



INSTITUTE FOR CONSTITUTIONAL ADVOCACY AND PROTECTION
GEORGETOWN UNIVERSITY LAW CENTER

VIA EMAIL

The Honorable Katie Hobbs
Governor of Arizona
1700 W. Washington Street
Phoenix, AZ 85007

March 21, 2023

Dear Governor Hobbs,

I am the Executive Director of Georgetown University Law Center's Institute for Constitutional Advocacy and Protection (ICAP), a non-partisan institute that uses novel litigation tools, strategic policy development, and constitutional scholarship to vindicate 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 ICAP has developed an expertise in legal options for countering political violence and domestic extremism. ICAP provides policy guidance to state and local governments on protecting public safety while preserving constitutional rights,² countering bigotry and extremism in the ranks of law enforcement,³ and understanding and responding to the so-called "constitutional sheriffs" movement.⁴

I am writing to raise concerns about recent rule amendments approved by the Arizona Peace Officer Standards and Training Board ("AZPOST" or "the Board"), which removed the requirement that AZPOST certify instructors for law enforcement trainings that are required by law. Under the amended rule, local law enforcement agencies will be permitted to "utilize selected instructors to facilitate this training without having to obtain AZPOST approval."⁵ The Governor's

¹ See Inst. for Const. Advoc. & Prot., *City of Charlottesville v. Pa. Light Foot Militia* (accessed Mar. 17, 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. 17, 2023), <https://constitutionalprotestguide.org/>.

³ See Inst. For Const. Advoc. & Prot., *Countering Bigotry and Extremism in the Ranks: A First Amendment Guide for Law Enforcement Agencies* (accessed Mar. 17, 2023), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/04/2022.4.7.-Countering-Bigotry-and-Extremism-in-the-Ranks.pdf>.

⁴ See Inst. For Const. Advoc. & Prot., *Fact Sheet: "Constitutional Sheriffs" and Elections* (accessed Mar. 17, 2023), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/09/Constitutional-Sheriffs-Fact-Sheet.pdf>.

⁵ Ariz. Peace Officers Standards and Training Bd., *Minutes of the May 18, 2022 Meeting of the Arizona Peace Officers Standards and Training Board 3* (accessed Mar. 17, 2023), <https://post.az.gov/sites/default/files/2022-06/May%2018%20Minutes.pdf>.

Regulatory Review Council (GRRC) approved these changes on October 4, 2022.⁶ At a subsequent AZPOST meeting, Executive Director Matt Giordano confirmed that the newly approved amendment means that “AZPOST will no longer be vetting advanced officer training.”⁷

We are deeply concerned by the possibility that this amended rule will open the door for Arizona peace officers to receive training from adherents of the “constitutional sheriffs” movement and other actors who urge local law enforcement to assume authorities beyond those allowed by law and to reject the proper exercise of state and federal authority in their jurisdictions.⁸ Such trainings could result in violations of the U.S. Constitution’s Supremacy Clause,⁹ and would place residents at risk of improper activity by county peace officers. As noted by the NAACP Legal Defense and Educational Fund, such a dynamic would pose a “particular threat” to Black and Brown communities, who are at the greatest risk of harm from abuses by law enforcement.¹⁰

To prevent these harms, we urge you to petition AZPOST¹¹ to make appropriate amendments to the rule before it takes effect on April 5, 2023,¹² or, at minimum, to ask the GRRC to delay implementation of the rule so that AZPOST can make the changes necessary to ensure that it will not allow for training that encourages violations of state or federal law.¹³ Should AZPOST decline to amend the rule to address the concerns raised herein, we urge your office to ask GRRC to reconsider this rule. Because the relevant provisions of the rule are not yet in place, it is not too late to make clear that Arizonans require peace officers to receive training that endorses the rule of law and rejects association with extremist organizations and vigilante activity.

There is good reason to believe that without action to intervene in the implementation of the rule, groups like the Constitutional Sheriffs and Peace Officers Association (CSPOA) will promptly take advantage of the loosened restrictions to offer training to law enforcement agencies throughout the state. The CSPOA is a group of so-called “constitutional sheriffs” that was founded by a former

⁶ Governor’s Regul. Rev. Council, *Governor’s Regulatory Review Council, Notice of Action Taken at the October 4, 2022 Meeting 3* (accessed Mar. 17, 2023), <https://grrc.az.gov/sites/default/files/2022-10/10.4.2022%20Action%20Report.pdf>, see also Governor’s Regul. Rev. Council, *October Final Files 319-48* (accessed Mar. 17, 2023), <https://grrc.az.gov/sites/default/files/2022-10/10.4.2022%20October%20Final%20Files.pdf>.

⁷ Ariz. Peace Officers Standards and Training Bd., *Minutes of the October 19, 2022 Arizona Peace Officers Standards and Training Board 2* (accessed Mar. 17, 2023), https://post.az.gov/sites/default/files/2022-11/101922%20Minutes%20%281%29_0.pdf.

⁸ See *Fact Sheet: “Constitutional Sheriffs” and Elections*, *supra* note 4.

⁹ See U.S. Const., art. VI, cl. 2.

¹⁰ NAACP Legal Def. & Educ. Fund, *Letter to Associate Attorney General Vanita Gupta and Assistant Attorney General Kristen Clarke Re: The Growing Threat of “Constitutional Sheriffs” to Our Multi-Racial Democracy 1* (Dec. 21, 2022), https://www.naacpldf.org/wp-content/uploads/2022.12.20-LDF-letter-to-AAG-Gupta-AAG-Clar_Puneet-Cheema.pdf.

¹¹ Under Arizona law, “any person” may petition for the amendment or repeal of an agency rule. Ariz. Rev. Stat. Ann. § 41-1033(A). If an agency rejects the petition, then the Governor’s Regulatory Review Council is entitled to review an appeal. *Id.* §§ 41-1033(E), (H).

¹² Ariz. Rev. Stat. Ann. § 41-1823(A) requires that a rule establishing a minimum qualification for law enforcement officers not go into effect until six months after being filed with the Secretary of State. The changes at issue here are subject to this requirement. See *October Final Files*, *supra* note 6, at 322.

¹³ Ariz. Rev. Stat. Ann. § 41-1052(D)(5) requires that the GRRC not issue final approval of rules if they are “illegal, inconsistent with legislative intent, or beyond the agency’s statutory authority.”

Arizona sheriff, Richard Mack.¹⁴ CSPOA's website states that "[t]he law enforcement powers held by the sheriff supersede those of any agent, officer, elected official or employee from any level of government when in the jurisdiction of the county."¹⁵ Its official brochure boasts that the "County Sheriff [sic] is the one who can say to the feds, 'Beyond these bounds you shall not pass.'"¹⁶

According to a recent investigation, during law enforcement training offered by CSPOA, Mack has instructed law enforcement that the Constitution gives them authority to stop federal officials from enforcing federal laws in their counties, and even the "powers to personally determine whether laws are constitutional."¹⁷ Training like this encourages violations of the U.S. Supremacy Clause as well as state law. According to Boston University School of Law Professor Robert Tsai, it "makes mincemeat out of the framers' constitutional design."¹⁸

Mack and CSPOA also have a long history of entanglement with the Oath Keepers,¹⁹ whose leaders have been convicted of seditious conspiracy for plotting the January 6, 2021, attack on the U.S. Capitol.²⁰ Although Mack has tried to distance himself and CSPOA from the Oath Keepers, the two organizations have a well-documented alliance that extends to the eve of the insurrection.²¹ As recently as October 2022, Mack addressed an Oath Keeper-aligned militia in Chino Valley.²²

In 2021, CSPOA submitted a proposal to AZPOST to train officers in "American ideals and the principles of Liberty upon which the USA was founded."²³ At the time, AZPOST rejected this request.²⁴ Once the rule change is effectuated, however, AZPOST will cede its authority to approve required officer trainings, paving the way for CSPOA to offer lessons to law enforcement entities

¹⁴ Anti-Defamation League, *The Constitutional Sheriffs and Peace Officers Association (CSPOA) and Richard Mack: How Extremists Are Successfully Infiltrating Law Enforcement* (Sep. 20, 2021), <https://www.adl.org/resources/report/constitutional-sheriffs-and-peace-officers-association-csboa-and-richard-mack-how>.

¹⁵ Const. Sheriffs & Peace Officers Ass'n, *About CSPOA* (accessed Mar. 17, 2023), <https://cspoa.org/about/>.

¹⁶ Const. Sheriffs & Peace Officers Ass'n, *2022 CSPOA Brochure 1* (accessed Mar. 17, 2023) <https://cspoa.org/wp-content/uploads/2022-CSPOA-Brochure.pdf>.

¹⁷ Scott Friedman et al., *Former Oath Keeper Has Trained Texas Law Enforcement from More Than 80 Departments*, NBC DFW (Jan. 5, 2023), <https://www.nbcdfw.com/investigations/former-oath-keeper-has-trained-texas-law-enforcement-from-more-than-80-departments/3167915/>.

¹⁸ Robert Tsai, *The Troubling Sheriffs' Movement That Joe Arpaio Supports*, Politico (Sept. 1, 2017), <https://www.politico.com/magazine/story/2017/09/01/joe-arpaio-pardon-sheriffs-movement-215566/>.

¹⁹ See Tess Owen, *How a Small-Town Sheriff Ended Up on a Crusade to Radicalize American Law Enforcement*, Vice (July 28, 2021), <https://www.vice.com/en/article/epnkg/richard-mack-constitutional-sheriff-movement>.

²⁰ U.S. Dep't of Just., *Leader of Oath Keepers and Oath Keepers Member Found Guilty of Seditious Conspiracy and Other Charges Related to the 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>.

²¹ Chuck Tanner, *Shoulder to Shoulder: CSPOA and the Oath Keepers*, Inst. for Rsch. & Educ. on Hum. Rts. (July 15, 2022), <https://www.irehr.org/2022/07/15/shoulder-to-shoulder-csboa-and-the-oath-keepers/>.

²² Isaac Stone-Simonelli, *Rule Change Opens New Path for "Constitutional Sheriff" Group to Train Arizona Law Enforcement*, Ariz. Ctr. for Investigative Reporting (Nov. 16, 2022), <https://azcir.org/news/2022/11/16/azpost-rule-change-opens-path-constitutional-sheriff-training/>.

²³ Const. Sheriffs & Peace Officers Ass'n, *Lesson Plan: Ethics and the LE Oath of Office 1* (accessed Mar. 17 2023), <https://www.documentcloud.org/documents/23304707-csboa-training-curriculum-lesson-plan-2021-1-1-2?responsive=1&title=1>.

²⁴ Stone-Simonelli, *supra* note 22.

throughout the state. Given the extent of CSPOA's influence among Arizona sheriffs,²⁵ there is a real risk that CSPOA will quickly find a foothold in promoting its false and unlawful theories under the guise of state-sanctioned training for law enforcement.

This is part of a nationwide strategy. In Texas, for example, CSPOA has already offered numerous training sessions, prompting an investigation by Texas officials.²⁶ Montana has similarly hosted trainings by Mack himself,²⁷ while Virginia officials have also approved a training sponsored by CSPOA at the request of Grayson County Sheriff Richard Vaughan,²⁸ himself a member of CSPOA's Advisory Board.²⁹ Allowing the CSPOA and similar organizations to present themselves as official trainers of Arizona law enforcement could have dangerous consequences for public safety and constitutional rights in the state. As we explain in our fact sheet on the "constitutional sheriffs" movement, the growing influence of CSPOA's unlawful theories has led to a belief that sheriffs have the capacity to interfere with the lawful functions of state and federal law enforcement and with election administration, often contrary to state and federal law.³⁰

Since the 2020 election, Mack and his allies have tried to investigate meritless claims of election fraud, which has raised the prospect that CSPOA-aligned sheriffs may try to intimidate voters in future elections.³¹ One Michigan sheriff associated with CSPOA came under investigation for his involvement in the illegal breach of a vote-counting machine.³² The movement's recent focus on voter fraud—and the insistence that sheriffs are empowered to act unilaterally to ensure election

²⁵ See Isaac Stone-Simonelli, *Arizona "Ground Zero" for Extremist, Anti-Government Sheriff Movement*, Ariz. Ctr. for Investigative Reporting (Oct. 20, 2022), <https://azciv.org/news/2022/10/20/arizona-constitutional-sheriffs-extremist-groups-election/>.

²⁶ See Jessica Pishko, *The Fringe Ideology of "Constitutional Sheriffs" is Attracting Believers Within Texas Law Enforcement*, Tex. Trib. (Jan. 13, 2023), <https://www.texastribune.org/2023/01/13/constitutional-sheriffs-texas/>. Mack himself has provided accredited trainings to officers from more than 80 law enforcement agencies across the state. Friedman et al., *supra* note 17.

²⁷ Stone-Simonelli, *supra* note 22.

²⁸ Va. Dep't of Crim. Just. Servs., *CSPOA Course Approval*, (accessed Mar. 17, 2023), <https://www.documentcloud.org/documents/22274635-virginia-cspos-records-request>.

²⁹ Const. Sheriffs & Peace Officers Ass'n, *Our Leadership* (accessed March 17, 2023), <https://cspos.org/about/our-leadership/>.

³⁰ *Fact Sheet: "Constitutional Sheriffs" and Elections*, *supra* note 4. In recent years, "constitutional sheriffs" have actively resisted the implementation of COVID-19 public safety mandates, as well as state and federal gun laws. See, e.g., Hillary Borrud, *Oregon "Constitutional Sheriffs" Seize on Mask Mandates to Attack State Government's Authority*, Or. Live (Aug. 26, 2021), <https://www.oregonlive.com/coronavirus/2021/08/oregon-constitutional-sheriffs-seize-on-mask-mandates-to-attack-state-governments-authority.html>; Simon Romero & Timothy Williams, *When Sheriffs Say No: Disputes Erupt Over Enforcing New Gun Laws*, N.Y. Times (Mar. 11, 2019), <https://www.nytimes.com/2019/03/11/us/state-gun-laws.html>; Eric Lutz, *Can Illinois's Assault Weapons Ban Survive Scores of Rogue Sheriffs?*, Vanity Fair (Jan. 27, 2023), <https://www.vanityfair.com/news/2023/01/can-illinois-assault-weapons-ban-survive-scores-of-rogue-sheriffs>; Alexandra Berzon & Nick Corasaniti, *2020 Election Deniers Seek Out Powerful Allies: County Sheriffs*, N.Y. Times (July 25, 2022), <https://www.nytimes.com/2022/07/25/us/politics/election-sheriffs-voting-trump.html>.

³¹ See Maurice Chammah, *Does Your Sheriff Think He's More Powerful Than the President?* The Marshall Project (Oct. 18, 2022), <https://www.themarshallproject.org/2022/10/18/does-your-sheriff-think-he-s-more-powerful-than-the-president>; see also Jessica Pishko, *These Sheriffs Say They're More Powerful Than the President. Now, They're Targeting Elections*, Reveal News (Nov. 5, 2022), <https://revealnews.org/article/big-lie-sheriffs-target-us-elections/>.

³² Craig Mauger, *Nessel's Office Seeks Special Prosecutor in Election "Conspiracy" Probe of DePerno, Others*, Detroit News (Aug. 7, 2022), <https://www.detroitnews.com/story/news/politics/2022/08/07/michigan-nessel-seeks-special-prosecutor-election-conspiracy-probe-deperno/10249508002/>.

integrity—should raise special concern in Arizona, where armed paramilitary actors took it upon themselves to patrol polling stations before the 2022 midterm elections.³³

The threat posed by open CSPOA infiltration of Arizona law enforcement—with the imprimatur of government approval, no less—would not be confined to elections. So-called “constitutional sheriffs” have propagated false and anti-Semitic conspiracies, created and supported extremist private militias, and encouraged defiance of COVID-19 orders.³⁴ Pinal County Sheriff Mark Lamb, the founder of a CSPOA-spinoff called Protect America Now,³⁵ has advocated in support of private militias, claiming, contrary to well-settled Supreme Court precedent,³⁶ that such militias are “well within the constitution,”³⁷ and promoting the supposed power of sheriffs to call local civilians into service to “suppress all affrays, insurrections and riots that comes [*sic*] to the attention of the sheriff.”³⁸ In 2020, in response to nationwide Black Lives Matter protests following the murder of George Floyd, Sheriff Lamb formed a “civilian posse to assist deputies with law enforcement,” even though there were no reports of unpeaceful protests in Pinal County.³⁹

CSPOA’s longtime affinity for the militia movement⁴⁰ poses a particular challenge for Arizona, which—like all other states—prohibits unauthorized militias and military units from engaging in activities reserved for the state militia, including law enforcement activities.⁴¹ Given that Arizona has struggled to respond to illegal activity by border vigilante groups,⁴² there is appreciable danger in allowing accredited CSPOA trainings that ignore state regulation of military and law

³³ See Rocio Fabbro, *Election Officials Combat Voter Intimidation Across U.S. as Extremist Groups Post Armed Militia at Some Polls*, CNBC (Nov. 6, 2022), <https://www.cnbc.com/2022/11/06/election-officials-facing-armed-militia-presence-at-some-polls.html>.

³⁴ Cloee Cooper et al., *Mapping Far-Right and Anti-Immigrant Movement Alignment With County Sheriffs*, Pol. Rsch. Assoc. (Sep. 14, 2020), <https://politicalresearch.org/2020/09/14/mapping-far-right-and-anti-immigrant-movement-alignment-county-sheriffs>.

³⁵ 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>.

³⁶ See Mary B. McCord, *Dispelling the Myth of the Second Amendment*, Brennan Center (June 29, 2021), <https://www.brennancenter.org/our-work/research-reports/dispelling-myth-second-amendment>.

³⁷ Pishko, *supra* note 35.

³⁸ *Id.*

³⁹ Alana Minkler, *Pinal County Sheriff Mark Lamb Discusses Citizen Posse in Response to Protests*, AZ Central (July 31, 2020), <https://www.azcentral.com/story/news/local/arizona-breaking/2020/07/31/pinal-county-sheriff-mark-lamb-new-citizen-posse/5555959002/>.

⁴⁰ Mack has been a “vocal supporter” of the militia movement and has urged people “not to demonize” militia groups. Anti-Defamation League, *The Constitutional Sheriffs and Peace Officers Association (CSPOA) and Richard Mack: How Extremists Are Successfully Infiltrating Law Enforcement* (Sep. 20, 2021), <https://www.adl.org/resources/report/constitutional-sheriffs-and-peace-officers-association-cspos-and-richard-mack-how>.

⁴¹ See Ariz. Const. art. II, § 20 (“The military shall be in strict subordination to the civil power.”); Ariz. Rev. Stat. Ann. § 26-123 (making it a felony for any “person, partnership or corporation,” other than state and local law enforcement, “sheriff’s posses,” and armed security guards protecting businesses, to “maintain troops under arms.”); *id.* § 26-170 (making it a misdemeanor for any person to “wear any part of the uniform of the national guard” or the U.S. armed forces, “or a uniform so similar as to be easily mistaken therefor, unless the person is a member of the service whose uniform he wears” or a veterans’ association.).

⁴² See Vanda Felbab-Brown & Elise Norio, Brookings Inst., *What Border Vigilantes Taught US Right-Wing Armed Groups*, (Mar. 12, 2021) <https://www.brookings.edu/articles/what-border-vigilantes-taught-us-right-wing-armed-groups/>.

enforcement conduct in favor of a revisionist endorsement of private paramilitary activity that flaunts proper civilian authority and places civilians at risk of violence and unlawful detention.⁴³

Local law enforcement are indispensable partners in combatting the nationwide rise in political violence that has taken aim at the free administration of elections, public health policies, marginalized populations, and American democracy itself.⁴⁴ But in order to serve as effective partners in safeguarding the constitutional system, law enforcement must receive accurate information about the boundaries of their authority.

These foundational principles of the rule of law are threatened by the prospect of trainings that will encourage Arizona peace officers to instead choose lawlessness and vigilantism. Trainings such as those offered by CSPOA and like-minded entities both “jeopardize[] the safety” of the public and “violate[] acceptable training standards,”⁴⁵ thereby failing to meet the requirements for instructional competency. By eliminating AZPOST’s oversight role in certifying instructors, however, the new rule would give CSPOA and other groups hostile to the constitutional structure the chance to influence Arizona law enforcement in a way that is contrary to state law.

For the foregoing reasons, we strongly urge you to use your authority to seek amendments to the new AZPOST rule that would ensure that local law enforcement entities will not receive credit for trainings from providers that encourage violations of Arizona law or federal law. Please do not hesitate to contact ICAP if we can assist you as you consider how best to ensure that this pending rule change does not make it more difficult for Arizona to maintain law enforcement that is well-informed and respectful of its role under the Constitution.

Sincerely,



Mary B. McCord

Executive Director
Institute for Constitutional Advocacy & Protection
Georgetown University Law Center
600 New Jersey Avenue, N.W.
Washington, D.C. 20001
mbm7@georgetown.edu

⁴³ See, e.g., James Dobbins, *A Texas County Welcomed a Border Militia Last Fall. Now Some Officials Have Grown Weary of It*, Tex. Monthly (May 2022), <https://www.texasmonthly.com/news-politics/kinney-county-border-militia/>.

⁴⁴ Anti-Defamation League, *The January 6 Effect: An Evolution of Hate and Extremism* (accessed Mar. 17, 2023), <https://www.adl.org/january-6-effect-evolution-hate-and-extremism>.

⁴⁵ Ariz. Admin. Code §§ 13-4-114(A)(3)(a)-(b) (as published Dec. 31, 2022).

cc:

The Honorable Kris Mayes
Attorney General of Arizona
20005 N. Central Avenue
Phoenix, AZ 85004
kris.mayes@azag.gov

Executive Director Matt Giordano
Arizona Peace Officers Standards and Training Board
2643 E. University Drive
Phoenix, AZ 85034
mattg@azpost.gov

The Honorable Adrian Fontes
Arizona Secretary of State
1700 W. Washington St.
Floor 7
Phoenix, AZ 85007
afontes@azsos.gov

The Honorable Vanita Gupta
Associate Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Vanita.Gupta19@usdoj.gov

The Honorable Kristen Clarke
Assistant Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Kristen.Clarke@usdoj.gov