

The Army Clause, Part 1: Overview and Historical Background

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This Legal Sidebar is the first in a five-part series that discusses the U.S. Constitution’s [Army Clause](#), found in Article I, Section 8, clause 12, which authorizes the federal government to raise and support armies while also allowing for congressional control through the appropriations process. Because the Army Clause provides Congress with an [essential element](#) of the United States’ suite of war powers, understanding the Army Clause may assist Congress in its legislative activities.

This Sidebar post provides an overview of and historical background on the Army Clause. Other Sidebars in this series discuss the clause’s [drafting and ratification](#); relationship with [appropriations, conscription, and war materials](#); role in [individual rights cases](#); and connection with [principles of federalism](#). Additional information on this and related topics is available at the [Constitution Annotated](#).

Overview

The Army Clause provides that 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.” The clause’s structure reflects the efforts by the Constitution’s Framers to balance two competing concerns in the Founding era: a [widespread mistrust](#) of peacetime standing armies and the new nation’s desire to [ensure security](#) through military protection. The Framers sought to address both issues by authorizing Congress to raise and maintain armies, while requiring renewal of appropriations for that purpose every two years to ensure democratically elected representatives continued to support the army. Although congressional power to raise and support armies has sometimes come into tension with other constitutional [rights](#) and [principles](#), the Supreme Court has described this power as “[broad and sweeping](#),” and has [rejected](#) some [claimed](#) limits [on](#) Congress’s authority under the Army Clause.

Historical Background

The Constitution’s Framers inherited a [long-standing tradition](#) of opposition to standing armies that was rooted in both political philosophy and historical experience. Many in the Framers’ generation believed standing armies during peacetime were [incompatible](#) with republican values, and they viewed professional armies to be [too far removed](#) from the general populace to be trusted to defend it.

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Great Britain traditionally [allowed](#) its monarchs both to initiate wars and to raise and support armies; however, in the 17th century, Britain experienced three-quarters of a century of struggle over whether its army would be controlled by the Crown or the Parliament. In the [1628 Petition of Right](#), the English Parliament called on King Charles I to end the practice of dispersing “great companies of soldiers and mariners” throughout England. Charles I was eventually ousted from the throne, tried, and convicted of treason following the English Civil War, but the Crown [again maintained](#) a standing army after the monarchy was restored. In the Glorious Revolution of 1689, William and Mary agreed to the [English Bill of Rights of 1689](#), which [prohibited](#) the Crown from raising or keeping a standing army in peacetime without Parliament’s consent.

The British experience contributed to a commonly accepted view in colonial America that peacetime standing armies enabled abuse of power and were a threat to civil liberties and individual freedom. Despite this popular sentiment, the British [maintained a standing army](#) in the American colonies after the end of the [Seven Years’ War](#) in 1763. When British troops shot into a crowd of civilians during the [1770 Boston Massacre](#), killing several men and injuring others, American hostility to the permanent military presence accelerated. By 1776, the complaint that King George III “kept among us, in times of peace, Standing Armies without the Consent of our legislatures” was [included](#) in the Declaration of Independence’s list of grievances justifying armed rebellion. As the former colonies transitioned to independence, [several](#) adopted [state constitutions](#) that [limited](#) standing [armies](#) and [described](#) them as [dangerous](#) to [liberty](#).

Against this backdrop, the [Articles of Confederation](#), which [preceded](#) the Constitution, primarily focused on the militia rather than a professional army as the first line of national defense. The Supreme Court has [described](#) the militia as the “body of armed citizens trained to military duty, who may be called out in certain cases, but may not be kept on service like standing armies, in time of peace” The Articles of Confederation [required](#) each state to maintain a well-regulated, disciplined, and armed militia and to have weaponry, ammunition, and equipment ready for its use. Despite the militia’s prominence, its limitations as a fighting force were evident as early as the Revolutionary War. In 1776, then-General George Washington and other military leaders [complained](#) that militia forces were unreliable and [lacked](#) necessary training and discipline. Washington later warned in a letter from the battlefield that unless the United States was vested with greater powers to raise armies, “[our cause is lost](#).”

Although the Articles of Confederation focused primarily on the militia, they also gave the national government some ability to build a professional army by granting the national government the [power](#) to “agree upon the number of land forces” to be put in the service of the United States and “to make requisitions from each state” to supply them. Like the militia, however, this system had shortcomings. The national congress organized under the Articles of Confederation could not raise armies directly; it was dependent upon states to supply, arm, and equip them. Requisitioning troops from the states [suffered](#) from delays, short enlistments, troop fluctuation, and uneven recruitment, especially in states that were less motivated to supply forces because they were far from active theaters of conflict. Defects in the requisition system “[nearly cost the Nation victory in the Revolutionary War\[,\]](#)” according to the Supreme Court, and the need to fix the process for raising armies became one of the “[recognized necessities](#)” for calling the [1787 convention](#) in Philadelphia that drafted the Constitution.

Click [here](#) to continue to Part 2.

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