



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

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June 17, 2020

Re: Private Paramilitary Activity in Appomattox County

Dear Administrator Sharp and Chairman Carter:

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 several years, we have developed an expertise in legal issues related to private paramilitary activity, as well as 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 a self-styled private militia calling itself the "Unorganized Militia of Appomattox County" intends to hold a "muster" on June 27 in Appomattox. According to a Facebook post, the purpose of the muster is "to organize volunteers in the event that the full organization of the militia is required to defend the rights and liberties of the citizens of Appomattox County."

In recent weeks, armed private militias have shown up at protests in the area, including in Lynchburg and Appomattox, where they have purported to protect and defend private businesses and public statues. Their conduct appears to have violated Virginia law, as discussed

below. We wanted to call this to your attention in light of the upcoming muster, as the Facebook post suggests that the Appomattox Militia may be planning to engage in similar unlawful conduct.

As you may be aware, 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 criminal 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 the functions and duties of law enforcement. Va. Code § 18.2-174. Although the Facebook post for the "Unorganized Militia of Appomattox County," refers to Virginia Code § 44-1 regarding the composition of the state militia, it fails to note other provisions of the Virginia Code, which make clear that only the Governor, as commander-in-chief, has the power to call forth the unorganized militia. *See* Va. Code. §§ 44-8, 44-86. When called forth, the "unorganized militia" is incorporated into the Virginia Defense Force under the control of the Virginia Department of Military Affairs. *See* Va. Code. §§ 44-54.4, 44-88. Private militias have no authority to deploy to engage in law enforcement or military functions outside of these carefully circumscribed laws.

After the August 2017 Unite the Right rally in Charlottesville turned violent, ICAP, citing these laws, filed 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.

Shortly thereafter, relying in part on the court's opinion in that case, the Virginia Attorney General opined that "Under the Code of Virginia, the responsibility to 'safeguard ... life and property' and to 'preserv[e] ... peace' is vested in the local police and other properly designated law-enforcement personnel. By engaging in crowd control or purporting to secure a public area, private militia members usurp a role specifically reserved to law enforcement, thereby 'assum[ing] or exercis[ing] the functions, powers, duties, and privileges' of law enforcement or peace officers' ... [in] violation of § 18.2-174 of the Code of Virginia."¹

¹ Virginia Attorney General Opinion No. 19-039 (Aug. 16, 2019), <https://www.oag.state.va.us/files/Opinions/2019/19-039-C-Herring-issued.pdf>.

Since bringing its successful litigation in Charlottesville, 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 Appomattox County officials about how best to ensure that future protests remain peaceful and free from unlawful militia activity. 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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