



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION  
GEORGETOWN UNIVERSITY LAW CENTER

Hearing before the House Committee on Oversight and Reform  
Subcommittee on Civil Rights and Civil Liberties

Confronting White Supremacy (Part VII):  
The Evolution of Anti-Democratic Extremist Groups and  
the Ongoing Threat to Democracy

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Chairman Raskin, Ranking Member Mace, and distinguished members of the Subcommittee, thank you for inviting me to testify about the evolution of anti-democratic extremist groups and the ongoing threat to democracy. My testimony focuses on extremist militia and paramilitary organizations.

### **Introduction**

Nearly two years after the January 6, 2021, attack on the United States Capitol, the United States remains politically and culturally polarized. Evaluating the militia extremist threat going forward requires not only understanding militia groups' use of paramilitary training and promotion of insurrectionist ideology, but also understanding and formulating responses to the strategies and developing alliances through which they seek to enter into mainstream American politics. Since January 6, militia members and other extremists have adopted a decentralized strategy, focusing on local politics. Extremist social media platform

Gab.com outlined the strategy in the spring of 2022: “Capture your local county, then several of them, then maybe your state. . . . We need to take the concepts and values of nationalism and decentralize them to our backyards. . . . A decentralized and localized Christian political movement.” Consistent with this strategy, militia extremists have run for local and state elected offices and signed up as poll workers and precinct chairs. They have orchestrated recall elections to replace moderate Republicans with election deniers and anti-government extremists. They have ingratiated themselves with elected state and federal officials who seek short-term political gain over long-term preservation of democratic processes. They have recruited and sought favor from active-duty law enforcement. And they have aligned themselves with “constitutional sheriffs,” a movement of elected sheriffs who believe they are the highest law of the land, answerable only to the U.S. Constitution as they interpret it.

### *All Politics Are Local*

Private paramilitary organizations have used the time since the U.S. Capitol attack to rebrand and reorganize. A little more than a month after January 6, the national council of The Three Percenters-Original announced the dissolution of the group, but decentralized spin-off groups remain active.<sup>1</sup> The Proud Boys also dissolved its national leadership, leaving management to local chapters.<sup>2</sup> Web pages of private militias tout their civic engagement, including providing assistance with disaster recovery, while denying any intent to commit acts of violence.<sup>3</sup> They claim to have working relationships with local government and

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<sup>1</sup> Tess Owen, *This Three Percenter Militia Group Just Cancelled Itself Because of the Capitol Riots*, VICE (Feb. 26, 2021), <https://www.vice.com/en/article/3anmkv/this-three-percenter-group-just-cancelled-itself-because-of-the-capitol-riots>.

<sup>2</sup> Sheera Frenkel, *Proud Boys Regroup, Focusing on School Boards and Town Councils*, N.Y. Times (Dec. 14, 2021), <https://www.nytimes.com/2021/12/14/us/proud-boys-local-issues.html>.

<sup>3</sup> See, e.g., FRANKLIN CNTY. MILITIA (last visited Mar. 29, 2022), <https://perma.cc/N5VB-XDK8>.

law enforcement officials and advertise their tax-exempt non-profit status.<sup>4</sup> They emphasize their careful vetting and background checks.<sup>5</sup>

More and more often, paramilitary organizations have pushed into the mainstream, both by injecting their propaganda into online “culture wars” and by becoming politically active at the local and state levels.<sup>6</sup> In 2021, they sought to influence local politics, including by packing school board meetings in opposition to mask and vaccine mandates and to teaching about race and diversity.<sup>7</sup> In 2022, they have shown up, armed and intimidating, at events promoting white supremacy,<sup>8</sup> LGBTQ-friendly programs,<sup>9</sup> and demonstrations in opposition to the U.S. Supreme Court’s *Dobbs*<sup>10</sup> decision overruling *Roe v. Wade*.<sup>11</sup>

Militia members, including some who participated in the January 6 assault, have recently run for office in multiple states.<sup>12</sup> A member of the Three Percenters

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<sup>4</sup> See, e.g., *About Us*, CIV. GROUND PATROL (last visited Mar. 29, 2022), <https://perma.cc/D74U-FDRE>.

<sup>5</sup> *Become A Member*, 1ST AMENDMENT PRAETORIAN (last visited Mar. 29, 2022), <https://perma.cc/TMB5-QFZN>.

<sup>6</sup> Jared Holt, Atlantic Council’s Digital Forensic Research Lab, *After the Insurrection: How Domestic Extremists Adapted and Evolved After the January 6 US Capitol Attack* 21 (Jan. 2022), <https://www.atlanticcouncil.org/wp-content/uploads/2022/01/After-the-Insurrection.pdf>.

<sup>7</sup> See, e.g., Frenkel, *supra* note 2; Erik Maulbetsch, *Militia Calls on Members to Pack Colorado Springs School Board Meeting Tonight*, COLORADO TIMES RECORDER (Oct. 21, 2021), <https://coloradotimesrecorder.com/2021/10/militia-calls-on-members-to-pack-colorado-springs-school-board-meeting-tonight/40461/>.

<sup>8</sup> Armed Conflict Location Event Data (ACLED), *From the Capitol Riot to The Midterms: Shifts in American Far-Right Mobilization Between 2021 and 2022* (Dec. 6, 2022), <https://acleddata.com/2022/12/06/from-the-capitol-riot-to-the-midterms-shifts-in-american-far-right-mobilization-between-2021-and-2022/>.

<sup>9</sup> *Id.*

<sup>10</sup> *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. \_\_\_ (2022).

<sup>11</sup> Vera Bergengruen, *Armed Demonstrators and Far-Right Groups Are Escalating Tensions at Abortion Protests*, TIME (July 8, 2022), <https://time.com/6194085/abortion-protests-guns-violence-extremists/>.

<sup>12</sup> See, e.g., Brittany Shammass, *Jan. 6 Defendant is Running for Office in Florida – From Jail*, WASH. POST (July 28, 2022), <https://www.washingtonpost.com/politics/2022/07/28/january-6-candidate-florida/> (Oath Keeper member Jeremy Michael Brown, charged with trespassing and disorderly conduct, running for Florida state House of Representatives); Tracey Tully, *An Oath Keeper Was at the Capitol Riot. On Tuesday, He’s on the Ballot.*, N.Y. TIMES (Oct. 28, 2021), <https://www.nytimes.com/2021/10/27/nyregion/oath-keeper-nj-assembly.html> (Oath Keeper member Edward Durfee Jr. running for New Jersey State Assembly); Lorien Nettleton, *Hailey Man Takes Second Run for Idaho Senate*, LONGVIEW NEWS-JOURNAL (Mar. 18, 2022), [https://www.news-journal.com/hailey-man-takes-second-run-for-idaho-senate/article\\_29fa6f45-ecf6-54cc-83a0-15c60eb3038e.html](https://www.news-journal.com/hailey-man-takes-second-run-for-idaho-senate/article_29fa6f45-ecf6-54cc-83a0-15c60eb3038e.html) (Eric Parker, founder of Idaho’s Real 3%ers, running for state senate); Sergio Olmos, *Republicans to Field More than 100 Far-Right Candidates This Year*, THE GUARDIAN (Feb. 2, 2022), <https://www.theguardian.com/world/2022/feb/02/republicans-100-far-right-candidates-2022> (noting, among others, Oath Keeper member Wendy Rogers running for reelection as Arizona state senator; Three Percenters members in the Pacific Northwest running for or elected to dozens of offices).

in Washington whose children do not attend public schools nevertheless won a school board seat against the educator-backed candidate.<sup>13</sup> She was among four female Three Percenter members who ran in a recent local election cycle in the state, three of whom won.<sup>14</sup> In Miami-Dade County, Florida, at least a half dozen current and former members of the Proud Boys, including some charged for their roles in the January 6 attack, have secured seats on the Miami-Dade Republican Party Executive Committee, causing internal turmoil as they aggressively push the party from its establishment roots toward the fringe.<sup>15</sup> Militias have also been instrumental in seeking recall elections of moderate Republicans in favor of election deniers and extremist opponents of public health measures.<sup>16</sup> In the mid-terms, a large number of election deniers sought to replace election officials and other elected officials from the precinct level to the state level, including by running for governor, attorney general, and secretary of state.<sup>17</sup> Although most of these election deniers lost statewide races, many claimed seats in the U.S. House of Representatives, in state legislatures, and in local offices.<sup>18</sup>

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including mayor, county commissioner, and school boards; militia leader Ammon Bundy running for governor in Idaho).

<sup>13</sup> Hannah Allam, *A Rural Washington School Board Race Shows How Far-Right Extremists are Shifting to Local Power*, WASH. POST (Jan. 8, 2022), <https://www.washingtonpost.com/national-security/2022/01/08/far-right-school-boards/>.

<sup>14</sup> *Id.*

<sup>15</sup> Patricia Mazzei and Alan Feuer, *How the Proud Boys Gripped the Miami-Dade Republican Party*, N.Y. TIMES (Oct. 13, 2022), <https://www.nytimes.com/2022/06/02/us/miami-republicans-proud-boys.html>.

<sup>16</sup> See Scott Wilson, *How Far-Right Militia Groups Found a Foothold in Deep-Blue California*, WASH. POST (Mar. 7, 2022), <https://www.washingtonpost.com/nation/2022/03/07/california-far-right-militia/>; Laura Bliss, *Bedrock, USA: "It's Not Going to Be Peaceful Much Longer,"* Bloomberg News CityLab and iHeart Media (July 27, 2022), <https://www.bloomberg.com/bedrock-usa>

<sup>17</sup> Adrian Blanco, Daniel Wolfe, and Amy Gardner, *Tracking which 2020 Election deniers are Winning, Losing in the Midterms*, WASH. POST (Dec. 18, 2022), <https://www.washingtonpost.com/politics/interactive/2022/election-deniers-midterms/>; Miles Parks, *Here's Where Election-Denying Candidates are Running to Control Voting*, NPR (Feb. 3, 2022), <https://www.npr.org/2022/01/04/1069232219/heres-where-election-deniers-and-doubters-are-running-to-control-voting>; *Replacing the Refs*, STATES UNITED DEMOCRACY CENTER (last updated Dec. 7, 2022), <https://statesuniteddemocracy.org/resources/replacingtherefs/>.

<sup>18</sup> Amy Gardner, *Election Deniers Score Big Wins, But Also Suffer Significant Setbacks*, WASH. POST (Nov. 9, 2022), <https://www.washingtonpost.com/politics/2022/11/09/election-deniers-2020-house-senate-races/>; Nicholas Riccardi, *Election Conspiracists Claim Some Races for Local Offices*, Associated Press (Nov. 19, 2022), <https://apnews.com/article/2022-midterm-elections-donald-trump-14ee28226986b6b4fb554aa3919d1525>.

Militia representation in government is not entirely new. A list of more than 35,000 members of the Oath Keepers, obtained by an anonymous hacker and analyzed by ProPublica in 2021, revealed 48 current and former state and local government officials.<sup>19</sup> More than 400 people who had signed up for Oath Keepers membership used government, military, or political campaign addresses.<sup>20</sup> What seems newer, however, is the openness of candidates, elected officials, and political party leadership to tout their militia affiliation when they see it in their political interest.<sup>21</sup> Whether running themselves or allied with election deniers, conspiracy theorists, and other extremists running for office, the involvement of militia and paramilitary actors significantly increases the potential for normalization of political violence and intimidation.

### *Alliances with Political Actors*

Shamefully, the call-and-response relationship that former President Donald Trump has enjoyed with paramilitary organizations since the Unite the Right rally in Charlottesville, Virginia, in 2017<sup>22</sup> is being replicated by other elected leaders who have shown increasing willingness to align with them. Members of Congress and state officials have used private militias as “security,” appeared at events with

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<sup>19</sup> Isaac Arnsdorf, *Oath Keepers in the State House: How a Militia Movement Took Root in the Republican Mainstream*, PROPUBLICA (Oct. 20, 2021), <https://www.propublica.org/article/oath-keepers-in-the-state-house-how-a-militia-movement-took-root-in-the-republican-mainstream>. An Anti-Defamation League analysis of the same data in August 2022 identified 81 individuals on the leaked list then holding or running for public office. Anti-Defamation League, *The Oath Keepers Data Leak: Unmasking Extremism in Public Life*, (Sept. 6, 2022) <https://www.adl.org/resources/report/oath-keepers-data-leak-unmasking-extremism-public-life>.

<sup>20</sup> Arnsdorf, *supra* n.19.

<sup>21</sup> Mehdi Hasan, *Trump Shares Stage with Self-Proclaimed Oath Keeper at Arizona Rally*, MSNBC (Jan. 17, 2022), <https://www.msnbc.com/all-in/watch/trump-shares-stage-with-self-proclaimed-oath-keeper-at-arizona-rally-131075141612>; Sam Brodey, *Liz Cheney's Wyoming Nemesis Is an Oath Keeper Who Was at Capitol Rally*, DAILY BEAST (Jan. 17, 2022), <https://www.thedailybeast.com/liz-cheney-s-wyoming-nemesis-is-an-oath-keeper-who-was-at-capitol-rally>.

<sup>22</sup> Expert Statement of Mary B. McCord, House Select Committee to Investigate the January 6<sup>th</sup> Attack on the United States Capitol (March 31, 2022), <https://www.justsecurity.org/wp-content/uploads/2022/04/january-6-clearinghouse-expert-statement-mary-mccord-march-31-2022.pdf>.

militia members, and have even echoed their insurrectionist propaganda.<sup>23</sup> The evidence presented during the House Select Committee’s hearings has shown that some at a high level in Trump’s orbit, including Roger Stone and Michael Flynn, have done the same.<sup>24</sup>

As the Armed Conflict Location Event Data (ACLED) program has reported, “[g]lobally, militias are responsible for more political violence than any other group, including governments, rebels, and insurgents.”<sup>25</sup> It is common in other countries for these non-state paramilitary organizations to operate at the behest of political figures, influencing elections and the political climate through attacks on their opponents and their opponents’ supporters.<sup>26</sup>

Those who have studied militia involvement in politics abroad have warned that violence and intimidation silences opposition and bolsters power, leading to more violence and intimidation.<sup>27</sup> Republican House members who voted to impeach Donald Trump in 2021 received death threats to themselves and their families; four of the ten opted against running for re-election.<sup>28</sup> Congressman Chris Jacobs, representing Buffalo, New York, where an 18-year-old white

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<sup>23</sup> Luke Broadwater & Matthew Rosenberg, *Republican Ties to Extremist Groups Are Under Scrutiny*, N.Y. TIMES (Jan. 29, 2021, updated June 10, 2021), <https://www.nytimes.com/2021/01/29/us/republicans-trump-capitol-riot.html>.

<sup>24</sup> Transcript of July 12, 2022, Hearing of the House Select Committee to Investigate the January 6th Attack on the United States Capitol (Transcript, July 12 House Select Committee Hearing), *available at* <https://www.npr.org/2022/07/12/1111123258/jan-6-committee-hearing-transcript>; Tess Owen, *Roger Stone used Oath Keepers as Security on the Eve of the Capitol Riot*, VICE (Jan. 26, 2021), <https://www.vice.com/en/article/7k9mpd/roger-stone-used-the-oath-keepers-as-security-on-the-eve-of-the-capitol-riot>.

<sup>25</sup> Armed Conflict Location Event Data, *Standing By: Right-Wing Militia Groups and the United States Election*, (Oct. 2020), <https://acleddata.com/2020/10/21/standing-by-militias-election/>.

<sup>26</sup> *Id.*

<sup>27</sup> Rachel Kleinfeld, *The GOP’s Militia Problem: Proud Boys, Oath Keepers and Lessons from Abroad*, JUST SECURITY (July 6, 2022), <https://www.justsecurity.org/81898/the-gops-militia-problem-proud-boys-oath-keepers-and-lessons-from-abroad/>.

<sup>28</sup> Amber Phillips, *What Happened to the 10 House Republicans Who Voted to Impeach Trump?* WASH. POST (June 15, 2022), <https://www.washingtonpost.com/politics/2022/03/01/what-happened-10-house-republicans-who-voted-impeach-trump/>; Sam Brodey, *‘He Won’t Last Until the Primary’: Republicans Who Voted to Impeach Getting Death Threats*, DAILY BEAST (Jan. 15, 2021), <https://www.thedailybeast.com/republicans-who-voted-to-impeach-trump-are-getting-death-threats-like-he-wont-last-until-the-primary>.



supremacist shot and killed ten people at a local grocery store, withdrew his re-election bid after being attacked for publicly supporting an assault-weapons ban.<sup>29</sup> Research in other countries shows that when politicians encourage violence, or even just tolerate it, domestic extremists are emboldened.<sup>30</sup> In America, after a 2021 holiday season that featured several Republican lawmakers sending holiday cards picturing their family members—including children—holding assault-style rifles,<sup>31</sup> over 350 mass shootings (four or more shot or killed, not including the shooter) had been recorded through the first three weeks of July, 2022.<sup>32</sup> The violence at the U.S. Capitol on January 6 has also been normalized, with the Republican Party approving a resolution calling the attack “legitimate political discourse,”<sup>33</sup> and members of Congress downplaying or denying it.<sup>34</sup>

Although the bulk of violent rhetoric has been from the far-right, it is not isolated there. Recent polling suggests alarming numbers of Americans believe that violence against the government—or against those with whom they disagree—may sometimes be justified.<sup>35</sup> The attempted murder charges against a man

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<sup>29</sup> Nicholas Fandos and Jess McKinley, *N.Y. Republican Drops Re-Election Bid After Bucking His Party on Guns*, N.Y. TIMES (June 3, 2022), <https://www.nytimes.com/2022/06/03/nyregion/chris-jacobs-congress-guns.html>.

<sup>30</sup> Arie Perlinger, *Terror Isn't Always a Weapon of the Weak – It Can Also Support the Powerful*, THE CONVERSATION (Oct. 28, 2018), <https://theconversation.com/terror-isnt-always-a-weapon-of-the-weak-it-can-also-support-the-powerful-82626>.

<sup>31</sup> Peter Manseau, *Why So Many Guns on Christmas Cards? Because Jesus was ‘Manly and Virile,’* WASH. POST (Dec. 14, 2021), <https://www.washingtonpost.com/outlook/2021/12/14/guns-christmas-thomas-massie-lauren-boebert/>.

<sup>32</sup> The New York Times, *A Partial List of Mass Shootings in the United States in 2022*, N.Y. TIMES (July 20, 2022), <https://www.nytimes.com/article/mass-shootings-2022.html>.

<sup>33</sup> Jonathan Weisman and Reid J. Epstein, *G.O.P. Declares Jan. 6 Attack ‘Legitimate Political Discourse,’* N.Y. TIMES (Feb. 4, 2022), <https://www.nytimes.com/2022/02/04/us/politics/republicans-jan-6-cheney-censure.html>.

<sup>34</sup> Anya van Wagtenock and Steve Reilly, *Are Republicans and Fox News Normalizing Violence By Ignoring the January 6 Hearings?* GRID NEWSLETTER (June 15, 2022), <https://www.grid.news/story/misinformation/2022/06/15/why-the-political-right-and-fox-news-ignore-the-jan-6-hearings/>.

<sup>35</sup> Garen Wintemut, Ph.D., *Political violence and the future of democracy: Take a look in the mirror, America*, THE HILL (July 25, 2022), <https://thehill.com/opinion/national-security/3573053-political-violence-and-the-future-of-democracy-take-a-look-in-the-mirror-america/>; Meryl Kornfield & Mariana Alfaro, *1 in 3 Americans Say Violence Against Government Can Be Justified, Citing Fears of Political Schism, Pandemic*, WASH. POST (Jan. 1, 2022), <https://www.washingtonpost.com/politics/2022/01/01/1-3-americans-say-violence-against-government-can-be-justified-citing-fears-political-schism-pandemic/>.

accused of plotting to kill Justice Brett Kavanaugh, as well as threats against other U.S. Supreme Court justices<sup>36</sup> and violent rhetoric propagated by a militant abortion-rights group, Jane’s Revenge,<sup>37</sup> provide ample reason for concern that as violence becomes more normalized, it will be utilized for political purposes across the political spectrum. And although far less common and—so far—less threatening than far-right militias, leftist militias do exist, raising the potential for armed conflicts that may not resolve peacefully.<sup>38</sup>

The seditious conspiracy guilty verdicts against Oath Keepers leaders<sup>39</sup> and the seditious conspiracy charges against the leader and members of the Proud Boys<sup>40</sup> are important steps toward accountability,<sup>41</sup> but far too little law enforcement action has been taken against militia and paramilitary activity across the country. Private militias are not authorized by federal or state law, are not protected by the Second Amendment, and are unlawful in every state.<sup>42</sup>

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<sup>36</sup> Betsy Woodruff Swan and Josh Gerstein, *Supreme Court Security in Spotlight After Kavanaugh Threat*, POLITICO (June 8, 2022), <https://www.politico.com/news/2022/06/08/man-gun-arrested-kavanaugh-00038137>.

<sup>37</sup> Jack Dutton, *What Is Jane’s Revenge? Abortion Rights Group Vows ‘Night of Rage’ Over Roe*, NEWSWEEK (June 24, 2022) <https://www.newsweek.com/what-janes-revenge-abortion-rights-group-vows-night-rage-over-roe-1718919>.

<sup>38</sup> Michael Mooney, *Roanoke, Texas, Drag Brunch Draws Armed Clash*, AXIOS (Aug. 30, 2022), <https://www.axios.com/local/dallas/2022/08/30/drag-brunch-roanoke-draws-armed-clash> (in Roanoke, Texas, armed counterprotesters outnumbered armed protesters at drag event). At the 2017 Unite the Right rally in Charlottesville, Virginia, “Redneck Revolt,” a self-proclaimed “anti-racist, anti-fascist community defense formation” stood guard at a park a few blocks from the rally, armed with semi-automatic assault-style rifles, ostensibly to protect against incursions into the park from white nationalists. See First Amended Complaint, *City of Charlottesville v. Pa. Light Foot Militia*, No. CL 17-560, (Va. Cir. Ct. Jan. 4, 2018), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/02/charlottesville-complaint.pdf>; <https://www.redneckrevolt.org/> (last visited Dec. 11, 2022).

<sup>39</sup> Press Release, U.S. Dep’t of Just., *Leader of Oath Keepers and Oath Keepers Member Found Guilty of Seditious Conspiracy and Other Charges Related to U.S. Capitol Breach* (Nov. 29, 2022), <https://www.justice.gov/opa/pr/leader-oath-keepers-and-oath-keepers-member-found-guilty-seditious-conspiracy-and-other#:~:text=Elmer%20Stewart%20Rhodes%20III%2C%20the.on%20Jan.%206%2C%202021>.

<sup>40</sup> Press Release, U.S. Dep’t of Just., *Leader of Proud Boys and Four Other Members Indicted in Federal Court for Seditious Conspiracy and Other Offenses Related to the U.S. Capitol Breach* (June 6, 2022), <https://www.justice.gov/opa/pr/leader-proud-boys-and-four-other-members-indicted-federal-court-seditious-conspiracy-and>.

<sup>41</sup> Mary B. McCord, *The Government Was Right to Charge Seditious Conspiracy*, JUST SECURITY (Dec. 7, 2022), <https://www.justsecurity.org/84399/the-government-was-right-to-charge-seditious-conspiracy/>.

<sup>42</sup> Mary B. McCord, *Dispelling the Myth of the Second Amendment*, BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW (June 29, 2021), <https://www.brennancenter.org/our-work/research-reports/dispelling-myth-second-amendment>.



Insurrection against the authority of the United States or its laws is not allowed by the U.S. Constitution and is a felony under federal law.<sup>43</sup> As ACLED has reported, “[t]he lack of open sanctions of [paramilitary] groups from public figures and select local law enforcement has allowed them space to operate, while concurrently allowing political figures to claim little direct responsibility for violent actions from which they hope to benefit.”<sup>44</sup>

### *Alliances with Law Enforcement*

Beyond alliances with political actors, alliances with law enforcement could prove even more dangerous to democracy. The Anti-Defamation League’s (ADL) August 2022 analysis of the leaked membership list for the Oath Keepers identified 373 persons who ADL had reason to believe were then serving in law enforcement agencies across the country, and approximately 1,100 who ADL had reason to believe had previously served in law enforcement.<sup>45</sup> Dozens of current and former police officers have been charged with crimes related to the January 6 attack, and more have been identified in the crowd at the Capitol.<sup>46</sup> A Reuters investigative report revealed five police trainers, responsible for training hundreds of police officers in recent years, who have made white supremacist or misogynist comments, espoused QAnon conspiracy theories, and advocated insurrection.<sup>47</sup>

After the plot to kidnap Michigan Governor Whitmer was thwarted, a West Michigan sheriff suggested that the plotters, including militia members, might have

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<sup>43</sup> 18 U.S.C. § 2383.

<sup>44</sup> ACLED, *supra* note 25.

<sup>45</sup> Anti-Defamation League, *supra* n. 19.

<sup>46</sup> NPR Staff, *The Capitol Siege: The Cases Behind the Biggest Criminal Investigation in U.S. History*, NPR (Dec. 2, 2022), <https://www.npr.org/2021/02/09/965472049/the-capitol-siege-the-arrested-and-their-stories>; Jonathan Ben-Menachem, *The Cops at the Capitol*, *The Appeal* (Jan. 13, 2021), <https://theappeal.org/the-cops-at-the-capitol/>.

<sup>47</sup> Julia Harte and Alexandra Ulmer, *U.S. Police Trainers With Far-Right Ties Are Teaching Hundreds of Cops*, Reuters (May 6, 2022), <https://www.reuters.com/investigates/special-report/usa-police-extremism>.

been attempting to make a citizens' arrest.<sup>48</sup> The sheriff, Dar Leaf, had previously spoken out against the governor's health safety restrictions alongside one of the plotters at a rally earlier in the year.<sup>49</sup> Leaf considers himself a "constitutional sheriff" and is a prominent supporter of the Constitutional Sheriffs and Peace Officers Association (CSPOA).<sup>50</sup> CSPOA believes that sheriffs are the highest law enforcement officers in the land, answerable to no governmental authority except the U.S. Constitution itself.<sup>51</sup> "Constitutional sheriffs" claim their powers "even supersede[] the powers of the President," and they refuse to enforce laws they believe are unconstitutional.<sup>52</sup> CSPOA's founder, a long-time board member of the Oath Keepers, has called the federal government "the greatest threat we face today."<sup>53</sup> After the January 6 attack, CSPOA issued a statement blaming antifa for the violence.<sup>54</sup> Sheriff Leaf sought to obtain information from Trump allies that would justify seizing voting machines in his county, and to share it with other like-minded sheriffs in other Michigan counties.<sup>55</sup> Although the effort was unsuccessful, CSPOA remains actively involved in recruiting more sheriffs into its

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<sup>48</sup> Alan Stamm, *Michigan Sheriff Claims Citizens Can 'Make A Felony Arrest' Of Whitmer (No Way, Nessel Says)*, DEADLINE DETROIT (Oct. 9, 2020), [https://www.deadlinedetroit.com/articles/26378/michigan\\_sheriff\\_claims\\_citizens\\_can\\_make\\_a\\_felony\\_arrest\\_of\\_w\\_hitmer\\_no\\_way\\_nessel\\_says](https://www.deadlinedetroit.com/articles/26378/michigan_sheriff_claims_citizens_can_make_a_felony_arrest_of_w_hitmer_no_way_nessel_says).

<sup>49</sup> *Id.*

<sup>50</sup> Michael Krafcik, *Barry County Sheriff Promotes Course Against Tyranny, COVID-19 Orders and Biden*, NEWS CHANNEL 3 (Michigan), <https://wwmt.com/news/local/barry-county-sheriff-promotes-course-against-tyranny-covid-19-orders-and-biden>.

<sup>51</sup> *About CSPOA*, CONST. SHERIFFS & PEACE OFFICERS ASS'N (last visited Mar. 29, 2022), <https://perma.cc/69FX-SE85>.

<sup>52</sup> *Id.*

<sup>53</sup> Julia Harte & R. Jeffrey Smith, *'The Army to Set Our Nation Free'*, THE CENTER FOR PUBLIC INTEGRITY (Apr. 18, 2016), <https://publicintegrity.org/national-security/the-army-to-set-our-nation-free/>.

<sup>54</sup> Jessica Pishko, *Sheriffs Helped Lead This Insurrection*, SLATE (Jan. 15, 2021), <https://slate.com/news-and-politics/2021/01/constitutional-sheriffs-white-supremacists-capitol-riot-insurrection.html>.

<sup>55</sup> Jonathan Oosting, *Emails: Michigan Sheriff Sought to Seize Voting Machines amid Trump Claims*, BRIDGE MICHIGAN (July 2, 2021), <https://www.bridgemi.com/michigan-government/emails-michigan-sheriff-sought-seize-voting-machines-amid-trump-claims>.

movement<sup>56</sup> and training its members on the “Constitution and the Citizen Posse.”<sup>57</sup>

CSPOA is not the only sheriffs’ organization asserting expansive authority and open support for private militias. Protect America Now, led by Sheriff Mark Lamb of Pinal County, Arizona, argues that sheriffs are “the last line of defense” and “are fighting back against the liberal takeover,” including against “an over-reaching government.”<sup>58</sup> In a blatant reference to revolution, the organization asks members to join for just “17.76” per month.<sup>59</sup> The organization, and Sheriff Lamb, take a hard line against gun control, immigration, and “socialis[m].”<sup>60</sup> Sheriff Lamb has spoken openly in support of private militias, wrongly claiming they are constitutionally protected, and has advocated for sheriffs in Arizona to “call local civilians into service to ‘suppress all affrays, insurrections and riots that comes [sic] to the attention of the sheriff.’”<sup>61</sup> He formed a civilian posse in his county in 2020.<sup>62</sup>

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<sup>56</sup> *The Constitutional Sheriffs and Peace Officers Association (CSPOA) and Richard Mack: How Extremists Are Successfully Infiltrating Law Enforcement*, ADL (Sept. 20, 2021), <https://www.adl.org/resources/reports/the-constitutional-sheriffs-and-peace-officers-association-csboa-and-richard-mack#training-law-enforcement>.

<sup>57</sup> *Upcoming Events*, CONST. SHERIFFS & PEACE OFFICERS ASS’N (last visited Mar. 29, 2022), <https://perma.cc/LY8F-XLN7>. The Claremont Institute, where John Eastman, the lawyer-architect of the fraudulent electors’ scheme, is a senior fellow, sponsors a “Sheriffs Fellowship” to train selected sheriffs about “today’s militant progressivism and multiculturalism, with particular emphasis on the role of law enforcement in maintaining liberty.” The Claremont Institute, *Sheriffs Fellowship* (last visited Dec. 12, 2022), <https://www.claremont.org/page/sheriffs-fellowship/>. See also Marc Fisher and Isaac Stanley-Becker, *The Claremont Institute Triumphed in the Trump Years. Then Came Jan. 6.*, WASH. POST (July 30, 2022), <https://www.washingtonpost.com/nation/2022/07/24/claremont-john-eastman-trump/>; Adam Rawnsley, *MAGA Institute Honors Sheriffs Who Defy Laws They Don’t Like*, DAILY BEAST (Nov. 22, 2021), <https://www.thedailybeast.com/maga-claremont-institute-honors-sheriffs-who-defy-laws-they-dont-like>.

<sup>58</sup> Join Protect America Now, *video available at* <https://protectamericanow.com/stand-together/> (last visiting Dec. 12, 2022).

<sup>59</sup> Protect America Now, <https://protectamericanow.com/stand-together/> (last visiting Dec. 12, 2022).

<sup>60</sup> *Id.*

<sup>61</sup> Jessica Pishko, *He Calls Himself the ‘American Sheriff.’ Whose Law is He Following?* POLITICO (Oct. 15, 2021), <https://www.politico.com/news/magazine/2021/10/15/mark-lamb-arizona-constitutional-sheriff-elections-republicans-514781>.

<sup>62</sup> Alana Minkler, *Pinal County Sheriff Mark Lamb Discusses Citizen Posse in Response to Protests*, Ariz. Republic (July 31, 2020), <https://www.azcentral.com/story/news/local/arizona-breaking/2020/07/31/pinal-county-sheriff-mark-lamb-new-citizen-posse/5555959002/>.

In 2022, both Protect America Now and CSPOA aligned themselves with True the Vote—a Texas-based nonprofit that has made unsupported claims about evidence of significant voter fraud.<sup>63</sup> Sheriff Lamb’s group and True the Vote launched ProtectAmerica.vote in the summer of 2022, an effort to raise money to provide training and resources for local sheriffs “to have real-time eyes on voting in their county.”<sup>64</sup> They claimed to be establishing a “National Election Integrity Voter Hotline” for citizens to report election fraud.<sup>65</sup> Meanwhile, Sheriff Mack announced CSPOA’s partnership with True the Vote in the same effort at the organization’s annual gathering in Las Vegas in July 2022.<sup>66</sup> The combination of false election fraud claims and sheriffs with expansive views of their authority and willingness to deputize militia members to assist in their investigations is an obvious threat to democratic processes. As Jason Van Tatenhove, a former communications director for the Oath Keepers, testified before the House Select Committee, the vision of the Oath Keepers for America “doesn’t necessarily include the rule of law . . . it includes violence.”<sup>67</sup>

### ***What Must be Done to Counter the Threat?***

Unauthorized paramilitary organizations, often armed with semi-automatic assault-style rifles, pose an obvious threat to public safety. As they have infringed the constitutional rights of others and suppressed participation in democratic

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<sup>63</sup> True the Vote joined with Dinesh D’Souza to produce the widely debunked film “2000 Mules” that purported to reveal voter fraud in swing states in 2020. Reuters Fact Check, *Fact Check—Does ‘2000 Mules’ Provide Evidence of Voter Fraud in the 1010 U.S. Election?* REUTERS (May 27, 2022), <https://www.reuters.com/article/factcheck-usa-mules/fact-check-does-2000-mules-provide-evidence-of-voter-fraud-in-the-2020-u-s-presidential-election-idUSL2N2XJ0OQ>.

<sup>64</sup> ProtectAmerica.Vote/Citizens and Sheriffs (June 22, 2022), <https://www.truehetevote.org/protectamerica-vote-citizens-and-sheriffs/>.

<sup>65</sup> *Id.*

<sup>66</sup> Peter Eisler and Nathan Layne, *Right-wing U.S. Sheriffs Vow to Probe 2020 Voter-Fraud Claims*, REUTERS (July 20, 2022), <https://www.reuters.com/world/us/right-wing-us-sheriffs-vow-probe-2020-voter-fraud-claims-2022-07-20/>.

<sup>67</sup> Transcript, July 12 House Select Committee Hearing, *supra* note 24.

processes by ideological opponents in recent years, they have recognized that they can increase their impact using a decentralized strategy of direct involvement in local and state politics. No longer are they relegated to providing security for other elected officials; they can run for office and hold power themselves. And by partnering with law enforcement officials who have no respect for the rule of law, they can ensure themselves of success. If this trend continues, the destabilizing effect on our government institutions will not only continue to weaken our democracy and make it vulnerable to internal threats; it will raise the prospect of increasing external threats by state and non-state actors. The invitation to Hungarian Prime Minister and autocrat Viktor Orbán to give a keynote speech to the Conservative Political Action Conference in Dallas in August 2022, even *after* his racist speech warning that Europeans should not “become peoples of mixed race,”<sup>68</sup> is not a good sign.

This disturbing anti-democracy trend will not be thwarted unless Americans—led by those who respect the rule of law—take action. Cracking down on private paramilitary organizations is one place to start, although insufficient on its own. Given that all 50 states have constitutional or statutory provisions (or both) that prohibit private militia activity,<sup>69</sup> it is reasonable to ask why these laws are not enforced more frequently. There are likely several reasons: The state constitutional provisions and state anti-militia laws are quite dated and not well known to modern law enforcement. Some local officials might be unsure of what elements of proof would be required to enforce their criminal anti-militia laws, lack access to adequate information and intelligence to build cases, or

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<sup>68</sup> Rick Noack, *Hungary’s Viktor Orbán Faces Outrage After Saying Europeans Shouldn’t Become ‘Mixed Race,’* WASH. POST (July 27, 2022), <https://www.washingtonpost.com/world/2022/07/27/viktor-orban-mixed-race-cpac/>.

<sup>69</sup> Institute for Constitutional Advocacy and Protection, *Prohibiting Private Armies at Public Rallies: A Catalog of Relevant State Constitutional and Statutory Provisions*, (3d ed. Sept. 2020), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/04/Prohibiting-Private-Armies-at-Public-Rallies.pdf>; Mary B. McCord, *supra* note 42.

mistakenly believe that private militia activity is constitutionally protected. And some local elected officials lack the political will to enforce anti-militia laws, especially in jurisdictions that have a seemingly high number of pro-militia voters or rely on a so-called “constitutional sheriff” for law enforcement. In most states, the attorney general lacks general criminal enforcement authority, and the laws generally do not convey explicit civil enforcement authority, so there is no state-level capacity to fill law enforcement gaps at the local level.<sup>70</sup>

These weaknesses point to the need for Congress to consider a federal anti-paramilitary law with a civil enforcement mechanism that would allow the U.S. Department of Justice to seek injunctive relief and civil forfeiture against armed paramilitary actors and their organizations. Providing for both civil and criminal enforcement mechanisms, and a cause of action for those injured by private paramilitary activity, would allow for a more effective, all-tools approach. Federal funding for state and local law enforcement to enforce existing laws would complement the package.

But that is not all. Law enforcement departments and agencies must clean up their houses. Although police officers have First Amendment rights, those

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<sup>70</sup> Civil litigation spearheaded by attorneys from Georgetown Law’s Institute for Constitutional Advocacy and Protection against unauthorized paramilitary organizations using state anti-paramilitary and related laws has been successful in recent years. A lawsuit brought by the City of Charlottesville, Virginia, and local businesses and residential associations against white supremacist and private paramilitary organizations after the Unite the Right rally in 2017 resulted in court-entered consent decrees that permanently prohibited the defendants and their successor organizations from returning to Charlottesville “as part of a unit of two or more persons acting in concert while armed with a firearm, weapon, shield, or any item whose purpose is to inflict bodily harm, at any demonstration, rally, protest, or march.” See Consent Decree, *City of Charlottesville v. Pa. Light Foot Militia*, No. CL 17-560, at 1 (Va. Cir. Ct. July 29, 2018), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/08/All-Consent-Decrees-and-Default-Judgments-without-photos.pdf>. A civil enforcement lawsuit brought by the Bernalillo County, New Mexico, District Attorney against an unauthorized militia that self-deployed to a demonstration against a statue of a Spanish conquistador in the summer of 2020 resulted in a court order against the organization and its “directors, officers, agents, employees, and members, and its successor organizations and members,” from “organizing and operating in public as part of a military unit independent of New Mexico’s civil authority and without having been activated by the Governor of New Mexico” and “assuming law-enforcement functions by using or projecting the ability to use organized force at protests, demonstrations, or public gatherings.” See Order, *Torrez v. New Mexico Civil Guard*, No. D-202-CV-2020-04051 (Oct. 7, 2022), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/10/2022-10-07-Order-on-Motions-for-Default.pdf>.



rights are not limitless. Even when speaking in their personal capacity on matters of public concern, law enforcement officials—like all government employees—may be fired, disciplined, or refused hiring when their speech or association undermines or interferes with the mission or effectiveness of the government agency.<sup>71</sup> This means that law enforcement agencies have significant authority to take action against bigotry and extremism in their own ranks.<sup>72</sup> They also should be vetting the trainers they hire to ensure they are not spreading white supremacist or other extremist ideologies through the force. If they will not do this themselves, Congress should act to condition federal law enforcement grant funding on proactive efforts to eradicate extremists from law enforcement.

State and local officials also must step in when law enforcement—whether part of the “constitutional sheriffs” movement or not—seek to act beyond their authority under state and local law.<sup>73</sup> Election administration is the job of state Secretaries of State, state-level election agencies, and local Boards of Election, not law enforcement officers.<sup>74</sup> State law governs the scope of investigative authority of sheriffs and other law enforcement officers, including when they may call up citizen “posses,” and the laws vary from state to state.<sup>75</sup> Sheriffs and other law enforcement must always comply with the U.S. Constitution, including the guarantees of due process, equal protection, and freedom from unreasonable

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<sup>71</sup> *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

<sup>72</sup> Institute for Constitutional Advocacy and Protection and States United Democracy Center, *Countering Bigotry and Extremism in the Ranks: A First Amendment Guide for Law Enforcement Agencies* (2022), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/04/2022.4.7.-Countering-Bigotry-and-Extremism-in-the-Ranks.pdf>.

<sup>73</sup> For a good example of this, see Letter from Peg Trent, Chief Counsel, Johnson County, KS, to Sheriff Calvin Hayden (July 7, 2022) (available at <https://dfv6pkw99pxmo.cloudfront.net/wp-content/uploads/2022/07/Election-Security-Letter.pdf>). (Johnson County Chief Counsel’s response to Sheriff Calvin Hayden after sheriff sought to implement procedures such as surveillance of ballot boxes and observation of the election board as it counted ballots, county chief counsel warned that such activity could violate laws that entrusted election administration to the chief election officers of the county and the state).

<sup>74</sup> Ballotpedia, *State Election Agencies*, [https://ballotpedia.org/State\\_election\\_agencies](https://ballotpedia.org/State_election_agencies) (last visited Dec. 9, 2022).

<sup>75</sup> Institute for Constitutional Advocacy and Protection and States United Democracy Center, *Fact Sheet: “Constitutional Sheriffs” and Elections* (2022), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/09/Constitutional-Sheriffs-Fact-Sheet.pdf>.

searches and seizures. Investigations must be based on credible information, and the surveillance, search, or seizure of persons or things, including voting machines or ballot boxes, generally requires a warrant approved by a judge based on probable cause of a crime. When state or local elections officials are concerned about law enforcement overreach, they should consult with their local or state legal counsel, such as a city or county attorney, district or commonwealth attorney, or state attorney general.

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Addressing the evolving extremist threat is just one piece of shoring up American democracy in this polarized time. As a country, we must also recognize and address the often-legitimate grievances that drive people to extremism and sometimes to violence. We must find a way to bridge our ideological divides and protect the rights of all to participate in democratic processes. Thank you for the opportunity to address the subcommittee.