



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

Jason Soto
Chief, Reno Police Department
455 E. Second St.
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October 28, 2020

Re: Private Paramilitary Activity and Voter Intimidation in Reno

Dear Chief Soto:

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 of increasing public concern that armed groups or self-styled private militias may position themselves at polling places during early voting or on Election Day, which has the potential to intimidate voters and result in violent confrontations.² In light of recent statements

¹ See, e.g., 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>, guidance for law enforcement, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/ICAP-General-Law-Enforcement-Guidance.pdf>, and a resource for election officials <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/ICAP-Election-Official-Guidance-10-27-20.pdf>.

² Jeri Davis & Bob Conrad, *Report: Violent, far-right groups on the rise in Nevada (updated)*, THIS IS RENO (Oct. 21, 2020), <https://thisisreno.com/2020/10/report-violent-far-right-groups-on-the-rise-in-nevada/>.

that you made to the press, we wanted to share information that may assist you in safeguarding voters' rights and curtailing unlawful private paramilitary activity.³

Private groups of individuals do not have authority under state or federal law to engage in the coordinated, armed enforcement of public safety and election law. These duties are reserved for law enforcement officers and election officials. The state militia (i.e., the National Guard and other state-sanctioned military forces) also can play a role in ensuring public safety, but only when called forth by the governor under Nevada law. We hope that the following information will help you prepare to protect against voter intimidation, as well as armed intimidation post-election, while preserving and fostering constitutional rights.

Several provisions of Nevada law prohibit private paramilitary activity. In particular, the Nevada Constitution forbids private military units from operating outside state authority, providing that “the military shall be subordinate to the civil power.” Nev. Const. art. I, § 11. The state’s Constitution bestows the governor with the “power to call out the Militia to execute the laws of the State or to suppress insurrection or repel invasion.” Nev. Const. art. XII, § 2. Statute prescribes “[t]he Governor is the Commander in Chief of the militia of the State.” Nev. Rev. Stat. § 412.034.

Nevada law makes it illegal for groups of people to organize as private militias without permission from the state. Nev. Rev. Stat. § 203.080 provides that it is a misdemeanor for “any body of individuals other than municipal police, university or public school cadets or companies, militia of the State or troops of the United States, to associate themselves together as a military company with arms without the consent of the Governor.” It is also a misdemeanor for any group, “other than the Nevada National Guard and the troops of the United States, to associate themselves together as a volunteer military company or volunteer military organization to drill or parade with arms in any city or town” in Nevada, “without the license of the Governor.” Nev. Rev. Stat. § 412.604. It is a crime for any person to “willfully exercise any of the functions or perform any of the duties” of a “public officer” “without having duly qualified therefor, as required by law.” Nev. Rev. Stat. § 197.120. Accordingly, 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.

Nevada 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.⁴ 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.

³ Jeri Davis, *VIDEO: Reno police chief discusses police role in upcoming election*, THIS IS RENO (Oct. 26, 2020), <https://thisisreno.com/2020/10/video-reno-police-chief-discusses-police-role-in-upcoming-election/>.

⁴ 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>.

Moreover, both federal and state laws prohibit voter intimidation. 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 attempt to vote.” 52 U.S.C. § 10307(b). Nevada law also prohibits the threat or use of “any force, intimidation, coercion, violence, restraint or undue influence” to intimidate voters. Nev. Rev. Stat. § 293.710 (punishable as a Category E felony).

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.⁵ ICAP has developed several resources that may be of further help, including our voter intimidation fact sheet, guidance to law enforcement and election officials, and toolkit for constitutional protest.⁶

Please do not hesitate to reach out if ICAP can assist you in protecting against armed unauthorized activity 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,

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⁵ See, e.g., Nev. Rev. Stat. § 293.740 (prohibiting electioneering within 100-feet of polling site entrance); Nev. Rev. Stat. § 293.730 (prohibiting individuals from “[r]emain[ing] in or outside of any polling place so as to interfere with the conduct of the election”); Nev. Rev. Stat. § 293.840 (establishing civil penalty “in an amount not to exceed \$20,000 for each violation”); Nev. Rev. Stat. § 292.320 (prohibiting the “rude, angry or threatening” display of “any dirk, dirk-knife, sword, sword cane, pistol, gun or other deadly weapon”).

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/>.

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