INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

Hearing before the Committee on Criminal Justice and Public Safety on LD 2130

Testimony of Jacob Glick
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Senator Beebe-Center, Representative Salisbury, and members of the Committee, I am pleased to testify today in support of LD 2130.

My name is Jacob Glick and I serve as Policy Counsel at the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center. Prior to my time at ICAP, I served as an investigative counsel on the House Select Committee to Investigate the January 6th Attack on the United States Capitol, where I helped to lead the Committee's investigation into domestic violent extremism and unlawful paramilitary groups such as the Proud Boys and Oath Keepers.

Drawing on decades of experience working in the federal government, our team at ICAP has sought to combat the threat from private actors who seek to engage in coordinated paramilitary activity to interfere with democratic self-government in a way that endangers public safety and intimidates others in the exercise of their constitutional rights. As part of that work, we have developed an expertise in legal options to counter paramilitary activity, including bringing successful litigation in state courts in both

Virginia and New Mexico to obtain injunctions against activity that violated state laws prohibiting private paramilitary conduct and the false assumption of law enforcement functions.[1] We have also consulted with local and state officials, law enforcement, and civil society groups across the country about how to protect public safety while preserving constitutional rights, including those guaranteed under the First and Second Amendments. Additionally, we have advocated for effective enforcement tools that allow states to better protect their citizens and the functioning of their state governments from threats of intimidation and violence.[2]

LD 2130's prohibition on paramilitary training stands on firm constitutional and legal ground. The proposal is consistent with both the United States Constitution, the Maine constitution, and Maine statutes, none of which protect private paramilitary organizations. The restrictions that would be imposed by LD 2130 would be viewpoint-neutral and applied to *conduct* that is protected by neither the First or Second Amendments. The bill does not seek to prohibit freedom of expression, freedom of association, or lawful possession and carrying of firearms. Instead, the bill prohibits paramilitary training activity, including instructing others in deadly tactics for use in a

[1] *See City of Charlottesville v. Pa. Light Foot Militia, Consent Decrees*, 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-andDefault-Judgments-without-photos.pdf; *State of New Mexico v. New Mexico Civil Guard*, Order Granting: (1) Plaintiff's Motion for Entry of Default Judgment Against Defendant New Mexico Civil Guard, for Order to Show Cause, and for Spoliation Sanctions; and (2) Plaintiff's Motion for Entry of Default Judgment Against Defendant New Mexico Civil Guard, No. D-202-CV-2020-04051 (N.M. Dist. Ct. Oct. 7, 2022), https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/10/2022-10-07-Order-on-Motions-forDefault.pdf.

[2] Conrad Wilson, *Oregon Lawmakers Send Paramilitary Bill to Governor's Desk*, Oregon Public Broadcasting (Jun. 28, 2023), https://www.opb.org/article/2023/06/28/oregon-legislature-paramilitary-bill-governor-tina-kotek/

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"civil disorder." This regulation would be both constitutionally permissible and in keeping with state laws across the country that govern private paramilitary activity. It also would provide Maine with an important tool to address the rising threat from paramilitary training camps operated by domestic extremist groups.

Paramilitary activity is not authorized by federal or state law; it is not protected by the Second Amendment or Supreme Court precedent; and it is unlawful in all 50 states.

First, the "well regulated militia" referred to in the Second Amendment has always meant a militia regulated by the *government*, even before the founding. Early state constitutions made clear that the militia—composed of able-bodied men between certain ages—were always strictly subordinate to civilian government control.[3] By the time of the Constitutional Convention in 1787, the Framers incorporated the Militia Clauses into the Constitution to ensure that only Congress would have the authority to provide for the organizing, disciplining, and calling forth of the militia. U.S. Const. art. 1, cl. 15 and 16.[4] Congress thereafter used its power under the Militia Clauses to create

[3]As far back as 1647, Massachusetts recognized that "the well managing of the Militia of this Common-wealth is a matter of great concernment, therefore that it may be carried an end with the utmost safety and certaintie for the best benefit of the Countrie." In 1724, New York's militia law provided that "an orderly and well disciplin'd Militia is justly esteemed to be a great Defence and Security to the Welfare of this Province." Early state constitutions also made clear that the militia was always to be under civilian governmental control. Virginia's 1776 Bill of Rights provided that "a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power." 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.

[4] *Id.*

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the National Guard system and authorize the states to maintain their own defense forces. 32 U.S.C. §§ 102-104, 109. The U.S. gives no authority to private individuals to form their own private paramilitary organizations outside of governmental control. Likewise, paramilitary training for use in a civil disorder is prohibited by federal law. 18 U.S.C. § 231(a).

Second, the Supreme Court has been clear since 1886 that the Constitution does not protect private paramilitary organizations. In *Presser v. Illinois*, 116 U.S. 252, 267 (1886), the Supreme Court upheld a state anti-militia bill against constitutional challenge. The Court held the First Amendment does not provide a "right voluntarily to associate together as a military company or organization" outside of the control of the government. The Court explained:

> Military organization and military drill and parade under arms are subjects especially under the control of the government of every country. They cannot be claimed as a right independent of law. Under our political system they are subject to the regulation and control of the state and federal governments, acting in due regard to their respective prerogatives and powers. *Id.*

The Court further held that prohibitions on private paramilitary activity "do not infringe the right of the people to keep and bear arms," and that states must be able to prohibit private paramilitary organizations as "necessary to the public peace, safety, and good order." *Presser* 116 U.S. at 265, 268. In 2008, the Supreme Court restated what it had made clear in *Presser*: that the Second Amendment "does not prevent the prohibition of private paramilitary organizations." *District of Columbia v. Heller*, 554 U.S.

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570, 621 (2008). Nothing in the Supreme Court's recent opinion in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022) casts doubt on this conclusion.[5]

Third, private paramilitary activity is unlawful in all 50 states. Forty-eight states, including Maine,[6] have a provision in their state constitutions providing that the military shall be strictly subordinate to the civil power.[7] Thirty states, again including Maine,[8] have an anti-militia law nearly identical to the law upheld by the Supreme Court in *Presser*, which generally bars bodies of men from associating as a military company or a military unit or parading or drilling in public with firearms.[9] Twenty-six states have anti-paramilitary laws that largely resemble LD 2130. These laws generally prohibit teaching, demonstrating, instructing, training, and practicing in the use of firearms, explosives, or techniques capable of causing injury or death, for use during or in furtherance of a civil disorder.[10] Twelve states prohibit falsely assuming or engaging in the functions of peace officers, law enforcement officers, or public officials.[11] Another nine states have laws

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[5] In fact, *Bruen*'s mandate that the government "demonstrate that [a] regulation is consistent with this Nation's historical tradition of firearm regulation" further underscores the constitutionality of anti-paramilitary-activity statutes, which long predate the adoption of the Bill of Rights and the Constitution itself. *Bruen*, 597 U.S. 1, 17-18.

[6] Me. Const. art. 1 § 17

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

[8] Me. Rev. Stat. tit. 37-B § 342.

[9] *Prohibiting Private Armies at Public Rallies*. As of January 1, 2024, Oregon's new comprehensive prohibition on private paramilitary activity went into effect, bringing the tally from 29 to 30. Elizabeth Castillo, *A New Year Means New Oregon Laws Have Taken Effect*, Oregon Public Broadcasting (Jan. 2, 2024), https://www.opb.org/article/2024/01/02/a-new-year-means-new-oregon-laws-have-taken-effect/

[10] *Prohibiting Private Armies at Public Rallies, supra* at n. 9. Last year, Vermont Gov. Phil Scott signed a bill to prohibit the operation of paramilitary training camps, bringing the total from 25 to 26. Lisa Rathke, *Vermont Bans Owning, Running Paramilitary Training Camps*, Associated Press (May 8, 2023), https://apnews.com/article/paramilitary-training-camps-vermont-ban-03506f22609d9be1d6311ce6b6a5fd6f.

[11] *Prohibiting Private Armies at Public Rallies, supra* at n. 9.

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that ban wearing the uniforms of, or similar to, the uniforms of the U.S. military or foreign military.[12] Maine is one of them.[13]

Maine's constitution and state statutes regulate its militia, law enforcement, and security services.

As noted, Maine's constitution requires that "the military shall, in all cases, and at all times, be in strict subordination to the civil power." Me. Const. art. 1 § 17. Maine's constitutional guarantee that citizens have an unquestionable right to keep and bear arms, *id.* at § 16, must be read in the conjunction with this provision, which stresses the necessity of civilian control of all military forces within the state.

State statutory law builds on this foundation. Under Title 37-B of the Maine Code, the Governor is the Constitutional Commander in Chief of the military forces of the state (except when they have been federalized). Me. Rev. Stat. tit. 37 § 103. The "state military forces" consist of the Maine National Guard and the state militia, naval militia, and Maine State Guard "when and if organized by direction of the Governor." Me. Rev. Stat. tit. § 102. Nowhere in these "military forces" is there room for private military organizations operating outside of the control of the Governor.[14] In fact, there

[12] *Id.*
[13] Me. Rev. Stat. tit. 37-B § 266(3).
[14] The "militia" under Maine law consists of all able-bodied citizens of the State, or able-bodied persons who have declared their intention to become citizens of the United States, who are at least 18 years of age and not more than 45 years of age, and who are enrolled or who have been enlisted, appointed or commissioned. Me. Rev. Stat. tit. 37-B § 222. All citizens must enroll with the militia whenever the Governor considers it necessary. Me. Rev. Stat. tit. 37-B § 225. The "Maine State Guard," when activated, is composed persons enlisted, appointed or commissioned from the militia, or those who have previously served in the U.S. military or National Guard. Me. Rev. Stat. tit. 37-B § 224.

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are explicit provisions against them. First, "no civil organization, society, club, post, order, fraternity, association, brotherhood, body, union, league or other combination of persons or civil group may be enlisted in the Maine State Guard as an organization or unit." Me. Rev. Stat. tit. 37-B § 224. Second, and even more importantly, the Maine Code prohibits "other military organizations" besides those authorized: "No group of persons, other than federal or state military forces, may join together as a military organization or parade in public with firearms." Any person violating this subsection is guilty of a Class E crime. Me. Rev. Stat. tit. 37-B § 342.

The authority to activate Maine's military forces also rests solely with the Governor, who "may order members of the state military forces to active state service in the case of, or imminent danger of, insurrection, invasion, tumult, riot, conspiracy to commit a felony or threat of violence to persons or property or upon the reasonable apprehension thereof; or for the safety of the inhabitants of this State; or, in the case of actual or imminent public disaster, to the aid of any civil authority." Me. Rev. Stat. tit. 37-B § 181-A. (State justices, sheriffs, and local officials may request aid from a commanding officer of state military forces.) Maine's heavy regulation of military activity in the state precludes the possibility that private individuals could form their own paramilitary organizations, engage in paramilitary activity, or mobilize themselves without proper authorization from the Governor.

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Maine also heavily regulates the license requirements of private security companies within the state. Under Title 32 of the Maine Code, private security guards must receive a valid license from the Commissioner of Public Safety that guarantees their good character and discloses important information about their organization. Me. Rev. Stat. tit. 32 §§ 9404, 9405. Private security guards are also forbidden from passing themselves off as a peace officer or any official agent of the state or federal governments. Me. Rev. Stat. tit. 32 § 9412(1). Private individuals cannot purport to form their own security services without meeting these state law requirements.

LD 2130 fits within state and federal regulations of military activity and would provide an important tool for Maine to curtail dangerous *conduct* that endangers the public and law enforcement.

Although Maine law currently criminalizes private paramilitary organizations and the unauthorized wearing of military uniforms, there is not a separate statutory provision that explicitly prohibits paramilitary training activity. LD 2130 would create a criminally and civilly enforceable prohibition on teaching, training, or demonstrating the use of firearms, explosive or incendiary devices, or "techniques capable of causing injury to or the death of another person" where a person reasonably knows that it is intended to be used in or in furtherance of a "civil disorder." The bill similarly would prohibit assembling with others to practice or be instructed in such paramilitary tactics.

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It defines "civil disorder" as "any public disturbance involving an act of violence by a group of [two] or more persons."

In this way, the passage of LD 2130 would align Maine with 26 other states that currently criminalize categories of private paramilitary activity, including training to deploy deadly weapons in a civil disorder. Perhaps more importantly, the bill authorizes the Attorney General to bring a civil action to enjoin individuals from engaging in unlawful paramilitary training activity, which would allow for authorities in Maine to shut down training camps used by domestic violent extremists that pose threats to residents and democratic self-government of the state.[15] As extremist networks continue to menace Maine and its neighbors, it is vital for the state to enact appropriate measures to better defend against the evolving threat.[16]

Thank you for the opportunity to address the Committee. I look forward to answering your questions.

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[15] The recent, brief acquisition of land by neo-Nazi Blood Tribe leader Christopher Polhaus showcases the necessity of giving state law enforcement a concrete enforcement mechanism to curtail private paramilitary activity. Kathleen Phalen Tomaselli, *Neo Nazi Says Mainers Made It "Too Dangerous" to Keep Springfield Property*, Bangor Daily News (Nov. 1, 2023), https://www.bangordailynews.com/2023/11/01/penobscot/neo-nazi-mainers-too-dangerous-springfield-joam40zk0w/. Polhaus first purchased the land in order to provide a place for the Blood Tribe to "network, strategize and train" as part of his effort to "turn Maine into an exclusively white settlement." Jeff Tischauser, *Neo-Nazi Ex-Marine Buys Up Land in Rural Maine for "Blood Tribe,"* Southern Poverty Law Center (Jul. 27, 2023), https://www.splcenter.org/hatewatch/2023/07/27/neo-nazi-ex-marine-buys-land-rural-maine-blood-tribe.

[16] *See, e.g.*, Rupa Shenoy and Laney Ruckstuhl, *Extremist Watchdog Explains New England White Supremacists Galvanized by Trump*, WBUR (Aug. 3, 2023), https://www.bangordailynews.com/2023/11/01/penobscot/neo-nazi-mainers-too-dangerous-springfield-joam40zk0w/.

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