



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
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**VIA EMAIL**

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January 27, 2022

**Re: Private Paramilitary “Volunteer” Resolution**

Dear Chairman Thompson, Vice-Chairman Tatum, and members of the Franklin County Board of Supervisors,

I am the Executive 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 ICAP brought against private paramilitary organizations that participated in the Unite the Right rally in Charlottesville, Virginia, in 2017, we have developed an expertise in legal issues related to private paramilitary activity, as well as the regulation of public protests and demonstrations in a manner that protects public safety while respecting individuals’ constitutional rights.

I am writing because we understand that self-styled private militias—including the Franklin County Militia—have urged the Franklin County Board of Supervisors (the Board) “to pass a resolution recognizing the need . . . for a militia in the county.”<sup>1</sup> Before taking such

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<sup>1</sup> See Jason Dunovant, *Franklin County Militia Asks Supervisors for Support*, Roanoke Times, (January 20, 2022), [https://roanoke.com/news/local/franklin-county-militia-asks-supervisors-for-support/article\\_df14136e-7a22-11ec-8057-bb11f089e88d.html](https://roanoke.com/news/local/franklin-county-militia-asks-supervisors-for-support/article_df14136e-7a22-11ec-8057-bb11f089e88d.html).

action, we wanted to ensure that the Board and community members are aware that private paramilitary organizations and paramilitary activity are unauthorized under Virginia law, as discussed below.

The Board recently heard public testimony that the Franklin County Militia and other militia groups have been armed and active at public demonstrations and protests in the community.<sup>2</sup> For example, when protestors in Rocky Mount gathered outside a town council meeting to call for the firing of two Rocky Mount police officers who took part in the January 6, 2021, attack on the U.S. Capitol, they were “met by counterprotesters, several wearing sweatshirts and other gear with symbols of a far-right, anti-government militia-style group called the Three Percenters.”<sup>3</sup> Franklin County residents also reported that in the summer of 2020, “armed . . . militias roamed the streets of [Rocky Mount], unchecked by police,” and reported armed militia attendance at protests against a Confederate statue.<sup>4</sup> In public debate before the Board over the potential removal of that statue, Aaron Hodges, who founded the Franklin County Militia, said he was there “give you guys . . . a warning.”<sup>5</sup>

The Franklin County Militia website states: “We seek to exercise ALL of our rights and we will work against any persons or agency that seeks to infringe on those rights using ALL legitimate means of resistance as expressed by the founding fathers in our Declaration of [I]ndependence and Constitution.”<sup>6</sup> Applicants looking to become members of the Franklin County Militia are asked to list their military experience and whether they have a concealed carry permit.<sup>7</sup> Reports also indicate that this unauthorized militia has held at least two public “musters.” In flyers calling on volunteers to attend one such muster, the Militia instructed volunteers “to bring an unloaded semi-automatic rifle, in good working order, preferably a variant of the AR-15 platform.”<sup>8</sup> This group, which is composed of private citizens and is not under the command of the Governor of Virginia, also purports to be an “unorganized militia as described in the Virginia constitution and subsequent statutes.”<sup>9</sup>

Certain of the unauthorized militia activity described appears to have violated Virginia law, as discussed below. We wanted to call this to your attention in light of the Board’s upcoming vote on whether to adopt a resolution in support of this group. In addition, the potential remains for future confrontations between protesters and armed militia members as protest activity continues. As you know, such confrontations can lead to tension, the chilling of constitutionally protected speech and assembly, and, in some cases, violent confrontations and destruction of property.

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<sup>2</sup> *Id*; see also Kimberly Kindy, *Black Lives Matter Activist Exposed the Role Two Local Police Officers Played in the Capitol Insurrection. Their Small Town Rapidly Took Sides*, Wash. Post (Mar. 29, 2021), <https://www.washingtonpost.com/politics/2021/03/29/capitol-riot-fallout/>.

<sup>3</sup> See Kindy, *supra* n.2.

<sup>4</sup> Megan Schiffres, *Rocky Mount Officers’ Firings Aren’t Enough, Residents Say*, Dogwood (Jan. 29, 2021), <https://vadogwood.com/2021/01/29/rocky-mount-officers-firings-arent-enough-residents-say/>.

<sup>5</sup> See Kindy, *supra* n.2.

<sup>6</sup> Franklin County Militia, “Who We Are,” <https://franklincountymilitia.com/who-we-are/>.

<sup>7</sup> Franklin County Militia, “Register,” <https://franklincountymilitia.com/register/>.

<sup>8</sup> See [https://www.reddit.com/r/Firearms/comments/exh2it/franklin\\_county\\_va\\_militia\\_muster\\_call/](https://www.reddit.com/r/Firearms/comments/exh2it/franklin_county_va_militia_muster_call/).

<sup>9</sup> See “Who We Are,” *supra* n.6.

As you may be aware, several provisions of Virginia law prohibit private paramilitary activity. In particular, the Virginia Constitution's Strict Subordination Clause forbids private military units from operating outside state authority, providing that "in all cases the military should be under strict subordination to, and governed by, the civil power." Va. Const. art. I, § 13. Similarly, Virginia's criminal anti-paramilitary statute prohibits private groups from using "firearm[s] . . . or technique[s] capable of causing injury or death . . . in, or in furtherance of, a civil disorder." Va. Code § 18.2-433.2. And Virginia's false-assumption statute prohibits individuals who are not law enforcement officers from exercising law enforcement functions. Va. Code § 18.2-174. Contrary to the Franklin County Militia's self-characterization as an "unorganized militia as described in the Virginia constitution and subsequent statutes," only the Governor, as commander-in-chief of the Commonwealth, has the power to call forth the unorganized militia, *see* Va. Code. §§ 44-8, 44-86. When called forth, the "unorganized militia" is incorporated into the Virginia Defense Force under the control of the Virginia Department of Military Affairs. *See* Va. Code. §§ 44-54.4, 44-88. Despite statements from the Franklin County Militia suggesting otherwise, private militias have no authority to engage in law enforcement or military functions outside of these carefully circumscribed laws.

After the August 2017 Unite the Right rally in Charlottesville turned violent, ICAP, relying on these laws, filed a successful lawsuit on behalf of the city, small businesses, and residential associations against a number of militia organizations involved in the unrest. The Charlottesville Circuit Court agreed in a written ruling that the city could invoke the provisions of Virginia's Constitution and state laws to seek court orders prohibiting the private paramilitary conduct. 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.

Shortly thereafter, relying in part on the court's opinion in that case, the Virginia Attorney General opined that "Under the Code of Virginia, the responsibility to 'safeguard . . . life and property' and to 'preserv[e] . . . peace' is vested in the local police and other properly designated law-enforcement personnel. By engaging in crowd control or purporting to secure a public area, private militia members usurp a role specifically reserved to law enforcement, thereby 'assum[ing] or exercis[ing] the functions, powers, duties, and privileges' of law enforcement or peace officers' . . . [in] violation of § 18.2-174 of the Code of Virginia."<sup>10</sup>

Since bringing its successful litigation in Charlottesville, ICAP has consulted with municipalities large and small across the country seeking advice on how to respond to the recent increase in unauthorized private militia activity, including how to protect public safety while preserving constitutional rights during public protests and demonstrations. We would be happy to consult with you or other Franklin County officials about how best to navigate these legal issues, or to ensure that future protests remain peaceful and free from unlawful militia activity. Because we conduct all our work on a pro bono basis, any consultation would be at no cost to you. Should we be of potential assistance, please feel free to contact me, or ICAP's managing director Alex Aronson ([aa2595@georgetown.edu](mailto:aa2595@georgetown.edu)), directly.

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<sup>10</sup> Virginia Attorney General Opinion No. 19-039 (Aug. 16, 2019), <https://www.oag.state.va.us/files/Opinions/2019/19-039-C-Herring-issued.pdf>.

Sincerely,

*/s/ Mary B. McCord*

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