



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

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Frank J. Rogers
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June 18, 2020

Re: Private Paramilitary Activity in Campbell County

Dear Chairman Watts and Administrator Rogers:

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 self-styled private militias—including the Campbell County Militia—have showed up at recent protests in neighboring jurisdictions, including Lynchburg.¹ After the incidents in Lynchburg, the militia released a June 1 statement indicating that it looked forward to “standing watch during times of civil unrest.”² We also understand that the Campbell County Board of Supervisors recently adopted a resolution “recognizing” the Campbell County Militia, which is composed of private citizens and is not under the command of the Governor of Virginia.³

¹ See Sarah Hanosky, *City of Lynchburg Declares a Local Emergency, Institutes Citywide Curfew*, News & Advance (June 1, 2020), https://www.newsadvance.com/news/local/watch-now-city-of-lynchburg-declares-a-local-emergency-institutes-citywide-curfew/article_2431dfa9-5972-5179-b9a6-0ae3cd132bd0.html.

² @CampbellMilitia, Twitter (June 1, 2020, 7:58 PM), <https://twitter.com/CampbellMilitia/status/1267606509510410248>.

³ Campbell County Resolution, *A Resolution Recognizing the Militia Within the County of Campbell Pursuant to the Second Amendment to the United States Constitution and Article I, Section 13 of the Constitution of the Commonwealth of Virginia* (March 3, 2020); see also Sarah Honosky, *Campbell County Backs Militia, Pursues Legal Action Against Region 2000*, News & Advance

The Campbell 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. Although the Board of Supervisors’ March 3 resolution refers to the Strict Subordination Clause and Va. Code §§ 44-1, 44-4, 44-75.1 and 44.78.1 regarding the composition of and circumstances necessary for calling on 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. Despite statements from the Campbell County Militia suggesting the contrary,⁴ private militias have no authority 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

(March 3, 2020), https://www.newsadvance.com/news/local/campbell-county-backs-militia-pursues-legal-action-against-region-2000/article_1236f9cf-129b-5efc-ab0e-ea96433ecb02.html.

⁴ *See* @CampbellMilitia, Twitter (June 1, 2020, 7:58 PM), <https://twitter.com/CampbellMilitia/status/1267606509510410248> (“The Militia does not require an express invite by local law enforcement to assist citizens in distress.”).

enforcement or peace officers' ... [in] violation of § 18.2-174 of the Code of Virginia.”⁵

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 Campbell 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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⁵ 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>.

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