

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

### **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 Oklahoma?**

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 Oklahoma, also prohibit paramilitary activity during or in furtherance of a civil disorder. Oklahoma’s laws are described below:

***Oklahoma Constitution:*** The Oklahoma Constitution forbids private military units from operating outside state authority, providing that “[t]he military shall be held in strict subordination to the civil authorities.” Okla. Const. art. II, § 14.

***Oklahoma Statutes:***

***Prohibition on private military units:*** Oklahoma law makes it illegal for groups of people to organize as private militias without permission from the state. Okla. Stat. tit. § 44-23 provides that “[t]he Governor of the state shall be the Commander in Chief of the Militia,” and that “[n]o independent military organization, except as a corps of cadets at the educational institutions, shall be permitted to bear arms without first securing permission of the Commander in Chief.”

*Prohibition on paramilitary activity:* It is a felony in Oklahoma to either:

(1) teach or demonstrate how to use, apply, or make “any firearm, explosive or incendiary device or application of physical force capable of causing injury or death,” knowing or intending that it “will be employed for use in, or in furtherance of, a riot or civil disorder” or

(2) assemble “with one or more persons for the purpose of training with, practicing with or being instructed in the use of any firearm, explosive or incendiary device or application of physical force capable of causing injury or death,” intending to employ it “in, or in furtherance of, a riot or civil disorder.” Okla. Stat. tit. 21, § 1320.10.

*Prohibition on falsely assuming functions of law enforcement:* In Oklahoma, it is a crime for any person to “without due authority exercise or attempt to exercise the functions of . . . a deputy sheriff, marshal, police officer, constable or peace officer.” Okla. Stat. tit. 21, § 264.

## 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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