

## Sec. 8—Powers of Congress

## Cls. 15 and 16—The Militia

or charge in handling . . . any necessities”<sup>1664</sup> as repugnant to the Fifth and Sixth Amendments in that it was so vague and indefinite that it denied due process and failed to give adequate notice of what acts would violate it.<sup>1665</sup>

Clause 15. The Congress shall have Power \* \* \* To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions.

Clause 16. The Congress shall have Power \* \* \* To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress.

## THE MILITIA CLAUSES

## Calling Out the Militia

The states as well as Congress may prescribe penalties for failure to obey the President’s call of the militia. They also have a concurrent power to aid the National Government by calls under their own authority, and in emergencies may use the militia to put down armed insurrection.<sup>1666</sup> The Federal Government may call out the militia in case of civil war; its authority to suppress rebellion is found in the power to suppress insurrection and to carry on war.<sup>1667</sup> The act of February 28, 1795,<sup>1668</sup> which delegated to the President the power to call out the militia, was held constitutional.<sup>1669</sup> A militiaman who refused to obey such a call was not “employed in the service of the United States so as to be subject to the article of war,” but was liable to be tried for disobedience of the act of 1795.<sup>1670</sup>

<sup>1664</sup> Act of October 22, 1919, 2, 41 Stat. 297.

<sup>1665</sup> *United States v. L. Cohen Grocery Co.*, 255 U.S. 81 (1921).

<sup>1666</sup> *Moore v. Houston*, 3 S. & R. (Pa.) 169 (1817), *aff’d*, *Houston v. Moore*, 18 U.S. (5 Wheat.) 1 (1820).

<sup>1667</sup> *Texas v. White*, 74 U.S. (7 Wall.) 700 (1869); *Tyler v. Defrees*, 78 U.S. (11 Wall.) 331 (1871).

<sup>1668</sup> 1 Stat. 424 (1795), 10 U.S.C. § 332.

<sup>1669</sup> *Martin v. Mott*, 25 U.S. (12 Wheat.) 19, 32 (1827).

<sup>1670</sup> *Houston v. Moore*, 18 U.S. (5 Wheat.) 1 (1820); *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827).