

Fact Sheet: Unlawful Militias in Idaho

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 Idaho?

No. All 50 states prohibit private, unauthorized militias and military units from engaging in activities reserved for the state militia, including law enforcement activities. Some, including Idaho, also prohibit paramilitary activity during or in furtherance of a civil disorder. Idaho’s laws are described below:

Idaho Constitution: The Idaho Constitution 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.

Idaho Statutes

Prohibition on private military units: Idaho law makes it illegal for groups of people to organize as private militias without permission from the state. Idaho Code § 46-802 provides that “[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.” Cities and towns are prohibited from providing funding for “arming[,] equipping, uniforming, or in any other way supporting, sustaining or providing drill rooms or armories for any such body.” *Id.*

Prohibition on paramilitary activity: It is a felony in Idaho to:

- (1) conspire “to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitutions or laws of the United States or the state of Idaho, by the use of violence against the person or property of such citizen”;
- (2) go on the highway or the premises of any citizen, with another person, “with the intent by use of violence against such citizen or his property, to prevent or hinder his free exercise or enjoyment of any right or privilege so secured”; *or*
- (3) assemble “with one (1) or more persons for the purpose of training or instructing in the use of, or practicing with, any technique or means capable of causing property damage, bodily injury or death with the intent to employ such training, instruction or practice in the commission of a civil disorder.” Idaho Code § 18-8103.

Prohibition on falsely assuming functions of law enforcement: In Idaho, it is a crime for any person to “unlawfully exercise or attempt to exercise the functions of ... a deputy sheriff, marshal, policeman, constable or peace officer.” Idaho Code § 18-711. It is also a crime to bring into Idaho “any armed or unarmed police force or detective agency or force, or any armed or unarmed body of men for the suppression of domestic violence.” *Id.*

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 law enforcement officers 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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