



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

Ruben Garcia
Chief, Lakeland Police Department
228 S. Massachusetts Ave.
Lakeland, FL 33801
ruben.garcia@lakelandgov.net

Grady Judd
Sheriff, Polk County
1891 Jim Keene Blvd
Winter Haven, FL 33880
gjudd@polksheriff.org

October 23, 2020

Re: Private Paramilitary Activity and Potential Voter Intimidation in Lakeland

Dear Chief Garcia and Sheriff Judd:

I am the Legal Director of Georgetown University Law Center's Institute for Constitutional Advocacy and Protection (ICAP). At ICAP, our mission is to defend American constitutional rights and values in and out of court. Over the past several years, as a result of [successful litigation](#) we brought against militia organizations that participated in the Unite the Right rally in Charlottesville, Virginia, in 2017, we have developed an expertise in the regulation of public protests and demonstrations in a manner that protects public safety while respecting individuals' constitutional rights. Most recently, we have been working with jurisdictions across the country to combat unlawful militia activity and safeguard the electoral process.¹

I am writing because it has come to our attention that private militias are gathering for a rally in Lakeland on Saturday, October 24. A public invitation to the event is posted on a forum on MyMilitia.com. The event also features Josh Ellis, of AmericanRevolution2.0 / MyMilitia.com, as a guest speaker. These self-styled "patriots" are operating as unauthorized private militias. One of the videos linked to in the post calls for individuals to "[d]efend our communities, to defend each other.

¹ See, e.g., Ximena Conde, *Krasner says anyone who tries to intimidate Philly voters will 'find themselves in jail'*, PHILA. TRIBUNE (Oct. 7, 2020), https://www.phillytrib.com/krasner-says-anyone-who-tries-to-intimidate-philly-voters-will-find-themselves-in-jail/article_a2c3cdc9-39cb-5fea-b2a1-b69241e56c9d.html#/questions. ICAP has produced fact sheets for every state explaining the laws that bar unauthorized private paramilitary organizations and what to do if groups of armed individuals are near a polling place, <https://www.law.georgetown.edu/icap/our-work/addressing-the-rise-of-unlawful-private-paramilitaries/state-fact-sheets/>. ICAP also has produced a fact sheet on voter intimidation, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/Voter-Intimidation-Fact-Sheet.pdf>, and a guide for actions that law enforcement can take to address and prevent voter intimidation, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/ICAP-General-Law-Enforcement-Guidance.pdf>.

And the way we do that is to each be armed and well-trained in the use of those firearms.”² Florida’s constitution and statutes regulate private militia activity. We hope that the following information will help you in preparing for and responding to these demonstrations.

Several provisions of Florida law prohibit private paramilitary organizations. In particular, the Florida Constitution forbids private military units from operating outside state authority, providing that “[t]he military power shall be subordinate to the civil.” Fla. Const. art. I, § 7. Key provisions of the Florida Code make clear that the governor “is the commander in chief of all the militia of the state.” Fla. Stat. § 250.06. Private militia organizations or other armed groups have no authority to self-activate or to engage in functions reserved to the state militia or law enforcement.

Additionally, Florida criminal law broadly prohibits paramilitary units and activity. State law makes it illegal for groups of people to organize as private militias without permission from the state. Fla. Stat. § 870.06 provides that it is a misdemeanor for any “body of persons, other than the regularly organized land and naval militia of this state[and] the troops of the United States,” to “associate themselves together as a military organization for drill or parade in public with firearms, in this state, without special license from the Governor” and approval by the local government. Additionally, it is unlawful to either (1) teach or demonstrate the use of “any firearm, destructive device, or technique capable of causing injury or death to persons ... for use in, or in furtherance of, a civil disorder,” or to (2) assemble “with one or more persons for the purpose of training with, practicing with, or being instructed in the use of any firearm, destructive device, or technique capable of causing injury or death to persons ... for use in, or in furtherance of, a civil disorder.” Fla. Stat. § 790.29. Florida law also prohibits any person, other than members of the U.S. or state armed services, to wear “the uniform of” any part of the U.S. armed forces or the National Guard, “or any part of such uniform, or a uniform or part of a uniform similar thereto, or in imitation thereof.” Fla. Stat. § 250.43.

Florida law is in keeping with the Second Amendment, which does not protect private, unauthorized paramilitary organizations that are dangerous to public safety and good order. 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)), and indeed all 50 states prohibit them.³ Accordingly, although individuals have a constitutional right to bear arms for individual self-defense, they have no constitutional right to organize themselves as private military units projecting public authority wholly outside of governmental accountability. Other state laws may further restrict the use of firearms or other weapons.⁴

Any private paramilitary conduct that is election-related may also constitute voter intimidation, which is prohibited by both federal and state laws. In addition to other federal provisions, Section 11 of the federal Voting Rights Act makes it unlawful to “intimidate, threaten, or coerce” another person, or attempt to do so, “for voting or attempting to vote” or “for urging or aiding any person to vote or

² American Revolution 2.0, *My Responsibility to America*, YOUTUBE (Aug. 10, 2020), <https://www.youtube.com/channel/UCXrMMoqQIZUX03g2VywD0DQ>.

³ Institute for Constitutional Advocacy and Protection, *Prohibiting Private Armies at Public Rallies* (Sept 2020), available at <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/04/Prohibiting-Private-Armies-at-Public-Rallies.pdf>.

⁴ Fla. Stat. § 790.10 (barring “[i]mproper exhibition of dangerous weapons or firearms,” including “any dirk, sword, sword cane, firearm, electric weapon or device, or other weapon,” in a manner that is “rude, careless, angry, or threatening”).

attempt to vote.” 52 U.S.C. § 10307(b). Florida’s Voter Protection Act prohibits a person from directly or indirectly using or threatening to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to take or refrain from taking various voting-related actions.⁵ In addition to these restrictions on paramilitary activity and voter intimidation, other election-specific provisions and generally applicable criminal laws might also apply to armed intimidation near polling places. ICAP has developed several resources that may be of further help, including our voter intimidation fact sheet, guidance to law enforcement, and toolkit for constitutional protest.⁶

Please do not hesitate to reach out if ICAP can assist you in protecting against armed unauthorized activity before, during, and after the election. ICAP has brought together a coalition of national law firms that have committed to assisting communities in preventing unsanctioned paramilitary activity and voter intimidation. Because we and our law firm partners do this work on a pro bono basis, any consultation would be at no cost to you. Thank you in advance for your efforts to safeguard voters’ rights this election.

Sincerely,

Mary B. McCord
Institute for Constitutional Advocacy & Protection
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
mbm7@georgetown.edu
Phone: 202-661-6607
Fax: 202-662-9248

CC:

Laurel M. Lee
Secretary of State
Florida Department of State
R.A. Gray Building
500 South Bronough Street
laurel.lee@dos.myflorida.com

Rick Swearingen
Commissioner, Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, FL 32302
RickSwearingen@fdle.state.fl.us

⁵ Fla. Stat. § 104.0615; *see also* 21 Fla. Jur. 2d Elections § 229.

⁶ ICAP, *supra* note 1; Institute for Constitutional Advocacy and Protection, Georgetown Law, Protests & Public Safety: A Guide for Cities and Citizens, *available at* <https://constitutionalprotestguide.org/>.

Lori Ward
Election Supervisor
P.O. Box 1460
Bartow, FL 33831
loriedwards@polkelections.com

William Mutz
Mayor, City of Lakeland
228 S. Massachusetts Ave.
Lakeland, FL 33801
William.Mutz@lakelandgov.net

Palmer Davis
City Attorney, City of Lakeland
228 S. Massachusetts Ave.
Lakeland, FL 33801
Palmer.Davis@lakelandgov.net

Brian Haas
State Attorney, 10th Judicial Circuit
Polk County Courthouse
255 N Broadway Ave.
Bartow, FL, 33830
bhaas@sao10.com

<https://www.youtube.com/post/Ugz8chSHCQL8cygjl1R4AaABCQ?lb=Ugz8chSHCQL8cygjl1R4AaABCQ>



<https://www.mymilitia.com/forums/topic/74217-angry-viking-patriot-rally-102420-lakeland-fl/>

