



**MEMORANDUM:
PRACTICAL RESPONSES TO FEDERAL LAW ENFORCEMENT ACTIVITY
SURROUNDING THE 2020 ELECTION**

From: Voter Protection Program
To: Interested Parties
Re: **Practical Responses to Federal Activity Surrounding the 2020 Election**
Date: 10/30/20

This memorandum provides guidance on practical steps that state officials can take to mitigate the risk of inappropriate federal law enforcement involvement in the 2020 election.

THE CONCERN

- The Administration's summertime deployment of federal law enforcement officers in places like Seattle and Portland, without requests for assistance from – and sometimes over the objection of – local elected officials, raises concerns about similar actions during the election.
- The dangers of election activity by federal law enforcement agencies include but are not limited to: (1) interference with and influence on the ongoing election; (2) delegitimization of the election after the votes are counted and the outcome certified; (3) damage to the integrity of our American democracy; and (4) politicization of our national law enforcement agencies.

WHAT ACTIONS SHOULD STATE OFFICIALS CONSIDER?

- 1. Set up a specific internal process for dealing with the federal government related to the election.**
- Designate agency lead(s) and key internal points of contact.

- Identify and obtain cellphone numbers for key federal officials. Events can move quickly during an election.
- 2. Contact the key agency heads or local Special Agents in charge of any field offices of federal law enforcement agencies, including DHS, ICE, FPS, CBP, and the Marshals Service. Convey the following:**
- Statutes Limit Federal Involvement in Elections: It is a criminal offense for a federal official to order any armed persons to an election location. 18 U.S.C. §592.
 - Even away from the polls, it is illegal for federal agents to interfere in the election. 18 U.S.C. §§ 593, 595. It is also illegal for anyone to intimidate voters. 18 U.S.C. § 594. All of these laws apply to federal law enforcement officials.
 - Elections Are Run by States: Under the Constitution and federal law, states – not the federal government – are responsible for administering elections.¹ Remind your federal counterparts that (1) you and your fellow state officials are executing that responsibility, and (2) the federal government has no role in that process. It is critical that the federal government avoid interfering or even creating the perception of interfering with the state’s election administration.
 - It’s Not Just Election Day: The election has already started. It will last until all the votes are counted and the results are certified. Federal interference with counting votes is just as illegal as interference with voting. 18 U.S.C. §§ 593, 595.
 - You Need to be a Full Member of the Team: Ask your federal counterparts to keep you informed and involved as they make any plans or preparations for the election.
 - Ask specifically if there have been meetings, plans, or task forces in their office regarding election issues or preparations for federal action in case of civil unrest.
 - Ask to attend every meeting and to be on any task force.
 - Ask for a full briefing on any election-related plans, in writing if appropriate.

¹ “The Times, Places and Manner of holding Elections . . . shall be prescribed in each State by the Legislature thereof . . .” U.S. Const. art. I, § 1.

- Tell your counterparts that in case of civil unrest, your state will rely first on civilian first responders and second on your own state's National Guard under State Active Duty (SAD) authority. Emphasize that law enforcement is reserved to the states under the 10th Amendment. Clarify – in writing, if appropriate – that you do not invite or expect federal assistance absent a formal request.
- Propose creating a joint protocol for any deployment of federal personnel in your state.
- No Grandstanding: Ask your counterparts not to solicit needless media coverage on any election related issues. During an election, media coverage risks creating a public impression that even proper activities are politically motivated.

3. Educate the Voting Public.

- Consider educating the public on the impropriety of partisan law enforcement and your commitment to protecting free and fair elections. Reemphasize steps you are taking to protect the democratic process.