

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

### **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 Virginia?**

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

***Virginia Constitution:*** The Virginia Constitution forbids private military units from operating outside state authority, providing that “the military should be under strict subordination to, and governed by, the civil power.” Va. Const. art. I, § 13.

#### ***Virginia Statutes***

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

(1) teach or demonstrate how to use, apply, or make “any firearm, explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that such training will be employed for use in, or in furtherance of, a civil disorder”;

(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 technique capable of causing injury or death to persons, intending to employ such training for use in, or in furtherance of, a civil disorder”; *or*

(3) “point, hold or brandish any firearm or any air or gas operated weapon” or similar-looking object, “whether capable of being fired or not,” in a way that would “reasonably induce fear in the mind of another” “while assembled with one or more persons for the purpose of and with the intent to intimidate any person or group of persons.” Va. Code Ann. § 18.2-433.2 (incorporating Va. Code Ann. § 18.2-282(A)).

*Prohibition on falsely assuming functions of law enforcement:* In Virginia, it is a crime for any person to “falsely assume[] or exercise[] the functions, powers, duties, and privileges incident to the office of sheriff, police officer, marshal, or other peace officer, or any local, city, county, state, or federal law-enforcement officer.” Va. Code Ann. § 18.2-174. It is also “unlawful for any person, not an officer, warrant officer or enlisted person in the armed forces of the United States, to wear” a uniform that is “similar to a distinctive part of the” uniform of the U.S. armed forces. Va. Code Ann. § 44-120.

## 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/](http://www.law.georgetown.edu/icap/). Contact us at [reachICAP@georgetown.edu](mailto:reachICAP@georgetown.edu).*