Twitter Thread by melross



melross
@msbopriss

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Fact Sheet: Unlawful Militias in Ohio

What is a militia?

Federal and state laws generally use the term "militia" to refer to all able-bodied residents between certain ages who may be called forth by the government to defend the United States or an individual state. *See* 10 U.S.C. § 246. When not called forth, they are sometimes referred to as the "unorganized militia." A group of people who consider themselves part of the able-bodied residents referred to as members of the militia under state or federal law is not legally permitted to activate itself for duty. A private militia that attempts to activate itself for duty, outside of the authority of the state or federal government, is illegal.

How do I know if a group of armed people is an unauthorized private militia?

Groups of armed individuals that engage in paramilitary activity or law enforcement functions without being called forth by a governor or the federal government and without reporting to any government authority are acting as unauthorized private militias. They sometimes train together and respond to events using firearms and other paramilitary techniques, such as staking out tactical positions and operating in military-style formations. They often purport to have authority to engage in military and law enforcement functions such as protecting property and engaging in crowd control.

These groups often engage in behaviors that show their intent to act as a private militia, such as wearing military-style uniforms, tactical gear, or identifying insignia; wielding firearms or other weapons; and operating within a coordinated command structure. Other factors—such as statements by leaders or members' efforts to direct the actions of others—also may suggest that a group is acting as a private militia. Groups of armed individuals may engage in unauthorized militia activity even if they do not consider themselves to be "members" of a paramilitary organization.

Does the Second Amendment protect private militias?

No. In fact, 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)).

Is it legal to act as a private militia in Ohio?

No. All 50 states prohibit private, unauthorized militias and military units from engaging in activities reserved for the state militia, including law enforcement activities. The Ohio Constitution provides that "the military shall be in strict subordination to the civil power." Ohio Const. art. I, § 4.