris Defense Policies*, BROOKINGS (Sep. 12, 2024), <https://www.brookings.edu/articles/the-partially-convergent-trump-and-harris-defense-policies/> [https://perma.cc/P8CB-3KX4] (noting relatively small differences in the approaches of the two presidential candidates in the 2024 election with respect to defense spending).

²⁰⁴ See, e.g., 2023 *Scorecard Methodology*, THE CLUB FOR GROWTH, <https://www.clubforgrowth.org/scorecards/2023-scorecard-methodology-copy/> [https://perma.cc/4D2J-P89Y] (last visited Jan. 1, 2026, at 14:31 CT); *Congressional Scorecard*, FREEDOM INDEX, <https://thefreedomindex.org/report/scorecard-118-1/> [https://perma.cc/TA26-HJWK] (last visited Jan. 1, 2026, at 14:36 CT); *National Environmental Scorecard*, LEAGUE OF CONSERVATION VOTERS, <https://www.lcv.org/work/congressional-scorecard/> [https://perma.cc/77TK-LNHS] (last visited Jan. 1, 2026, at 14:37 CT).

²⁰⁵ A search for "legislative scorecard military industrial complex" on Perplexity generated, in part, the following response: "There is no specific legislative scorecard focused solely on the military-industrial complex." <https://www.perplexity.ai/search/legislative-scorecard-military-VIMffle.SC.Vp303v8NJ8g>.

The defense contractors that benefit from the status quo go to great lengths to guarantee favorable candidates win at the polls. A comparison of influence makes clear that these private actors drown out the electoral effect of anti-military industrial complex votes. Single defense contractors commonly spend nearly \$10 million per election cycle to bolster the odds of their preferred candidates.²⁰⁶ Once those candidates get elected, contractors continue to invest in political processes to shape outcomes. Lobbyists hired by the contractors swarm the Hill to fend off any potential cuts to military spending.²⁰⁷

The people then may face stiffer odds of removing an official who, despite not being very popular with their constituents, has the backing of defense firms. Members of the House and Senate Armed Services Committees, for instance, surely benefited electorally from the \$10.2 million in campaign funds they collectively received from the defense sector.²⁰⁸ These firms are not stingy nor overly selective when it comes to campaign assistance. Single companies such as Lockheed Martin spend millions on favorable candidates from both sides of the aisle each cycle.²⁰⁹ This spending goes a long way in shaping electoral outcomes. From 2000 to 2016, the House candidate who raised the most money won 90 percent of the time.²¹⁰ The Senate percentage hovered around 80 percent during that same period.²¹¹ Average voters may find that their vote seemingly has less of an impact in elections where third-party donors flood the race.²¹²

Voters seem unlikely to regain the ability to meaningfully hold officials accountable for excessive military spending in the age of AI. The handful of AI companies capable of competing for defense contracts will leverage or have already leveraged their financial might to sway electoral outcomes. Microsoft, on its own AI spending spree²¹³ and actively seeking defense contracts related to

²⁰⁶ Hartung & Freeman, *supra* note 180.

²⁰⁷ *Id.*

²⁰⁸ Savannah Wooten & Rick Claypool, *Military-Industrial Complex Clinches Nearly 450,000% Return on Investment*, PUB. CITIZEN (July 7, 2022), <https://www.citizen.org/article/military-industrial-complex-contributions-report/> [<https://perma.cc/XNS3-D8VV>].

²⁰⁹ Hartung & Freeman, *supra* note 180.

²¹⁰ Maggie Koerth, *How Money Affects Elections*, 538 (Sep. 10, 2018, at 05:56 CT), <https://fivethirtyeight.com/features/money-and-elections-a-complicated-love-story/> [<https://perma.cc/8XFV-9GPR>].

²¹¹ *Id.*

²¹² KATHERINE M. GEHL & MICHAEL E. PORTER, *THE POLITICS INDUSTRY: HOW POLITICAL INNOVATION CAN BREAK PARTISAN GRIDLOCK AND SAVE OUR DEMOCRACY* (2020).

²¹³ Usman Kabir, *Microsoft Corporation (MSFT) Set to Lead AI Spending Surge with \$90 Billion CapEx in 2025, Says Morgan Stanley*, INSIDER MONKEY (Nov. 7, 2024, at 04:14 CT), <https://www.insidermonkey.com/blog/microsoft-corporation-msft-set-to-lead-ai-spending-surge-with-90-billion-capex-in-2025-says-morgan-stanley-1386379/> [<https://perma.cc/T6RU-A4TL>].

AI,²¹⁴ regularly pours substantial funds into elections.²¹⁵ Others in Silicon Valley are in a similar position.²¹⁶ Amazon and its employees have contributed substantial sums to local, state, and federal races.²¹⁷ To the extent some firms have yet to engage in direct campaign donations, they have nevertheless invested in means to shape legislation, for example through lobbyists.²¹⁸

The effects of AI on the intended checks on the army do not end there. Changes in the nature of warfare brought on by AI will further erode the Founder's intended role for state-based militias.

C. *Forgotten Federalist Values*

Militias no longer operate as a counterweight anchored in the states to the threats of an oppressive, unchecked standing army. For all intents and purposes, the militias familiar to the Founders no longer exist. This is a startling disappearance.²¹⁹ The states at the time of the Founding were presumed and, in some cases, obligated by their own state constitutions²²⁰ to have military forces.²²¹ In fact, "the idea of states maintaining militaries seemed more normal in late 18th Century American political culture than the idea of a standing federal force."²²²

²¹⁴ Dina Bass & Lizette Chapman, *Microsoft, Palantir Team Up to Sell AI to US Defense, Intelligence Agencies*, BLOOMBERG (Aug. 8, 2024, at 05:59 CT), <https://news.bloomberglaw.com/tech-and-telecom-law/microsoft-palantir-aim-to-sell-ai-to-us-defense-spy-agencies-1> [<https://perma.cc/AEE6-H5PM>].

²¹⁵ Lisa Stiffler, *Amazon, Microsoft back campaign against initiative that would defund climate efforts in Washington*, Geekwire (Apr. 17, 2024, at 10:54 ET), <https://www.geekwire.com/2024/amazon-and-microsoft-back-effort-to-defeat-initiative-that-would-defund-washington-state-climate-efforts/> [<https://perma.cc/34D4-FVRY>]; see also Dorothy Neufeld, *Visualizing U.S. Election Contributions by Corporate Employees*, VISUAL CAPITALIST (Aug. 27, 2024), <https://www.visualcapitalist.com/election-contributions-by-corporate-employees/> [<https://perma.cc/4ABH-Q83S>] (documenting political contributions made by Microsoft employees).

²¹⁶ See, e.g., Felix Salmon, *Silicon Valley's political muscles*, AXIOS (Oct. 8, 2024), <https://www.axios.com/2024/10/08/silicon-valley-campaign-donations> [<https://perma.cc/3JEF-XTVK>].

²¹⁷ Mike Baker, *Amazon Tests 'Soul of Seattle' With Deluge of Election Cash*, N.Y. TIMES (Oct. 30, 2021 at A13), <https://www.nytimes.com/2019/10/30/us/seattle-council-amazon-democracy-vouchers.html> [<https://perma.cc/D2ZU-QXUE>]; Jordan Fischer, *Amazon Quadruples Its Campaign Donations in Virginia, New Home of HQ2*, WUSA9 (Oct. 31, 2019, at 23:51 EDT), <https://www.wusa9.com/article/news/local/amazon-quadruples-election-spending-in-virginia/65-a8d02d97-53ef-4aee-b889-6d2051be8bb1> [<https://perma.cc/E2G7-MV74>].

²¹⁸ Will Henshall, *There's an AI Lobbying Frenzy in Washington. Big Tech Is Dominating*, TIME (Apr. 30, 2024, at 12:05 CT), <https://time.com/6972134/ai-lobbying-tech-policy-surge/> [<https://perma.cc/D7WA-GZBN>]; Caitlin Oprysko, *Anthropic Adds First In-House Lobbyist*, POLITICO (Mar. 20, 2024, at 17:27 ET), <https://www.politico.com/newsletters/politico-influence/2024/03/20/anthropic-adds-first-in-house-lobbyist-00148114> [<https://perma.cc/V4T9-NFP2>].

²¹⁹ Cf. Frederick Bernays Wiener, *The Militia Clause of the Constitution*, 54 HARV. L. REV. 181, 210 (1940) (reflecting that "[t]hrough the word 'militia' has virtually disappeared from the statute books, it is still embedded in the Constitution").

²²⁰ See, e.g., PENN. CONST. art. IX, § 22 (1790).

²²¹ GENTILE ET AL., *supra* note 1, at 16.

²²² *Id.*

As the nature and frequency of war shifted, Congress eventually found ways to “square military necessity with constitutional limitation.”²²³ Wary of relying on militias that were keenly aware of the restrictions on their service, Congress initiated a call for volunteers to supplement the regular army during the Mexican War.²²⁴ This soon became a pattern: the Union turned to volunteers during the Civil War.²²⁵ The creation of the National Guard and an insistence on dual enlistment in both state forces and federal forces perpetuated the erasure of the militia.²²⁶ Repeated use of volunteers and diminished reliance on militias hastened the demise of the militia as understood at the time of the Founding.²²⁷ But military justifications for a more stable, well-trained force were not the only factor accelerating this transition.

Political values behind the need for militias as well as restrictions on their use that pervaded the Founding Era also dissipated. Early Americans demonstrated significant respect for militias. The 1792 Uniform Militia Act intended to bolster the army by creating a reserve corps of men across the country available to serve, if called.²²⁸ Yet, deference to states and their respective militias led Congress to opt not to include any enforcement mechanisms to guarantee states would train and, when necessary, supply militia units.²²⁹ The Act also avoided the potentially inflammatory step of characterizing state militia as reserve units for the army.²³⁰

Appreciation for the distinct and limited role of militias eventually waned. Whereas early Americans may have celebrated the militia’s refusal to fight the wars launched by the central government, by the Spanish War, those who cited the limits on the militia to avoid fighting were the subject of popular scorn.²³¹ Likewise, when the National Guard and dual enlistment requirements seemingly rendered the idea of state-operated militias moot, the American public seemingly acquiesced. Few suits challenged this assertion of federal power.²³² The restoration of the Founding values has not transpired. Few people today associate “local militias with democracy and republican virtue.”²³³ Even more significant than the change in views of the militia since the Founding is the shift in thinking related to an individual’s relationship with their own state.

²²³ Wiener, *supra* note 113, at 189; *see* Leider, *supra* note 100, at 1001 (asserting that Congress used the powers afforded by the Army Clause to undermine checks on its authority, such as constraints imposed by federalism).

²²⁴ Wiener, *supra* note 113, at 190.

²²⁵ *Id.* at 191.

²²⁶ *Id.*

²²⁷ *Id.* at 203–04.

²²⁸ GENTILE ET AL., *supra* note 1, at 21.

²²⁹ *See id.* at 22.

²³⁰ *Id.*

²³¹ Wiener, *supra* note 113, at 192–93.

²³² *Id.* at 204.

²³³ GENTILE ET AL., *supra* note 1, at 18.

Few people today strongly identify with their state.²³⁴ Ambivalence among many, especially Democrats, as to whether states can counter the aggrandizement of the federal government stands in stark contrast to the sentiments of early Americans.²³⁵ Many members of the Founding Generation not only felt a deep, if not superseding, loyalty to their state but also regarded the states as having an affirmative duty to cabin the size and power of the federal government.²³⁶ The depth of state loyalty and fervor for federalism explains why George Mason and two other delegates sought to include within the Constitution a reminder that state militias mitigate “the danger of standing armies in time of peace[.]”²³⁷

The need to abandon certain beliefs and to pursue drastic revisions in order to preserve the Founders’ fledgling political experiment was well-founded. The early nation mightily struggled to defend itself from Native American threats as well as to respond to internal discord.²³⁸ Turns out the Constitution and early legislation from Congress “looked backward to colonial times, to a simpler military environment, to localism in defense when citizens could provide security by defending themselves.”²³⁹ The issue with the revisions made to bolster the nation’s military, though, was that they did not maintain the checks intentionally and methodically established by the Founders.²⁴⁰ States have little to no meaningful control over the size of the army nor its uses. This lack of control has been compounded over time as the defense sector relies more heavily on private actors.

Private actors took advantage of the resulting discretion and power afforded to Congress to take responsive action when the nation’s defenses seemed to pale in comparison to the threats facing the upstart political community. Since the Revolution, private actors have made up for a lack of manpower, expertise, or

²³⁴ G. Alan Tarr, *Federalism and Identity: Reflections on the American Experience*, 3 L’EUROPE EN FORMATION 20, 20–21 (2013) (regarding “proclamations of state allegiance” as “quaint, if not incomprehensible.”); *What Most Influences the Self-Identity of Americans?*, BARNA (Mar. 19, 2015), <https://www.barna.com/research/what-most-influences-the-self-identity-of-americans/> [<https://perma.cc/DE7W-XDWV>].

²³⁵ *Americans’ Views of Government’s Role: Persistent Divisions and Areas of Agreement*, PEW RESEARCH CENTER (June 24, 2024), <https://www.pewresearch.org/politics/2024/06/24/americans-views-of-governments-role-persistent-divisions-and-areas-of-agreement/> [<https://perma.cc/Q77J-XX2H>] (reporting on polling indicating that on many policy questions the majority of Americans support federal intervention).

²³⁶ Cf. Allen Guelzo, *Federalism and the Founders*, NAT’L AFFS. (2022), <https://nationalaffairs.com/publications/detail/federalism-and-the-founders> [<https://perma.cc/PUR7-BUMX>] (pointing out the emphasis on state sovereignty and independence that pervaded the US in the late 1700s).

²³⁷ THE RECORDS OF THE FEDERAL CONVENTION 1787, at 617 (Max Farrand ed., 1911).

²³⁸ GENTILE ET AL., *supra* note 1, at 20.

²³⁹ RICHARD KOHN, *EAGLE AND THE SWORD: THE FEDERALISTS AND THE CREATION OF THE MILITARY ESTABLISHMENT IN AMERICA, 1783–1802* at 137 (1975).

²⁴⁰ Cf. Leider, *supra* note 100, at 991 (contending that “the federal government has undermined” structural limitations in the Constitution on the nation’s military power).

both in the nation's army.²⁴¹ Then-General George Washington turned to foreign engineers to address an expertise gap in American forces revealed during the Revolutionary War.²⁴² Reliance on private actors has grown by several orders of magnitude since then²⁴³—further lowering the federalism barrier intended by the Founders. The defense sector's reliance on AI created by private actors will only increase this trend.

As mentioned above, the Biden Administration identified AI research and development as well as the militarization of AI as core aspects of its national security strategy.²⁴⁴ Subsequent administrations, including the Trump Administration, seem likely to carry on this approach, perhaps with subtle differences.²⁴⁵ The possibilities for AI to transform warfare have been framed as too great for the United States or any nation for that matter to lag behind its adversaries.²⁴⁶ So long as the federal government must rely on private actors to stay on the cutting edge of AI, states and, by extension, the people will have less control over the military. Private companies are not accountable to the people nor directly responsive to states.²⁴⁷ Defense contracts are rarely available for full public scrutiny.²⁴⁸ How and why the military plans to use privately-developed

²⁴¹ Matthew Underwood, "Jealousies of a Standing Army": *The Use of Mercenaries in the American Revolution and its Implications for Congress's Role in Regulation Private Military Firms*, 106 NW. U. L. REV. 317, 325 (2012).

²⁴² *Id.* at 326.

²⁴³ See, e.g., Mark Moyar, *The Military-Industrial Complex*, HOOVER INST. (Sep. 17, 2020), <https://www.hoover.org/research/military-industrial-complex> [https://perma.cc/V8WY-8EGB].

²⁴⁴ See Biden NSM, *supra* note 4.

²⁴⁵ John Villaseñor, *AI Policy Directions in the New Trump Administration*, BROOKINGS (Nov. 14, 2024), <https://www.brookings.edu/articles/ai-policy-directions-in-the-new-trump-administration/> [https://perma.cc/956E-LFV2].

²⁴⁶ Cf. AMOS C. FOX, OBSTRUCTIVE WARFARE: APPLICATIONS AND RISKS FOR AI IN FUTURE MILITARY OPERATIONS 1 (CIGI 2024) (mapping out ways in which AI may alter warfare).

²⁴⁷ Cf. Benj Edwards, *Claude AI to Process Secret Government Data Through New Palantir Deal*, ARS TECHNICA (Nov. 8, 2024), <https://arstechnica.com/ai/2024/11/safe-ai-champ-anthropic-teams-up-with-defense-giant-palantir-in-new-deal/> [https://perma.cc/F5NM-BDS8] (sharing news of an agreement between Anthropic and unnamed parts of the nation's defense apparatus).

²⁴⁸ Dylan Hedtler-Gaudette, *POGO's Testimony on Wasteful, Inefficient Pentagon Spending*, PROJECT ON GOV'T OVERSIGHT (July 24, 2024), <https://www.pogo.org/testimonies/pogos-testimony-on-wasteful-inefficient-pentagon-spending> [https://perma.cc/UVZ3-CP56] (arguing that the defense department procurement processes lack transparency); see Savannah Wooten, *Deadly and Imminent: The Pentagon's Mad Dash for Silicon Valley's AI Weapons*, PUB. CITIZEN (Nov. 22, 2024), <https://www.citizen.org/article/deadly-and-imminent-report/> [https://perma.cc/4TPQ-SKB4] (flagging that the Pentagon's rapid pursuit of leading AI models has resulted in "minimal public inquiries into its undertakings that might slow down its procurement process").

AI systems also escapes popular analysis.²⁴⁹ What's more, AI companies have thus far managed to evade any national regulation.²⁵⁰

The cumulative effect of the demise of the militia and rise of private actors in shaping the scope and use of federal military power is the “federal government’s usurpation of state military power.”²⁵¹ A return to a world of state-based militias is not appropriate. Contemporary efforts to revive militias have focused on ideological goals more than on the restoration of republican values and defense of the local community.²⁵² That said, some means of a state-based check on the military power exercised by the central government warrants further extensive scholarship.²⁵³

V. CONCLUSION

A simple test can show whether the three checks devised by the Founders to constrain a standing army function as intended: whether “[t]he military forces of a free country . . . [are] in strict subordination to the civil authority” and the total number of regular troops is no more than is “evident[ly] necess[ary].”²⁵⁴

The answer to both parts of that are no. Civil control over the military does not exist as expected and intended by the Founders. Congress has run roughshod over the Army Clause. A temporal limit on appropriations has been stretched to meet the needs of private actors. Elections no longer provide voters with a meaningful chance to hold officials accountable for abuse of the Clause. Militias do not serve as a means for states to guard against an excessive, oppressive standing army.

We stand at a crossroads. The Constitution forecloses the status quo. Many lawmakers and private actors have no problem with carrying on with constitutional ignorance so long as it means outpacing rivals in a new arms race. The question remains whether the public footing the bill while exercising little to no control over an expanding defense budget are likewise willing to surrender the protections afforded by the Constitution.

²⁴⁹ Brandi Vincent, *Questions on DOD's Plans for Generative AI Swirl as Task Force Lima's Possible Sunset Nears*, DEF. SCOOP (Oct. 25, 2024), <https://defensescoop.com/2024/10/25/questions-on-dods-plans-for-generative-ai-swirl-as-task-force-limas-possible-sunset-nears/> [https://perma.cc/A5PR-KQJB]; see *Artificial Intelligence Use Case Inventory*, DEPT. OF HOMELAND SEC. (last updated Dec. 16, 2024), https://www.dhs.gov/data/AI_inventory [https://perma.cc/TMX7-YG2T] (omitting information on classified use cases of AI).

²⁵⁰ Bill Whyman, *AI Regulation is Coming - What is the Likely Outcome?*, CTR. FOR STRATEGIC & INT'L STUD. (Oct. 10, 2023), <https://www.csis.org/blogs/strategic-technologies-blog/ai-regulation-coming-what-likely-outcome> [https://perma.cc/ATC2-DESK].

²⁵¹ See Leider, *supra* note 100, at 992.

²⁵² Catrina Doxsee, *Examining Extremism: The Militia Movement*, CTR. FOR STRATEGIC & INT'L STUD. (Aug. 12, 2021), <https://www.csis.org/blogs/examining-extremism/examining-extremism-militia-movement> [https://perma.cc/9PCA-ESQE].

²⁵³ See Leider, *supra* note 100, at 993 (“[T]he Framers paid careful attention to ensuring the existence of adequate checks and balances for military power”).

²⁵⁴ Anonymous, *The Federalist Farmer No. XVIII (1788)*, in *THE COMPLETE ANTI-FEDERALIST* at 341 (Herbert J. Storing, ed., 1981).

