

Military Dictatorship

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Military Dictatorship: Is it possible in Idaho?

by Bill Denman

Various forms of militia have existed since the days of antiquity. During the reign of Philip IV of Macedon (336 B.C.) they consisted of rough skin-clad warriors who defended territorial borders. The existence of militia continued through the Middle ages and before the American Revolution was the only defense for the Colonies. After the United States Constitution was ratified, states continued to act independently concerning their use of the militia. During both the War of 1812 and the Civil War, states that disagreed with federal government policies withheld participation of their militia in these conflicts.

The basic idea behind the "militia" is that it is composed of all able bodied men in a social body (tribe, community, state, etc.) for their common protection. There have been (and still are) attempts by governments to control or dominate the militia in order to consolidate their monopoly over the "protection" business. The motive behind such attempts is usually not protection for the common good, but domination in order to impose tyrannical government on defenseless citizens. In 1642 the English Parliament attempted to control the militia by passing the "Militia Ordinance" which contributed to the outbreak of the English Civil War. Throughout history, disarming the people and control of the militia by a central government has lead to tyrannical control of the people and the eventual collapse of civilized society.

Unfortunately, we are once again witnessing the attempt by government to disarm the people and control the militia. Controlling the militia is undoubtedly the most effective way to neutralize any effective opposition to complete control of the people because it effectively controls the people who own the guns. The method of controlling the people who own the guns will become obvious as we review Idaho Senate bill S1518, which was passed by the Legislature during the '98 session without a single dissenting vote.

Those who support this grab for power usually cite the U.S. Constitution to justify their position. In order to put this issue into perspective, perhaps we should briefly review Article 1, Section 8 of the U.S. Constitution concerning the militia.

"The Congress shall have power ... (15) To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasion; (16) 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 ..."

It's important to recognize that Congress only has the power to govern "such part of them as may be employed in the service of the United States" and they are not granted the power to "govern" the portion of the militia not "employed in the service of the United States."

Subsection (15) simply authorizes Congress to call out the militia for certain specific purposes and subsection (16) authorizes Congress to "provide for"; in other words, provide the necessary materials for organizing arming and disciplining the militia. It's interesting to note that there is no mention in the U.S. Constitution (or the Idaho Constitution) of the "National Guard." This is no accident; the "National Guard" symbolizes what the Founding Fathers feared most _ a standing army in time of peace. Thus we can say without fear of contradiction that the "National Guard" is unconstitutional at

both federal and state levels of government (in the state of Idaho). Furthermore, the "militia" is the only military organization authorized in the Idaho Constitution _ there is no authorization for an Idaho Military as established in Idaho Senate bill S1518!

Now let's turn our attention to the wording contained in S1518 and see what our Legislature has done to us.

The purpose of this article is to provide an overview of the present threat to PRIVATE CITIZENS contained in S1518 in conjunction with other laws in Title 19 and Title 46 of Idaho Code. Only the most serious threats posed by S1518 will be presented. For those readers who want more detail, or perhaps wish to verify for themselves that the information contained herein is not taken out of context or exaggerated, it is recommended that they consult a copy of S1518 which is available at public libraries. Other codes referenced in this article can be found in Idaho Code books which are also available at public libraries. Then they can join in the effort to alert their fellow citizens and Legislators about a very serious situation.

The most serious threats to the freedom of Idaho citizens contained in S1518 are the changes in "Definitions" and the addition of new sections. In this review, all direct quotes will be italicized; strike- out lines inserted over the original wording which was deleted by S1518 and underlined words are additions to the code. They are exactly as found in S1518 with the exception of minor paragraph renumbering changes and new sections added to the code. The new sections added by S1518 have been treated the same (underlined) as added wording in revised sections even though they do not appear that way in S1518. Double underline has been added to words this writer wishes to emphasize. All referenced sections pertain to Idaho Law unless otherwise specified.

The "Definitions" (Section 46-1102) create a new military organization called the "Idaho military" which includes the "Idaho national guard" and the "militia of the state of Idaho." Section 46-103 defines the "militia of the state of Idaho" as: "The national guard, the organized militia and the unorganized militia." Section 46-102 (not mentioned in S1518) defines the militia as all able-bodied male citizens of the state between the ages of 18 and 45. The "state militia", or portions thereof, becomes the "organized militia" when the Governor declares an emergency and calls members of the unorganized militia to active duty. If the Governor declares an emergency, as authorized by Section 46-601, he can call to active duty all or any portion of the able-bodied males between the age of 18 and 45 and any female citizens (Section 46-105), regardless of age. The requirement regarding females existed prior to the passage of S1518 but the changes in S1518 will apply to them also. The significance of including the state militia in the definition of "Idaho military" is that sections of the "code of military justice" which formerly applied only to the national guard, or to the national guard and the organized militia, now apply to all members of the unorganized militia _ in other words, all able-bodied male citizens of Idaho between the age of 18 and 45. The wording of this change raises serious questions about applicability of the revised "code of military justice" to citizens who are not called to active duty. A detailed analysis of these questions will not be presented here because of space limitations. Female citizens are not part of the "unorganized militia" but become part of the national guard or the organized militia if the Governor calls them to active duty. In such event, they would also fall under the "code of military justice" as amended by S1518.

Prior to this change, the "code of military justice" applied only to the national guard; membership in which is VOLUNTARY. However, membership in the "militia of the state of Idaho" IS NOT

VOLUNTARY, IT'S COMPULSORY! (see Section 46-102, Idaho Code and Article XIV, Section 1, of the Idaho Constitution).

This change to the "code of military justice" also defines "uniform code of military justice" as "10 U.S.C. (United States Code) section 801, et seq." S1518 also added "(19) 'Manual for courts-martial' means that document prescribed by Presidential Executive Order 12473, August 1, 1984; as currently amended (1995 Edition)" to Section 46-1102. Thus we see that every able-bodied Idaho male between the age of 18 and 45 could be prosecuted in a military court under the provisions of a Presidential Executive Order, which could change at any time to fit the objectives of the president.

The definition of "Enemy" added to Section 46-1102 by S1518 is: "(21) 'Enemy' includes organized armed forces of a party hostile to the state or the United States in time of war, any hostile body that the forces of the state or the United States may be opposing, such as a rebellious mob or a band of renegades, and includes civilians as well as members of military organizations." The vague generalities contained in this section make it a serious threat to the freedom of Idaho citizens.

What is the definition of "any hostile body"? Webster's dictionary defines "hostile" as: "having or showing ill will; unfriendly; adverse; antagonistic. Under this definition any person, or group of persons, who criticize (shows ill will towards) government, or an agency thereof, could be considered an "Enemy" of "the state or the United States."

The definition of "Duty status" has been amended as follows: "'Duty status' includes periods when a military member is on duty or is lawfully ordered to duty." The word "includes" means that other situations may constitute "duty status." An amendment to Section 64-1103 makes militia members subject to court-martial for activities which tend to bring discredit "upon the Idaho national guard ... " Who will decide whether a particular action will tend to bring "discredit" upon the Idaho national guard? We are talking about serious consequences and this is no place for vague generalities.

S1518 changes the statute of limitations to eliminate the three year limitation on the filing of charges for a particular offense. It should be kept in mind that this now applies to all militia and national guard whereas it originally only applied to members of the national guard. Also notice the addition of "aiding the enemy", considering the questions already raised about this issue. "A person charged with desertion, absent without leave during time of war or during an emergency declared by the governor, aiding the enemy, mutiny, or fraudulent discharge, as defined by the punitive articles of this code, is not liable to be tried by court martial, or punished, if the offense was committed more than three (3) years before the receipt of sworn charges ... may be tried and punished at any time without limitation. (2) A person charged with any other offense, as defined in under this code is not liable to be tried by court-martial or punished under section 46-1108, Idaho Code, if the offense was committed more than two three (2 3) years before the receipt of sworn charges and specifications ..."

Section 46-601 (not amended by S1518) says: "(a) The governor shall have the power in the event of a state of extreme emergency to order into active service of the state, the national guard, or any part thereof, and the organized militia, or any part thereof, or both as he may deem proper. 'State of extreme emergency' means: ... (2) the duly proclaimed existence of conditions of extreme peril to the safety of persons and property within the state, or any part thereof, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot or earthquake, insurrection, breach of peace, which conditions by reason of their magnitude are or are likely to be beyond the control of the services, personnel, equipment and facilities of any county, city, or any city and county."

"Such conditions as" implies that there are other unspecified conditions that could be used as the basis for declaring an emergency. Who will determine the level of air pollution that is considered dangerous? The EPA?

S1518 amends Section 46-1108(1) to require the County Sheriff to perform duties for the military. "(2) If any member of the Idaho military has had charges preferred against him under this code ... and that the incarceration of the accused pending court-martial is required ... the convening authority is authorized to arrest such member or cause him to be arrested and have him confined pending trial. If military personnel are not available for the purpose of making the arrest, or if the convening authority deems it advisable, he may issue a warrant to any sheriff ... and said sheriff ... shall effect the arrest and hold the accused in the county jail of the county of the arrestee so that the convening authority may further process the charges against the accused ... (3) If any member of the Idaho national guard military is accused of an offense against a civil authority, any other member of the Idaho national guard military may, on request by a civil authority, arrest such accused member, but in such case, immediate steps must be taken to deliver such member forthwith to the appropriate civil authorities."

Remember _ "military" includes all able-bodied males between the age of 18 and 45. This would be a very effective way to pit citizen against citizen.

Section 46-1114(2) says: "A military judge shall be: (a) A commissioned officer who is a member of the bar of this state or a member of the bar of a federal court ... or (b) Any magistrate or district court judge of the state of Idaho, currently sitting or retired, who is a member of the bar of this state and who has been appointed to act as a military judge in Idaho by the Idaho supreme court upon the written request of the adjutant general ..."

This could result in a significant increase in the number of "military judges." Do you suppose they are anticipating a significant increase in the number of people to be tried under this "code of military justice"?

Section 46-1144 says: Sentences of courts martial shall become effective on the date when all reviews provided by this code have been completed. If the sentence includes confinement, the member shall be remanded to the custody of the sheriff of the county wherein the member's military unit or assignment, to attachment, for duty, is located; ..."

This could increase the county jail population considerably. I wonder if previous knowledge of this kind of program could have influenced the original proposal to build an oversized jail in Bonner County?

S1518 adds a new Section 46-1179 concerning aid to the "enemy" which says: "Any person subject to this code who: (1) Aids or attempts to aid, the enemy with arms, ammunition, supplies, money or other things; or (2) Without proper authority, knowingly harbors or protects or gives intelligence to or communicates or corresponds with the enemy, either directly or indirectly; shall be punished as a court-martial may direct."

This is an especially dangerous addition when the vague generalities in the definition of the "enemy" are considered.

S1518 adds Section 46-1186 which provides immunity for acts committed while on duty, provided they do not conflict with this code. Remember, this applies to all able-bodied males between the age

of 18 and 45 and note the inclusion of the word "civilians." It also applies to all females who are called to duty by the Governor. "All persons acting under the provisions of this chapter, whether as a member of the military or as a civilian, shall be immune from any personal liability for any of their acts or omissions which they did or failed to do as part or their duties under this chapter."

The victims of any misdeeds perpetrated under the protection of this section will have no recourse.

The vague generalities and undefined terms in this "code of military justice" make it a very serious threat to the freedom of Idaho citizens. Part 2 will review some basic principles regarding the source of power of the military, the attitude of the founding fathers relating to the "militia" and "standing armies" and the "constitutional" issue. Laws like this one illustrates the wisdom of the Founding Fathers in their antipathy towards "standing armies."

State Senator Clyde Boatright was floor sponsor for S1518 and Senators Shawn Keough, Gordon Crow, Jack Riggs and Representatives John Campbell, Jim Stoicheff, Hilde Kellogg, Wayne Meyer, Jim Clark, Jeff Alltus, and Larry Watson all voted for this bill. Representative Don Pischner was absent when the vote was taken. As a matter of fact, everyone, except those who were absent, voted in favor of this bill and the Governor signed it into law.