



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

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March 29, 2023

Re: Potential Private Paramilitary Activity in Geauga County

Dear Sheriff Hildenbrand, Chief Niehus, and Chief Young:

I am the Executive Director of Georgetown University Law Center's Institute for Constitutional Advocacy and Protection (ICAP), a non-partisan institute that uses litigation, strategic policy development, and constitutional scholarship to vindicate individuals' constitutional rights, protect democratic processes, and defend the rule of law. Over the past several years, since bringing successful litigation in 2017 against private paramilitary organizations that participated in the Unite the Right rally in Charlottesville, Virginia,¹ we have developed an expertise in the regulation of public protests in a manner that protects public safety while still respecting individuals' constitutional rights.²

I am writing because we understand that members of private paramilitary organizations, including the Proud Boys, may be planning to disrupt one or more drag events in your communities

¹ See Inst. for Const. Advoc. & Prot., *City of Charlottesville v. Pa. Light Foot Militia* (accessed Mar. 24, 2023), <https://www.law.georgetown.edu/icap/our-work/addressing-the-rise-of-unlawful-private-militias/city-of-charlottesville-v-pennsylvania-light-foot-militia/>.

² See Inst. for Const. Advoc. & Prot., *Protests & Public Safety: A Guide for Cities and Citizens* (accessed Mar. 24, 2023), <https://constitutionalprotestguide.org/>.

that are scheduled to take place on Saturday, April 1.³ These events are being organized by the Community Church of Chesterland, which has a record of support for the LGBTQ+ community.⁴ As law enforcement officials in Chardon, Chesterland, and Geauga County prepare for these events, the potential remains for confrontations between private paramilitary actors and attendees, including members of the LGBTQ+ community who have become primary targets for paramilitary violence.⁵ Indeed, violence has already occurred, as the church was recently attacked by Molotov cocktails.⁶

This concern is only exacerbated by recent events in your region. Earlier this month, neo-Nazis, Proud Boys, white supremacists, and other extremists descended on a similar LGBTQ+ community event in Wadsworth, which led to a melee between opposing groups and several arrests for disorderly conduct.⁷ Many anti-LGBTQ+ demonstrators who came to Wadsworth were heavily armed, led Nazi chants, performed the Hitler salute, and threatened the crowd of community supporters who were present.⁸ This recent, coordinated call to action against a nearby LGBTQ+ community event heightens the risk that extremist private paramilitaries will mobilize their members against the upcoming events in your jurisdiction.

Although we are encouraged by reports that organizers are hiring security and coordinating with your offices,⁹ we wanted to offer our assistance as you consider options for avoiding potential violence while protecting the opportunity for peaceful protest and free expression. We have previously worked with local law enforcement and municipal leaders to advise them on successful de-escalation tactics in these situations, as well as the types of private paramilitary activities that are unlawful within their jurisdictions.

As you may be aware, the Ohio constitution provides that “the military shall be in strict subordination to the civil power.”¹⁰ This self-executing constitutional provision¹¹—as well as additional requirements that all military forces conform to state law¹²—makes it clear that Ohio does

³ Paris Wolfe, *Proud Boys to Protest Chardon Drag Brunch, Law Enforcement Ready*, Cleveland.com (Mar. 24, 2023), <https://www.cleveland.com/news/2023/03/proud-boys-to-protest-chardon-drag-brunch-law-enforcement-ready.html>.

⁴ Kevin Freeman, *Upcoming Drag Show Brunch in Local Community Sparks Controversy, Threats*, Fox 8 News (Mar. 23, 2023), <https://fox8.com/news/upcoming-drag-show-brunch-in-local-community-sparks-controversy-threats/>.

⁵ See, e.g., Philip Bump, *The Proud Boys Keep Popping up at LGBTQ Events*, Wash. Post (Nov. 22, 2022), <https://www.washingtonpost.com/politics/2022/11/22/proud-boys-keeping-popping-up-anti-lgbtq-events/>.

⁶ *Location of Upcoming Ohio Drag Queen Story Hour Vandalized by Molotov Cocktails; Church Fundraising for Security*, Buckeye Flame (Mar. 26, 2023), <https://thebuckeyeflame.com/2023/03/26/location-of-upcoming-ohio-drag-queen-story-hour-vandalized/>.

⁷ Will Carless & Doug Livingston, *Nazi Salutes, Pepper Spray, and Pistols: Ohio Drag Event Devolves Into an Extremist Melee*, USA Today (Mar. 14, 2023), <https://www.usatoday.com/story/news/nation/2023/03/14/drag-storytelling-in-wadsworth-ohio-devolves-into-extremist-fight/11465959002/>.

⁸ *Id.*; H.L. Comeriato, *Armed Nazis, White Supremacists Swarm LGBTQ+ Drag Event in Wadsworth, Ohio*, The Buckeye Flame (Mar. 15, 2023), <https://thebuckeyeflame.com/2023/03/15/armed-nazis-white-supremacists-swarm-lgbtq-drag-event/>.

⁹ See Wolfe, *supra* note 3; see also Paris Wolfe, *Protesters Threaten to Bring Guns to Chardon Drag Brunch Demonstration*, Cleveland.com (Mar. 24, 2023), <https://www.cleveland.com/entertainment/2023/03/protesters-threaten-violence-at-chardon-drag-brunch.html>.

¹⁰ Ohio Const. art. I, § 4.

¹¹ See *State v. Williams*, 728 N.E.2d 342, 352-53 (Ohio 2000) (stating that the words of a constitutional provision must be “sufficiently precise” to guide courts in order to be deemed “self-executing”); cf. *City of Charlottesville v. Pa. Light Foot Militia*, 2018 WL 4698657 (Va. Cir. Ct. July 7, 2018), at *4 (holding that Virginia’s Strict Subordination Clause is also “self-executing”).

¹² See R.C. 5923.01(E) (“[n]o troops shall be maintained” except those authorized by state and federal law); R.C. 5923.34 (the organized militia must be “governed and disciplined by the military laws of the state, the orders of the commander

not protect activities of private paramilitaries who do not answer to any governmental authority and were not called forth by the proper officials for a legitimate purpose. Additionally, Ohio has state laws regulating the actions of private security, such as required licensing, training, and insurance.¹³ Among these restrictions are prohibitions on private security wearing uniforms confusingly similar to law enforcement¹⁴ and otherwise impersonating a law enforcement officer.¹⁵

Given these requirements, your officers should be on the lookout for any private paramilitary groups, including the Proud Boys, who may seek to act as *de facto* armed forces at these events and potential protests surrounding them. Additionally, we also urge you to make clear to the public that unauthorized assumption of law enforcement or security functions are unlawful.

In seeking to maintain civilian control over military and law enforcement activity, Ohio law is well aligned with federal precedent. The U.S. Supreme Court has been clear since 1886 that the Second Amendment “does not prevent the prohibition of private paramilitary organizations.”¹⁶ Consistent with that interpretation, a federal district court in Texas enforced the state’s prohibition on private militias against the militia wing of the KKK in 1982. The court emphasized that Texas’s anti-militia statute helped to ensure civilian authorities’ monopoly over the use of force, which is a foundational democratic principle. Moreover, the court asserted, in enjoining future private militia activity, that “[m]ilitary organizations are dangerous wherever they exist, because of their interference with the functioning of a democratic society and because of their inconsistency with the State’s needs in operating its militia.”¹⁷ Ohio’s constitutional and statutory provisions that govern its militia and other armed forces seek to address a similar concern.

Indeed, all 50 states have laws or constitutional provisions that bar private military activity.¹⁸ 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 white supremacists and private militia organizations that engaged in paramilitary activity during the rally.¹⁹ 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.²⁰ The case resulted in court orders against 23 individuals and organizations, which barred 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.²¹

in chief, acts of congress of the United States pertaining to the organized militia . . . , and the Ohio code of military justice.”)

¹³ R.C. 4749.03.

¹⁴ R.C. 4749.08.

¹⁵ R.C. 2921.51.

¹⁶ *District of Columbia v. Heller*, 554 U.S. 570, 621 (2008) (citing *Presser v. Illinois*, 116 U.S. 252 (1886)).

¹⁷ *Vietnamese Fishermen’s Ass’n v. Knights of the Ku Klux Klan*, 543 F. Supp. 198, 218 (S.D. Tex. 1982).

¹⁸ Inst. for Const. Advoc. & Prot., *Prohibiting Private Armies at Public Rallies: A Catalog of Relevant State Constitutional and Statutory Provisions* (Sept. 2020), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/04/Prohibiting-Private-Armies-at-Public-Rallies.pdf>.

¹⁹ *City of Charlottesville*, *supra* note 1.

²⁰ *City of Charlottesville v. Pa. Light Foot Militia*, *supra* note 11.

²¹ Consent Decree, *City of Charlottesville v. Pa. Light Foot Militia*, No. CL 17000560-00 (Va. Cir. Ct. July 24, 2018), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/08/All-Consent-Decrees-and-Default-Judgments-without-photos.pdf>

Following the Charlottesville lawsuit, ICAP has consulted with municipalities large and small across the country that were seeking advice on how to protect public safety while preserving constitutional rights during public protests and demonstrations. In 2019, ICAP consulted with officials in Dayton, Ohio, regarding their lawsuit against the Honorable Sacred Knights (HSK), a white supremacist organization affiliated with the KKK.²² Dayton was able to obtain a consent decree to enjoin the HSK from participating in paramilitary actions during a planned march.²³ In 2021, ICAP also partnered with the District Attorney for Bernalillo County, New Mexico, to bring a successful lawsuit against a local militia there that usurped law-enforcement and military authority in violation of anti-paramilitary laws in New Mexico.²⁴

Other states have relied on their own state-law authorities as the basis for content-neutral time, place, and manner restrictions during public protest events. ICAP's online legal toolkit, *Protests and Public Safety: A Guide for Cities and Citizens*, available at <https://constitutionalprotestguide.org/>, describes the authorities for and limits on such restrictions, as well as best practices for preventing violence. Please do not hesitate to contact us if we can be of assistance. ICAP's work is performed on a pro bono basis.

Sincerely,



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²² Complaint, *City of Dayton v. Honorable Sacred Knights*, Case No. 2019 CV 01109 (Ct. Com. Pl., Montgomery Cty., Mar. 13, 2019), available at <https://perma.cc/YC93-JF7R>.

²³ Consent Decree, *City of Dayton v. Honorable Sacred Knights*, Case No. 2019 CV 01109 (Ct. Com. Pl., Montgomery Cty., May 13, 2019).

²⁴ Inst. for Const. Advoc. & Prot., *State v. New Mexico Civil Guard* (accessed Mar. 24, 2023), <https://www.law.georgetown.edu/icap/our-work/addressing-the-rise-of-unlawful-private-militias/state-v-new-mexico-civil-guard/>

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