



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

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June 16, 2020

Re: Private Paramilitary Activity in Bedford County

Dear Supervisor Sharp and Administrator Hiss:

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 from Bedford County has shown up at recent protests in the area, including in Lynchburg, Virginia, where heavily armed militia members deployed to the city on May 31-June 1, purportedly to protect downtown businesses.¹ We also understand that the Bedford County Board of Supervisors recently adopted a resolution "recognizing" the Bedford County militia, which is composed of private citizens and is not under the command of the Governor of Virginia.²

¹ 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/>.

² Bedford County Resolution #R 052620-03, *A Resolution Recognizing the Militia Within the County of Bedford Pursuant to the Second Amendment to the United States Constitution and Article I, Section 13 of the Constitution of the Commonwealth of Virginia* (May 26, 2020).

The Bedford County Militia's conduct in Lynchburg appears to have violated Virginia law, as discussed below. We wanted to call this to your attention in light of the Board of Supervisors' apparent sanctioning of the militia. In addition, the potential remains for future confrontations between protesters and armed militia members as protest activity continues. As you know, such confrontations can lead to tension, the chilling of constitutionally protected speech and assembly, and, in some cases, violent confrontations and destruction of property.

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 law enforcement functions. Va. Code § 18.2-174.

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 on the court's opinion in that case, the Virginia Attorney General opined that "a group of private militia members coming as a unit, heavily armed with assault-style weapons, dressed in fatigues and other military accessories, and acting in a coordinated fashion" violates Virginia law when it engages in crowd control or other activities reserved for law enforcement.³

³ 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 Bedford 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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