

Fact Sheet: Unlawful Militias in New York

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 New York?

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

Prohibition on private military units: New York law makes it illegal for groups of people to organize as private militias without permission from the state. It is a misdemeanor for any “body of men other than the organized militia and the armed forces of the United States . . . [to] associate themselves together as a military company or other unit or parade in public with firearms in any city or town of this state.” N.Y. Mil. Law § 240(1). 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.” N.Y. Mil. Law § 240(2)

Prohibition on paramilitary-activity: The same statute makes it a felony to “assemble[] or conspire[] to assemble with one or more persons as a paramilitary organization,” with “knowledge of its purpose,” and to “practice with a military weapon to further the purpose of” that organization. N.Y. Mil. Law § 240(6)(a). A “paramilitary organization” is “an organization of two or more persons who engage or conspire to engage in military instruction or training in

warfare or sabotage for the purpose of unlawfully causing physical injury to any person or unlawfully damaging the property of any person.” N.Y. Mil. Law § 240(6)(b)(i).

Prohibition on wearing foreign military uniforms: New York makes it a misdemeanor to “appear in any public place or in the public view attired in any uniform similar to that worn by the military, semi-military, naval, police, storm troop or other official or semi-official forces of any foreign state, nation or government,” or “in any distinctive part” of such uniform, “or 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.” N.Y. Mil. Law § 238-c.

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).

This Fact Sheet has been prepared by the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center, with the pro bono assistance of law firms Akin Gump Strauss Hauer & Feld, Jones Day, and O’Melveny & Myers. ICAP’s mission is to use the power of the courts to defend American constitutional rights and values. Visit us at www.law.georgetown.edu/icap/. Contact us at reachICAP@georgetown.edu.