



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

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June 25, 2020

Re: Private Paramilitary Activity in Coeur d'Alene

Dear Mayor Widmyer and City Attorney Gridley:

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, as a result of successful litigation we brought against militia organizations that participated in the Unite the Right rally in Charlottesville, Virginia, we have developed an expertise in the regulation of public protests in a manner that protects public safety while respecting individuals' constitutional rights.

I am writing because we understand that heavily armed self-styled private militia members have been patrolling downtown Coeur d'Alene in recent weeks, purporting to provide security at protests about police brutality and racial justice.¹ According to news reports, the militia presence caused some Coeur d'Alene businessowners to close early due to concern about possible violent confrontations, and meant some residents "didn't feel safe downtown."² We

¹ Kip Hill & Chad Sokol, *Armed Presence in North Idaho Towns Questioned by Some Politicians, Business Owners*, Spokesman-Rev. (June 5, 2020), <https://www.spokesman.com/stories/2020/jun/04/armed-presence-in-north-idaho-downtowns-questioned/>; Isaac Stanley-Becker, *As Protests Spread to Small-Town America Militia Groups Respond with Online Threats and Armed Intimidation*, Wash. Post (June 18, 2020), https://www.washingtonpost.com/national/as-protests-spread-to-small-town-america-militia-groups-respond-with-online-threats-and-armed-intimidation/2020/06/18/75c4655c-b0a1-11ea-8f56-63f38c990077_story.html

² Hill & Sokol, *supra*, n.1.

understand that the militias have continued to provide security at local events,³ and we have received numerous phone calls and emails from concerned residents asking if this conduct is legal.

The militia members' assumption of law enforcement functions in Coeur d'Alene appears to have violated Idaho law, as discussed below. We wanted to call this to your attention in light of city officials' June 5 statement suggesting that the militia activity is protected by the U.S. Constitution and state law.⁴ In addition, the potential remains for future confrontations between protesters and armed militia members as protest activity continues.⁵ As you know, such confrontations can lead to tension, the chilling of constitutionally protected speech and assembly, and, in some cases, violence and destruction of property.

As you may be aware, several provisions of Idaho law prohibit private paramilitary activity. In particular, the Idaho Constitution's Strict Subordination Clause forbids private military units from operating outside state authority, providing that "[t]he military shall be subordinate to the civil power." Idaho Const. art. I, § 12. Moreover, Idaho's statute prohibiting "unorganized associations" from engaging in paramilitary activity states, "[n]o body of men, other than the regularly organized national guard, the unorganized militia when called into service of the state, or of the United States . . . shall associate themselves together as a military company or organization, or parade in public with firearms in any city or town of this state." Idaho Code § 46-802. The Supreme Court has long recognized that such laws are constitutional and do not violate the Second Amendment.⁶

Other provisions of Idaho law make clear that the Governor of Idaho, as commander-in-chief, is the state official who has the authority to call the unorganized militia (all able-bodied Idaho citizens between the ages of 18 and 45) into active service. Idaho Code § 46-106 ("Whenever the governor as commander-in-chief, shall call into the active service of the state the unorganized militia or any part thereof, it shall be organized into such units and shall be armed and equipped in such manner as the governor in his discretion shall deem proper. The officers thereof, shall be appointed and commissioned by the governor under such rules and regulations as he may deem expedient to promulgate."); *see also* Idaho Code § 46-110 ("The governor of the state by virtue of his office, shall be commander-in-chief of the national guard, except of such thereof, as may be at times in the service of the United States."). Accordingly, private militias have no authority to deploy to engage in law enforcement or military functions outside of these carefully circumscribed laws, and no official other than the governor has authority to call into service private militias or to activate the "unorganized militia."

³ Chad Sokol, *Shea Vows to Continue Push for 51st State at 'Liberate America' Event in Coeur d'Alene*, Spokesman-Rev. (June 15, 2020), <https://www.spokesman.com/stories/2020/jun/13/shea-vows-to-continue-push-for-51st-state-at-liber/> (quoting a rally organizer as thanking local militias for guarding the event).

⁴ Steve Widmyer, et al., *A Message to Our Citizens* (June 5, 2020) available at <https://cdaid.org/Home/ShowPage?path=5821/>.

⁵ *See, e.g.*, Zachary Miller, *Letter to Mayor Steve Widmyer*, Coeur d'Alene Press (June 5, 2020), <https://cdapress.com/news/2020/jun/05/opinion-unnecessary-amount-of-armed-citizens-5/> (expressing concern from a local former military servicemember that inadequately trained militias may increase the risk of violent confrontation, even if accidental); *see also* Rachel Knapp, *Man Arrested in Shooting of Protestor in Old Town on Monday*, KRQE Albuquerque (June 15, 2020), <https://www.krqe.com/news/crime/apd-investigating-shooting-at-tiguex-park/>.

⁶ *See District of Columbia v. Heller*, 554 U.S. 570, 620 (2008); *Presser v. Illinois*, 116 U.S. 252, 264-265 (1886).

All 50 states have similar laws or constitutional provisions that bar private paramilitary activity. After the August 2017 Unite the Right rally in Charlottesville, Virginia, turned violent, ICAP, citing Virginia antiparamilitary 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.

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 Coeur d'Alene 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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