



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

Clifton G. Harrold
Sheriff, Lane County
125 E. 8th Avenue
Eugene, OR 97401
sheriffs.office@co.lane.or.us

Terri Davie
Superintendent, Oregon State Police
3565 Trelstad Ave SE
Salem, OR 97317
ask.osp@osp.oregon.gov

Steve Mokrohisky
County Administrator
Lane County Administration
125 East 8th Avenue
Eugene, OR 97401
CountyAdministrator@lanecountyor.gov

November 2, 2020

Re: Private Paramilitary Activity and Voter Intimidation in Lane County

Dear Sheriff Harrold, Superintendent Davie, and Administrator Mokrohisky:

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 unlawful 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

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, [600 New Jersey Avenue NW, Washington, D.C. 20001 | \(202\) 662-9042 | reachICAP@georgetown.edu](https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/ICAP-</p></div><div data-bbox=)

I am writing in response to concerns about voter intimidation by armed groups of individuals in Lane County. Reports to the Election Protection helpline indicate that voters attempting to deposit their ballots in a drop box at the Lively Park Swim Center were confronted and questioned by groups of armed individuals in military attire blocking their way. Some voters turned away without depositing their ballots.

Private groups of armed individuals—whether calling themselves militias or not—have no authority to patrol ballot drop boxes or engage in functions reserved to law enforcement or the state militia, on or after Election Day. The state militia (i.e., the National Guard and other state-sanctioned military forces) can play a role in ensuring public safety, but only when called forth by the governor under Oregon law. We hope that the following information will help you in protecting against voter intimidation, as well as armed intimidation post-election, while preserving and fostering constitutional rights.

Several provisions of Oregon law require all militia activity to be under the control and authority of the state. In particular, the Oregon Constitution forbids private military units from operating outside state authority, providing that “the Military shall be kept in strict subordination to the civil power.” Ore. Const. art. I, § 27. The Oregon Constitution bestows the legislature with “the organization, maintenance and discipline of a state militia.” Ore. Const. art. X, § 1. Additionally, the Oregon Constitution provides that the governor is the “Commander-in-Chief of the military forces of the State.” Ore. Const. art. X, § 3. Relevant statutes further specify that the militia is under command of the governor. Or. Rev. Stat. § 396.125.

Oregon statute also prohibits paramilitary activity. It is a felony in Oregon to exhibit, display or demonstrate the use “of any firearm, explosive or incendiary device or any technique capable of causing injury or death,” intending or knowing “that such firearm, explosive or incendiary device or technique will be unlawfully employed for use in a civil disorder;” or to assemble “with one or more other 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 with the intent to unlawfully employ such firearm, explosive or incendiary device or technique in a civil disorder.” Or. Rev. Stat. § 166.660(1). Although there are no reports that the area around the drop box in Lane County devolved into violent civil disorder, the apparent militia members who self-deployed there appear to have been practicing their use of firearms for potential use in civil disorder, and their activity intimidated voters from depositing their ballots.

Oregon 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

[Election-Official-Guidance-10-27-20.pdf](#). We have also developed law enforcement guidance for demonstrations following the 2020 election, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/10/ICAP-Post-Election-Law-Enforcement-Guidance-Final.pdf>.

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>.

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.

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). Oregon law also prohibits any individual or group from “subject[ing] any person to undue influence” in exercising their voting rights, including efforts “to induce” another to refrain from voting or to vote in a particular manner. Or. Rev. Stat. § 260.665. State law also bars any person from “obstruct[ing] an entrance of a building in which ballots are issued or a place designated for the deposit of ballots under ORS 254.470 (Procedures for conducting election by mail) or any voting booth maintained under ORS 254.474 (Voting booths for primary and general elections) is located.” Or. Rev. Stat. § 260.695(3).

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.³ 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.⁴

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,

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

³ See, e.g., Or. Rev. Stat. § 260.695(2) (prohibiting electioneering with 100-foot of polling site); Or. Rev. Stat. § 163.190 (defining “the crime of menacing” as “word or conduct” with the intent of “plac[ing] another person in fear of imminent serious physical injury”); Or. Rev. Stat. § 166.220 (making the “unlawful use of a weapon” a Class C felony); Or. Rev. Stat. § 166.190 (“Any person over the age of 12 years who, with or without malice, purposely points or aims any loaded or empty pistol, gun, revolver or other firearm, at or toward any other person within range of the firearm . . .”).

⁴ 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/>.

CC:

Bev Clarno
Secretary of State, Oregon
900 Court Street NE
Capitol Room 136
Salem OR 97310-0722
503-986-1523
bev.clarno@oregon.gov

Ellen Rosenblum
Attorney General, Oregon
Oregon Department of Justice
1162 Court St. NE
Salem, OR 97301-4096
ellen.rosenblum@doj.state.or.us

Diana Jones
Board Administrator, Lane County
125 East 8th Avenue
Eugene, OR 97401
Diana.Jones@lanecountyor.gov

Stephen Dingle
Department Director
County Counsel, Lane County
Office of Legal Counsel
125 East 8th Avenue
Eugene, OR 97401
Stephen.Dingle@lanecountyor.gov