

Authorities Governing the Deployment of Federal Law Enforcement During the Election and Post-Election Season

Executive Summary

Recent statements by high-ranking government officials have raised a major question ahead of the 2026 midterm elections: Is it legal to deploy federal law enforcement in the vicinity of voting locations during the election and post-election season? And if so, what type of federal law enforcement entities and under what authorities? This memo provides a high-level summary of the laws and procedures at issue.

At bottom, federal and state laws make clear that states have primary responsibility for administering elections and for ensuring security and order around voting locations. Accordingly, federal law generally bars the deployment of armed federal law enforcement officers to voting locations. In addition, a broad range of federal and state laws sharply limit the potential use of federal law enforcement that could affect the conduct of elections. Certain civil staff from the Department of Justice may have election-related authorities, for instance to help ensure that elections and voter access adhere to federal laws such as the Voting Rights Act or National Voter Registration Act, but these do not permit the federal government to use federal armed forces to interfere with election administration – or to disrupt election administration by other means.

Background

Cities, counties, and states routinely plan for problems that could occur during elections, including election-related unrest, and this year is no exception. State and local law enforcement may be needed to respond to certain incidents, yet any such security efforts must be balanced against a risk of suppressing voting—one reason for the many federal and state laws governing law enforcement behavior at voting locations.

Recent incidents and statements have heightened concerns that federal law enforcement may be deployed in ways that will intimidate voters or otherwise interfere with the administration of federal, state, and local elections. Some relevant examples of recent incidents and statements include:

- The recent and large-scale deployments of federal agents to cities and states against the wishes of local and state government officials;¹

¹ See, e.g., *Chicago Headline Club v. Noem*, 810 F. Supp. 3d 842 (N.D. Ill. 2025); *Los Angeles Press Club v. Noem*, 799 F. Supp. 3d 1036 (C.D. Cal. 2025).

- Calls from high-ranking government officials to “take over” and “nationalize” voting in the United States;²
- The Federal Bureau of Investigation’s seizure of election-related materials in Fulton County, Georgia, including 2020 ballots, tabulator tapes and voter rolls;³
- Homeland Security Secretary Mullin’s pledge to prosecute election officials who do not comply with Administration directives regarding election practices⁴; and
- Statements calling for federal law enforcement agents, including agents involved in enforcing immigration and customs laws, to “surround the polls come November” and the Administration’s responses.⁵

The deployment of federal law enforcement authorities to election sites is usually unlawful and also problematic for historical and policy reasons. The U.S. Constitution expressly gives states primary responsibility for administering elections.⁶ More generally, the police power—including the power to police civil unrest at or around polling places—is reserved under the Constitution to the states,⁷ and the role of federal law enforcement in addressing such unrest is quite limited. Consistent with the Constitution, a host of federal and state laws prohibit or limit the use of federal law enforcement concerning elections; and those laws are fortified by longstanding norms constraining the role of federal law enforcement agencies in administering elections and policing civil unrest. Accordingly, the use of federal law enforcement in the election context would be illegal and inappropriate in almost all instances.

STATE LAW ENFORCEMENT AUTHORITY

Under the Tenth Amendment to the U.S. Constitution, any powers not delegated to the federal government are reserved to the states. This includes the police power—the power to protect public health, safety, and welfare. There is no general federal police power; if federal law enforcement wishes to act within a state, it must do so pursuant to a specific grant of authority to enforce or investigate violations of federal laws that Congress has passed. Federal and state law enforcement agencies may choose to form joint task forces

² Reid J. Epstein & Nick Corasaniti, *Trump, in an Escalation, Calls for Republicans to ‘Nationalize’ Elections*, N.Y. Times (Feb. 2, 2026), <https://www.nytimes.com/2026/02/02/us/politics/trump-nationalize-elections.html>.

³ Nick Corasaniti & Richard Fausset, *Fulton County in Georgia Challenges the F.B.I.’s Seizure of 2020 Ballots*, N.Y. Times (Feb. 4, 2026), <https://www.nytimes.com/2026/02/04/us/politics/fulton-county-fbi-raid-trump-gabbard.html>; see also Phil Stewart, Erin Banco & Jonathan Landay, *US spy chief’s office investigated voting machines in Puerto Rico*, Reuters (Feb. 4, 2026) (reporting seizure of voting machines and data in Puerto Rico),

<https://www.reuters.com/world/americas/us-spy-chiefs-office-investigated-voting-machines-puerto-rico-2026-02-04/>

⁴ Nick Corasaniti & Dustin Volz, *Trump’s Homeland Security Chief Threatens Election Officials with Prison Time*, N.Y. Times (July 17, 2026), <https://www.nytimes.com/2026/07/17/us/politics/markwayne-mullin-election-officials-threats-trump.html?smid=url-share>.

⁵ Sophie Brams, *Bannon: ‘We’re going to have ICE surround the polls,’* The Hill (Feb. 4, 2026), <https://thehill.com/homenews/media/5723066-bannon-ice-presence-polls/>; Rebecca Beitsch, *Blanche: Why is there objection to sending ICE to polling places?*, The Hill (March 27, 2026),

<https://thehill.com/homenews/administration/5803874-todd-blanche-immigration-enforcement-polling-places-2026-election/>.

⁶ See U.S. Const., art. I, § 4 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.”).

⁷ See U.S. Const., amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

(e.g. counter-drug task forces), and states in some circumstances can deputize federal officers with state law enforcement powers. However, the federal government generally must stay within a specific grant of authority when deployed within a state, particularly when acting without the request of state officials.

Particularly with respect to addressing civil unrest, established laws and protocols—grounded in federalism and crystallized over centuries of historical practice—call for use of a tiered approach. Mayors use local law enforcement as the first response. If local police are overwhelmed, they first call for reinforcements from other local governments or from state law enforcement bodies. If more help is needed, a governor can activate the state's National Guard, which may be authorized to enforce state law when acting in state-active-duty status, and whose members are drawn from the communities they protect. If emergency conditions require additional help, governors may then ask other governors for the assistance of their National Guard forces through the Emergency Management Assistance Compact (EMAC).

When states deem that they have a “law enforcement emergency” and that federal law enforcement is necessary to provide an adequate response, the state can request that help from the U.S. Attorney General under the Emergency Federal Law Enforcement Assistance Act (EFLEAA).⁸ This Act provides a pathway for assistance that is specified in law and trackable.⁹

Other emergency authorities, with few exceptions, do not disturb this general framework. During a major disaster or emergency, for instance, federal law enforcement may be engaged pursuant to EFLEAA to support local and state law enforcement (e.g., during Hurricane Katrina) or pursuant to Emergency Support Function 13, “Public Safety and Security,” under the rubric of the Federal Response Plan, in support of state and local officials.¹⁰ Importantly, none of these pathways expands federal law enforcement jurisdiction. The Federal Response Plan Emergency Support Function-13 Annex notes that “Local law enforcement responsibility and authority rests with local, state, tribal, territorial, and insular area law enforcement departments and agencies,”¹¹ and recommends that if states are overwhelmed by the results of an actual or anticipated natural or man-made disaster or an act of terrorism, they should seek additional resources from other states via mutual aid and assistance agreements; only when those options are exhausted or unavailable should federal aid be requested.

UNREQUESTED FEDERAL LAW ENFORCEMENT DEPLOYMENTS

⁸ 34 U.S.C. §§ 50101-50112.

⁹ See 34 U.S.C. § 50108 (establishing recordkeeping requirement).

¹⁰ See generally Bryan L. Adkins et al., CRS, R46379, Emergency Authorities Under the National Emergencies Act, Stafford Act, and Public Health Service Act (July 14, 2020); State and Local Deputation of Federal Law Enforcement Officers During Stafford Act Deployments, 36 Op. O.L.C. 77 (2012).

¹¹ U.S. Dep’t of Justice & ATF, Emergency Support Function #13 – Public Safety and Security Annex (June, 2016), https://www.fema.gov/sites/default/files/2020-07/fema_ESF_13_Public-Safety-Security.pdf.

Outside of specific requests for federal law enforcement assistance, as described above, there is limited room for federal law enforcement deployments in communities and none that explicitly contemplate direct involvement in ongoing election operations.

While various federal agencies do have law enforcement powers, they are focused on the specific missions of those agencies and do not include general police powers.¹²

The Federal Protective Service (FPS) is charged with protecting federal buildings and other property, as well as people on that property. It authorizes the designation and deployment of employees of the Department of Homeland Security, not limited to FPS officers, “for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.”¹³ The federal government has viewed the “areas outside the property” as extending no further than a block.¹⁴ This authority could potentially become relevant where an election is held at a federal facility, but federal law enforcement would still face prohibitions on voter intimidation.

Within the Department of Justice, many law enforcement agencies, like the FBI and Bureau of Prisons, have the authority to investigate and enforce provisions of Title 18, which catalogs many federal crimes. One such agency, the U.S. Marshals Service, was formalized within DOJ to protect the federal judiciary and provide other law enforcement functions for the courts. But due to the unique history of the Marshals Service, which stretches back to the broad authorities of the U.S. Marshal for each Territory of the U.S. prior to their entry into the Union, Marshals have the same authority to make arrests when enforcing the laws under their jurisdiction as any other federal law enforcement entity.¹⁵ The Director of the Marshals Service can also deputize any person to act as a U.S. Marshal, including federal, state, or local law enforcement officers.¹⁶

None of these authorities directly pertain to administering elections and they are also constrained by statutory and constitutional law that protects voting and the political process, as discussed below.

Then with respect to federal elections, Congress has enacted a range of statutes, including laws criminalizing specified forms of election-related misconduct.¹⁷ The Justice Department is charged with enforcing the civil and criminal penalties in these laws, but the Department has historically acknowledged that its authority to investigate election-related offenses does not give it authority to administer elections—or to improperly impede state and local administration of elections in that task. It has

¹² The U.S. Park Police is somewhat unusual; in addition to having jurisdiction over National Parks administered by the National Park Service, it shares jurisdiction with the D.C. Metropolitan Police, a reflection of D.C.’s unique constitutional status.

¹³ 40 U.S.C. § 1315(b)(1), (2).

¹⁴ See *Index Newspapers LLC v. City of Portland*, 480 F. Supp. 3d 1120, 1125 n.2 (D. Or. 2020).

¹⁵ See 28 U.S.C. § 566; 28 U.S.C. § 564.

¹⁶ 28 C.F.R. § 0.112.

¹⁷ See, e.g., 18 U.S.C. § 594 (prohibiting voter intimidation in connection with federal elections); 52 U.S.C. § 20701 (providing that “[e]very officer of election shall retain and preserve” certain election-related records and criminalizing willful violations of those requirements).

emphasized that “[t]he principal responsibility for overseeing the election process rests with the states.”¹⁸ In particular, “[i]t is the states that have primary authority to ensure that only qualified individuals register and vote, that the polling process is conducted fairly, and that the candidate who received the most valid votes is certified as the winner.”¹⁹ To avoid interfering with those state and local processes, federal prosecutors should not seize ballots or other election-related documents from state and local election officials “until the election to which they pertain has been certified and the time for contesting the election results has expired.”²⁰

In short, DOJ’s role in protecting free and fair elections generally involves post-election investigation and enforcement, not mid-election intervention – with possible exceptions for necessary efforts to enfranchise voters in the face of an ongoing state violation of the right to vote.²¹ That is particularly so when federal intervention would violate chain of custody requirements and thereby impede or even preclude the orderly and reliable resolution of an ongoing election in accordance with established processes for resolving election-related disputes.

As DOJ has recognized, the same principles apply in cases of alleged fraud:

Because the federal prosecutor’s function in the area of election fraud is not primarily preventative, any criminal investigation by the Department must be conducted in a way that minimizes the likelihood that the investigation itself may become a factor in the election. The mere fact that a criminal investigation is being conducted may impact upon the adjudication of election litigation and contests in state courts. Moreover, the seizure by federal authorities of documentation generated by the election process may deprive state election and judicial authorities of critical materials needed to resolve election disputes, conduct recounts, and certify the ultimate winners. Accordingly, it is the general policy of the Department not to conduct overt investigations, including interviews with individual voters, until after the outcome of the election allegedly affected by the fraud is certified.²²

Federal law enforcement operations that interfere with state and local administration of ongoing elections would not just violate longstanding DOJ policy; they would also raise significant legal concerns, as further described in the following part. Federal law does not supply clear and specific statutory authority supporting such anomalous federal interference with state and local administration of elections.²³ Any

¹⁸ U.S. Dep’t of Just., Federal Prosecution of Election Offenses at 8 (8th ed. 2017), <https://electionjudgments.org/en/entity/ok5o88x6m4r/text-search?file=15950091773541o6uhighakw.pdf&page=1>.

¹⁹ *Id.*

²⁰ *Id.* at 11.

²¹ *Id.* at 8.

²² *Id.* at 9.

²³ See, e.g., *United States v. Gradwell*, 243 U.S. 476, 485 (1917) (construing federal statute framed in general terms not to apply to regulation of elections, stressing that “the policy of Congress for so great a part of our constitutional life has been, and now is, to leave the conduct of the election of its members to state laws, administered by state officers,” and explaining that “whenever [Congress] has assumed to regulate such elections it has done so by positive and clear statutes”); *Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 639 (2026) (Opinion of Roberts, C.J.) (explaining that the Constitution’s allocation of powers and “a practical

attempted federal intervention with federal law enforcement entities could be difficult to comport with federal statutes barring or limiting conduct that could intimidate voters.²⁴ Some attempted interference would also likely also confront federal constitutional requirements, including those imposed by the Tenth Amendment, the Fourth Amendment, the due process and equal protection clauses, federal constitutional protections for the right to vote, and the constitutional separation of powers.²⁵

ELECTION LAWS AND LAWS PERTAINING TO VOTING SITES

During the period of early voting, election day, and the counting of ballots, federal and state laws aimed at protecting free and fair elections and voters' constitutional rights restrict what federal officials can do and where they can go. In addition to such affirmative restrictions, federal officials are also restrained insofar as federal agents can only act where there is a specific grant of authority to take actions, as noted above.

Federal law prohibits armed federal officers from being in the vicinity of voting locations, absent extraordinary rebellion-like circumstances. State law often additionally requires law enforcement to maintain significant distance from the polls or to be present only under specific processes and circumstances. As noted above, federal agents are also prohibited from interfering with an election in general. Accordingly, federal law-enforcement agencies—including but not limited to leaders charged with supervising agencies operating under the purview of the Department of Homeland Security—need to avoid carrying out law enforcement activity that interferes with elections or intimidates voters.

Specifically, because DHS agents are required to be armed while on duty, they are subject to the federal prohibition on armed officers being present in the vicinity of any voting location. Additionally, certain operations and tactics of federal or state law enforcement (including immigration enforcement) in areas beyond the vicinity of voting locations may constitute unlawful voter intimidation that is also subject to statutory or constitutional prohibitions. There is no geographic limit on these protections and they should be implemented to achieve the goal of protecting voters from intimidation.

Federal Laws and Statutes on Elections

Deployment of federal troops or armed federal law enforcement officers to polling places is almost always illegal. In addition, both civil and criminal laws broadly prohibit the harassment or intimidation of voters, and such generally phrased statutes apply to law-enforcement officers as well as ordinary civilians.

Pertinent federal statutes include the following:

understanding of legislative intent" both suggest that "Congress would not have delegated 'highly consequential power' through ambiguous language") (quoting *West Virginia v. EPA*, 597 U.S. 697, 723–724 (2022)).

²⁴ See *infra* (discussing "Federal Laws and Statutes on Elections").

²⁵ See *infra* (addressing "Constitutional Rights").

- 18 U.S.C. § 592 prohibits civil and military authorities from having troops or “armed men” in the vicinity of voting locations “unless such force be necessary to repel armed enemies of the United States” and makes violations of that prohibition subject to criminal penalties.
- 18 U.S.C. § 594 makes voter intimidation by anyone in connection with federal elections a federal crime subject to imprisonment.
- 18 U.S.C. § 595 prohibits government employees financed by federal funding from using their official authority for the purpose of interfering with or affecting a federal election.
- 18 U.S.C. § 598 bars anyone from using “any authority conferred by any Appropriation Act for the purpose of interfering with, restraining, or coercing any individual in the exercise of his right to vote at any election,” subject to fine or imprisonment.
- 42 U.S.C. § 1985(3) clauses 3 and 4 (originally the Ku Klux Klan Act) prohibits government and private actors from engaging in conspiracies to intimidate or injure voters or voter assistance organizations in presidential or congressional elections.
- Section 11(b) of the Voting Rights Act prohibits all public or private actors from intimidating, threatening, or coercing voters or voter assistance organizations, regardless of a specific intent to intimidate in connection with federal elections.²⁶
- Section 131(b) of the Civil Rights Act of 1957 states that “[n]o person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose” in a federal election.²⁷

A violation of federal civil laws prohibiting election interference may give rise to a private lawsuit to enjoin the violation.²⁸ Although federal criminal laws are typically enforced by the federal government, it may also be possible for other parties injured by illegal action to bring a civil suit for injunctive relief to halt violations of federal criminal law.²⁹ In addition, a federal official acting in violation of federal law may be subject to legal restrictions under state law, even where enforcing state law against the federal official might otherwise run afoul of the Constitution’s Supremacy Clause.

²⁶ See 52 U.S.C. § 10307(b).

²⁷ See 52 U.S.C. § 10101(b).

²⁸ See *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 326–27 (2015); *Ex parte Young*, 209 U.S. 123, 150–51 (1908).

²⁹ See *Armstrong*, 575 U.S. at 326–27 (recognizing “a long history of judicial review of illegal executive action, tracing back to England,” and explaining that the Supreme Court has “long held that federal courts may in some circumstances grant injunctive relief” against state and federal officers “who are violating, or planning to violate, federal law”); see also 5 U.S.C. § 706 (enabling federal courts to prohibit final agency action “found to be ... not in accordance with law”).

State Laws and Statutes on Elections

Consistent with their constitutionally assigned role in the administration and regulation of elections, states have enacted a wide range of laws to protect the right to vote and ensure free and fair elections. Those laws complement and supplement the federal statutory limits set out above, and they provide private and state enforcement mechanisms over and above those created at the federal level.³⁰

Two categories of state laws warrant particular attention: those limiting the presence of law enforcement officers at or near polling places and those prohibiting voter intimidation.

State Laws Limiting The Presence of Law-Enforcement Officers. Federal and state laws bar the deployment of armed federal agents to election locations. In addition, state laws may establish a chain of command led by election officials requiring any law enforcement officers whose presence is permitted at the polls to follow the instructions of state and local election authorities.

Some illustrative laws include the following:

- Florida law directs that “[n]o person may enter any polling room or polling place where the polling place is also a polling room, or any early voting area during voting hours,” subject to certain exceptions; the limited exception for “[l]aw enforcement officers” applies only to those officers who are “there with permission of the clerk or a majority of the inspectors.”³¹
- Law enforcement officers are likewise barred from entering polling sites in Arizona, Michigan, Wisconsin, Texas, and other states, unless they are voting themselves or have been invited by election officials to enforce the law or maintain order. North Carolina officials may invite law enforcement only in cases of “urgent need,” and police activity is limited to the “extent necessary to address that need.”³²
- Pennsylvania law prohibits “any person,” including but not limited to police officers, from interfering with the right to vote in certain specified ways. Police officers are prohibited from coming within 100 feet of the polling place unless called by election officials to maintain order,³³ and they likewise may not “use or practice any intimidation ... nor, in any manner, unduly influence or overawe any elector or prevent him from voting or restrain his freedom of choice.”³⁴

³⁰ See, e.g., Institute for Constitutional Advocacy and Protection, Fact Sheet: Protecting Against Voter Intimidation (explaining that, in addition to the “[m]ultiple federal statutes” that “make it a crime to intimidate voters,” “[e]very state also separately prohibits interference with voters and/or voter intimidation”) (hereinafter “ICAP Fact Sheet”), available at <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2024/08/Voter-Intimidation-Fact-Sheet.pdf> (last visited 8/10/26).

³¹ Fla. Stat. § 102.031(3)(a).

³² N.C. Stat. § 163-166.3(a)(9).

³³ See 25 Pa. Stat. §§ 3047, 3520.

³⁴ 25 Pa. Stat. § 3047.

- Other states are considering or have enacted similar legislation to prevent any law-enforcement agents—state or federal—from operating in proximity to elections. New Mexico, for example, recently enacted a law that makes it a state-level crime to have armed law enforcement or troops in the vicinity of a voting location or to interfere with a registered voter casting a ballot.³⁵

Those and other such laws do not, on their face, carve out exceptions for federal law-enforcement agents. In keeping with the Supremacy Clause of the U.S. Constitution, state laws barring the uninvited presence of law enforcement at the polls might have to yield in cases where deployment of *unarmed* federal law enforcement is necessary to enforce federal law (and is not a pretext for intimidation). But any such exception would apply only when such deployment is authorized by a valid federal law that specifically authorizes such activity; and—as noted above—federal law and longstanding policy independently limits the extent to which law-enforcement officers may be deployed around election locations. In any case, the presence of *armed* federal law enforcement in the vicinity of voting locations is prohibited by federal law, as noted above, unless necessary to repel armed enemies of the United States.

State Laws Prohibiting Voter Intimidation. In addition to these laws specifically addressing law enforcement presence at the polls, federal law enforcement agents may be subject to state laws on voter intimidation. Consistent with federal law, every state has prohibited voter intimidation, typically by making it a crime. Similarly, many states likewise prohibit carrying guns at or near election-related facilities.

Like their federal counterparts, state laws prohibiting voter intimidation are typically framed in broad terms. Accordingly, courts and voting-rights experts have construed such laws to proscribe a wide range of conduct, including but not limited to:

- Baseless or abusive challenges to voters' eligibility.
- Direct confrontation of voters.
- Blocking polling-place entrances.
- Following and photographing voters, recording license plate numbers, and visiting voters' homes.
- Brandishing weapons in front of voters.
- Dissemination of misleading information that purposely misstates the time, location, manner, and date of an election.³⁶

³⁵ S.B. 264, N.M. Leg., Reg. Sess. (N.M. 2026), <https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=264&year=26>. At least six states have considered similar legislation over the last year.

<https://apnews.com/article/immigration-officers-voting-midterms-democrats-9782b37033fec6a433b6d501d2989871>.

³⁶ Mathew Simkovits et al. *Defining Voter Intimidation: Six Battleground States*, 2-3 (2020), https://web.mit.edu/healthyelections/www/sites/default/files/2020-10/Voter_Intimidation.pdf. (explaining that, although real-world “instances of voter intimidation have rarely made it into the courts,” state laws prohibiting voter intimidation are framed in “broad” terms and may be construed to “encompass a broad range of acts”); ICAP Fact Sheet, *supra* n.30.

In short, states have adopted a broad range of laws prohibiting voter intimidation, including intimidation by federal law-enforcement agents, and those laws supplement the protections afforded by federal statutes.

State Constitutional Rights Protecting Voters. Numerous state constitutions protect the right to vote, including (with somewhat varying language) the right to free and fair elections.³⁷ Twenty-eight state constitutions also explicitly recognize a common law privilege from civil arrest going to and from voting.³⁸ These protections could apply to protect voters from intimidation by federal law enforcement.

Federal Constitutional Rights

The Constitution is our country's ultimate law and prevails over all other statutory authorities.³⁹

The right to vote is "a fundamental political right, because [it is] preservative of all rights,"⁴⁰ and "[o]ther rights, even the most basic, are illusory if the right to vote is undermined."⁴¹ Numerous provisions of the U.S. Constitution directly protect specific aspects of the right to vote, including the First, Fifth, Tenth, Fourteenth, Fifteenth, Seventeenth, Nineteenth, Twenty-fourth, and Twenty-sixth amendments.

Other provisions of the Constitution, while not directly establishing or protecting a right to vote, limit the extent to which federal law enforcement agents may interfere with free and fair elections. For example:

- The Constitution's structural provisions independently constrain federal interference in election administration. Article I, Section 4 provides that the "Times, Places and Manner" of congressional elections "shall be prescribed in each State by the Legislature thereof," and the Tenth Amendment reserves to the states all powers not delegated to the federal government—including the general police power and the administration of elections. Because the Constitution assigns default authority over elections to the states, federal law enforcement may act with respect to an election only pursuant to a clear and specific grant of statutory authority by Congress. Deployments of federal law enforcement that displace or disrupt state control over voting, ballot custody, or the canvass would therefore raise serious structural constitutional concerns, independent of any violation of individual rights.

³⁷ E.g., Pa. Const. art. I, § 5 ("Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."); see also <https://www.ncsl.org/redistricting-and-census/free-and-equal-election-clauses-in-state-constitutions>; <https://democracyprinciple.law.wisc.edu/>.

³⁸ E.g., Ariz. Const. art. VII, § 4 ("Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at any election, and in going thereto and returning therefrom."); see also Joshua A. Douglas, *The Power of the Electorate Under State Constitutions*, 76 Fla. L. Rev. 1679, 1698 (2024).

³⁹ See U.S. Const., art. VI, cl. 2 (providing that the "Constitution ... shall be the supreme Law of the Land").

⁴⁰ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

⁴¹ *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964),

- The First Amendment protects the rights of peaceful assembly, free speech, and protest—including expressive activities that take place during election season. Law enforcement agents who are attempting to keep order at a protest must ensure security while not impeding these rights or deterring anyone from protesting because of the threat of arrest or injury, both of which are grounds for claims that constitutional rights have been violated.
- The Fourth Amendment’s prohibition on unreasonable searches and seizures has been interpreted by courts to apply to dispersing crowds with excessive force and making warrantless arrests.⁴² The use of weaponry or force to dominate a space or the types of arrests federal agents make can implicate Fourth Amendment protections.
- The Constitution’s provisions guaranteeing equal protection of the laws, including those embodied in the Fifth and Fourteenth Amendments, have “been held to forbid” certain governmental actions “that restrict the right to vote.”⁴³ Similarly, the Due Process Clauses of the Fifth and Fourteenth Amendments prohibit governmental conduct that seriously undermines the fundamental fairness of the electoral process, as well as deprivations of the right to vote—including interference with ballots already cast—without adequate notice and an opportunity to be heard.⁴⁴

These federal constitutional rights are buttressed by various enforcement mechanisms—including enforcement actions that may be brought by the U.S. Department of Justice. Importantly, however, plaintiffs other than federal governmental authorities may also have standing to bring suit in federal court to enjoin ongoing violations of federal constitutional rights.⁴⁵

CONCLUSION

Federal law bars the deployment of armed federal law enforcement agents in the vicinity of election locations, and a broad range of federal and state laws impose significant constraints on the extent to which such agents may in any way interfere with voters or the state and local administration of elections. In addition, the well-established practice of state control over law enforcement action within the state is based on the constitutional principle of state sovereignty, longstanding legal precedent concerning the

⁴² See *Graham v. Connor*, 490 U.S. 386, 395 (1989) (holding that “all claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard,” and explaining that “the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct”).

⁴³ *Katzenbach v. Morgan*, 384 U.S. 641, 647 (1966).

⁴⁴ See *Griffin v. Burns*, 570 F.2d 1065, 1077 (1st Cir. 1978) (due process is violated “where the entire election process...fails on its face to afford fundamental fairness.”); *Duncan v. Poythress*, 657 F.2d 691, 700 (5th Cir. 1981); *Griffin v. N.C. State Bd. of Elections*, 781 F. Supp. 3d 411, 435, 446 n.24 (E.D.N.C. 2025) (recognizing substantive and procedural due process protections against interference with cast ballots); cf. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

⁴⁵ See *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 326–27 (2015); *Ex parte Young*, 209 U.S. 123, 150–51 (1908). In addition, many state lawmakers have recently introduced proposed legislation to adopt the Universal Constitutional Remedies Act, “a state law that would grant citizens the right to sue federal, state or local officials in state court for violations of the federal Constitution.” See David French, *A Law That Might Just Save the Midterms*, *N.Y. Times* (Feb. 5, 2026). Such proposed laws, although they have not yet been tested, could offer another source of potential judicial remedies.

police power, and sound principles and long-established norms of deferring to authorities with greater knowledge of applicable local laws, practices, and circumstances. Those laws and norms effectuate important practical interests: Federal law enforcement agents lack expertise in running elections and addressing any related civil unrest, which are core state functions and implicate particularly difficult and sensitive policing missions.

In sum, interference by federal law enforcement officers in areas typically left to state and local law enforcement is fraught with difficulty and potential pitfalls, both legal and practical, for all involved. Accordingly, federal law-enforcement authorities and state and local officials should carefully assess whether, based on the facts and circumstances of any particular case, the actual or proposed deployment of law enforcement agents to an election location is barred by federal or state law or would otherwise be inappropriate under long-prevailing norms.

About the National Task Force on Election Crises

The National Task Force on Election Crises is a diverse, cross-partisan group of more than 50 experts in election law, election administration, national security, cybersecurity, voting rights, civil rights, technology, media, public health, and emergency response. The mission of the nonpartisan National Task Force on Election Crises is to ensure free and fair elections by recommending responses to a range of potential election crises. The Task Force does not advocate for any electoral outcome except an election that is free and fair. The recommendations of the Task Force are the result of thoughtful consideration and input from all members and therefore do not fully reflect any individual Task Force member's point of view—they are collective recommendations for action. More information about the Task Force, including its members, is available at <https://www.electiontaskforce.org/>.