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## The Governor's Troops Under the Florida Constitution

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## I. INTRODUCTION

“The militia<sup>1</sup> shall be composed of all ablebodied inhabitants of the state who are or have declared their intention to become citizens of the United States . . . .”<sup>2</sup> This requirement, found in article X, section 2 of the Florida Constitution, imposes a universal military obligation<sup>3</sup> on the inhabitants of the state. The universal military requirement was the basis of the colonial militia system.<sup>4</sup> Members of the militia are citizen-soldiers<sup>5</sup> who fulfill this obligation. They are ordinary citizens who are willing to disrupt their lives for the greater good. The spirit of the militia is alive today in the form of the National Guard.<sup>6</sup>

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1. Militia is defined as “[t]he body of citizens in a state, enrolled for discipline as a military force, but not engaged in actual service except in emergencies, as distinguished from regular troops or a standing army.” BLACK’S LAW DICTIONARY 993 (6th ed. 1990).

2. FLA. CONST. art. X, § 2(a).

3. Universal military obligation is based on the theory that every ablebodied man has a civic duty to defend his society. See JOHN K. MAHON, HISTORY OF THE MILITIA AND THE NATIONAL GUARD 6 (Louis Morton ed., 1983).

4. See Alan Hirsch, *The Militia Clauses of the Constitution and the National Guard*, 56 U. CIN. L. REV. 919, 923 (1988); see also MAHON, *supra* note 3, at 14-18 (describing early militia system).

5. See James B. Whisker, *The Citizen-Soldier Under Federal and State Law*, 94 W. VA. L. REV. 947, 949-51 (1992).

6. See *Maryland ex rel. Levin v. United States*, 381 U.S. 41, 46 (1965) (declaring the National Guard as the modern militia).

“The [National] Guard is an essential reserve component of the Armed Forces of the United States”<sup>7</sup> that is used to augment the federal military in times of need.<sup>8</sup> By presidential order,<sup>9</sup> or congressional determination,<sup>10</sup> the National Guard can be called into federal service.<sup>11</sup> This creates a “dual enlistment”<sup>12</sup> . . . whereby an incoming guardsman join[s] both the National Guard of his home state and the National Guard of the United States, a reserve component of the U.S. [military].<sup>13</sup> Thus, Guardsmen lead their lives subject to calls for service by both their home state and their federal government.<sup>14</sup>

Florida has the oldest militia of any state in the country.<sup>15</sup> Duty, honor, and sacrifice are traditions which permeate every aspect of the Florida Guard.<sup>16</sup> This article examines Florida’s military force in regard

7. Gilligan v. Morgan, 413 U.S. 1, 7 (1973); see also 10 U.S.C. § 261 (1988) (naming the National Guard as a reserve component of the federal armed forces).

8. 10 U.S.C. § 262 (1988); see also *id.* § 263 (authorizing Congress to augment federal forces).

9. *Id.* § 332.

10. *Id.* § 263.

11. For Florida’s contribution to the Seminole Wars, see generally George C. Bittle, In the Defense of Florida: The Organized Florida Militia from 1821 to 1920 (1965) (unpublished Ph.D. dissertation, Florida State University). For Florida’s contribution to the Mexican War, Civil War, Spanish-American War, World War I, World War II, Korean War, and Vietnam War, see generally ROBERT HAWK, FLORIDA’S ARMY (1986) (detailing that the Florida militia has been called to federal duty in every major war since gaining statehood in 1845). For Florida’s contribution to the Persian Gulf War, see generally FLA. ADJUTANT GEN. ANN. REP. 28 (1992) [hereinafter ADJUTANT REPORT].

12. The dual enlistment concept is embodied in the enlistment oath taken by a Guardsman. See 32 U.S.C. § 304 (1988). In Florida, the Guardsman swears to “support and defend the Constitution of the United States and of the State of [Florida] against all enemies . . . and . . . obey the orders of the President of the United States and the Governor of [Florida] . . .” *Id.*

13. Johnson v. Powell, 414 F.2d 1060, 1063 (5th Cir. 1969).

14. Perpich v. Department of Defense, 496 U.S. 334, 348 (1990). Justice Stevens, describing the role of Guardsmen, wrote, “[i]n a sense, all of them now must keep three hats in their closets - a civilian hat, a state militia hat, and an army hat - only one of which is worn at any particular time.” *Id.*

15. HAWK, *supra* note 11, at 16. Florida’s militia tradition began on September 16, 1565, when Spanish Admiral Pedro Menendez de Aviles left the settlement of St. Augustine with his troops and designated the civilian left behind to defend the settlement as “milicia”. *Id.*

16. Throughout this article, the terms Florida Guard, Florida National Guard, Florida Air Guard, and organized militia will be used interchangeably. These terms refer to those citizens who volunteer to serve in the state’s military force, as opposed to the entire Florida population comprising the militia. In addition, for the sake of consistency, fluidity, and

to its state militia status.

## II. CONSTITUTIONAL AND STATUTORY AUTHORITY

### A. *Composition of State Military Force*

The state constitutional authority for the composition of the militia is found in article X, section 2 of the Florida Constitution.<sup>17</sup> Although the constitution imposes a universal military obligation,<sup>18</sup> the militia is statutorily divided into an organized and an unorganized component.<sup>19</sup> The organized militia consists of the National Guard.<sup>20</sup> The unorganized militia consists of the entire ablebodied population who are, or intend to become, Florida citizens.<sup>21</sup>

Superficially, a universal military obligation seems antiquated. However, it is by precisely this authority that the Governor can institute a draft of ablebodied citizens into the state organized militia, thereby compelling military service to the state. "The Governor shall have the power . . . to order into active service of the state all or any part of the militia that he may deem proper."<sup>22</sup> Although the Governor's power to draft Florida citizens into the organized militia appears diminished by related

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simplicity within the article, all references to the Governor will be in the masculine.

17. FLA. CONST. art. X, § 2. Article X, section 2 reads in full:

(a) The militia shall be composed of all ablebodied inhabitants of the state who are or have declared their intention to become citizens of the United States; and no person because of religious creed or opinion shall be exempted from military duty except upon conditions provided by law.

(b) The organizing, equipping, housing, maintaining, and disciplining of the militia, and the safekeeping of public arms may be provided for by law.

(c) The governor shall appoint all commissioned officers of the militia, including an adjutant general who shall be chief of staff. The appointment of all general officers shall be subject to confirmation by the senate.

(d) The qualifications of personnel and officers of the federally recognized national guard, including the adjutant general, and the grounds and proceedings for their discipline and removal shall conform to the appropriate United States army or air force regulations and usages.

*Id.*

18. *See supra* note 3.

19. FLA. STAT. § 250.02 (1991).

20. *Id.* § 250.02(2).

21. *Id.* § 250.02(3).

22. *Id.* § 250.06(3).

legislation,<sup>23</sup> it remains the state statutory law.

In 1917, Governor Catts sought an advisory opinion to determine his authority to draft county guards into state military service.<sup>24</sup> The Florida Supreme Court interpreted sections 1<sup>25</sup> and 4<sup>26</sup> of article 14 of the 1885 Florida Constitution. The supreme court informed the Governor that all inhabitants of the state who fit the constitutional definition were a part of the state militia, and subject to the Governor's orders for purposes of preserving the public peace, executing the laws of the state, and suppressing insurrection.<sup>27</sup> By informing the Governor of his authority, the Florida Supreme Court validated a constitutional limitation on the Governor's authority to draft civilians into state service.<sup>28</sup> By constitutional mandate, his authority to compel civilians into military service is strictly limited to the express purposes of preserving public peace, executing laws, suppressing insurrection, or repelling invasion.<sup>29</sup>

### B. *Authority for Command and Control*

Although the Governor is commander-in-chief of all the state militia,<sup>30</sup> his power is greatest as commander-in-chief of the organized militia. To

23. See FLA. STAT. § 251.01(1) (Supp. 1992). In authorizing the Governor to organize and maintain military forces to assist civil authorities in the event the Florida National Guard is activated into federal service, the Governor is directed to take volunteers and supplement the Florida Guard through the drafting of militiamen *already enrolled* in the Florida National Guard. *Id.* This represents a change from the previous provision which authorized the Governor to supplement the Florida National Guard, in the event the Guard is activated into federal service, through members of the *entire* state militia. See also FLA. STAT. § 252.36(4) (1991) (during a state of emergency, the Governor is commander-in-chief of the organized militia and the *volunteer* militia).

24. *In re* Advisory Opinion to Governor, 77 So. 87 (Fla. 1917).

25. Article XIV, section 1 of the 1885 Florida Constitution defines militia as all ablebodied male inhabitants between the ages of 18 and 45. FLA. CONST. of 1885, art. XIV, § 1.

26. Article XIV, section 4 of the 1885 Florida Constitution provides the Governor with the power to call out the militia to preserve public peace, execute the laws of the state, suppress insurrection, or repel invasion. *Id.* § 4. It is the substantive equivalent of the current constitutional provision.

27. *Advisory Opinion*, 77 So. at 88.

28. See *id.*

29. See *id.*

30. FLA. CONST. art. IV, § 1(a) (providing that "[t]he supreme executive power shall be vested in a governor," and "[h]e shall be commander-in-chief of all military forces of the state not in active service of the United States"); see also FLA. STAT. § 250.06(1) (1991) (declaring the Governor the commander-in-chief of all state militia).

achieve the constitutional mandate of ensuring that the laws are faithfully executed,<sup>31</sup> the Governor is authorized to use the state military force.<sup>32</sup> In cases of civil unrest, the Governor may use the state military force to preserve public peace.<sup>33</sup> When the Governor declares a state of emergency, he may use the military to enforce any rules or regulations promulgated in reaction to that emergency.<sup>34</sup> The Governor is further authorized to use the military force to intervene in any situation where there exists violence, threats of violence, or any disturbance which threatens the peace and good order of society.<sup>35</sup> Furthermore, the Governor is authorized to deploy the military forces to assist and aid those civil authorities which are unable to suppress any of the following situations: invasion, insurrection, riot, mob, unlawful assembly, breach of the peace, or resistance to the execution of laws.<sup>36</sup>

The United States Supreme Court has long recognized that maintaining law and order is the most important state interest,<sup>37</sup> and the range of discretion within which a Governor acts pursuant to this interest must be broad.<sup>38</sup> When a Governor determines that an emergency requires the aid of the military, his decision to deploy troops is conclusive.<sup>39</sup> Although the power to deploy the state military is broad, Florida governors have historically used great discretion in calling out this body. No reported court decision has ever challenged the use of this gubernatorial power by a Florida governor.

In addition to his authority to deploy the military force, the Governor has other duties as commander-in-chief. The Governor has the power to authorize the Florida Guard's participation in any parades, reviews, or public exercises.<sup>40</sup> He is responsible for ensuring that the Florida Guard conforms

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31. FLA. CONST. art. IV, § 1(a).

32. *Id.* § 1(d).

33. FLA. STAT. § 14.02 (1991).

34. *Id.* § 14.021(3).

35. *Id.* § 14.022(1).

36. *Id.* § 250.28.

37. *Sterling v. Constantin*, 287 U.S. 378, 399 (1932).

38. *Scheuer v. Rhodes*, 416 U.S. 232, 247 (1974).

39. *See Sterling*, 287 U.S. at 399. "That means that he shall make the ordinary use of the soldiers to that end; that he may kill persons who resist and . . . use the milder measure of seizing the bodies of those [who] . . . stand in the way of restoring peace." *Moyer v. Peabody*, 212 U.S. 78, 84 (1909). But every action the Governor takes is not conclusive, because "the allowable limits of military discretion . . . are judicial questions." *Sterling*, 287 U.S. at 401.

40. FLA. STAT. § 250.06(4) (1991).

to the terms of federal legislation.<sup>41</sup> He also appoints all General officers, including the Adjutant General.<sup>42</sup> However, these appointments must be confirmed by the Senate.<sup>43</sup> The Governor is also responsible for convening all General court martials,<sup>44</sup> approving dishonorable discharges,<sup>45</sup> approving pay vouchers,<sup>46</sup> and borrowing funds to pay Guardsmen activated in service of the state.<sup>47</sup>

Although the Governor is commander-in-chief, the Adjutant General is vested with direct operational control of the militia.<sup>48</sup> The state headquarters is under the administration of the Adjutant General,<sup>49</sup> who is Chief of the Department of Military Affairs.<sup>50</sup> The Adjutant General is charged with supervising all aspects of the troops, arms, and equipment, maintaining official records, and preparing all reports and returns required by the Secretary of Defense.<sup>51</sup>

The Adjutant General is vested with the exclusive authority of appointing an Assistant Adjutant General and a State Quartermaster.<sup>52</sup> Through the State Quartermaster, the Adjutant General is accountable for all funds disbursed and received through the Department of Military Affairs.<sup>53</sup> Similarly, the Adjutant General has the exclusive authority of allocating appropriations to the armories<sup>54</sup> located throughout the state.<sup>55</sup> Furthermore, the Adjutant General is authorized to activate the Florida Guard if the Governor cannot be reached and an emergency exists of which time is of the

41. *Id.* § 250.08.

42. *See id.* § 250.13.

43. *Id.*

44. *Id.* § 250.35.

45. FLA. STAT. § 250.35 (1991).

46. *Id.* § 250.24.

47. *Id.* § 250.25.

48. *See id.* §§ 250.10-250.28.

49. *Id.* § 250.07.

50. FLA. STAT. § 250.10 (1991); *see also id.* § 250.05 (the Department of Military Affairs is an agency of the state government which includes every member of the Florida National Guard and all employees required to wear a military uniform in performance of their official duties); *State v. Florida State Improvement Comm'n*, 47 So. 2d 627 (Fla. 1950) (holding that the Florida National Guard is an arm of state government).

51. FLA. STAT. § 250.10 (1991).

52. *Id.*

53. *Id.*

54. An armory is a building used primarily for housing and training of troops and the storing of arms and other military property. *Id.* § 250.41. For further discussion of armories, see *infra* notes 107-10 and accompanying text.

55. FLA. STAT. § 250.20 (1991); *see generally id.* § 250.41.

essence.<sup>56</sup>

The statutory scheme delegating duties to the Governor and Adjutant General leads to the conclusion that their respective powers are expressed. The Governor is commander-in-chief, but is only permitted to call out the Guard in certain situations.<sup>57</sup> Other duties are dictated to the Governor by statute as well.<sup>58</sup> Similarly, the Adjutant General has been vested with exclusive powers with which to run the Florida National Guard.<sup>59</sup>

Since these powers are statutorily granted, the Governor cannot take direct operational control of the Florida Guard pursuant to any implied powers as commander-in-chief.<sup>60</sup> When troops are called out in an emergency, the civil authorities outline the objectives to be accomplished by the military force.<sup>61</sup> However, only active militia officers may give tactical directions to the military forces on how to achieve those objectives.<sup>62</sup> In addition, courts have held that when a Governor calls out the state militia pursuant to the constitutional mandate to faithfully execute the laws, he is acting in his civil capacity and not as a military commander-in-chief.<sup>63</sup>

56. *Id.* § 250.28.

57. *See supra* text accompanying notes 31-36.

58. *See supra* text accompanying notes 40-47.

59. *See supra* text accompanying notes 49-56.

60. *See Farmer v. Mabus*, 757 F. Supp. 1462 (S.D. Miss. 1991). When the Governor of Mississippi attempted to assume performance of the Adjutant General's duties on the theory of implied powers of the commander-in-chief to direct and control operations of Mississippi National Guard, the Mississippi Supreme Court held that the Legislature had clearly established that certain powers are to be exercised by the commander-in-chief and certain powers are to be exercised by the Adjutant General. *Id.* Any theory of implied powers would be contrary to the statutory scheme. *Id.*; *see also State v. Hansen*, 401 P.2d 954 (Wyo. 1965) (where Wyoming Supreme Court held that the Governor exceeded his power in removing the Adjutant General pursuant to implied powers as commander-in-chief, and not pursuant to statutory scheme).

61. *See FLA. STAT.* § 250.30 (1991).

62. *See id.* The statute reads in part:

When an armed force is called out in aid of the civil authorities, the orders of the civil officer or officers may extend to a direction of the general or specific objects to be accomplished and the duration of service by the active militia, but the tactical direction of the troops, the kind and extent of force to be used, and the particular means to be employed to accomplish the objects specified by the civil officers, are left solely to the officer of the active militia.

*Id.*

63. *Constantin v. Smith*, 57 F.2d 227 (E.D. Tex. 1932), *aff'd sub nom. Sterling v. Constantin*, 287 U.S. 378 (1932); *see also In re Moyer*, 85 P. 190 (Colo. 1904), *aff'd sub nom. Moyer v. Peabody*, 212 U.S. 78 (1909); *Franks v. Smith*, 134 S.W. 484 (Ky. Ct. App. 1911); *State v. McPhail*, 180 So. 387 (Miss. 1938). The Florida Constitution embraces this



Thus, unless the Governor is also an active militia officer with command authority, he is prevented by law from exercising tactical operational command.

Members of the Florida Guard are not criminally or civilly liable for any lawful act done by them in good faith and within the scope of their duties.<sup>64</sup> If injured while on active state duty, they are provided medical treatment at the state's expense.<sup>65</sup> More importantly to the troops, no private or public employer can terminate, reprimand, or penalize a Guardsman because of an absence due to state active duty.<sup>66</sup> Since these Guardsmen are primarily citizens, the security of their employment is extremely important in maintaining an effective militia.

### III. MILITARY MANAGEMENT

#### A. *Strength and Firepower*

Since the National Guard is an integral part of the first line defense of the United States,<sup>67</sup> the composition of its units<sup>68</sup> and its training<sup>69</sup> conforms to that of the federal military. In addition, the National Guard uses the same type of arms and equipment as the federal military.<sup>70</sup> There are nearly 14,000 federally trained and equipped Guardsmen employed by the Department of Military Affairs.<sup>71</sup> Since the Department of Military Affairs is a part of the National Guard of the United States, the Governor is

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view by mandating that "[t]he military power shall be subordinate to the civil." FLA. CONST. art. I, § 7. Consequently, the troops called out to enforce the laws "act as civil officers, with no greater power than civil officers would have." *Constantin*, 57 F.2d at 241. The military is sent to perform the duties which the local executives would and could perform were they able. *McPhail*, 180 So. at 391. In essence, when the Governor calls out the troops to execute the laws, the troops are police officers whose purpose is to preserve the peace and tranquility of the state. *See Franks*, 134 S.W. at 493.

64. FLA. STAT. § 250.31 (1991).

65. *Id.* § 250.34.

66. *Id.* § 250.482.

67. 32 U.S.C. § 102 (1959).

68. *Id.* § 104.

69. *Id.* § 501.

70. *Id.* § 701.

71. ECON. IMPACT REP. OF THE FLA. NAT'L GUARD (Fla. Dep't of Military Aff., Tallahassee, Fla.) 6 (1993) [hereinafter *IMPACT REPORT*]. The exact figure at the end of Fiscal Year 1992 was 13,852. *Id.* This figure fluctuates due to retirement, discharge and new enlistments.

commander-in-chief of a military force that could rival that of a third world country.

The Governor's troops are divided into the Florida Army National Guard and the Florida Air National Guard.<sup>72</sup> The Adjutant General is Commanding General for both divisions.<sup>73</sup> The Florida Army National Guard has seven major commands consisting of 12,168 troops.<sup>74</sup> These seven commands include: the 227TH Field Artillery Brigade, the 53RD Infantry Brigade, the 419TH Aviation Group, the Troop Command, the 53RD Signal Brigade, the 164TH Air Defense Artillery Brigade, and the Camp Blanding Training Site.<sup>75</sup> As this article will demonstrate, these seven commands provide the Governor with an army capable of accomplishing any domestic mission, and most combat missions.

The 227TH Field Artillery Brigade provides command and control of two field artillery battalions, and one direct support maintenance company.<sup>76</sup> The 53RD Infantry Brigade is comprised of three infantry battalions that are specifically trained to provide public safety during civil emergencies.<sup>77</sup> The 419TH Aviation Group consists of a unit which operates both the AH-64 Apache attack helicopters and the UH-60 Blackhawk utility helicopters.<sup>78</sup> In addition, the 419TH operates an air ambulance.<sup>79</sup> When activated by the Governor, the 419TH provides command and control to aviation units within Florida.<sup>80</sup> The Troop Command is the most diverse command in the Florida Guard.<sup>81</sup> It operates a medical group, a mobile surgical hospital, a special forces battalion, and a military intelligence battalion.<sup>82</sup> The Troop Command is trained to assume command and control of land defense units, and to provide military support to civil authorities at the direction of the Governor.<sup>83</sup> The 53RD Signal Brigade is made up of two signal battalions which operate two signal companies, two transportation companies, and one maintenance company.<sup>84</sup> In addition to

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72. ADJUTANT REPORT, *supra* note 11, at 5.

73. *Id.*

74. *Id.*

75. *Id.* at 38-50.

76. *Id.* at 45.

77. ADJUTANT REPORT, *supra* note 11, at 40.

78. *Id.* at 47.

79. *Id.*

80. *Id.* at 46.

81. *Id.* at 38.

82. ADJUTANT REPORT, *supra* note 11, at 38.

83. *Id.*

84. *Id.* at 44.

providing support to civil authorities, they have the capability of installing and operating a communications network for command and control during an emergency.<sup>85</sup> The 164TH Air Defense Artillery Brigade is capable of providing air defense through the use of the Chaparral Missile System, which is a heat seeking air defense artillery weapon.<sup>86</sup>

The Florida Army's capabilities are enhanced by the Florida Air Guard. The Florida Air Guard consists of one major fighter group,<sup>87</sup> and three major squadrons<sup>88</sup> comprising 1615 Guardsmen.<sup>89</sup> The 125TH Fighter Group consists of a fighter interceptor group and support squadrons.<sup>90</sup> It also operates a medical clinic.<sup>91</sup> The 202D Red Horse Civil Engineering Squadron is capable of providing heavy damage repair to aircraft launch facilities due to enemy attack or natural disaster.<sup>92</sup> The remaining two major squadrons have capabilities in satellite communications,<sup>93</sup> and high frequency communications support.<sup>94</sup>

Due to the size and capabilities of the state's military force, it is highly unlikely that the Governor would ever consider drafting civilians into state service. The Florida Guard has both the firepower and the training necessary to enable the Governor to achieve his constitutional mandates. Whatever situation develops requiring military force, the Governor may be certain that a competent, well equipped militia is ready to answer the call.

### B. *Financing the Force*

In addition to providing the state with the security of an armed force of citizen-soldiers, the Florida Guard generates federal funds and state revenue. Since the National Guard is a reserve component of the federal military, the federal government provides funding for the Florida Guard.<sup>95</sup> When the Governor calls the Florida Guard to active state service, the State

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85. *Id.*

86. *Id.* at 43.

87. ADJUTANT REPORT, *supra* note 11, at 73.

88. *Id.*

89. *Id.* at 5.

90. *Id.* at 54-64.

91. *Id.* at 58.

92. ADJUTANT REPORT, *supra* note 11, at 64.

93. *Id.* at 67.

94. *Id.* at 65.

95. See 32 U.S.C. § 106 (1988) (providing annual appropriations for the National Guard).

of Florida funds the Florida Guard.<sup>96</sup> Guardsmen on active state duty receive the same pay and allowance as received by the federal military.<sup>97</sup>

At the end of Fiscal Year 1992, the federal government expended \$127,550,329 on the Florida Guard.<sup>98</sup> Additionally, the state appropriated \$13,196,577 for a combined investment of \$140,746,906.<sup>99</sup> Furthermore, the value of army equipment on hand in the state totals nearly \$700,000,000.<sup>100</sup>

The Guard also receives support from local governments.<sup>101</sup> Since the Florida Guard is based throughout the state, counties and municipalities are authorized to donate financial and material support to the Guard.<sup>102</sup> The value of assistance received from local governments at the end of Fiscal Year 1992 was \$83,435.<sup>103</sup>

### C. *Community Involvement*

Although the headquarters is located in St. Augustine, the Guard is based throughout the state.<sup>104</sup> The Department of Military Affairs maintains 858 buildings on 121,307 acres of land.<sup>105</sup> There are seventy-one armories located in forty-three counties.<sup>106</sup>

Most Guardsmen assemble one weekend a month at these armories. The armories are primarily used for training<sup>107</sup> and equipment storage, but

96. See FLA. STAT. § 250.24 (1991) (providing for pay and expenses of Guardsmen activated to state duty from state appropriations for preserving public peace); see also *id.* § 250.25 (authorizing the Governor to borrow funds to pay active state Guardsmen if funds are not available).

97. *Id.* § 250.23. In addition, enlisted soldiers receive a \$20 per day bonus for every day served on state active duty. *Id.*

98. IMPACT REPORT, *supra* note 71, at 4; see also ADJUTANT REPORT, *supra* note 11, at 6.

99. IMPACT REPORT, *supra* note 71, at 4. Assuming a money multiplier effect of three percent, the combined economic impact of this investment totals \$423,000,000. *Id.*

100. ADJUTANT REPORT, *supra* note 11, at 6.

101. This support is in the form of cash, utility services and real property donations. See *id.* at 83.

102. See FLA. STAT. § 250.40 (1991). Since national defense is a joint responsibility of all political subdivisions of the country, it is considered equitable that the burden be shared. *Id.*

103. ADJUTANT REPORT, *supra* note 11, at 83.

104. IMPACT REPORT, *supra* note 71, at 3.

105. ADJUTANT REPORT, *supra* note 11, at 36.

106. IMPACT REPORT, *supra* note 71, at 2.

107. See generally 32 U.S.C. § 502 (1988). Members of the National Guard must assemble for drill and instruction 48 times per year. *Id.* In addition, they must participate

they are also available to the community for social activities and emergency shelters.<sup>108</sup> The armories are part of the community. When the armory loses a unit due to military downsizing, the communities grieve.<sup>109</sup> The communities suffer the loss of both economics<sup>110</sup> and patronage. The Guard is the epitome of community benevolence.

The Florida Guard has implemented a statewide Drug Demand Reduction program where Guardsmen enter school classrooms across the state to educate the students on the danger of drugs.<sup>111</sup> The Florida Guard is active in school career days, March of Dimes Walk-A-Thons, and parades throughout the state.<sup>112</sup> Individual Guardsmen volunteer their time to work with youth groups such as scouting and little league, the American Cancer Society, church organizations, and various other community activities.<sup>113</sup>

The Florida Guard also has an extensive family support network in place to assist families during times of mobilization.<sup>114</sup> This network conducts family support workshops for volunteers around the state, and administers an emergency relief fund.<sup>115</sup> Family support groups help alleviate the strain caused when Guardsmen are activated for extended periods of time. When the activation of the Guard is unexpected and the family has no time to prepare, there is an intense strain on the family. As this article will further indicate, this family support network was tested to the limits during the second half of 1992.<sup>116</sup>

#### D. *The Guard in Action*

On August 23, 1992, the Governor ordered the Adjutant General to call out the Florida Guard in response to Hurricane Andrew.<sup>117</sup> The Florida

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in training encampments at least 15 days each year. *Id.* This training requirement translates into a requirement of one weekend a month, and two weeks a year.

108. IMPACT REPORT, *supra* note 71, at 6.

109. See Michael Day, *Build Down Can be Traumatic Experience*, FLA. GUARDSMAN, 3 (1993).

110. Since the armories are community based, Guardsmen boost the local economy through spending and consumption during training weekends.

111. IMPACT REPORT, *supra* note 71, at 6.

112. ADJUTANT REPORT, *supra* note 11, at 14.

113. *Id.* at 42-45.

114. *Id.* at 20-21.

115. *Id.*

116. See John Daigle, Jr., *Guard Families Weather Tough Year*, FLA. GUARDSMAN, 5 (1993).

117. EXEC. ORDER NO. 92-220-E.

Guard was positioned in Dade County even before the storm hit on August 24, 1992.<sup>118</sup> This turned out to be the longest and largest state activation in the history of the Florida Guard.<sup>119</sup>

After the storm hit, the Guard carried out its mission of assisting civil authorities in a variety of ways. Infantry units patrolled streets, engineering units cleared debris, and signal units worked to restore communications.<sup>120</sup> Aviation units flew in supplies, medics treated the wounded, and Guardsmen served food and water to victims.<sup>121</sup> They helped find lost pets, and even drove buses of children to and from school.<sup>122</sup> Although the Guard could not replace the belongings or rebuild the lives of the victims devastated by Hurricane Andrew, the Guard's relief effort, by neighbor helping neighbor and Floridian helping Floridian, may have brought a temporary reprieve into the desperation of the victims.

On November 6, 1992, while the South Florida relief effort was ongoing, the Governor ordered the Adjutant General to call out the Guard for a mission in North Florida.<sup>123</sup> One hundred eighty Guardsmen were activated for thirty days to patrol a ten mile stretch of highway<sup>124</sup> where repeated incidents of rock and brick throwing, as well as sniper fire, resulted in several injuries and one fatality.<sup>125</sup> The Guardsmen set up a communications system, and provided a show of force by the patrols.<sup>126</sup> The Guardsmen security mission resulted in success, as the attacks subsided, and

118. IMPACT REPORT, *supra* note 71, at 5.

119. *Id.* At the peak of the activation, 58 units comprising over 6300 Guardsmen were on duty. *Id.* The last Guardsman to leave active duty returned home on December 18, 1992. *Id.* The Guard provided service for over 3 1/2 months. *Id.* In contrast, less than 1600 Guardsmen were called to federal duty for the Persian Gulf War. IMPACT REPORT, *supra* note 71, at 5. In addition, President Bush sent 20,000 federal troops to Dade County to assist in the relief effort. *Id.*

120. See C.J. Drake, *Stormy Scenes Litter Andrew's Path*, FLA. GUARDSMAN, 22, 23 (1993).

121. *Id.*

122. *Id.*; see also IMPACT REPORT, *supra* note 71, at 5. In addition, the Guard hauled 13,834 cubic yards of debris and cleared 1818 miles of road. *Id.* They distributed 61,990 pounds of food, 290,000 pounds of ice, and 248,000 gallons of water. *Id.* A total of 10,974 civilians were treated by medics and 3106 immunizations were given. *Id.* The Guard provided 54 civilians with dental care and even delivered 13 babies. *Id.*

123. EXEC. ORDER NO. 92-317.

124. John Daigle Jr., *Guarding I-295: Operation Overpass*, FLA. GUARDSMAN, 12 (1993).

125. EXEC. ORDER NO. 92-317.

126. Kaye Jewell, *146TH Signal Battalion Patrolled Hometown Highway*, FLA. GUARDSMAN, 12, 13 (1993).

several suspects were arrested.<sup>127</sup>

Providing relief from natural disasters and assisting law enforcement are common uses of the Guard.<sup>128</sup> However, history reveals some uncommon uses. Prior to the Civil War, the Florida militia was primarily devoted to fighting Seminole Indians,<sup>129</sup> and conducting slave patrols.<sup>130</sup> After the Civil War, the militia was activated over twenty times in a fifty year period to protect African-American prisoners from lynch mobs.<sup>131</sup>

On May 4, 1901, the Florida militia was deployed to Jacksonville pursuant to a declaration of martial law<sup>132</sup> in response to a fire that leveled their city.<sup>133</sup> The presence of the Guardsmen, as well as other federal

127. Daigle, *supra* note 124.

128. See IMPACT REPORT, *supra* note 71, at 8. In the last 15 years, there have been four times where the state has called to active duty 1000 or more troops, excluding Hurricane Andrew. These events were Hurricane Elena in 1985 (2561 troops), Miami/Liberty City riots in 1980 (3979 troops), South Florida Cuban refugee support in 1980 (1414 troops) and the South Florida fuel crisis in 1979 (1100 troops). *Id.*

129. Bittle, *supra* note 11, at 57-89.

130. HAWK, *supra* note 11, at 74.

131. Bittle, *supra* note 11, at 342, 378, 400, 430. The Guard was unsuccessful only once. *Id.* at 401. In June of 1916, an African-American prisoner was murdered in Inverness because the train from Brooksville transporting the troops did not depart in time. *Id.* Consequently, the Guard did not arrive until after the murder. *Id.*

132. Martial law is defined as the "law of military necessity, where the military exercises great control over civilians and civilian affairs, usually because of the existence of war." BARRON'S LAW DICTIONARY 293 (3d ed. 1991). But the definition of martial law has never been clear. See *Duncan v. Kahanamoku*, 327 U.S. 304, 315 (1946). "[T]he term 'martial law' carries no precise meaning. The Constitution does not refer to 'martial law' at all and no Act of Congress has defined the term. It has been employed in various ways by different people and at different times." *Id.*; see also Note, *Judicial Control of the Riot Curfew*, 77 YALE L.J. 1560, 1566 n.28 (1968). The confusion regarding the definition of martial law results from the term being used to describe a broad spectrum of measures, ranging from total military control over all civilian functions to the imposition of minor restrictions on personal liberty. *Id.* The confusion is heightened because the Governor is both the chief executive and the military commander-in-chief, thereby blurring the traditional separation of civil and martial law. *Id.*

The concept of martial law is beyond the scope of this article. However, it must be noted that the potential for a Governor to use a military force against the state citizenry has historically been greatest under a declaration of martial law. For cases construing the concept of martial law, see *Duncan v. Kahanamoku*, 327 U.S. 304 (1946); *Luther v. Borden*, 48 U.S. (7 How.) 1 (1849); *Constantin v. Smith*, 57 F.2d 227 (E.D. Tex. 1932); *Wilson & Co. v. Freeman*, 179 F. Supp. 520 (D. Minn. 1959); *Cox v. McNutt*, 12 F. Supp. 355 (S.D. Ind. 1935); *Commonwealth ex rel. Wadsworth v. Shortall*, 55 A. 952 (Pa. 1903).

133. 2 GENE M. BURNETT, *FLORIDA'S PAST* 213-16 (1988). The fire began around noon on Friday, and by 8:00 p.m., the city of Jacksonville "lay in rubble and ashes, all but

troops, provided stability to more than 10,000 homeless persons, and prevented looters from plundering the remains of the city.<sup>134</sup> The show of force ensured the framework in which the displaced but dedicated Jacksonville residents could begin the task of rebuilding.<sup>135</sup> In April of 1929, the Guard was activated to help quarantine the Mediterranean Fruit Fly discovered in Central Florida orange groves.<sup>136</sup> In 1960, the Guard helped dispose of thousands of dead chickens which posed a health threat to the town of Massayariktown.<sup>137</sup>

In 1980, the Guard was activated to assist the quelling of the Liberty City Riots in Miami.<sup>138</sup> Governor Graham sent the Guard to Miami under orders that they be deployed only around the perimeter of the riot area to avoid unnecessary loss of life due to armed confrontation.<sup>139</sup> The Governor required the Guardsmen to be accompanied by police officers, and the Guardsmen were not authorized to arrest civilians.<sup>140</sup> The Governor's prudent use of the Guard avoided a possible bloodbath, and "ensured the eventual end of the riot by smothering it with sheer numbers."<sup>141</sup> In addition to providing relief efforts to areas destroyed by hurricanes, floods and tornadoes, the Guard has hunted convicts, searched for missing persons, controlled traffic, cleaned up toxic chemical spills and assisted in labor disputes.<sup>142</sup> No matter what the mission, the Florida Guard has always answered the call.

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obliterated from the earth's face by a great conflagration that swept over its streets with freakish fury in one of the greatest calamities ever to befall a Southern city." *Id.* at 213. The fire produced so much smoke that "[i]n Savannah, Georgia, 160 miles north, people flooded the weather office with calls when they mistook the huge pillars of black clouds far southward for a great storm brewing." *Id.* at 215; *see generally* Bittle, *supra* note 11 (referring to the Guard's deployment to Jacksonville pursuant to a declaration of martial law).

134. BURNETT, *supra* note 133, at 215.

135. Indeed, the effort to rebuild began quickly, as "[t]he first building permit was issued that first Monday morning, and . . . [t]he sawmills in the surrounding county . . . could not turn out lumber fast enough." *Id.* at 216.

136. HAWK, *supra* note 11, at 157. Every car, bus and train entering or leaving the area was stopped and searched. *Id.* Nearly 20,000,000 inspections revealed 20,000 contaminated pieces of fruit. *Id.*

137. *Id.* at 201.

138. *See* BRUCE PORTER & MARVIN DUNN, THE MIAMI RIOT OF 1980 93-97 (1984).

139. *Id.* at 95-96.

140. *Id.* at 96.

141. *Id.*

142. HAWK, *supra* note 11, at 198, 201-02.



## IV. CONCLUSION

The militia provided for by article X, section 2 of the Florida Constitution defines every state citizen as a soldier. The true brand of citizen-soldier today is a member of the Florida National Guard. The Florida Guard is a well trained, well equipped, professional military force which is an essential agency of the state government. When the state needs the Guardsmen, they interrupt their civilian employment, leave their spouses, children and parents, and come to the aid and assistance of their fellow state citizens.

Florida has never witnessed its militia used in an abusive manner which restricts liberty, or is repugnant to the very foundation of government. Florida governors have historically used the military in a conservative manner as a means to achieve humanitarian objectives. In addition, the Florida Legislature has framed the laws in such a way as to ensure that actions taken under military orders are pursuant to the civil law, and in the interests of the Florida citizenry. This being the case, the Florida Guard stands ready to act in their fellow citizens' time of peril, and the state citizenry is deeply indebted to this institution's humanitarian contributions to the well-being of the state.

*Anthony J. Scaletta*