



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
GEORGETOWN UNIVERSITY LAW CENTER

**VIA EMAIL**

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Tommy Merricks  
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June 11, 2020

**Re: June 12 Black Lives Matter Vigil in Altavista**

Dear Mr. Coggsdale and Chief Merricks:

I am the Legal Director of Georgetown University Law Center's Institute for Constitutional Advocacy and Protection (ICAP). At ICAP, our mission is to defend American constitutional rights and values in and out of court. Over the past three years, we have developed an expertise in legal issues related to the regulation of public protests and demonstrations in a manner that protects public safety while respecting individuals' constitutional rights.

I am writing because we understand that self-styled private militias—including the Campbell and Bedford County militias—have showed up at recent protests in neighboring jurisdictions, including Lynchburg and Appomattox, and may be planning to be present at the Black Lives Matter vigil and march planned for tomorrow evening in Shreve Park in Altavista.<sup>1</sup> In Lynchburg, militia members were heavily armed and purported to have deployed to protect downtown businesses.<sup>2</sup> Their conduct appears to have violated Virginia law, as discussed below. We wanted to call this to your attention in advance of the planned event in Altavista so that you may take necessary precautions to protect the safety of all who seek to exercise their First

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<sup>1</sup> See Jeffrey Westbrook, *Peaceful vigil planned in Altavista*, Altavista Journal (June 9, 2020), [http://www.altavistajournal.com/news/article\\_acc4dbc0-aa92-11ea-bd03-831b4422156c.html](http://www.altavistajournal.com/news/article_acc4dbc0-aa92-11ea-bd03-831b4422156c.html).

<sup>2</sup> See Samantha Smith & Shayne Dwyer, *Armed citizens volunteer as security to protect Lynchburg restaurant*, WSLs 10 News (June 1, 2020), <https://www.wsls.com/news/local/2020/06/01/armed-citizens-volunteer-as-security-to-protect-lynchburg-restaurant/>.

Amendment rights. As you know, confrontations between protesters and private armed militia members can lead to tension, the chilling of constitutionally protected speech and assembly, and, in some cases, violent confrontations and destruction of property.

Several provisions of Virginia law prohibit private paramilitary activity. In particular, the Virginia Constitution's Strict Subordination Clause forbids private military units from operating outside state authority, providing that "in all cases the military should be under strict subordination to, and governed by, the civil power." Va. Const. art. I, § 13. Similarly, Virginia's anti-paramilitary statute prohibits private groups from using "firearm[s] . . . or technique[s] capable of causing injury or death . . . in, or in furtherance of, a civil disorder." Va. Code § 18.2-433.2. And Virginia's false-assumption statute prohibits individuals who are not law enforcement officers from exercising law enforcement functions. Va. Code § 18.2-174.

After the August 2017 Unite the Right rally in Charlottesville turned violent, ICAP used these laws to file a successful lawsuit on behalf of the city, small businesses, and residential associations against a number of militia organizations involved in the unrest. The Charlottesville Circuit Court agreed in a written ruling that the city could invoke the provisions of Virginia's Constitution and state laws to seek court orders prohibiting the private paramilitary conduct. The case resulted in court orders against 23 individuals and organizations barring them from returning to Charlottesville in groups of two or more acting in concert while armed with anything that could be used as a weapon during any rally, protest, demonstration, or march.

Since bringing that litigation, ICAP has consulted with municipalities large and small across the country seeking advice on how to protect public safety while preserving constitutional rights during public protests and demonstrations. We would be happy to consult with you or other Altavista officials about how best to ensure that tomorrow's event remains peaceful and lawful. Because we conduct all of our work on a pro bono basis, any consultation would be at no cost to you.

Sincerely,

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