



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

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Mayor Keisha Lance Bottoms
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November 20, 2020

Re: Unlawful Militia Activity and Post-Election Rallies

Dear Governor Kemp and Mayor Bottoms:

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 helping state and local officials ensure that public protests and demonstrations take place in a manner that protects public safety while respecting individuals' constitutional rights under both the First and Second Amendments. Most recently, we have been working with jurisdictions across the country to combat unlawful militia activity both pre- and post-election.

I am writing because of increasing concern that self-styled private militias are organizing multiple armed demonstrations and marches in the coming days and weeks. Most urgently, Chris Hill of the III% Security Force has put out a request for "patriot groups," "militias," and "hardcore" Georgia residents to come to the capitol tomorrow to take up a "defensive position" to protect the rally planned there at 12:00 p.m. EST.¹ Moreover, ICAP has learned through the social media platform MeWe that the American Patriots III% is organizing an "armed march[]" on the Georgia State Capitol to protest "election fraud" and "to demand that riots, looting, and violence be immediately dealt with." As of November 5, American Patriots III% estimated that "thousands" of "patriots" have pledged to attend.

Private unlawful militias like the III% Security Force and the American Patriots III% have no authority under federal or state law to engage in coordinated, armed paramilitary activity. We hope

¹ See <https://youtu.be/ZPTGQg3WJso>.

that the following information will help you prepare to protect against unlawful coordinated armed activity while preserving and fostering constitutional rights.

Several provisions of Georgia law require all militia activity to be under the control and authority of the state. In particular, the Georgia Code makes clear that the Governor is the commander-in-chief and has the sole power to call forth the militia into active service. Ga. Code Ann. §§ 45-12-27, 38-2-6(c). When so called forth, the Georgia state militia is commanded and administered by the Governor, as commander-in-chief, through the Georgia Department of Defense and its Military Division. Ga. Code Ann. § 38-2-132. Private militia organizations or other armed groups thus have no authority to self-activate or to engage in functions reserved to the state militia or law enforcement.

Additionally, Georgia criminal law broadly prohibits paramilitary activity. State law makes it unlawful for a body of men other than the organized militia to associate as a military unit or parade in public with firearms. Ga. Code Ann. § 38-2-277(a). Furthermore, it is a felony in Georgia to “teach, train, or demonstrate” how to use, apply, or make “any illegal firearm, dangerous weapon, explosive or incendiary device capable of causing injury or death,” intending or knowing “that such . . . will be unlawfully employed for use in a civil disorder;” or to assemble “with one or more other persons for the purpose of being taught, trained, or instructed in the use of any illegal firearm, dangerous weapon, explosive or incendiary device capable of causing injury or death to persons, knowing or intending that such “will be unlawfully employed for use in or in furtherance of a civil disorder, riot, or insurrection.” Ga. Code Ann. § 16-11-151.

Georgia 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.² 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.

After the August 2017 Unite the Right rally in Charlottesville, Virginia, ICAP—relying on Virginia’s anti-paramilitary laws—filed a successful lawsuit on behalf of the city, small businesses, and residential associations against a number of militia organizations involved in the violence. The case resulted in court orders against 23 individuals and organizations barring them from returning to Charlottesville in groups of two or more acting in concert while armed with anything that could be used as a weapon during any rally, protest, demonstration, or march. ICAP also recently partnered with the District Attorney for Bernalillo County, New Mexico, to bring a lawsuit against a local militia there that usurped law-enforcement and military authority in violation of similar laws in New Mexico. Other states have relied on these authorities as the basis for time, place, and manner restrictions during public protest events.

² 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>.

Since bringing its successful litigation in Charlottesville, ICAP has consulted free of charge with states and municipalities across the country seeking advice on how to protect public safety while preserving constitutional rights during public protests and demonstrations. ICAP has developed several resources that may be useful, including a 50-state catalog of anti-militia and anti-paramilitary-activity laws, guidance for law enforcement at mass demonstrations,³ and a toolkit for constitutional protest.⁴

Please do not hesitate to reach out if ICAP can assist you in protecting against armed unauthorized activity in Atlanta. ICAP has brought together a coalition of national law firms that have committed to assisting communities in preventing unsanctioned paramilitary activity. 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.

Sincerely,

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³ See *id.* ICAP's law enforcement guidance is available at <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/ICAP-Post-Election-Law-Enforcement-Guidance-Final.pdf>.

⁴ ICAP's toolkit, *Protests and Public Safety: A Guide for Cities and Citizens*, is available at <https://constitutionalprotestguide.org/>.

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