

Institute for
Constitutional Advocacy and Protection

GEORGETOWN LAW

Fact Sheet: Local Governments and Militias

Every state has laws that govern its organized and unorganized militia forces, both of which answer to the governor as commander-in-chief. Despite this, some local governments have indicated that they might seek to activate so-called “[militia forces](#)” independent of, or even in explicit opposition to, their governor, particularly to interfere with enforcement of state and federal laws that they find objectionable. This Fact Sheet outlines state militia authorities and explains the relatively limited power of local governments.

Who has power over state militia forces?

Nearly every state constitution includes a provision that all militia forces in the state must be strictly subordinate to civilian leadership.¹ States have generally implemented this requirement by making the governor the “commander-in-chief” of all militia forces within the state.² This authority extends to both organized state militia units, such as the National Guard and other state defense forces,³ as well as the “unorganized” militia, which traditionally consists of able-bodied residents of eligible age who can be called into service by the governor in times of emergency or crisis.⁴ In some cases, other officials—such as the adjutant general—are statutorily designated as commanders of state militia forces, ultimately answering to the governor.⁵ **Any paramilitary units that operate outside of this legal framework are unlawful unless otherwise authorized.**⁶ This includes groups purportedly organized or recognized by county or other local officials, who have no power to call forth state militia forces or to create their own local militias.

Can local governments create their own militia?

No. Local governments have no authority under federal or state law to create their own militias. The U.S. Constitution gives Congress the authority “[t]o provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions,”⁷ and “[t]o provide for organizing, arming, and disciplining, the Militia,”⁸ while reserving the appointment of officers and training to the states. Congress has exercised its authority repeatedly since passage of the Militia Acts of 1792 which established the state National Guard system and authorized states to establish other state defense forces.⁹ As noted above, states have exercised this authority by giving the governor or state adjutant general (reporting to the governor) the

¹ Inst. for Const. Advocacy & Prot., *Prohibiting Private Armies at Public Rallies: A Catalog of Relevant State and Statutory Provisions* 4 (4th ed., Jan. 2024), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2024/02/50-state-survey-v4-FIN.pdf>.

² See, e.g., [Mich. Comp. Laws § 32.579\(1\) \(2024\)](#) (“No civilian person, except the governor, may command personnel of the state military establishment.”); [Va. Code Ann. § 44-8 \(2024\)](#) (“The Governor shall be Commander in Chief of the armed forces of the Commonwealth, and shall have power to employ such forces to repel invasion, suppress insurrection, and enforce the execution of the laws.”)

³ See, e.g., [Va. Code Ann. § 44.54.4 \(2024\)](#) (creating the Virginia Defense Force).

⁴ See, e.g., [Mich. Comp. Laws § 32.555 \(2024\)](#) (establishing the governor’s authority “to order into the defense force” the state’s unorganized militia).

⁵ See, e.g., [Ariz. Rev. Stat. § 26-102 \(2024\)](#) (designating the adjutant general as National Guard commander under the governor).

⁶ Private security services, such as security guards and other organizations, fall into this exception if they comply with relevant state law requirements. See Inst. for Const. Advocacy & Prot., *Fact Sheet: Private Security Services*, https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2024/05/Private-Security-Forces-Fact-Sheet_FINAL.pdf.

⁷ U.S. Const. art. I, § 8, cl. 15.

⁸ U.S. Const. art. I, § 8, cl. 16.

⁹ Act of May 2, 1792, 1 Stat. 264; Act of May 8, 1792, 1 Stat. 271.

power to call forth and command the state’s organized and unorganized militia. Every state has constitutional and/or statutory provisions that prohibit private militias or private paramilitary activity, where members are not reporting up an established chain of command to the governor.¹⁰

Can local officials use paramilitary groups to obstruct federal or state law?

No. The Supremacy Clause of the United States Constitution provides that federal law is “the supreme Law of the Land.”¹¹ The Supreme Court has long held that it is an “incontrovertible principle” that the federal government can “command obedience to its laws” and “keep the peace” through its agents on “every foot of American soil.”¹² This means that no state or local government official can obstruct—or use paramilitary units to obstruct—the federal exercise of authority within its jurisdiction even “for a moment.”¹³ Similarly, as subdivisions of the state, local governments may be preempted by state law from enacting or enforcing conflicting local laws or policies, including those applicable to firearms.¹⁴ It would be unlawful for local governments to use paramilitary units to obstruct enforcement of state laws.

What about the power of sheriffs to deputize civilians or summon a posse?

The powers of county sheriffs are generally controlled by state constitutions and statutory law, as well as the limits imposed by the U.S. Constitution. For example, in most states, the office of county sheriff is created by the state constitution as an elected office and can be further regulated by state law.¹⁵ In many states, sheriffs can deputize civilians or summon them to assist as part of a “posse comitatus,”¹⁶ but their authority is often limited by state law to specific purposes, such as service of process, security at county events, hostage situations, natural disasters, search and rescue, and pursuing fugitives.¹⁷ The power to deputize civilians or summon a posse to aid the sheriff in the temporary execution of a specific law enforcement function does not include the power call forth a state militia or create a county militia.¹⁸

This guidance was prepared by the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center. ICAP’s mission is to use strategic legal advocacy to defend constitutional rights and values while working to restore confidence in the integrity of governmental institutions. Connect with ICAP at www.law.georgetown.edu/icap/, reachICAP@georgetown.edu, or [@GeorgetownICAP](https://twitter.com/GeorgetownICAP)

¹⁰ See Inst. For Const. Advocacy & Prot., *Prohibiting Private Armies at Public Rallies*, *supra* note 1, at 3. See also Letter from ICAP Executive Director Mary McCord to Franklin County, VA, Officials (Jan. 27, 2022), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/02/2022.1.27-ICAP-Letter-Franklin-County-Board.pdf>.

¹¹ U.S. Const. art. VI, cl. 2.

¹² *Ex Parte Siebold*, 100 U.S. 371, 395 (1879), *abrogation on other grounds recognized by Brown v. Davenport*, 596 U.S. 118, 129-30 (2022).

¹³ *Tennessee v. Davis*, 100 U.S. 257, 263 (1879); see also *Clifton v. Cox*, 549 F.2d 722, 730 (9th Cir. 1977) (A “basic tenet[] in the application of the Supremacy Clause is that the states have no power to determine the extent of federal authority.”).

¹⁴ See, e.g., *Rancho Lobo, Ltd. v. De Vargas*, 303 F.3d 1195, 1201 (10th Cir. 2002) (enumerating circumstances in which state law will preempt local ordinances).

¹⁵ Inst. for Const. Advocacy & Prot., *Fact Sheet: “Constitutional Sheriffs” and Elections*, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/09/Constitutional-Sheriffs-Fact-Sheet.pdf>.

¹⁶ This authority existed at common law and has been incorporated into state laws but is not to be confused with the federal Posse Comitatus Act, which prohibits the U.S. military from engaging in domestic law enforcement. See Joseph Nunn, *The Posse Comitatus Act Explained*, Brennan Ctr. for Justice (Oct. 14, 2021), <https://www.brennancenter.org/our-work/research-reports/posse-comitatus-act-explained>.

¹⁷ The breadth of these powers varies by state. For more information, see Inst. for Const. Advocacy & Prot., *Fact Sheet: “Constitutional Sheriffs” and Elections*, *supra* note 16.

¹⁸ See Letter from ICAP Executive Director Mary McCord to Kinney County, Texas, Officials (May 18, 2022), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/05/ICAP-Letter-Kinney-County-TX.pdf>.