



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
GEORGETOWN UNIVERSITY LAW CENTER

**VIA EMAIL**

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November 6, 2020

**Re: Private Paramilitary Activity in Vancouver, WA**

Dear Sheriff Atkins, Chief McElvain, 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 2017 Unite the Right rally in Charlottesville, Virginia, 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.<sup>1</sup> Most recently, we have been working with jurisdictions across the country to combat unlawful militia activity in response to the election.<sup>2</sup>

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<sup>1</sup> See *City of Charlottesville v. Pa. Light Foot Militia*, <https://www.law.georgetown.edu/icap/our-work/addressing-the-rise-of-unlawful-private-paramilitaries/city-of-charlottesville-v-pennsylvania-light-foot-militia/>.

<sup>2</sup> See, e.g., ICAP has developed law enforcement guidance for managing election-related driver activity, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/11/Driver-Guidance-11.1.20.pdf>.

I am writing in response to concerns about unlawful armed militia activity in the coming days, including a “Stop the Steal” rally and “cruise” planned for tomorrow, November 7, 2020. Patriot Prayer USA, which has a long and well-documented history of violence and affiliations to extremists, is encouraging attendance at the “#StopTheSteal rally in Vancouver, Wa at Esther Short Park @3pm and Cruise at 4:30 this Saturday.” @PatriotPrayerUS, <https://twitter.com/PatriotPrayerUS/status/1324781599855005696?s=20>.

Washington law explicitly prohibits private militia organizations and paramilitary activity, such as that in which Patriot Prayer USA has engaged in the past. State statute provides 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. 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). And, to the extent that unlawful paramilitary organizations seek to usurp law enforcement authority, that too is prohibited under Washington law. RCW 9A.60.045.

Moreover, 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* RCW 38.08.

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 either in opposition to the state or as augmentation of law enforcement authority.

To assist law enforcement, and in conjunction with law enforcement leaders including former Seattle police chief Kathleen O’Toole, we have developed guidance about how to protect election staff and ballots during the vote counting period, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2020/11/Protecting-the-Count-Law-Enforcement-Guidance-11.4.20.pdf>. We also have published 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 have an extensive online legal treatise on protecting public safety while preserving constitutional rights during mass demonstrations, which you can find here: <https://constitutionalprotestguide.org>.

Please do not hesitate to reach out if ICAP can assist you. ICAP has brought together a coalition of national law firms that have committed to helping communities prevent unsanctioned paramilitary activity, including Stoel Rives. Because we and our law firm partners do this work on a pro bono basis, any consultation would be at no cost to you.

Sincerely,

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