

Authorities Governing the Deployment of Troops during the Election and Post-Election Season

Executive Summary

Elections serve a unique and essential role in our democracy and their importance is reflected in the laws that govern activity at or near the polls. Unless deployment of the military is necessary to repel armed enemies of the United States, federal officials who send troops or armed personnel to voting locations are committing a federal crime. Congress and the states have also enacted a wide range of laws that prohibit troops from engaging in specific forms of election interference—such as voter intimidation or coercion.

In addition to those election-specific protections, federal and state laws limit the circumstances in which military forces may be deployed more generally. Under longstanding federal law, for example, the military is broadly prohibited from performing domestic law enforcement functions unless expressly authorized by the Constitution or a federal statute. The circumstances in which such express authorization may be invoked, as the Supreme Court recently reaffirmed, are “exceptional.”

This memo provides an overview of those principles and responds to some of the most commonly asked questions about the laws and authorities governing the possible use of federal or state military forces in the United States during and after elections. Section I covers deployment under federal command, Section II addresses deployment under state gubernatorial control, and Section III summarizes relevant election laws that apply to service member activities during election season.

FEDERAL COMMAND: FEDERAL MILITARY & NATIONAL GUARD UNDER TITLE 10

Command and Control

The chain of command for federal forces follows the National Command Authority, which runs from the President to the Secretary of Defense to United States Northern Command (NORTHCOM) and/or other relevant United States Department of Defense combatant commands.¹

¹ See 10 U.S.C. § 161; Clare Ribando Seelke and Robert Switzer, Congressional Research Service (CRS), IF13044, *Defense Primer: U.S. Northern Command (USNORTHCOM)* (2025). <https://www.congress.gov/crs-product/IF13044>

Civilian Control and Congressional Primacy

Our founders were concerned about the potential for executive misuse of a standing military, particularly its use for law enforcement purposes. The Constitution therefore ensured that the military would operate under civilian control, and that the power to create, maintain, and fund the armed forces would be vested in Congress.² In addition, the Militia Clauses of the Constitution make clear that deployment of the militia “to execute the Laws of the Union [and] suppress Insurrections and repel Invasions” must be pursuant to statutory authority.³

Posse Comitatus Act

To avoid the unauthorized use of the military for law enforcement purposes, Congress further constrained military action with the Posse Comitatus Act of 1878.⁴ The Act is considered foundational to our armed forces and reinforces that their mission is to repel hostile foreign forces, not police civilians. It prohibits the use of federal armed forces for domestic law enforcement, unless such use is expressly authorized by the Constitution or a federal statute.⁵ There are no provisions in the Constitution or federal law that expressly authorize federal armed forces to engage in domestic law enforcement in the context of elections – and indeed there are federal statutes that expressly ban or constrain such a prospect. As construed by the Supreme Court, circumstances “where the military could legally execute the laws” are “exceptional.”⁶

Courts have construed the Posse Comitatus Act to prohibit federal forces from subjecting civilians to “the exercise of military power [which] is regulatory, proscriptive, or compulsory in nature.”⁷ However, they have permitted some instances of indirect assistance to law enforcement, such as providing equipment and training, conducting reconnaissance, or sharing intelligence.

Some courts have also developed a limited “military purpose” exception for actions that have a primarily military purpose, even if the actions have an incidental law enforcement benefit.⁸ Cases upholding this exception to the Posse Comitatus Act have almost always involved (1) activities related to maintaining order, security, and discipline on or near a military base (e.g., military police detaining a civilian drunk driver who drives onto a military installation) or (2) investigations into military personnel’s off-base conduct that impacts good order and discipline (e.g., military personnel assisting with the investigation of a servicemember’s off-base involvement in illegal drug activity).⁹ The scope of this doctrine is unclear but it is likely narrow.

The Posse Comitatus Act applies to the National Guard when the Guard is federalized, i.e., when it is called up by the federal government for a federal mission, removed from the control of state governors, and placed under the National Command Authority. The provisions of federal law governing national defense

² See U.S. Const., art. I, § 8, cl.13-15.

³ *Id.* at cl. 16-17 (authorizing Congress “[t]o provide for calling forth the Militia,” for “organizing, arming, and disciplining, the Militia,” and for “governing such Part of them as may be employed in the Service of the United States”).

⁴ 18 U.S.C. § 1385.

⁵ *Trump v. Illinois*, 146 S. Ct. 432, 434 (2025) (“Under the Posse Comitatus Act, the military is prohibited from ‘execut[ing] the laws’ ‘except in cases and under circumstances expressly authorized by the Constitution or Act of Congress.’”) (quoting 18 U.S.C. § 1385).

⁶ *Id.*

⁷ *United States v. Khan*, 35 F.3d 426, 431 (9th Cir. 1994); *United States v. Yunis*, 924 F.2d 1086, 1094 (D.C. Cir. 1991).

⁸ See, e.g., *Hayes v. Hawes*, 921 F.2d 100, 103 (7th Cir. 1990) (citing cases and noting that “[a] majority of courts that have addressed the issue presented in this case have noted that where military involvement is limited and where there is an independent military purpose of preventing illicit drug transactions to support the military involvement, the coordination of military police efforts with those of civilian law enforcement officials does not violate either § 1385 or § 375”).

⁹ See *id.*

are set forth in Title 10 of the U.S. Code; when “Title 10 Status” is activated, the National Guard is considered part of the federal forces and is subject to the same federal laws as active-duty troops.¹⁰

The Posse Comitatus Act is a criminal statute; a commander, civilian officer, or service member who violates the Act can incur criminal penalties.¹¹ It also informs the permissible scope of authority for the federal executive’s use of service members in a domestic mission.¹²

Insurrection Act

The Posse Comitatus Act does not bar federal forces from engaging in law enforcement when there is an explicit authorization in the Constitution or federal law. The primary such exception is the Insurrection Act, which authorizes the President to deploy federal forces, including active-duty armed forces and federalized National Guard forces, in certain specified circumstances involving civil unrest, violence, or significant obstruction of law enforcement.¹³ The first version of the Act, adopted in 1792, enabled federal military action to suppress armed uprisings. Subsequent amendments, including changes made during and immediately after the Civil War, broadened its scope to authorize quelling rebellions against U.S. government authority and enforcing the equal protection clause of the 14th Amendment. Notably, all of the Act’s provisions were authored before the advent of professionalized police departments.¹⁴

The three operative provisions of the current Act are commonly referred to based on their section numbers in the part of the U.S. Code (Title 10) in which they are located:

- Section 251 allows the President to use troops when requested by the state to “suppress” an “insurrection” against a state government.¹⁵
- Section 252 allows deployment without the consent of the receiving governor “[w]henever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State by the ordinary course of judicial proceedings.”¹⁶
- Section 253 similarly allows the President to deploy troops without the consent of a state’s governor when “any insurrection, domestic violence, unlawful combination, or conspiracy” either (1) prevents enforcement of state or federal laws in a manner that deprives residents of that state of their federal constitutional rights, or (2) obstructs or opposes the execution of federal law or impedes “the course of justice” under such law.¹⁷

The authorities set out in the Insurrection Act do not exist in a vacuum; like all laws, they must be construed in the context of other statutes and constitutional provisions. For example, Congress has specifically barred any federal officials (civil or military) from bringing any federal troops or “armed men” to a place where an election is held for any reason other than “repell[ing] armed enemies of the United States.”¹⁸ Under ordinary principles of statutory interpretation, those specific and later-enacted protections

¹⁰ Jennifer K. Elsea, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law*, CRS, R42659 at 61 & n.416 (Updated Nov. 6, 2018).

¹¹ See 18 U.S.C. § 1385.

¹² See, e.g., *Trump v. Illinois*, 146 S. Ct. 432, 434 (2025); *Newsom v. Trump*, 797 F. Supp. 3d 1092, 1127-30 (N.D. Cal. 2025).

¹³ See 10 U.S.C. §§ 251-253.

¹⁴ See generally Elsea, *supra* note 10, at 7-9.

¹⁵ 10 U.S.C. § 251.

¹⁶ 10 U.S.C. § 252.

¹⁷ 10 U.S.C. § 253.

¹⁸ 18 U.S.C. § 592; see *infra* (discussing federal laws specifically prohibiting various forms of election interference).

for election sites would take precedence over general authorities set out in earlier-enacted laws like the Insurrection Act if there were tensions or conflicts between them.¹⁹

The Insurrection Act has not been invoked since 1992, when California's governor requested federal assistance with the L.A. riots after the acquittal of officers charged with the beating of Rodney King. It has almost always been invoked at the request of a state, except during the Civil Rights era, when presidents Eisenhower and Kennedy invoked it to enforce desegregation orders. It was also used during the late 19th and early 20th century "gilded age" to break strikes and interfere in labor conflicts.²⁰ Because of the Act's potential for misuse, the military's longstanding understanding of the Act, as expressed in former Defense Secretary Mark Esper's 2020 testimony to Congress, was that it "should only be used as a matter of last resort, and only in the most urgent and dire of situations."²¹ Similarly, the Department of Justice opined in 1964 and 1975 that the law is "limited ... by the Constitution and by tradition" and that the law should only be used as a "last resort" in certain specified circumstances.²² More recently, the federal government has suggested there is an inherent constitutional authority to use troops to protect federal property and functions; this untested view is discussed below.

Federalization of the National Guard Under 10 U.S.C. § 12406

National Guard units operate primarily as state entities under state control, but in some instances can be deployed by the federal government and subject to federal command. Recent statements and actions raise important questions about potential federal deployment of the National Guard proximate to elections. In January 2026, for example, President Trump told reporters that "he regretted not ordering the National Guard to seize voting machines in swing states after his loss in the 2020 election."²³ In 2020, some of his advisers reportedly "wanted the president to use the military or federal law enforcement officers to seize Dominion machines in several states where he believed there had been fraud in order to conduct a recount of the vote."²⁴

Such concerns come amid recent efforts to deploy the National Guard to communities in federal status over the objections of state and local officials, without invocation of the Insurrection Act. Between June and October 2025, President Trump used a little-known statute, 10 U.S.C. § 12406, to federalize National Guard forces and deploy them in Los Angeles, Portland (Oregon), and Chicago. The deployments in L.A., Portland, and Chicago were blocked by the district courts and, in the Chicago case, a federal appellate court; and the administration decided to drop its efforts to deploy National Guard troops in all three areas after the Supreme Court denied its stay application in the Chicago case. As discussed below, those recent cases provide guidance on a number of important issues pertaining to the nature and scope of the

¹⁹ See, e.g., *Bloate v. United States*, 559 U.S. 196, 207 (2010) (explaining that "[a] specific provision" of statutory law "controls" over provisions "of more general application"); *Branch v. Smith*, 538 U.S. 254, 281 (2003) (plurality opinion of Scalia, J.) ("the most rudimentary rule of statutory construction" is "that courts do not interpret statutes in isolation, but in the context of the corpus juris of which they are a part, including later-enacted statutes").

²⁰ See, e.g., Elsea, *supra* note 10, at 34-43.

²¹ David Welna, *Pentagon Chief Rejects Trump's Threat To Use Military To Quell Unrest*, NPR (June 3, 2020), available at <https://www.npr.org/2020/06/03/868929288/pentagon-chief-rejects-trumps-threat-to-use-military-to- quell-unrest>.

²² See Laura A. Dickinson, *How the Insurrection Act (Properly Understood) Limits Domestic Deployments of the U.S. Military*, Lawfare (Sept. 12, 2024), available at [https://www.lawfaremedia.org/article/how-the-insurrection-act-\(properly-understood\)-limits-domestic-deployments-of-the-u.s.-military#:~:text=As%20a%201964%20Department%20of,found%20in%20the%201964%20memo](https://www.lawfaremedia.org/article/how-the-insurrection-act-(properly-understood)-limits-domestic-deployments-of-the-u.s.-military#:~:text=As%20a%201964%20Department%20of,found%20in%20the%201964%20memo) (quoting DOJ memos from 1964 and 1975).

²³ See Alan Feuer and Ashley Ahn, *Trump Regrets Not Seizing Voting Machines After 2020 Election*, The New York Times (Jan. 11, 2026), available at <https://www.nytimes.com/2026/01/11/us/trump-voting-machines-2020-election.html>.

²⁴ *Id.*

President's authority. Because those cases were not litigated to completion, however, some issues remain unresolved.

Section 12406 permits federalization in three circumstances: (1) when there is an invasion or danger of invasion by a foreign nation; (2) when there is a rebellion or danger of rebellion against U.S. government authority; or (3) when the president is "unable with the regular forces to execute the laws of the United States."²⁵

Defending its 2025 deployments in Los Angeles, Portland, and Chicago against legal challenges, the administration invoked the second and third prongs of the statute. At early stages of the Los Angeles and Portland cases, panels of the U.S. Court of Appeals for the Ninth Circuit concluded that the deployments were judicially reviewable, albeit under a deferential standard.²⁶ The Ninth Circuit panels, applying deferential review, preliminarily sided with the federal government – finding that challenges to the Los Angeles and Portland deployments were not likely to succeed because violence by some protesters "significantly impeded" the execution of immigration law.²⁷ By contrast, a panel of the U.S. Court of Appeals for the Seventh Circuit found that, even under a deferential standard of review, the evidence did not justify the Chicago deployment.²⁸ None of the courts accepted the administration's argument that isolated violence by protesters constituted a "rebellion."

The Supreme Court in *Trump v. Illinois* denied the administration's application for a stay of the Seventh Circuit's decision that effectively blocked the planned Chicago deployment. The majority concluded that the term "regular forces" likely refers not to civilian law enforcement, but to the active-duty armed forces.²⁹ Accordingly, the President may not federalize the National Guard under Section 12406 unless (1) there is legal authority to deploy active-duty armed forces, and (2) active-duty armed forces could not address the problem.³⁰ At this preliminary stage of ruling on a stay application, the majority concluded in the Chicago case that the administration failed at the first step of the analysis. The majority emphasized that the Posse Comitatus Act, described above, prohibits using military forces for domestic law enforcement unless performed under an explicit exception in law.³¹ President Trump had not invoked, and the administration was not relying on, the Insurrection Act or any other explicit statutory authority that would authorize the deployment of active-duty troops. The administration did rely on a claimed inherent constitutional authority (stemming from the "Take Care" clause) to deploy troops to protect federal property, personnel and functions; it stated that such protective activities do not constitute "executing the law" and so are not constrained by the Posse Comitatus Act. The Court majority found that deployments under 12406 are *expressly* undertaken to "execute the law," and so this claimed constitutional power cannot provide authority for such deployments.³²

The upshot of the Supreme Court's ruling is that the President likely may not invoke 10 U.S.C. § 12406, on its own, to federalize and deploy National Guard forces for the purpose of executing federal law; instead,

²⁵ 10 U.S.C. §12406.

²⁶ *Newsom v Trump*, 141 F.4th 1032, 1040 (9th Cir. 2025); *Oregon v. Trump*, 157 F.4th 1013, 1026 (9th Cir. 2025), *vac'd upon grant of rehearing en banc by Oregon v. Trump*, 165 F.3d 1158, 1160 (9th Cir. 2025), *appeal dismissed* 171 F.4th 1144 (9th Cir. 2026).

²⁷ See *Newsom*, 141 F.4th at 1052; *Oregon*, 157 F.4th at 1019.

²⁸ *Illinois v. Trump*, 155 F.4th 929, 933 (7th Cir. 2025).

²⁹ *Trump v. Illinois*, 146 S. Ct. at 434.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

"he likely must" show some distinct "statutory or constitutional authority to execute the laws with the regular military *and* must be 'unable' with those forces to perform that function."³³

Other Potential Authorities

While the Supreme Court in *Trump v. Illinois* did not reach the issue of whether there is an inherent "protective" authority to deploy troops, it is questionable that any such authority would provide the basis for involving troops in elections. The Take Care clause says that the President "shall take Care that the Laws be faithfully executed," and the President's duty to faithfully execute the laws does not give him the power to violate laws passed by Congress.³⁴ In addition, while it has been suggested that the Take Care clause impliedly allows the President, at least in some circumstances, to engage in certain forms of domestic protection in the *absence* of express statutory authority, any such power cannot *contravene* explicit statutory limits on domestic deployments.³⁵ That is particularly true if those statutory limits embody an exercise of Congress's expressly enumerated constitutional authorities, such as its powers "[t]o make Rules for the Government and Regulation of the land and naval Forces" and "[t]o provide for calling forth the Militia," for "organizing, arming, and disciplining, the Militia," and for "governing such Part of them as may be employed in Service of the United States."³⁶ Consistent with the constitutional and statutory authorities discussed above, Congress has long been understood to have the power to limit the domestic use of the military.

Judicial Review

As *Trump v. Illinois* makes clear, deployments of the military in asserted domestic emergencies are subject to judicial review, although there are unsettled questions around what can be reviewed and the standard of such review.

In reviewing President Trump's federalization of National Guard forces under 10 U.S.C. § 12406, the Supreme Court interpreted the terms of the statute and did not afford deference to the government's contrary interpretation. Consistent with that ruling and longstanding principles of statutory interpretation, courts are similarly empowered to assess the meaning of other statutes governing military deployments, including but not limited to the Insurrection Act.

Whether courts may review the president's assessment that facts on the ground create a qualifying emergency—and, if so, under what standard—is a different and more complicated question. In *Martin v. Mott*, the Supreme Court in 1827 stated that the President's determination as to whether circumstances merited the deployment of troops under an early version of the Insurrection Act (in that case, to defend against foreign attack) was "conclusive."³⁷ That statement, however, was made in the context of assessing whether "subordinate militiamen" could second guess the President's finding of need.³⁸ In a subsequent

³³ *Id.* (emphasis added).

³⁴ U.S. Const. art. II, § 3, cl. 3.

³⁵ See *Cunningham v. Neagle*, 135 U.S. 1, 67-68 (1890) (suggesting in dicta that the Take Care clause gave the President implied authority to "take measures for the protection of a judge of one of the courts of the United States," in context of a case where "there [was] positive law investing the marshals and their deputies with powers which not only justify what Marshal Neagle did in this matter, but which imposed it upon him as a duty.").

³⁶ U.S. Const., art. I, § 8, cl. 14-17.

³⁷ *Martin v. Mott*, 25 U.S. 19, 30 (1827).

³⁸ See *Illinois v. Trump*, 155 F.4th 929, 937 (7th Cir. 2025) (explaining that the Court in *Mott* "expressed incredulity at the prospect that every officer under the President's command could make his own determination whether an imminent threat of invasion existed and could refuse to obey the President's orders or be subject to civil liability if he enforced what was later deemed an invalid order") (citing 25 U.S. at 29-30).

case, *Sterling v. Constantin*, the Court reiterated that even if there were deference to an executive's (there, a state governor) determination of need to employ the military, that did not foreclose judicial review. Instead, the Court held that it "is well established" that an executive's use of the military cannot be "supported by mere executive fiat" and "the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions."³⁹ In *Illinois v. Trump*, the court of appeals declined to extend the reasoning of *Mott* to the distinct question "whether courts, not subordinate militiamen, may review" presidential finding of need, and it concluded that such presidential determinations are likely reviewable under the good-faith standard (a colorable assessment of the facts within the range of honest judgment).⁴⁰ On review, a majority of the Supreme Court did not rule on that question,⁴¹ although dissenting justices expressed the view that the district court "erred in refusing to afford any deference to the President's determination that calling up the National Guard was needed to execute federal law."⁴²

In any case, the Supreme Court has made clear that the judiciary may review whether the military's actions and orders during the course of a deployment are lawful. Thus, even statutes such as the Insurrection Act that authorize domestic deployments cannot empower troops to violate constitutional rights. And, like all other statutes, the Insurrection Act must yield if it comes into direct conflict with more specific, later-enacted federal laws—such as the federal statute that expressly prohibits using the military "in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State."⁴³ Whether a specific deployment and conduct of troops violates the Constitution or other federal laws is a question for the courts to decide.⁴⁴

STATE COMMAND: NATIONAL GUARD UNDER STATE COMMAND & TITLE 32

Command and Control

The governors of each state and three U.S. territories command 53 of the country's National Guard units when they are not in federal service. Governors generally appoint an Adjutant General (TAG) to serve as the highest military leader administering the state forces. Congress gave the President command over the District of Columbia National Guard at a time when Washington D.C. had no independent local government, and the President retains such command today. Presidents have delegated this command authority for the D.C. National Guard to the Secretary of Defense, who has in turn delegated it to the Secretary of the Army.

State Active Duty

National Guard units usually operate under state command and control; federalization for domestic use under Title 10 is rare. National Guard personnel under State Active Duty pursue state missions, are paid with state funds, and are subject to state laws. Because they are not federal military forces in this status,

³⁹ *Sterling v. Constantin*, 287 U.S. 378, 400–01 (1932).

⁴⁰ *Illinois v. Trump*, 155 F.4th at 937, 938.

⁴¹ See *Illinois v. Trump*, 146 S. Ct. at 434 ("We need not and do not address the reviewability of findings made by the President under § 12406(3) or any other statute.").

⁴² *Id.* at 439 (Alito, J., dissenting).

⁴³ 52 U.S.C. § 10102.

⁴⁴ See, e.g., *Trump v. Illinois*, 146 S. Ct. at 434 ("At this preliminary stage, the Government has failed to identify a source of authority that would allow the military to execute the laws in Illinois.").

they are not subject to the Posse Comitatus Act, and may undertake law enforcement activities within their state if authorized by state law and consistent with other federal rights.⁴⁵

There are limited cases of National Guard troops assisting election officials while in this state status. For instance, in the 2020 cycle – amid concerns about COVID and a potential lack of election workers – some were activated to support election officials with cyber security and/or to serve as poll workers out of uniform.⁴⁶

Title 32 or “Hybrid” Status

Under Title 32 or “hybrid” status, National Guard units are federally funded and work in service of federal missions, but as a legal matter they remain under state command and control and therefore are not subject to the Posse Comitatus Act. In this status, National Guard troops may pursue federal missions assigned by the President or Secretary of Defense and are subject to federal regulations. It is not unusual for states that have experienced natural disasters or other emergencies to ask the federal government for assistance by invoking Title 32 so that the National Guard units are paid for by the federal government and not out of state coffers.

Title 32 “hybrid” status was originally limited to certain counter-drug, homeland defense, and training activities, but the law was amended to authorize additional federally assigned “training or other duty” under section 502(f).⁴⁷ Governors can refuse to allow their National Guards to be used for Title 32 missions.

In June 2020, during protests that erupted in the wake of George Floyd’s death, Attorney General Barr claimed that under the section 502(f) training authority, the President could assign National Guard units to perform any duty whatsoever, including law enforcement activities in response to civil disturbances. President Trump then asked willing governors to send Guard units from their home states into the District of Columbia, despite Mayor Muriel Bowser’s objections. According to Secretary Esper’s Congressional testimony, these troops, while nominally under the command of their governors, reported to General Walker, commander of the D.C. National Guard. Yet General Walker’s chain of command runs through the Secretary of Defense to the President.

This represented a dubious and unprecedented expansion of domestic deployment authority.⁴⁸ Statutory context and legislative history make clear that the narrow intent behind Section 502(f) was to facilitate federal payment for National Guard activities authorized elsewhere in Title 32 (such as homeland defense) and certain other traditional Guard functions (such as disaster relief) – not to create an entirely

⁴⁵ Joseph Nunn, Cayleigh Soderholm, and Anna Zhuravlova, *State and Territorial Laws Governing the National Guard*, Brennan Ctr. for Justice. (June 23, 2026),

<https://www.brennancenter.org/our-work/research-reports/state-and-territorial-laws-governing-national-guard>

⁴⁶ Shortly before the 2020 elections, senior National Guard officials in multiple states announced that their members were “gearing up to activate across the country to support the Nov. 3 general election in several capacities,” with missions ranging “from assisting with cyber defense, working the polls, and standing-by in case of post-election civil unrest.” Davis Winkie, *Here’s how the National Guard is supporting the Nov. 3 election*, Military Times (Oct. 28, 2020),

<https://www.militarytimes.com/news/election-2020/2020/10/28/heres-how-the-national-guard-is-supporting-the-nov-3-election/>.

⁴⁷ 32 U.S.C. § 502(f)(1). *Section 502(f)* is part of a law addressing “Required Drills and Field Exercises.” It states that National Guard members may “be ordered to perform training or other duty,” *id.*, which includes “[s]upport of operations or missions undertaken by the member’s unit at the request of the President or Secretary of Defense.” *id.* § 502(f)(2)(A)

⁴⁸ John Denn, then a staff attorney at the U.S. Army Forces Command and one of a team working on these issues, explained to *The Washington Post* that the provision for performing federal “operations or missions” was added to the law in 2006 “to deal with counterterrorism,” and that “[n]obody writing this new provision likely viewed it as ever becoming some sort of work around for the Insurrection Act.”

open-ended deployment authority that could be used to quell civil unrest.⁴⁹ In addition, if National Guard units report to a federal chain of command, they must be deployed under Title 10 status and therefore cannot be used for law enforcement, unless the Insurrection Act or another statutory exception has been invoked.

A similar scenario unfolded in August 2025, when President Trump deployed a thousand D.C. National Guard troops and invited several governors to send more than a thousand of their own National Guard forces into Washington, D.C. for the stated purpose of addressing street crime. The National Guard presence in DC grew even larger in subsequent months, with more than 4,000 out-of-state Guard forces in the city as of July 2026. Once again, the purpose of the deployment goes far beyond what Congress contemplated in passing section 502(f); evidence suggests the out-of-state troops are reporting through a federal chain of command; and the out-of-state troops are in D.C. over the mayor's objection. A district court preliminarily blocked the deployment,⁵⁰ but the D.C. Circuit stayed the district court's order pending appeal, which is not expected to be decided on the merits until late 2026.⁵¹

Finally, President Trump, citing section 502(f), has asked the governors of Tennessee and Louisiana to deploy their National Guard forces in Memphis and New Orleans, respectively, for crime control. The governors agreed and deployed troops. Local officials in Memphis objected and sued the governor in state court, arguing that the deployment of Guard forces for ordinary crime control and without legislative approval violated Tennessee law, including the state's Constitution. The trial court agreed and enjoined the deployment; but that the operation was allowed to go forward during an appeal, which later found the plaintiffs lacked standing to sue.⁵²

In short, while certain discrete issues that are the subject of pending litigation have not yet been definitively resolved, the better view of the law, consistent with longstanding practice, is that hybrid status and section 502(f) do not generally authorize the President to utilize the National Guard in ways that evade the procedural and substantive requirements applicable to federalized deployments under Title 10. At any rate, and as discussed below, federal law imposes strict limits on domestic deployments that would interfere with elections.

SERVICEMEMBER ACTIVITIES DURING ELECTION SEASON

Unless the deployment is necessary to repel armed enemies of the United States, federal officials who deploy armed troops to election polls are committing a crime. An array of federal and state laws specifically prohibit interference in an election and apply to military troops.

Federal Laws

- **18 U.S.C. § 592** prohibits any federal officials (civil or military) from bringing any federal troops (including federalized National Guard forces) or "armed men" to a place where a general or special

⁴⁹ For example, Section 502 is housed in Chapter 5 of Title 32, which is entitled "Training." And Section 502 itself is entitled "Required drills and field exercises."

⁵⁰ *District of Columbia v. Trump*, 810 F. Supp. 3d 19, 28 (D.D.C. 2025).

⁵¹ *District of Columbia v. Trump*, No. 25-5418, 2025 WL 3673674, at *2 (D.C. Cir. Dec. 17, 2025).

⁵² See Chris Hippensteel and Pooja Salhotra, *How Courts Have Ruled in Challenges to Trump's National Guard Deployments*, N.Y. Times (Dec. 11, 2025),

<https://www.nytimes.com/2025/10/10/us/federal-courts-national-guard-trump.html#:~:text=The%20judge%20found%20that%20the%20Washington> (last visited 2/25/26); *Harris v. Lee*, No. M2025-01915-COA-R9-CV, 2026 WL 1144357 (Tenn. Ct. App. Apr. 28, 2026), <https://www.tn.gov/content/dam/tn/attorneygeneral/documents/pr/2026/pr26-15-opinion.pdf>

election is held for any reason other than “repell[ing] armed enemies of the United States,” under criminal penalty for those officers or civil authorities,⁵³

- 18 U.S.C. § 593 prohibits officers or members of the federal armed forces (including federalized National Guard forces) from interfering in an election in a number of ways, including using threat or force to intimidate voters, or interfering in any manner with an election officer’s discharge of his duties, subject to imprisonment;
- 18 U.S.C. § 594 makes voter intimidation by anyone in a federal election a federal crime subject to imprisonment;
- 18 U.S.C. § 609 prohibits federal military officers from using “military authority to influence the vote of a member of the Armed Forces or to require a member of the Armed Forces to march to a polling place”
- 42 U.S.C. § 1985(3) clauses 3 and 4 (originally part of the Ku Klux Klan Act) prohibit government and private actors from engaging in conspiracies to intimidate or injure voters in a federal election;
- 52 U.S.C. § 10102 specifies that federal military officers may not “prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.”
- Section 131(b) of the Civil Rights Act of 1957 and Section 11(b) of the Voting Rights Act prohibit voter intimidation by all public or private actors.

While federal criminal laws are typically enforced by the federal government, they also provide clear contours showing what Congress has and has not authorized the federal executive to do with control over military forces. There are means to challenge improper federal military interference in elections. A violation of federal civil laws prohibiting election interference may give rise to a private lawsuit to enjoin the violation.⁵⁴ Additionally, 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.

State Laws

States have enacted an array of additional laws barring election interference.⁵⁵ For instance, Florida’s Voter Protection Act makes it illegal under criminal penalty for any person to “directly or indirectly use or threaten to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to[] vote or refrain from voting,” as well as various other voting-related activities.⁵⁶ Delaware

⁵³ DoD policy extends the prohibitions from 18 U.S.C. §§ 592–94 to guard personnel in Title 32 or hybrid status: Dep’t of Def. Directive 3025.18 states “[i]t is DoD policy that . . . DoD personnel and National Guard personnel in Title 32 status will not conduct operations at polling places and must strictly refrain from activities similar to those prohibited by sections 592–594” of Title 18, <https://www.esd.whs.mil/portals/54/documents/dd/issuances/dodd/302518p.pdf>.

⁵⁴ See *Armstrong v. Exceptional Child Ctr.*, 575 U.S. 320, 326–27 (2015); *Ex parte Young*, 209 U.S. 123 (1908).

⁵⁵ See Georgetown L., Inst. for Constitutional Advocacy and Protection, *Fact Sheet: Protecting Against Voter Intimidation* (Aug. 2024), <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2024/08/Voter-Intimidation-Fact-Sheet.pdf> (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”); Mathew Simkovits et al., *Defining Voter Intimidation: Six Battleground States* 2–3, Stanford-MIT Healthy Elections Project (Oct. 8, 2020), https://web.mit.edu/healthyelections/www/sites/default/files/2020-10/Voter_Intimidation.pdf.

⁵⁶ Fla. Stat. § 104.0615.

criminalizes bringing armed soldiers to voting places and aiding/abetting military interference with elections.⁵⁷ Some state constitutions also prohibit military interference in elections.⁵⁸

In keeping with the Supremacy Clause of the U.S. Constitution,⁵⁹ state laws must yield if in direct conflict with federal laws. However, as noted above, if a federal official is acting in violation of federal law—rather than pursuant to it—the Supremacy Clause is not triggered.⁶⁰

CONCLUSION

Federal law broadly prohibits the deployment of troops or armed personnel to election locations, and a wide range of federal and state laws provide additional election-specific protections and limit the circumstances in which military forces may be deployed for domestic purposes. Federal, state, and local officials should carefully review such authorities in considering requests or suggestions regarding the deployment of military forces during the election and post-election season.

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/>.

⁵⁷ Del. Code Ann. tit. 15, §§ 5301-02 (2026)

⁵⁸ See, e.g., Ariz. Const. art. 2, § 21 ("All 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"; 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."))

⁵⁹ U.S. Const. art. VI, cl. 2.

⁶⁰ See *Martin v. United States*, 605 U.S. 395, 409 (2025) ("The Supremacy Clause supplies a rule of decision when federal and state laws conflict.").