



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

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November 2, 2020

Re: Private Paramilitary Activity and Voter Intimidation in Spokane County

Dear Sheriff Knezovich, Chief Meidl, and Chief Batiste:

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 armed militia activity on election night and thereafter. Recently, an individual posted in an online III Percenters forum a call for a group “to stand against antifa/blm on election night and +1 in Spokane.”¹

As you may be aware, the issue of armed groups appearing at protests or other civil demonstrations has attracted the attention of the Spokane City Council.² Today the Spokane City Council is scheduled to further address this issue and consider a proposed ordinance. I write, in part, to provide you with information about federal and state laws relevant to these issues.

Private groups of armed individuals—whether calling themselves militias or not—have no authority to 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 Washington 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 Washington law require all militia activity to be under the control and authority of the state. In particular, the Washington Constitution forbids private military units from operating outside state authority, providing that “[t]he military shall be in strict subordination to the civil power.” Wash. Const. art. I, § 18. The Washington Constitution bestows upon the legislature the power and responsibility for “organizing and disciplining the militia.” Wash. Const. art. X, § 2. Additionally, the Washington Constitution provides that the governor is the “commander-in-chief of the military in the state” (Wash. Const. art. III, § 8) and that the governor “shall have the power to call forth the militia to execute the laws of the state to suppress insurrections and repel invasions (Wash. Const., art. X, § 2). Relevant statutes further specify that the militia is under command of the governor. *See generally* Ch. 38.08 RCW.

Moreover, the Washington Constitution specifically enshrines the principle of elections free from armed interference: “All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.” Wash. Const., art. I, § 19. Washington law also explicitly prohibits private militia organizations, providing that “[n]o organized body other than the recognized militia organizations of this state . . . shall associate themselves together as a military company or organize or parade in public with firearms.” RCW 38.40.120. Moreover, it is a gross misdemeanor in Washington “to carry, exhibit, display, or draw any firearm, . . . club, or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate another or that warrants alarm for the safety of other persons.” RCW 9A.02.010(1), (2). It is a felony to cause or create a substantial risk of an interruption or impairment of service rendered to the public by physically damaging, destroying, or

[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>, and managing driver activity, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/11/Driver-Guidance-11.1.20.pdf>.

² See Adam Shanks, “Police should rein in assembly of armed militias, Spokane City Council proposal says,” *The Spokesman-Review*, Oct. 29, 2020, available at <https://www.spokesman.com/stories/2020/oct/29/police-should-reign-in-assembly-of-armed-militias-/>.

removing an official ballot deposit box or ballot drop box.” RCW 9A.48.070(d), 9A.48.080(c). Further, it is a felony to “teach[] or demonstrate[] to any other person the use, application, or making of any device or technique capable of causing significant bodily injury or death to persons, knowing, or having reason to know or intending that same will be unlawfully employed for use in, or in furtherance of, a civil disorder.” RCW 9A.48.120(1), (2).

Washington 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. 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). It is a felony under Washington law to “use[] menace, force, threat, or any unlawful means towards any voter to hinder or deter such a voter from voting.” RCW 29.84.620. It is likewise unlawful to menace or unduly influence “any person in refusing to give his or her vote.” RCW 29.84.630.

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.

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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Anyone looking to stand against antifa/blm on election nightand +1 in Spokane? Looking for a group.

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