

HB 2572 – Preventing Unlawful Paramilitary Activity

Background:

In 2022, the Oregon Secretary of State Audits Division released a report on domestic violent extremism. In that report, they found that “Over the past decade, Oregon witnessed the sixth-highest number of domestic violent extremism incidents in the nation.” In 2020, as our Nation approached a Presidential election, Oregon became one of the five states at highest risk for private paramilitary activity with the potential for violence and inhibiting people from exercising their constitutional rights.

It is important to note that the **private paramilitary activity that would be prohibited by the bill is not tied to any specific political ideology**. The bill clearly defines the *armed conduct* that would be prohibited when done as part of or in furtherance of the objectives of a private paramilitary organization.

Private paramilitary activity—often referred to as “militia” activity—is prohibited by Art. I, § 27 of the Oregon Constitution and by state statutory law found at ORS 166.660. However, the language of the existing anti-paramilitary law and its lack of a civil enforcement mechanism **have hampered law enforcement officials in Oregon in preventing armed paramilitary groups from mobilizing for acts of intimidation or violence**.

The U.S. Supreme Court has been clear that **prohibitions on private paramilitary organizations are permissible under the Second Amendment of the U.S. Constitution**. The Court decided in 1886—and repeated in 2008—that the Second Amendment “does not prevent the prohibition of private paramilitary organizations.” *District of Columbia v. Heller*, 554 U.S. 570, 621 (2008) (citing *Presser v. Illinois*, 116 U.S. 252 (1886)). The Court also held that such prohibitions do not infringe on the First Amendment right to peaceably assemble. *Presser*, 116 U.S. at 267.

Solution:

HB 2572 would replace ORS 166.660, making it a **more effective enforcement tool** against the continuing threat of violence from armed paramilitary groups. This bill would apply to **conduct** that endangers public safety and infringes the rights of all Oregonians, **regardless of the ideology motivating that conduct**. The measure was developed in concert with law enforcement, constitutional, and legal experts to ensure that the revised provisions conform with the constitutional requirements of Article I, § 8, which protects free speech and expression.



The changes proposed by HB 2572 include:

- **Creation of a criminally and civilly enforceable prohibition** on certain types of armed activity by individuals acting as part of or in furtherance of the objectives of an unauthorized private paramilitary organization, with a focus on the **actions** that threaten civic life and public safety.
- **New definitions of prohibited categories** of unauthorized, armed private paramilitary activity, which include public patrols, drills, or engagement in paramilitary techniques; interfering or attempting to interfere with government proceedings or operations; wrongfully asserting authority over others by assuming the functions of law enforcement; interfering with or intimidating another person in the exercise of their constitutional rights, such as engaging in protected free expression, petitioning the government, and voting; and training to do the foregoing.
 - Importantly, **the bill also defines exceptions** for activities such as historic reenactments, self-defense clinics, training in the safe handling and use of firearms, and other training authorized by the state or federal government.
- **A definition** of “private paramilitary organization” that applies to groups of three or more persons associating under a command structure to function in public or train to function in public as a combat, combat support, law enforcement, or security services unit.
- **The addition of a civil enforcement mechanism** by which the Attorney General may seek injunctive relief against those engaging in prohibited activity, as well as a private cause of action for individuals harmed by private paramilitary activity to seek money damages and/or injunctive relief.

Taken together, **the reforms proposed by HB 2572 would make it harder for private paramilitaries to operate with impunity throughout Oregon, regardless of their ideology.** The civil enforcement provision will empower individual Oregonians to seek compensation for harm done to them by these groups. The focus on armed activity that interferes with government functions, usurps legitimate law enforcement authority, and infringes constitutional rights **balances the protection of public safety with the preservation of constitutional guarantees** of free speech and association, the right to petition the government, and voting.



Legal Background:

HB 2572 is consistent with the U.S. Constitution, which does not authorize or protect private paramilitary or militia organizations operating outside of governmental authority.

- The U.S. Constitution gives Congress the power to provide for organizing, disciplining, and calling forth the “militia.” U.S. Constitution, art. I, clauses 15 and 16. Congress has used this power to create the National Guard system and to authorize states to maintain their own state defense forces. 32 U.S.C. §§ 102-104, 109.
- **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 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 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. 570, 621 (2008).**

HB 2572 is consistent with Oregon’s constitution and statutory regulation of military affairs.

- Oregon’s constitution, like the constitutions of 48 states, provides that “the Military shall be kept in strict subordination to the civil power.” Or. Const., Art. I, § 27. **The only type of “militia” activity that is sanctioned in Oregon is that which is regulated and controlled by the civilian government.**
- Oregon’s constitution explicitly instructs that “[t]he Legislative Assembly shall provide by law for the organization, maintenance, and discipline of a state militia for the defense and protection of the State.” Or. Const. Art. X, § 1. The governor is the “commander in chief of state military forces,” and is the *only* government actor able to “call out such forces to execute the laws, to suppress insurrection [*sic*], or to repel invasion.” Or. Const. Art. X, § 3. **Private paramilitary groups are not permitted to act outside this system.**
- By statute, Oregon’s “militia” is comprised of the “organized” and “unorganized” militia. Or. Rev. Stat. § 396.105(1).
 - The “organized militia” is composed of the Oregon National Guard and the Oregon Civil Defense Force “when duly organized.” Or. Rev. Stat. § 396.105(2).
 - **Even the “unorganized” militia, which consists of “all able-bodied residents of the state,” can only be called into service by the governor.** See Or. Rev. Stat. §§ 396.105(3), 396.125, 396.135, 396.140.

