

## **Fact Sheet: Unlawful Militias in Alabama**

### **What is a militia?**

Federal and state laws generally use the term “militia” to refer to all able-bodied residents between certain ages who may be called forth by the government to defend the United States or an individual state. *See* 10 U.S.C. § 246. When not called forth, they are sometimes referred to as the “unorganized militia.” A group of people who consider themselves part of the able-bodied residents referred to as members of the militia under state or federal law is not legally permitted to activate itself for duty. A private militia that attempts to activate itself for duty, outside of the authority of the state or federal government, is illegal.

### **How do I know if a group of armed people is an unauthorized private militia?**

Groups of armed individuals that engage in paramilitary activity or law enforcement functions without being called forth by a governor or the federal government and without reporting to any government authority are acting as unauthorized private militias. They sometimes train together and respond to events using firearms and other paramilitary techniques, such as staking out tactical positions and operating in military-style formations. They often purport to have authority to engage in military and law enforcement functions such as protecting property and engaging in crowd control.

These groups often engage in behaviors that show their intent to act as a private militia, such as wearing military-style uniforms, tactical gear, or identifying insignia; wielding firearms or other weapons; and operating within a coordinated command structure. Other factors—such as statements by leaders or members’ efforts to direct the actions of others—also may suggest that a group is acting as a private militia. Groups of armed individuals may engage in unauthorized militia activity even if they do not consider themselves to be “members” of a paramilitary organization.

### **Does the Second Amendment protect private militias?**

No. In fact, the Supreme Court decided in 1886—and repeated in 2008—that the Second Amendment “does not prevent the prohibition of private paramilitary organizations.” *District of Columbia v. Heller*, 554 U.S. 570, 621 (2008) (citing *Presser v. Illinois*, 116 U.S. 252 (1886)).

### **Is it legal to act as a private militia in Alabama?**

No. All 50 states prohibit private, unauthorized militias and military units from engaging in activities reserved for the state militia, including law enforcement activities. Alabama’s laws are described below:

#### ***Alabama Constitution***

The Alabama Constitution forbids private military units from operating outside state authority, providing that “the military shall, in all cases, and at all times, be in strict subordination to the civil power.” Ala. Const. art. I, § 27.

#### ***Alabama Statutes***

*Prohibition on private military units:* Alabama law makes it illegal for groups of people to organize as private militias without permission from the state. Alabama Code § 31-2-125 provides that “[a]ny two or more persons, whether with or without uniform, who associate, assemble, or congregate together by or under any name in a military capacity for the purpose of drilling, parading, or marching at any time or place or otherwise take up or bear arms in any such capacity without authority of the Governor” may be fined up to \$1,000.

*Prohibition on wearing foreign military uniforms:* Alabama makes it illegal to “appear in any public place or in the public view attired in any uniform similar to that worn by the military, semimilitary, naval, police, storm troop, or other official or semiofficial forces of any foreign state, nation or government,” or “in any distinctive part” of such uniform, and “to assemble with other persons similarly attired in any camp, drill ground or other place for the purpose of engaging in military drill or training or other military practices.” Ala. Code § 31-2-18.

## What should I do if I see armed groups near a polling place or voter registration drive?

### First, document what you see:

- What are the armed people doing?
- What are the armed people wearing?
- Are they carrying firearms? If so, what type? If not, are they carrying other types of weapons?
- Are they wearing insignia? If so, what does it say or look like?
- Are they bearing signs or flags?
- Do they seem to be patrolling like a law enforcement officer might do?
- Do they seem to be coordinating their actions?
- Do they have a leader?
- Are they stopping or talking to people outside of their group?
- Do they appear to be provoking or threatening violence? If so, what are they doing specifically?
- Are people turning away from the polling station after seeing or speaking with them?

### Second, call Election Protection at 866-OUR-VOTE (866-687-8683) to report what you see.

Assistance is also available in **Spanish** at 888-VE-Y-VOTA (888- 839-8682), in **Arabic** at 844-YALLA-US (844-915-5187), and **Asian languages** at 888-API-VOTE (1-888-174-8683). A video call number for **American Sign Language** is available at 301-818-VOTE (301-818-8683).

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