

COUNTERING ELECTION-MOTIVATED VIOLENT EXTREMISM IN 2020 AND BEYOND

ADL'S PRACTICAL GUIDE FOR STATE AND LOCAL GOVERNMENTS

Note: This document provides an overview of strategies and techniques to address and deter election-related violence, many of which involve a discussion of laws currently in place. However, it is not intended as legal guidance, and any decisions regarding application of the laws it references should be made in consultation with appropriate legal departments and advisors.

EXECUTIVE SUMMARY

The 2020 Presidential Election threatens to catalyze and exacerbate politically-motivated violent extremism already on the rise in the United States. The potential for violent conflict associated with the election is high, both during voting and in the weeks and months following Election Day. A number of the possible scenarios suggest that a contested election or narrow victory by either presidential candidate could lead to a constitutional and political crisis, which extremist groups could seek to exploit. Further, the direct encouragement of extremists from the President and its coverage and amplification by mainstream media outlets is already emboldening extremist groups like the Proud Boys to see the election as a flashpoint moment for them.¹

Because states and localities administer elections and oversee state and local law enforcement, they must be ready with strategies to identify, prevent, and counter violent extremism associated with the 2020 election. They will grapple with this challenge in the run-up to Election Day, on Election Day, and likely for at least several weeks or even months following the election. This Anti-Defamation League (ADL) report is designed to provide state and local governments with practical tools, strategies, and concepts to do just that. The report also outlines state laws, local ordinances, and law enforcement strategies that local governments may use to combat violent extremism, as well as creative ways to prevent individuals from choosing violence in the first place.

While the report is designed to give states and localities a practical approach to election-related violent extremism, no two experiences will be the same. ADL is committed to working with governments to craft tailored approaches to countering violent extremism while strictly preserving individual rights and liberties.

¹ See, e.g. Anti-Defamation League. "Asked to Denounce White Supremacists, President Trump Tells Far-Right Extremist Group to 'Stand By.'" 29 September 2020. <https://www.adl.org/blog/asked-to-denounce-white-supremacists-president-trump-tells-far-right-extremist-group-to-stand>

EXTREMIST THREATS TO THE 2020 ELECTION

This report is not designed to provide an in-depth analysis of all categories of violent extremism in the United States, nor to present a full inventory of the organizations or movements most likely to engage in election-related violent extremism. Its purpose is to provide an overview of the potential for violence and how to mitigate its impact. However, state and local governments must have the capacity and resources to adequately identify violent extremist threats if they hope to take effective measures to prevent election-related violence. ADL's intent with this toolkit is to help policymakers and local leaders address threats related to:

Violent White Supremacy

White supremacists believe the white race is threatened with extinction or otherwise doomed unless white supremacists take action—by a rising tide of people of color who are being controlled or manipulated by Jews.² Most people who have adopted this extremist ideology consider America's two-party political system to be useless (because it is under "Jewish control"), but there are also large numbers of white supremacists who have voiced support for President Trump.³

White supremacists are extremely prone to violence, and have dominated the extremist murder landscape for the last decade. According to our data, white supremacists were responsible for 34 (81%) of the extremist-related murders of 2019, which fits with the ongoing resurgence of white supremacy that began in 2015. Over the past 10 years, white supremacists have committed 78% of right-wing extremist-related murders and 60% of all extremist-related murders. That is not to say that there are not threats from other types of extremists and extremist ideology, but rightwing extremists pose by far the greatest threat in 2020 America.

2 Anti-Defamation League. "Defining Extremism: A Glossary of White Supremacist Terms, Movements and Philosophies." <https://www.adl.org/education/resources/glossary-terms/defining-extremism-white-supremacy>

3 Anti-Defamation League. "White Supremacists, Extremists Celebrate President Trump's Latest Racist Tweets." 15 July 2019. <https://www.adl.org/blog/white-supremacists-extremists-celebrate-president-trumps-latest-racist-tweets>

Extremism from Unlawful Anti-Government Militias

The militia movement is an anti-government extremist movement, and many of its adherents have strong anti-immigrant, anti-Muslim, or other bigoted and racist views. The militia movement also has a long track record of violence and criminal activity, including acts of terrorism.⁴ These groups include Three Percenters and Oath Keepers.

In 2019 and 2020, the Boogaloo movement emerged as one of the predominant anti-government extremist groups. In 2020, Boogalooers increasingly engaged in physical world activities as well as online activities, showing up at protests and rallies around gun rights, pandemic restrictions and police-related killings. The term “boogaloo” is a slang reference to a future civil war, a concept Boogalooers anticipate and even embrace. The ideology of the Boogaloo movement is primarily anti-government, anti-authority and anti-police in nature. Most Boogalooers are not white supremacists, though one can find white supremacists within the movement.

One important distinction between traditional militia groups (Three Percenters and Oath Keepers) and the Boogalooers: The militia and Three Percenters strongly supported Donald Trump—the first major party nominee the extremist militia movement ever supported— and his election in 2016, which caused the movement to lose much of its anti-government fervor; it is hard to be intensely anti-government while strongly supporting the person at the head of the national government.⁵ Boogalooers, who maintain a more aggressively anti-government ideology, take an exceedingly dim view of this position.

Other Right-Wing Extremism

Proud Boys and Patriot Prayer: These far-right groups often appear together at public pro-Trump events, as well as demonstrations supporting “freedom” and, purportedly, the First Amendment. Both have a propensity for violent confrontations.

While the Proud Boys can be described as violent, nationalistic, antisemitic, Islamophobic, transphobic and misogynistic, its members represent a range of ethnic backgrounds, and its leaders vehemently protest any allegations of racism.⁶

Violence has always been a key component of the Proud Boys’ ethos; this has been especially apparent during the last two years.

In advance of the August 2019 “End Domestic Terrorism” rally in Portland, Oregon, organizer and outspoken Proud Boys ally, Joe Biggs, posted videos of himself holding a spiked baseball bat with the words “Make America Great Again” emblazoned on it, telling the camera that “We’re going to put this to good use.”⁷ He also posed wearing t-shirts reading, “I’m Just Here for the Violence” and “Death to Antifa.”⁸

4 For more information on what makes certain militias “unlawful,” see the Georgetown Law ICAP toolkit mentioned below

5 Anti-Defamation League. “Three Percenters.” [adl.org/resources/backgrounders/three-percenters](https://www.adl.org/resources/backgrounders/three-percenters)

6 See, eg. Anti-Defamation League. “Proud Boys.” <https://www.adl.org/resources/backgrounders/proud-boys-0>

7 Ibid.

8 Ibid.

Patriot Prayer, a frequent Proud Boys collaborator, organized another protest that turned violent, on August 15, 2020 in Portland, OR. One week later, on August 22, 2020, members of the Proud Boys fought with counter-protestors in Portland, Oregon.⁹ This clash between right-wing and left-wing activists was one of many in Portland and other American cities throughout the summer, and Proud Boys were a fixture at most of them.¹⁰

The Proud Boys have been embraced by a number of Fox News hosts; Proud Boys founder Gavin McInnes has appeared on Sean Hannity's Fox News program more than 24 times, and Tucker Carlson has appeared on McInnes' show.

Antifa, Anarchist, and Other Far-Left Extremism

The Antifa movement gained new prominence in the United States after the white supremacist Unite the Right rally in Charlottesville, VA, in August 2017. In Charlottesville and at many subsequent events held by white supremacists or right-wing extremists, antifa activists have aggressively confronted what they believe to be authoritarian movements and groups. While most counter-protestors at right-wing events tend to be nonviolent, there have been several instances where encounters between antifa and the far-right have turned violent.

Some counter-protestors at far right rallies and events are adherents of "antifa" (short for "antifascist"), a loose collection of groups, networks and individuals who believe in active, aggressive opposition to far right-wing movements.¹¹ Their ideology is rooted in the assumption that the Nazi party would never have been able to come to power in Germany if people had more aggressively fought them in the streets in the 1920s and 30s. Most antifa come from the anarchist movement or from the far left, though since the 2016 presidential election, some people with more mainstream political backgrounds also identify with these beliefs.¹²

Other/Miscellaneous Extremism

QAnon is a global, wide-reaching and remarkably elaborate conspiracy theory that has taken root within some parts of the pro-Trump movement.¹³ It is an amalgamation of both novel and well-established theories, with marked antisemitism and xenophobia.

Fundamentally, the theory claims that almost every president in recent American history up until Donald Trump has been a puppet put in place by a global elite of power brokers hellbent on enriching themselves and maintaining their Satanic child-murdering pedophilic cult. According to adherents, this global elite, known as the "Deep State" of "The Cabal" control not only world governments, but the banking system, the Catholic church, major industries and the media and entertainment worlds. Q is a reference to "Q clearance" or "Q access authorization," terms used to describe a top-secret clearance level within the Department of Energy.

9 Ibid.

10 Ibid.

11 Anti-Defamation League. "Who are Antifa?" <https://www.adl.org/resources/backgrounders/who-are-antifa>

12 Ibid.

13 See, e.g. Anti-Defamation League. "Qanon." <https://www.adl.org/qanon>

Despite a profound lack of any supporting evidence, QAnon has successfully made the leap into America's mainstream conservative movement.¹⁴ As the QAnon ideology has gained a wider audience, a cottage industry of merchandise, food supplements and lifestyle advice has emerged alongside it, all rooted in the same profound distrust in governments, established sciences and mainstream media.¹⁵

It has attracted a following of private citizens, rapacious grifters and even national politicians,¹⁶ as well as considerable support within other extremist movements, particularly the militia and anti-government movements.

In 2020, several major party candidates for the U.S. House of Representatives are openly supportive of the QAnon conspiracy theory.¹⁷

Key Takeaway: No two localities will face the same threats. The odds are high that some combination of threats coming together will pose the highest risk in a given locality. ADL condemns violent extremism independent of ideology and is ready to work with governments, offering a variety of resources to further educate officials about the nature of the extremist threat in their locality. In particular, ADL's Center on Extremism (COE)¹⁸ offers local law enforcement research and investigative assistance, trainings, and a clearinghouse of up-to-the minute information about extremism of all types.

14 Kunzelman, Michael. "QAnon' conspiracy theory creeps into mainstream politics." ABC News. 9 February, 2020. <https://abcnews.go.com/Politics/wireStory/qanon-conspiracy-theory-creeps-mainstream-politics-68860270>

15 See, e.g. Brandy Zadrozny and Ben Collins. "Like the fringe conspiracy theory Qanon? There's plenty of merch for sale on Amazon." 18 July 2018. <https://www.nbcnews.com/business/business-news/fringe-conspiracy-theory-qanon-there-s-plenty-merch-sale-amazon-n892561>

16 See, e.g., Sommer, Will. "Louie Gohmert And Steve King Take To House Floor To Suggest The Deep State Killed a Man." Daily Beast. 6 March 2020. <https://www.thedailybeast.com/louie-gohmert-and-steve-king-take-to-house-floor-to-suggest-the-deep-state-killed-a-man>

17 Stracqualursi, Veronica. "The congressional candidates who have embraced the baseless QAnon conspiracy theory." CNN. 12 August 2020. <https://www.cnn.com/2020/08/12/politics/qanon-congressional-candidates/index.html>

18 Anti-Defamation League. Center on Extremism. <https://www.adl.org/who-we-are/our-organization/advocacy-centers/center-on-extremism>.

POLICY TOOLS AND STRATEGIES TO COUNTER ELECTION-MOTIVATED VIOLENT EXTREMISM

Local officials must avail themselves of state laws and local ordinances to both address violent, election-motivated extremism and, to the greatest extent possible, prevent the conditions that lead to such violence. However, officials must also think creatively about preemptively countering the underlying movements and ideologies that can spark violence, including through non-law enforcement tools that prevent those who may harbor extreme views from choosing violence as a means to advance them. This section outlines non-statutory strategies to help localities deter election-related extremist violence in the short-term and to set long-term conditions to reduce the future threat.

1. Utilize Existing Research and Expertise to Better Understand the Threat

State and local governments must understand the threat of violent extremism if they hope to prevent it. After identifying knowledge gaps, local governments should partner with civil society organizations and one another to identify the most dangerous actors and potential triggers or precursors to violence. Governments must invest long-term in training and resources for law enforcement, but there are many short-term resources of which they can avail themselves to prepare for election-motivated violence in 2020.

ADL maintains a public Hate Symbols Database¹⁹ providing a comprehensive catalogue of symbols used by white supremacist groups and movements, as well as other types of hate groups. Training law enforcement to identify symbols, logos, and hand signs will enable localities to identify potential threats to public safety on and in the wake of Election Day.

ADL has also created an interactive and customizable map detailing extremist and anti-Semitic incidents around the United States, known as the Hate, Extremism, Antisemitism, and Terrorism (HEAT) Map.²⁰ Law enforcement can use this visualization tool to develop a deeper understanding of the threat and identify potential flashpoints for violent extremist activity. Finally, ADL offers local governments a variety of trainings, geared toward law enforcement but available for other officials upon request.

19 ADL Hate Symbols Database, <https://www.adl.org/hate-symbols>.

20 ADL HEAT Map, <https://www.adl.org/education-and-resources/resource-knowledge-base/adl-heat-map>.

The trainings include:

- Violent Extremism 101: Key terms & concepts related to preventing, recognizing, & addressing violent extremism
- Introduction to the Center on Extremism: Overview and orientation to Center on Extremism resources and investigations
- New Hate & Old: An exploration of the makeup, ideology and tactics of the white supremacist movement
- Sovereign Citizens: Tactics, trends and criminal activity of the country's largest anti-government extremist movement.
- Anti-Government Extremists: Uncover the ideology, history and violent tactics of sovereign citizens, militia groups and other anti-government extremists.
- Anti-Muslim & Anti-Immigrant Extremists: An in-depth look at the growing cottage industry of anti-Muslim and anti-immigrant bigots and organizations in the U.S.
- Responding to the Call: America's Terrorist Recruits: Who are America's homegrown Islamist extremists, what threats do they pose and what role does social media and technology play in their radicalization?
- QAnon: An overview of its origins as a fringe online conspiracy group to how it has inspired real-world acts of violence.
- Extremism & Hate Online: How extremists exploit social media and technology to reach, recruit and radicalize.
- Symbols of White Supremacy: How white supremacists use hate symbols to identify themselves.
- The Changing Landscape of Extremism in America: Charlottesville and Beyond: The state of the white supremacist movement post-Charlottesville, the challenges ahead and how to best address them.
- Incels & Misogyny: So-called "involuntary celibates" continue to threaten and kill women. Where does this hatred come from? Where do incels fit in the larger extremist landscape?
- Understanding the Boogaloo: An overview of the Boogaloo network, the movement's origins, how it organizes itself, how it has navigated from its online spaces into the real world, and the danger it poses.

Immediate Actions

1. Rapidly inventory your locality's violent extremism expertise
2. Share the ADL HEAT Map with policymakers
3. Share the ADL Hate Symbols Database with local law enforcement
4. Invite law enforcement to sign up for ADL training

2. Communication and Public Transparency

State and local governments must communicate effectively to prevent violent extremism from Election Day through the inauguration and beyond. Effective communication includes not only top-down, strategic communications from elected leaders, but also transparent, accessible, and timely bottom-up communications about public demonstrations, policing, and efforts to counter the threat. Most importantly, local officials must ensure consistent messaging. Law enforcement, local officials, and civil society partners should develop joint communications strategies to ensure violent extremism is met with a single, strong voice while still respecting fundamental First Amendment principles regarding free speech and association.

Use the Bully Pulpit

If you are an elected official, we urge you to take a moment to recognize how critical your voice is in this moment. State and local officials must unequivocally call out and condemn violent extremism in all its manifestations and at every opportunity, while also ensuring that calling out the threat neither creates panic nor raises fears that inadvertently keep voters away from the polls. Part of the agenda of extremist groups seeking to suppress voters, or certain voters, is to raise the fear level to a point where eligible voters are too scared to cast a vote. Free and equitable access to the ballot box is a key principle of democracy that must be upheld and protected.

While the right to free speech, even speech that is often extremely distasteful, is a core value protected against state action by the U.S. Constitution, the incitement of violence should be consistently rejected. Moreover, bully pulpits can and should be used to condemn hateful speech that in and of itself may be constitutionally protected, but should still be condemned. Simply put, local leaders cannot say it enough: America is no place for hate, extremism, or politically-motivated violence. Leaders should use their bully pulpits to strongly condemn organizations or movements motivated by hate, antisemitism, racism, conspiracy theories, or anti-democratic principles.²¹ Moreover, criminal violence should be effectively prosecuted, regardless of the ideology behind it. Leaders must forcefully speak out so that violent actors will be held accountable.

²¹ See e.g., "Confronting the Rise in Anti-Semitic Domestic Terrorism: Hearing Before the House Homeland Security Committee," 116th Cong. (2020) (Statement of Jonathan Greenblatt, CEO and National Director, ADL).

Identify Effective Messengers to Undermine Narratives That Inspire Extremism

State and local officials cannot simply rely on their own bully pulpit to denounce violent extremism. Government leaders should also identify and work with influencers who are the most likely to be listened to by individuals susceptible to extremist narratives or election conspiracy theories. An effective alternative narrative has the potential to undermine the intellectual framework of extremist ideologies, erode the legitimacy of extremists, highlight how extremist activities negatively impact the people they claim to represent and/or demonstrate how extremists' actions are inconsistent with their own beliefs.²² Conspiracy theories related to the election – such as the idea that the election is rigged, or that certain groups may be conspiring to rig the election – must be undermined using these principles because they are false and meant to suppress votes. Highlighting the steps being taken to keep the election secure is paramount.

State and local officials should immediately identify credible, local voices who not only can help amplify the government's anti-extremist message, but who will be respected by individuals vulnerable to extremist narratives, such as sports or music figures, local celebrities, or local political or civic leaders. As a first step, local leaders of one party should look to reach across the aisle and issue a bipartisan statement noting the importance of voting and also strongly condemning the idea that violence can solve political conflict. Clearly conveying that no party is home to hate or violence can be a crucial first step toward reducing the social fissures that extremists seek to exploit.

Ensure Information About Public Gatherings is Timely, Accurate, Relevant, and Accessible

As extremist organizations engage in election-related demonstrations and counter-demonstrations, state and local officials must clearly and consistently communicate public safety information while refuting false claims and narratives pushed by extremists.

Law enforcement should actively upload operational developments to their social media pages.²³ Community and civil society leaders should have direct access to local officials and law enforcement to ensure the government's counter-extremist messaging and public safety information is disseminated widely and in real time. Conversely, the community must have multiple, reliable means for communicating real-time information, photos, and videos about extremist activity and violence directly to law enforcement.

Law enforcement simply communicating the route of an extremist protest march or providing real-time updates about an extremist event via social media can effectively involve the community and avoid flashpoints of violent extremism.

22 Vidhya Ramalingam, Institute for Strategic Dialogue, *On the Front Line: A Guide to Countering Far-Right Extremism*. 2014. <https://www.isdg-lobal.org/isd-publications/on-the-front-line-a-guide-to-countering-far-right-extremism/>

23 Georgetown Law's Institute for Constitutional Advocacy and Prevention (ICAP). "Protests & Public Safety: A Guide for Cities & Citizens." https://constitutionalprotestguide.org/ICAP-Protest_and_Public_Safety-Toolkit-072720.pdf

Increase Transparency with the Public

An effective communications strategy is amplified when local governments are fully transparent about the threat of violent extremism and how the government is attempting to counter that threat. For instance, the State of New Jersey recently released a supplement to its annual terrorist threat assessment focused squarely on the unique conditions associated with the 2020 election.²⁴ The report recognizes the rise of domestic extremism due to the pandemic, anti-government sentiment, nationwide civil unrest, and disinformation and the potential effects when this extremism converges with the 2020 presidential election. New Jersey recognizes that “providing up-to-date knowledge and guidance from trusted authorities is imperative ... [to] separate fact from fiction.”²⁵

State attorneys general should consider a systematic mechanism for communicating law enforcement efforts to counter domestic violent extremism, including an annual report that contains:

- Assessments, preliminary investigations, and full investigations with a domestic violent extremism nexus;
- Indictments, prosecutions, and convictions with a domestic violent extremism nexus; and
- Any information corresponding to the above in which elections or a desire to disrupt elections was a motivating factor.

Transparency about the government’s response to domestic extremism not only instills public confidence and enables effective oversight, but it allows civil society organizations, like ADL, to better understand how to tailor our support to state and local governments.

Immediate Actions

1. Issue a bipartisan or non-partisan proclamation condemning violence and ensuring election administration will be safe and secure
2. Ask local influencers to make similar statements, including urging community members to think before they click
3. Create a transparency plan around extremist protests and share with the public how your administration views extremist concerns

²⁴ The New Jersey Office of Homeland Security and Preparedness, 2020-2021 Supplemental Threat Assessment. September 2020. <https://www.njhomelandsecurity.gov/analysis/2020-2021-supplemental-threat-assessment>.

²⁵ *Id.* at 2.

3. Prioritize Criminal Justice Sector Efforts to Address Violent Extremism

The Federal Bureau of Investigation (FBI) officially ranks counterterrorism as its top investigative priority, resulting in proportional resources to and focus on federal counterterrorism investigations. States too should publicly specify how they prioritize efforts to counter violent extremism and consider raising the priority between November 2020 and February 2021, a timeframe in which we anticipate an elevated risk of violence. Prioritizing tracking and responding to domestic violent extremism not only helps shift resources to countering the threat, but also it serves a signaling function to local law enforcement, civil society, and the public in the importance of a just and inclusive society.

To the extent they do not already exist, state and local governments should create and codify task forces or other inter-agency bodies dedicated to domestic terrorism, hate crimes, and other forms of violent extremism. For instance, in New York, the recently passed Neumann Act creates a nine-member Domestic Terrorism Task Force reporting to the Governor and State Legislature.²⁶ Similarly, in 2019 in the wake of the El Paso shooting, Texas Governor Abbott formed a Domestic Terrorism Taskforce to provide advice on strategies to maximize law enforcement's ability to protect against acts of domestic terrorism.²⁷ Formalizing these structures helps ensure violent extremism is triaged and resourced commensurate with the gravity of the threat.

Increase Coordination and Information Sharing Among Local Law Enforcement and State Agencies

Localities should seek to pool resources and knowledge by increasing coordination and flattening communication among law enforcement and local agencies whenever possible. Government has effectively utilized multi-agency fusion cells, such as the High Impact Drug Trafficking Area (HIDTA) networks, to counter organized crime and drug trafficking at a regional level. Localities should use the same model to share resources and streamline coordination of efforts to counter domestic violent extremism and more effectively respond to election-motivated violence. States and localities should also forge law enforcement and intelligence partnerships with federal entities, such as the FBI Hate Crimes and Domestic Terrorism Fusion Cell.

²⁶ New York State Bar Association, Report of the New York State Bar Association Task Force on Domestic Terrorism and Hate Crimes. June 2020. <https://nysba.org/app/uploads/2020/07/Final-Report-Task-Force-on-Domestic-Terrorism-Hate-Crimes.pdf>.

²⁷ Press Release, Office of the Texas Governor, Governor Abbott Forms Domestic Terrorism Task Force in the Wake of El Paso Shooting (Aug. 14, 2019), <https://gov.texas.gov/news/post/governor-abbott-forms-domestic-terrorism-task-force-in-the-wake-of-el-paso-shooting>.

State and local law enforcement agencies play a critical role collecting indicators and warnings of potential extremist violence and are the first-line of defense in terms of collecting intelligence to prevent domestic terrorism.²⁸ State and local law enforcement agencies should more comprehensively collect and immediately report to the FBI incidents of violent extremism.²⁹ Timely and comprehensive reporting not only deters violent extremism, but it can advance police-community relations. Law enforcement must not wait until Election Day to establish relationships and points of contact with one another and the federal government. Instead, communication channels must be open and effective before November to adequately respond to the threat.

Immediate Actions

1. Officially raise state/local law enforcement's priority level of domestic violent extremism through February 2021
2. Form a Task Force to Prevent and Counter Violent Extremism to streamline coordination across the extremism, hate crimes, and election security elements in your state or locality
3. Confirm your teams addressing violent extremism issues have point of contact information for regional counterparts and know who to contact in the event of a violent extremist incident

²⁸ Seth G. Jones, Catrina Doxsee, & Nicholas Harrington, Center for Strategic and International Studies, The Tactics and Targets of Domestic Terrorists. 30 July 2020. <https://www.csis.org/analysis/tactics-and-targets-domestic-terrorists>

²⁹ Confronting the Rise in Anti-Semitic Domestic Terrorism: Hearing Before the House Homeland Security Committee. 116th Cong. 2020. Statement of Jonathan Greenblatt, CEO and National Director, ADL.

4. Invest in Community Resilience for Prevention

Creating community-level resources to prevent the root causes of radicalization, intervene in the radicalization process, and rehabilitate former offenders is a longer-term initiative state and local governments should pursue to prevent violent extremism. Effective community resilience forges partnerships among different community pillars including government, community leaders, civil society organizations, private industry, educators, and mental health counselors. For example, the Colorado Resilience Collaborative develops partnerships with community members, brings together clinical consultation through mental health and related counseling services, invests in educational services, and researches the root causes of extremism in Colorado as well as credible messengers to intervene in the radicalization process.³⁰

Effective community resilience creates partnerships and programming to reduce the likelihood individuals become radicalized to violence. For example, a call center in Houston, Texas fields calls from individuals concerned loved ones might be following a dangerous path, and, using a model similar to a suicide-prevention hotline, offers voluntary mental health resources.³¹ The Houston program received federal funds to train hotline counselors in violent extremism risk factors and conduct outreach to at-risk populations targeted by violent extremism in all its forms.

States and localities should evaluate existing community resilience infrastructure and local partners who can use civil liberties-compliant methods to help divert individuals from participating in election-motivated violent extremism.

Immediate Actions

1. Establish a call center for social workers and mental health professionals to field referrals and provide resources to individuals embracing violent extremist ideologies or conspiracy theories

³⁰ Colorado Resilience Collaborative. <https://psychology.du.edu/counseling-consultation/colorado-resilience-collaborative>.

³¹ U.S. Dep't of Homeland Security, Office of Terrorism Prevention Partnerships, Quarterly Update on Programmatic Performance FY16 Countering Violent Extremism (CVE) Grant Program. 2018. https://www.dhs.gov/sites/default/files/publications/Q3%20CVE%20Grant%20Program%20Summary%20Final%20508%20Compliant_1.pdf

5. Creative Methods for Managing Threats to Public Order

In the face of election-motivated extremist violence at protests, rallies, and other public gatherings, state and local governments will need to rely on existing laws and regulations to prevent violence and prosecute perpetrators. However, localities should also consider whether other statutes might apply to the same movements, even if the laws are traditionally associated with tangential topics. Local governments should be ready to use all lawful means to ensure safe and secure voting and any related political protest. Importantly, whenever possible, local government should avoid deploying armed law enforcement to polling places, which could have a chilling effect on voting and free expression.

Diverting Proximity of Protests and Counter-Protests

Protesting is constitutionally protected, it is necessary to a thriving democracy, and we should encourage it as a non-violent outlet for political expression. Protestors and counter-protestors can be empowered to share their views in many ways without inhibiting each other's speech or resorting to violence, including by keeping them separated from physical contact.

For example, in August 2017, a violent white supremacist murdered Heather Heyer at the "Unite the Right" rally in Charlottesville, Virginia after protestors instigated confrontations with counter-protestors, resulting in violence. One week later, a similar protest and counter-protest in Boston, at which law enforcement deployed 500 police officers to keep protestors and counter-protestors separate, remained non-violent.³² In some cases, it may also be appropriate to impose content-neutral time, place, and manner restrictions on protests, including through event permitting.³³

Note, however, courts generally read into unlawful assembly statutes a limitation that "protests or assemblies cannot be dispersed on the ground that they are unlawful unless they are violent or... pose a clear and present danger of imminent violence, or they are violating some other law in the process."³⁴

32 Reilly, Katie. "Thousands of Counter-Protesters March Against White Nationalism in Boston a Week After Charlottesville." TIME. 19 August 2017. <https://time.com/4907681/boston-free-speech-rally-protests-charlottesville/>

33 ICAP Guide. Ibid. at 23

34 ICAP Guide. Ibid. at 23

Reclaiming Digital Community Civility

Nearly every major social media platform has community guidelines or terms of service regarding what content is allowed on their site, and those guidelines typically include prohibitions against content deemed hateful in some way. Local officials can encourage community members to flag content they find offensive and potentially violative of the platform's standards, including extremist propaganda and hate speech, by reporting the content directly to the relevant social media company. They can also work with ADL's Center for Technology and Society (CTS), which has experience in dealing with hate online and effective ways to respond. Unlike speech occurring in public spaces, social media companies are private technology platforms. The U.S. Constitution thus does not prohibit these private platforms from moderating against hateful content that the government could not enjoin – and more than the Constitution prevents a store manager from evicting a customer who comes in and spews racist invective in the middle of the shop.

Some of the platforms, like YouTube, also have Trusted Flagger Programs that work with organizations like ADL that may be in a position to reinforce user concerns about particular content.³⁵

Continuing Self-Assessment of Resource and Legal Authority Gaps Preventing State and Local Officials from Countering Violent Extremism

State and local officials should consistently evaluate gaps in resources and legal authorities required to effectively prevent and counter violent extremism in all its forms. Short-term, localities must honestly self-assess whether they have the resources to respond to the likely rise in extremist activity between Election Day and Inauguration Day. Law enforcement should immediately communicate to state and local officials the resources and authorities needed and fill short-term needs.

Immediate Actions

1. Promote free speech by empowering protest, but maintaining distance between protestors and counter-protestors.
2. Issue guidance to community members for flagging hateful or untrustworthy content through social media platforms.
3. Assess the gaps in resources to take on these initiatives and investigate whether gaps can be filled immediately

³⁵ Press Release, Anti-Defamation League, ADL Applauds Google and YouTube in Expanding Initiative to Fight Online Hate, Aug. 1, 2017, <https://www.adl.org/news/press-releases/adl-applauds-google-and-youtube-in-expanding-initiative-to-fight-online-hate>.

USING STATE LAWS AND LOCAL AUTHORITIES TO PREVENT ELECTION-MOTIVATED VIOLENT EXTREMISM

This section outlines categories of state laws and local authorities to address violent extremism threats. Georgetown Law’s Institute for Constitutional Advocacy and Prevention (ICAP) helpfully outlines many of these laws in great detail in a toolkit,³⁶ and corresponding 50 state fact sheets,³⁷ which may serve as helpful background for evaluating options in more detail.

While violence and incitement to imminent violence or unlawful activity are not constitutionally protected, states and localities must vigilantly protect individuals’ civil rights and liberties when enforcing these laws. Enforcement must be based on violence or the threat of violence itself, rather than the content or viewpoint of any speech underlying or accompanying the violence. In other words, enforcement must not be inequitable or disproportionate be even-handed and not selective

6. State Laws to Prevent Violent Extremism and Prosecute Perpetrators at Public Gatherings

Individuals and extremist movements have used the vulnerable nature of crowds to encourage violence, and in an election season may target crowds gathered at public polling stations and other election-related or non-violent partisan rallies to mobilize supporters, stoke conflict, and engage in violent acts. State and local law enforcement should understand and be prepared to utilize relevant laws to prevent the conditions that can lead to violence and prosecute acts of violent extremism.

State Hate Crime and Domestic Terrorism Statutes

Every state criminalizes violent activity. However, state laws often provide separate and more stringent penalties for hate crimes or acts of terrorism designed to intimidate or coerce whole communities. State and local law enforcement should be prepared to protect against, investigate, and prosecute hate crimes and domestic terrorism to send a broader message that communities will not tolerate extremist violence. Forty-six states and the District of Columbia have hate-crime laws on the books.³⁸ Where bias-motivated conduct is recurring, some state laws also allow attorneys general to seek injunctions to prevent such harm from happening in the future.³⁹

36 ICAP Guide. Ibid. at 23

37 Georgetown Law Institute for Constitutional Advocacy and Protection, 50 State Fact Sheet on Laws Barring Unauthorized Militia, <https://www.law.georgetown.edu/icap/our-work/addressing-the-rise-of-unlawful-private-paramilitaries/state-fact-sheets/>.

38 ICAP Guide. Ibid. at 23.

39 ICAP Guide. Ibid. at 23 (citing ME. REV. STAT. tit. 5, § 4681; W. VA. CODE § 5-11-20).

At least 25 states and the District of Columbia have passed laws criminalizing domestic terrorism or imposing sentence enhancements for acts of terrorism.⁴⁰ State domestic terrorism statutes generally mirror the intent requirements present in federal law, namely the use of intimidation or coercion to affect a civilian population or influence government policy. While states vary in the types of conduct they deem as “acts of terrorism” when paired with the requisite intent, at a minimum state terrorism covers acts that cause or create a risk of death or serious physical injury.

For instance, in Pennsylvania, a person is guilty of terrorism if that person “commits a violent offense intending to do one of the following: (1) Intimidate or coerce a civilian population; (2) influence the policy of a government by intimidation or coercion; or (3) affect the conduct of a government.”⁴¹ However, a person in Pennsylvania may also be guilty of a “terroristic threat” if that person “communicate(s), either directly or indirectly, a threat to: (1) commit any crime of violence with intent to terrorize another; (2) cause evacuation of a building, place of assembly, or facility of public transportation; or (3) otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.”⁴²

Violent acts motivated by the outcome of the presidential election will likely be orchestrated to intimidate a wider group of individuals beyond the targets of any specific violent acts, namely those in political and ideological opposition to the perpetrators. If applicable to a protected characteristic, state and local officials should review and be prepared to investigate and, if appropriate, enforce applicable state hate crime and domestic terrorism laws.

State Anti-Paramilitary Laws

In 2014, the Oath Keepers militia, a group of thousands of current and former law enforcement officers, attended protests following the police killing of Michael Brown in Ferguson, Missouri. The St. Louis County police chief at the time described the presence of the armed and camouflaged militia as “both unnecessary and inflammatory.”⁴³ Unlawful militia groups were also prominent in the 2017 Unite the Right rally in Charlottesville, Virginia, which turned deadly when a far-right extremist drove his car into a crowd of counter-protestors, killing one and injuring many others.⁴⁴ In late August 2020, during protests following the shooting and paralyzing of Jacob Blake in Kenosha, Wisconsin, a newly formed militia called the Kenosha Guard issued an open invitation: “Law enforcement is outnumbered and our mayor has failed, take up arms and let’s defend our CITY!”⁴⁵ Soon thereafter, Kyle Rittenhouse, 17, was arrested in connection with the fatal shooting of two protestors and the maiming of a third.

40 ICAP Guide. *Ibid.* at 23.

41 18 PA. CONS. STAT. § 2717(a) (2019).

42 18 PA. CONS. STAT. § 2706(a) (2019).

43 Safia Samee Ali, “Where Protestors Go, Armed Militias, Vigilantes Likely to Follow with Little to Stop Them.” NBC News. Sept. 1, 2020, <https://www.nbcnews.com/news/us-news/where-protesters-go-armed-militias-vigilantes-likely-follow-little-stop-n1238769>.

44 Anti-Defamation League. “Two Years Ago, They Marched in Charlottesville. Where are They Now?” 8 August 2019. <https://www.adl.org/blog/two-years-ago-they-marched-in-charlottesville-where-are-they-now>.

45 Howard Graves. “The Shooting Deaths in Kenosha, Wisconsin, Were Predictable and Avoidable.” Southern Poverty Law Center HateWatch Blog. Sept. 9, 2020. <https://www.splcenter.org/hatewatch/2020/09/09/shooting-deaths-kenosha-wisconsin-were-predictable-and-avoidable>.

Every state has some legal provisions prohibiting non-sanctioned, private militias, but the statutes are largely unenforced.⁴⁶ State and local law enforcement should make use of state anti-paramilitary laws prohibiting private armies and paramilitary activity at election-related rallies and other public gatherings. These laws can be utilized not only retroactively to prosecute violators, but proactively as a basis for enforcing lawful time, place, and manner restrictions designed to minimize violence at future public gatherings.⁴⁷

State anti-paramilitary laws fall into one of the following four categories:

- **State Constitutional Provisions.** Forty-eight states have constitutional provisions subordinating the military to civil authorities.⁴⁸ Relying on such authority, a Virginia state court found that “[U]nder this constitutional provision, no private army or militia would have any justified existence or authority apart from the federal, state, or local authorities.”⁴⁹ In an email to city officials following Rittenhouse’s arrest in Kenosha, Georgetown Law ICAP Legal Director Mary McCord noted that, “[i]n particular, the Wisconsin Constitution’s Subordination Clause forbids private military units from operating outside state authority, providing that ‘[t]he military shall be in strict subordination to the civil power.’”⁵⁰
- **Unauthorized Private Militia Statutes.** Twenty-nine states prohibit unauthorized private military units, typically prohibiting bodies of individuals from associating together as a “military unit” or “parading” or “drilling” while armed in public.⁵¹ When unlawful, private, and armed militias attend public rallies purportedly to keep the peace or protect the rights of protesters, they likely violate these statutes.
- **Anti-Paramilitary Activity Statutes.** Twenty-five states criminalize paramilitary activity such as teaching individuals how to use firearms or “techniques” capable of causing bodily injury or death, or assembling to train or practice with such firearms or techniques knowing or intending to use them in a “civil disorder.”⁵² Colorado’s anti-paramilitary activity law defines civil disorder as “any planned public disturbance involving acts of violence by an assemblage of two or more persons that causes an immediate danger of, or results in, damage or injury to property or to another person.”⁵³ Virginia’s prohibition likely covers conduct similar to that witnessed at the 2017 Unite the Right Rally in Charlottesville in which a state court concluded the City adequately pleaded a violation of the provision when the complaint alleged the rally’s organizer “was engaged and involved in the solicitation, training, and command of ... paramilitary units.”⁵⁴
- **False Assumption Statutes.** Many states prohibit the false assumption of the uniform or duties of peace officers or members of the military. Private militias that wear uniforms highly similar to military uniforms or seek to “keep the peace” to the exclusion of authorized law enforcement may violate these provisions. States and localities may find false assumption statutes particularly relevant as militias increasingly attend rallies and protests explicitly to offer themselves as a de facto arm of law enforcement, in some cases alerting law enforcement to their intent and requesting to be deputized.⁵⁵

46 ICAP Guide. Ibid. at 23

47 ICAP Guide. Ibid. at 23

48 ICAP Guide. Ibid. at 23

49 ICAP Guide. Ibid. at 23. citing *City of Charlottesville v. Pa. Light Foot Militia*, No. CL 17-560, 2018 WL 4698657, at *4 (Va. Cir. Ct. July 7, 2018).

50 Ibid. at 45

51 ICAP Guide. Ibid. at 23

52 ICAP Guide. Ibid. at 23

53 Colo. Rev. Stat. § 18-9-120 (1)(a).

54 ICAP Guide. Ibid. at 23 (citing *City of Charlottesville*, 2018 WL 4698657, at *6). The letter opinion is available on ICAP’s website: <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2018/07/2018.07.07-Letter-Opinion-Ruling-on-Defendants-Demurrer-to-Complaint.pdf>

55 Ibid. at 45

According to Mary McCord, ICAP’s Legal Director, state and local law enforcement often do not enforce anti-paramilitary laws because of a fundamental misunderstanding of the Second Amendment, particularly in open carry states.⁵⁶ While the Second Amendment protects an individual’s right to bear arms in certain circumstances, the U.S. Supreme Court has made clear that it does not prevent states from prohibiting paramilitary organizations. Local officials should make clear to militias that their purported “help” is unlawful and unwanted, and that law enforcement will enforce laws prohibiting their presence or actions.

On September 24, 2020, the Virginia Attorney General issued an official advisory opinion in response to reports of intimidation at polling places amidst the start of in-person early voting in Virginia for the 2020 November election. In addition to reinforcing state and federal laws against voter intimidation and harassment, the advisory opinion stated that “it is a criminal offense for private individuals to usurp the role of actual law enforcement, and it is accordingly unlawful to appear at the polls attempting to exercise roles that rightfully belong to the government.”⁵⁷ The opinion pointed out that this criminal prohibition “can apply to ‘a group of private militia members coming as a unit, heavily armed with assault-style weapons, dressed in fatigues and other military accessories, and acting in a coordinated fashion’ where the ‘militia members patrol[] a line of citizens’ and ‘project[] authority to manage the crowd.’”⁵⁸ Other attorneys general should consider immediately issuing similar advisory opinions or other public statements clarifying and buttressing state laws prohibiting militia activities.

Critically, should unlawful militia members legally attend public gatherings, law enforcement absolutely must not engage in any behavior that favors or appears to favor such groups. Especially as they violate the law. In Kenosha, police were reportedly distributing water bottles to the militia with which Rittenhouse marched and in one instance an officer stated: “We appreciate you guys. We really do.”⁵⁹ This sort of activity is unacceptable, sending the wrong message to our society, including but not limited to non-violent protestors across the ideological and political spectrum.

56 Ibid. at 43

57 Op. Va. Att’y Gen., 20-046 (Sept. 24, 2020), <https://www.oag.state.va.us/files/Opinions/2020/Simon-20-046-issued.pdf>.

58 Ibid. (quoting Op. Va. Att’y Gen., 19-039 (Aug. 16, 2019)).

59 Ibid. at 45

Public-Nuisance Laws

Public nuisance is a broad albeit amorphous doctrine providing criminal and civil means to prohibit “unreasonable interference with a right common to the general public.”⁶⁰ Public nuisance, helpfully analyzed in the Georgetown Law ICAP toolkit, must “substantially” interfere with public rights, such as public health and safety, comfort, and convenience, as opposed to individual rights. Municipalities can use public nuisance laws to prevent violence at public gatherings, assuming the restrictions comport with constitutional restrictions. For instance, the U.S. Court of Appeals for the Second Circuit upheld an injunction obtained by New York City under a public-nuisance theory where anti-abortion protestors used mass demonstrations to block access to health clinics, thereby impeding the public’s right to obtain medical services and the health and safety of those who wanted to use the streets.⁶¹

Governments, however, cannot use public nuisance laws to attempt to silence unwanted speech. Practically speaking, even somewhat disruptive demonstrations may not be prohibited as a public nuisance. However, when extremist organizations engage in demonstration tactics presenting a significant public health and safety hazard, such as blocking public streets or preventing public access to public facilities for an extended period of time, localities may find it possible to invoke public nuisance law to seek a court order enjoining that same conduct in the future.⁶²

Immediate Actions

1. Review your state’s hate crime, domestic terrorism, and anti-paramilitary statutes, and proactively plan for scenarios in which such statutes might be enforced
2. Issue attorney general advisory opinions or public statements clarifying the applicability and enforceability of state anti-paramilitary and related statutes
3. Ensure law enforcement is directed to promote lawful protest, but be aware of public nuisance and related statutes

60 ICAP Guide. Ibid. at 23

61 ICAP Guide. Ibid. at 23 (citing *New York State National Organization for Women v. Terry*, 886 F.2d 1339, 1362 (2d Cir. 1989)).

62 ICAP Guide. Ibid. at 23 (citing *Thomas v. City of Danville*, 152 S.E.2d 265, 269 (1967) (“Clearly the lower court had the right . . . to enjoin the defendants and their associates from obstructing or attempting to obstruct the free use of the streets and the free ingress and egress to public buildings and other acts which were patently disorderly and riotous.”)).

7. Using Permitting and Other Strategies to Manage Public Gatherings and Prevent Violent Extremism

State and local officials should think creatively about how they can employ permitting and other strategies within constitutional limits to significantly reduce the likelihood of violent extremism at public gatherings. The Georgetown Law ICAP Toolkit helpfully outlines several of these concepts.

The Effective and Legal Use of Permitting to Reduce Violence

Local governments' use of content-neutral permitting to impose content-neutral time, place, and manner restrictions on public gatherings can be a powerful legal tool to prevent violent extremism at rallies and protests. When conducted within constitutional standards, permitting gives municipalities some ability to discern possibly violent intentions, tailor marching routes to avoid confrontation between adversaries, and even restrict weapons.⁶³

In light of the rise in extremism at public protests, municipalities are critically evaluating the permitting process to reduce violence. For instance, in the wake of the 2017 "Unite the Right" rally in Charlottesville, the Governor of Virginia created a Task Force on Public Safety Preparedness and Response. The Governor's executive order included a statewide review of permitting to establish recommendations for a model permitting process to be adopted by the Commonwealth and localities.⁶⁴

When local officials believe violence may erupt at a public event, they may wish to consult with their counsels' office to assess whether they can include either as a permit condition or a generally applicable condition of attendance a list of prohibited items, including firearms, which may not be brought to the event. In August 2017, in an attempt to avoid the violence marking the Charlottesville rally, Boston granted a permit for a "Free Speech" rally featuring extremist speakers. The permit barred demonstrators from carrying sticks, bats, or backpacks.⁶⁵

63 ICAP Guide. Ibid. at 23

64 Va. Exec. Order No. 2017-68 (Aug. 24, 2017), <https://www.pshs.virginia.gov/media/governorvirginiagov/secretary-of-public-safety-and-home-land-security/pdf/eo-68.pdf>.

65 Sarah N. Lynch & Lisa Lambert. "Far-Right Protests Leave U.S. Cities Scrambling to Balance Safety, Free Speech, Reuters, Aug. 18, 2017." <https://www.reuters.com/article/us-usa-protests-mayors/far-right-protests-leave-u-s-cities-scrambling-to-balance-safety-free-speech-idUSKCN1AY-2CX>.

While many states have passed firearms-regulation preemption laws that prohibit localities from regulating firearms in a manner that differs from state law, some statutes contain exceptions expressly preserving local officials' ability to restrict possession of firearms in government buildings and public spaces.⁶⁶ Because state laws vary, local governments should closely analyze applicable preemption statutes or governing doctrine before applying reasonable time, place, and manner restrictions on firearms during public events. Even absent a preemption law, however, localities must ensure any restriction is based on a well-founded concern for protecting public safety.

Importantly and in order to preserve the rights of law abiding protesters, permitting regimes should be clear, consistently enforced, widely publicized, and avoid lengthy advance-notice requirements that stifle free and spontaneous speech. Permitting regulations should specify the circumstances under which a permit must be denied or revoked and should not leave undue discretion in officials to deny permits. Localities must also explain how they prioritize competing permit applications, such as considering applications on a first-come, first-served basis to avoid the prospect of content-based discrimination.

States and municipalities should be working now to establish and refine permitting regulations in advance of, and immediately following, the November 2020 election. Local governments that wait to learn of a planned event and then enact emergency authorities are more vulnerable to legal challenges.⁶⁷

Immediate Actions

1. Review, refine, and widely communicate permitting and other time, place, and manner restrictions in advance of potential protests

⁶⁶ ICAP Guide. *Ibid.* at 23

⁶⁷ ICAP Guide. *Ibid.* at 23