



**MEMORANDUM:
COORDINATION WITH THE NATIONAL GUARD AROUND ELECTIONS**

From: Voter Protection Program
To: Interested Parties
Re: **Coordination with the National Guard Around Elections**
Date: 10/30/20

This memorandum guides state officials in preparing for and responding to the possible involvement of the National Guard in the 2020 election. Governors should remember that the Guard remains under their command unless “federalized” by the President under Title 10 of the U.S. Code. Governors are uniquely situated to alleviate confusion over the appropriate deployment of the Guard, emphasize the primacy of the state role in elections, and minimize any chance that the federal government will try to use the Guard inappropriately. It is critical that the federal government avoid interfering or even creating the perception of interference with the state’s election administration.

THE CONCERN

- The Administration’s June deployment of the National Guard to Washington, D.C., over the objection of local officials raises concerns about similar actions during the election.
- Reports of National Guard preparations for the November election have renewed this summer’s concerns. We do not yet know that any planned Guard mission will improperly affect the election. But in light of the summertime Guard deployment, any election-related Guard activity needs to be managed and messaged carefully.
- The dangers of improper National Guard election activity 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 democracy; and (4) politicization of the National Guard.

WHAT ACTIONS SHOULD GOVERNORS CONSIDER?

The Voter Protection Program (VPP) is a national nonpartisan initiative promoting election integrity and ensuring safe, fair, and secure elections. Learn more at voterprotectionprogram.org

1. Engage with your state's Adjutant General (TAG). Convey the following:

- Statutes Limit Guard 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. §592.¹ This prohibition applies to the Guard, regardless of the status in which the Guard is serving (SAD, Title 32, or Title 10).
- Even away from the polls, it is illegal for the military and federal officials to interfere in an election. 18 U.S.C. §§ 593, 595. It is also illegal to intimidate voters. 18 U.S.C. § 594. All these laws apply to Guard members.
- Elections Are Run by States: Under the Constitution and federal law, states – not the federal government – are responsible for administering elections.² Remind the TAG that (1) you and your fellow state officials are executing that responsibility, (2) the federal government has no role in that process, and (3) the Guard reports to you unless it is in Title 10 status.
- 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 TAG to keep you informed and involved as they make any plans for the election:
 - Ask for a full briefing on any election-related plans, in writing if appropriate.
 - Identify specific points of contact for election coordination.
 - Ask your TAG whether there are meetings or task forces regarding election issues or preparations for action in case of civil unrest. Consider sending a member of your staff to participate in those meetings and task forces.
 - Remember and emphasize if necessary that routine law enforcement is reserved to the states under the 10th Amendment, and that the *Posse Comitatus* Act, 18 U.S.C. § 1835 makes it illegal to use the military for civilian law enforcement unless

¹ “Whoever, being an officer of the Army or Navy, or other person in the civil, military, or naval service of the United States, orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held . . . shall be fined under this title or imprisoned . . .” 18 U.S.C. § 592.

² 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.

expressly authorized by Congress or the Constitution. This prohibition includes National Guard personnel if they are serving in Title 10 status.

- Align with Your TAG on Media Strategy: Ask your TAG not to solicit needless media coverage of election related issues. During an election, media coverage risks creating a public impression that even proper activities are politically motivated.

2. Act to Avoid Improper Federalization of National Guard

- Transmit a formal message via the Emergency Management Assistance Compact (EMAC) channels making clear that you do not consent to any deployment of National Guard troops from other states to your state absent your express request, citing Article XIII of the EMAC. If such a deployment becomes a concern, issue a public statement confirming that you have not provided your consent to such a deployment and request that it cease.

3. Educate the 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. If you are planning to deploy your state's Guard under SAD authority to assist with election administration, assure voters that the deployment is entirely consistent with the National Guard's appropriate role and with free and fair election administration.³

³ [For example](#), Gov. Tony Evers activated the Wisconsin National Guard under SAD authority to help with elections held in August of this year. Guard members wore civilian clothing and performed the duties of civilian volunteer poll workers. Gov. Evers has announced Wisconsin National Guard members will similarly assist with the November election.