NCSL Standing Committee on Law, Criminal Justice, and Public Safety

Policy Directives and Resolutions

2016 NCSL Legislative Summit
Chicago, Illinois

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NCSL acknowledges that a national debate on election reform continues and that any Congressionally mandated changes in election processes necessarily will impact state and local elections. State law controls the processes and the administration of matters pertaining to federal, state, and local elections. It logically follows that NCSL, as the national voice of the various state legislatures, should be at the center of this national debate. NCSL reaffirms its commitment to the Voting Rights Act of 1965 and all other civil rights legislation that ensures a person’s right to vote.

NCSL maintains that it must be an equal partner with Congress or any federal agency or commission charged with regulating or establishing elections guidelines because this effort must be a partnership among federal, state, and local officials. In this respect, NCSL believes that federal legislation that affects the states should be drafted with substantial input from those who would be responsible for its implementation. Federal legislation impacting state election policies or procedures should not curtail state innovation and NCSL believes that federal legislation should include reasonable timeframes for implementing state and local programs.

NCSL acknowledges that public confidence in the election process is important to state legislators. Therefore, NCSL opposes any federally mandated elections standards that are not accompanied by sufficient federal funding and that are preemptive of sound, constitutional state policies and procedures. NCSL believes that such funding should be based on broad principles, and supports a federal grant formula which awards money to states for broad-based purposes dealing with election reform, and opposes any funding mechanism, which seeks to mandate specific requirements on the states.

NCSL supports federal formula grant funding to states for the following broad purposes:

- Improving election technology, systems and ballot design;
Facilitating voter registration, verification and maintenance of voter rolls;

Improving the accuracy and security of election procedures and vote counts;

Educating citizens on representative democracy and election processes and systems;

Providing greater access to voter registration and polling places especially for rural and disabled voters; and

Providing training and education opportunities for elections personnel.

NCSL recognizes the functions of the Election Assistance Commission (EAC) are important to the development of election equipment standards, dissemination of election-related statistics and information, and states benefit from the EAC’s skilled expertise in these areas.

Continuity of Congress

NCSL acknowledges the possibility that a catastrophic national emergency may render the U.S. House of Representatives unable to conduct the business of the country due to the death or permanent incapacitation of more than 100 of its members. In order to keep the national government going during such a crisis, from time to time, Congress has examined various means of filling vacancies in the U.S. House of Representatives by drafting legislation that proposes a uniform special elections process containing federal mandates for the timing of such elections. Special elections have traditionally been a state responsibility that does not merit federal intervention.

Given that all states have a special elections process in place that is procedurally best for that state, NCSL would support federal legislation that would allow for state flexibility with respect to the timing of and other rules governing special elections, and would oppose federal legislation that sought to preempt state laws governing special elections.

Campaign Finance Reform

All candidates for state office are subject to state campaign finance and public disclosure laws. NCSL supports the ability of states to consider and pass legislation
governing campaign finance at the state level. NCSL opposes efforts to federalize these
state and local campaign finance regulations, and opposes all efforts to bring state
legislators under the regulations of the Federal Election Commission (FEC). NCSL
takes no position on campaign finance reform for federal candidates. NCSL supports
the Supreme Court’s holding in *Buckley v. Valeo* that any limit on spending money to
publish ads or brochures would necessarily bar speech, but that limitations on the
amount of an individual’s cash contribution for purposes of the express advocacy for the
election or defeat of a candidate are constitutional.

NCSL affirms its opposition to federal campaign finance reform efforts that preempt
state laws regulating candidates running for state office.
Whereas, the Virgin Islands is an unincorporated territory of the United States having been acquired by the United States from the kingdom of Denmark in 1917; and

Whereas, as a territory, the Virgin Islands is subject to the plenary powers granted to the Congress under the territorial clause of Article IV, Section 3, of the United States Constitution, and

Whereas, following such acquisition, the citizenship of Virgin Islanders was addressed by the Congress in Title 8 United States Code, Section 1406; and

Whereas, the Virgin Islands, like the other 50 continental states, participate in the democratic and republican nomination process for the Office of President of the United States; and

Whereas, the Democratic and Republican National Conventions are the Territory’s only opportunity to participate in the election of the President of the United States; and

Whereas, Virgin Islanders who reside in the continental United States have the right to vote for the President of the United States; and

Whereas, Virgin Islands residents, who are United States citizens, however, are denied voting rights and access to presidential election; and

Whereas, this denial began with the controversial and divided Supreme Court decisions known as the Insular Cases, which were decided shortly after the United States acquired overseas territories; and

Whereas, the Insular Cases established a doctrine of “separate and unequal” constitutional treatment for overseas U.S. territories; and
Whereas, the Insular Cases stand on the premise that the United States Constitution applies “only in part in unincorporated Territories” but “in full in incorporated Territories destined for statehood”; and

Whereas, the Constitution of the United States specifies that the President and the Vice President shall be elected by electors chosen by the States; and

Whereas, the Virgin Islands is not a part of any state; but, like states, are able to elect their own governor and legislature; and

Whereas, the Virgin Islands are approaching 100 years as a territory of the United States and Virgin Islanders almost as many years as citizens of the United States, though never given the opportunity to participate in the election of the President of the United States; and

Whereas, the Virgin Islands is effectively disenfranchised at the national level due to its inability to participate in the election of the President; and

Whereas, though unable to participate in the vote for President, the Virgin Islands must abide by and is subject to all national policies, rules, regulations and laws enacted by the Government of the United States; and

Whereas, young males who are Virgin Islanders, must register for the selective service and can be drafted by the same Commander in Chief that they cannot vote for; and

Whereas, a number of scholars have concluded that the United States national electoral process is not fully democratic due to U. S. Government disenfranchisement of United States citizens residing in United States territories;

THEREFORE, BE IT RESOLVED, that the National Conference of State Legislators respectfully urges the Congress of the United States to review the United States Constitution as it relates to the disenfranchisement of Virgin Islands residents and the inability to participate in the election of a President and implement the necessary revisions to grant Virgin Islands residents the right to vote in the United States presidential elections;
BE IT FINALLY RESOLVED, that a copy of this resolution shall be forwarded to the
President of the United States of America, Honorable Barack Hussein Obama;
Honorable Paul Ryan, Speaker of the House of Representatives, each member of the
United States Congress and the United States Virgin Islands Delegate to Congress,
Honorable Stacey Plaskett.

Expires
There is a general consensus among federal, state, and local public policy leaders, and emergency management experts that “all disaster response is local,” that any response to a terrorist attack or natural disaster begins at the local level where the event occurs, and involves state and federal response as local, then state, resources are overwhelmed by the magnitude of the event. The National Conference of State Legislatures, urges Congress and the Administration to partner with NCSL and other organizations representing state and local government to prepare our nation for national disasters and threats to homeland security. NCSL urges Congress and the administration to:

- Continue to channel funding directly to the states to ensure compliance with statewide strategies for maximum coordination and require that such funds be subject to the state legislative oversight or the state appropriation process;

- Recognize the roles of state legislatures in the development of future guidance frameworks and Congressional legislation;

- Provide state flexibility among grant program categories for spending-planning, training, equipment, and exercises allowing transfer of funds across categories;

- Continue to provide a minimum grant in states that appear to have low risk, vulnerability, and criticality factors, in order to sustain the basic response infrastructure for public safety and public health emergencies;

- Consult with NCSL and state legislatures regarding each state’s cost for the development and implementation of performance standards and other accountability measurements related to grant programs; and
Ensure that funding for any new grant programs complements, and DOES NOT replace, existing funding sources for other key programs such as first responder programs.

Recognize the strain on personnel, equipment, and other resources that activation of the National Guard for federal services poses for state and local ability to secure the homeland from terrorism and natural disasters; and to work with state legislatures to develop programs to ensure adequate resources to maintain domestic security. NCSL strongly opposes any effort to preempt domestic control of the National Guard from state authority.

Develop a centralized grant application process for homeland security and emergency preparedness activities; utilize an all-hazards approach including terrorism, natural and man-made disasters, and public health emergencies; and avoid adding new compliance requirements to existing grant programs.

Fund the Emergency Management Planning Grants (EMPG) at a level that meets current needs.

Provide funding to support the Emergency Management Assistance Compact (EMAC).

The Department of Homeland Security (DHS) should work closely with NCSL, individual state legislatures, state emergency management and public safety leaders to meet the goal of fully funded and fully operating Fusion Centers that blend relevant law enforcement and intelligence information analysis and coordinate security measures to reduce threats in their communities and to continue to improve the quality and quantity of analytical intelligence products that are provided to state and local governments.

**Cybersecurity**

NCSL recognizes that the nation’s information infrastructure is rapidly becoming one of the most serious threats our country has ever encountered. In order to combat this increasing threat, it is essential that all levels of government work together to develop proper solutions. NCSL urges Congress and the Administration to:
• View state and local governments as critical stakeholders;

• Avoid unfunded federal mandates and preemptions on state and local partners;

• Collaborate with state and local governments to invest in cybersecurity awareness; and

• Maintain the civil liberties and privacy of all citizens while sustaining the safety and stability of the internet and electronic communications.

**Border Security and Enforcement**

Securing all of America’s borders, ports, and airports is essential to preserving our national security and maintaining the safety of all Americans. NCSL urges the federal government to fulfill its responsibilities with regard to border security and encourages a renewed state-federal cooperation in countering human trafficking, weapons and drug smuggling. NCSL calls on the federal government to increase its enforcement of these crimes and encourages countries of origin to provide reentry facilities, transition services and transportation for returned inmates.

NCSL supports full, federal funding for increases in Department of Homeland Security border enforcement personnel where they are most needed and necessary improvements in facilities, technology and infrastructure.

**Presidential Disaster Declaration**

Upon the issuance of a Presidential Disaster Declaration (PDD), the Federal Emergency Management Agency (FEMA) calculates federal aid to states based on a per capita equation tied to state or local population pursuant to 44 C.F.R. Section 206.4. FEMA uses this per capita figure as one of several contributing factors when deciding whether to grant public assistance to a state.

The National Conference of State Legislatures calls upon the Administration to consult with states and requests transparency in their review and reform standards, policies, and procedures. When determining aid per capita for states, individual designations of
localities should be recognized and respected within states NCSL also requests that FEMA exercises the greatest level of flexibility possible in granting public assistance disaster relief funds that respect the ubiquities of different states.
COMMITTEE: LAW, CRIMINAL JUSTICE AND PUBLIC SAFETY

POLICY: IN SUPPORT OF THE FEDERAL GOVERNMENT
ESTABLISHING A FORMAL RECOGNITION
COMMITTEE OR COMMISSION TO COMMEMORATE
AND CELEBRATE THE 100TH ANNIVERSARY, IN
2020, OF THE PASSAGE OF THE 19TH AMENDMENT
AND WOMEN’S VOTING RIGHTS.

TYPE: MEMORIAL RESOLUTION

WHEREAS, 2020 marks the 100th anniversary of most United States women achieving
the right to vote through the 19th amendment to the Constitution; and,

WHEREAS, women worked tirelessly for this equal right since the founding of the
country, in some cases even sacrificing their lives and health; and,

WHEREAS, women from all over the United States, right in their own communities,
were instrumental in achieving women’s suffrage through action and advocacy; and,

WHEREAS, every state had outstanding women who were important in achieving final
victory; and,

WHEREAS, in the past 100 years, Native American, African American, Asian and other
minority women finally achieved full voting rights; and,

WHEREAS, women voters have been a major influence on United States politics and
life, exercising their voting rights to achieve justice, equal rights, and good government;
and,

WHEREAS, elected women now comprise 20% or more of elective offices* on most
levels of government throughout the country; and,

WHEREAS, since 1980, women have consistently outnumbered men among registered
voters*; and,
WHEREAS, in recent years, the number of women turning out for elections has equaled or exceeded voter turnout rates for men*; and,

WHEREAS, the number of female voters has exceeded the number of male voters in every presidential election since 1964*; and,

WHEREAS, the ratification of the 19th amendment was one of the turning points in American history and should be recognized as one of the great human rights victories of our country and world; and,

WHEREAS, the 1920 victory was and continues to be a beacon to other countries around the world showing that United States values women, their rights, and their contributions.

NOW, THEREFORE, BE IT RESOLVED, that the National Conference of State Legislatures (NCSL) urges that the federal government establish a formal recognition committee or commission to commemorate and celebrate the 19th amendment and women’s voting rights. NCSL believes that this committee or commission should have, among its various responsibilities, the duty to recognize this great achievement by identifying and appropriately honoring state suffragists and the places and events within the states where women organized for change and equal rights.

*Statistics (2016) from Center for American Women and Politics, Eagleton Institute of Politics, Rutgers University
The National Conference of State Legislatures (NCSL) recognizes the challenges facing our country in matters related to immigration. Federal immigration policy must strike a balance among core principles of our democracy: preserving the safety and security of our nation, encouraging the economic strength of our states and communities, and recognizing our history as a nation of immigrants. The impact of the federal government’s immigration policy decisions are directly felt by the states who not only implement programs required by federal law but also encourage the integration of immigrants into the economic, social and civic life of their adopted communities. States often bear the costs of immigration, especially in our education, health and law enforcement systems, with limited federal reimbursement.

Immigration Reform
State legislators call on Congress and the Administration to pursue immigration reform that enhances our border security and addresses the imbalance in the state-federal relationship. Immigration reform and implementation requires true collaboration between state and federal leaders. Our nation’s immigration laws must not contain unfunded mandates nor preempt areas of existing state authority. Federal immigration reform will not be comprehensive unless it addresses the fiscal impact of immigration on the states.

SECURITY AND LAW ENFORCEMENT

Border Security & Enforcement
Securing all of America’s borders, ports, and airports is essential to preserving our national security and maintaining the safety of all Americans. NCSL urges the federal government to fulfill its responsibilities with regard to border security and encourages a
renewed state-federal cooperation in countering human trafficking, weapons and drug smuggling. NCSL urges the federal government to increase its enforcement of these crimes.

NCSL supports full, federal funding for increases in Department of Homeland Security border enforcement personnel where they are most needed and necessary improvements in facilities, technology and infrastructure.

**The Role of State and Local Law Enforcement**

NCSL is strongly opposed to any efforts to shift enforcement of civil immigration law to state and local law enforcement agencies. State legislators believe that enforcement of federal civil immigration law is a federal responsibility and that state involvement in immigration enforcement activities should only be a state option.

NCSL opposes efforts to criminalize violations of civil federal immigration law in an effort to shift federal enforcement responsibilities to state and local law officers. State and local government law enforcement and public safety personnel must already incarcerate, detain and transport illegal immigrants who have committed crimes, without adequate federal funding. NCSL strongly supports full reimbursement to states for the State Criminal Alien Assistance Program (SCAAP). The current SCAAP program only provides 17% reimbursement of current costs, according to a recent General Accountability Office study. NCSL also opposes any effort to coerce state participation in enforcement of federal immigration law by withholding SCAAP program funds.

**EMPLOYMENT VERIFICATION**

**Worksite Enforcement**

NCSL believes that employment verification is a critical component of enforcement requiring federal reforms. NCSL supports the rights of states to provide incentives and sanctions to encourage compliance. The U.S. Supreme Court case in Chamber of Commerce v. Whiting agreed with this view. NCSL opposes efforts to treat state
governments differently from the private sector in meeting federal employment verification requirements.

**E-Verify**

NCSL supports E-Verify in its current voluntary form. NCSL urges Congress and the Administration to improve the program to handle the interfaces between the Social Security Administration and Department of Homeland Security databases and to eliminate discrepancies and backlogs. NCSL opposes any efforts to mandate E-Verify until the system is adequately funded and performs to the benefit of all parties without imposing unfunded liabilities on the states.

Enforcement efforts should be focused on bad actors – employers and employees alike. NCSL is deeply concerned about identity theft and counterfeit documents. NCSL encourages the DHS to test approaches that confirm the identity of the individual as part of the verification process. NCSL urges the federal government to tighten its enforcement surrounding counterfeit documents. DHS needs to improve its education and training for employers regarding worksite verification.

**SAVE (Systematic Alien Verification for Entitlement)**

NCSL strongly believes that the federal government should pay for the cost of SAVE and/or new verification requirements. Unfunded verification requirements for state programs or federal programs that states administer are a cost-shift to states and violate the Unfunded Mandates Act.

**Enforcement Activities**

NCSL believes that federal enforcement activities – at the worksite or in communities - should be coordinated with state and local government. NCSL urges the federal government to be mindful that the states bear the primary responsibility for the children who are separated from their families as a result of federal enforcement activities. NCSL supports federal coordination with child welfare agencies to guarantee that children are not endangered and that their best interests are protected.
ELIMINATING COST-SHIFTS TO THE STATES

State Impact Assistance

The 1996 federal welfare law established a five year bar on SCHIP/Medicaid, Supplemental Nutrition Assistance Program (SNAP), TANF and SSI for legal immigrants. Yet, state governments continue to bear significant costs for essential programs and services such as education and public health that promote public safety, reduce community tensions and integrate newcomers into our communities. This could include those who may be here on a temporary basis. State governments fund critical services including: emergency health care, public health, safety and education and English language instruction.

NCSL urges Congress to include in immigration reform a funding stream to address the entire fiscal impacts on state governments of any guestworker program, earned legalization and/or increases in the number of immigrants. Such funding must be subject to appropriation by state legislatures so that it can be best targeted to the state’s individual needs including government, faith-based or nonprofit institutions. These grants must take into account the fact that some states have existing high levels of noncitizens and some states have recent high growth in the number of noncitizens. Grants must be allocated in a way that assists both categories of states. NCSL opposes any measure that does not contain state impact assistance.

WORK, FAMILY AND REFUGEE ASSISTANCE

Temporary Worker Program

NCSL supports the creation of a temporary worker program. Providing a legal channel for those that want to come to our country for work will reduce illegal border crossings and enable federal law enforcement agents to focus their efforts on individuals attempting to enter or already in the country for the purpose of doing our nation harm. A temporary worker program for critical industries will also strengthen many sectors of our economy by providing a legal workforce. NCSL believes that Congress and the
Administration should work together to develop a system that responds to the nation’s needs effectively and efficiently.

Temporary worker visas help to fill labor shortages in seasonal and specialized occupations that have been caused by changing demographics and a need for expertise. NCSL urges the Administration and Congress to consider demonstration projects in health and education and work with states to develop sound policies that will prevent cost shifts to states. The federal government should work with states who wish to streamline and improve efficiencies in temporary worker and investor visa processing, and identify areas of needed flexibility for exchange visitor programs.

**Earned Legalization**

NCSL affirms the right and responsibility of the federal government to determine federal immigration policy, including the existence and form of an earned legalization program. NCSL supports the creation of an earned legalization program for illegal immigrants currently in the country. NCSL opposes amnesty. Earned legalization should include appropriate fines and penalties that are proportional to the violation. A mass deportation or crackdown on illegal immigrants currently in the country would have detrimental impacts on our communities because immigrant workers and entrepreneurs contribute to the economic vitality of our nation and citizen children in mixed-status households would be adversely impacted.

**Legal Immigrants**

NCSL opposes federal efforts to deny benefits to legal immigrants and to citizens who are foreign born. This shifts the cost of taking care of needy legal noncitizens to the states and localities. Eliminating federal benefits to noncitizens or deeming for unreasonable amounts of time does not eliminate the need, and state budgets and taxpayers will bear the burden.
NCSL supports:

- the extension of deadline for those elderly and disabled refugees so that they can continue to receive SSI benefits while pursuing citizenship; making affidavits of support legally binding so that sponsors of immigrants will live up to their commitment to support them; requiring voluntary agencies to live up to their commitment to refugees; enforcing Department of Labor certification process for employer sponsorship for both temporary and permanent foreign workers; and a limited period of alien to sponsor deeming.

NCSL supports the HHS regulation limiting the definition of a means-tested benefit to Temporary Assistance to Needy Families (TANF), Medicaid, Supplemental Security Income (SSI), State Children’s Health Insurance Program (SCHIP) and Food Stamps.

Refugee Assistance

NCSL supports federal efforts to assist individuals and families forced to flee their native land in fear for their personal safety. The problem of political refugees is an international one, and consequently demands the cooperative efforts of many countries.

While refugees, Cuban and Haitian Entrants, and asylees continue to be accepted, federal support which provides income and medical assistance, social services, education, employment and training and other needed support has continued to be reduced, shifting these costs to state and local governments. The existing federal domestic assistance program appropriately provides 100 percent federal funding for income and medical assistance after settlement. States should be reimbursed for cash and medical assistance during the resettlement period for 36 months as provided by law. States have been willing to accept refugee policy decisions that are made by the federal government; to continue this coordination, the federal government must provide adequate financial assistance to aid refugees in resettlement. NCSL believes that funding should be more flexible to allow states to respond to changing needs. The cost of resettlement must not be shifted to the states.

The federal government should not raise the admissions ceiling without adequately compensating states for resettlement costs. NCSL is disturbed by the recent trend to
admit refugees under "refugee-like" categories that are not eligible for federally reimbursed services.

The primary goal of the federal domestic assistance program is to assist refugees and entrants to become independent and self-sufficient members of the community. NCSL urges the federal government to improve the track record of the domestic assistance program in meeting the goal of self-sufficiency and independence for refugees.

The federal government should provide English and citizenship instruction as well as job training to refugees, where possible, before they arrive in the United States. This up-front investment should reduce costs in the domestic assistance program and should result in a more successful effort in producing self-sufficient and independent citizens. NCSL asks the Office of Refugee Resettlement (ORR) to assist states with efforts to strengthen refugee integration services. It is also critical for the federal government to support English and citizenship instruction to refugees already in the United States who, according to federal law, will lose access to public benefits unless they become citizens within seven years.

In addition, NCSL strongly urges the federal government to avoid further placements in areas that are already heavily impacted with refugee or Entrant populations, experiencing a shortage of rental housing for low-income households, and experiencing overcrowding in the local school system. NCSL urges the federal government to continue to work with states on the issue of secondary migration.

NCSL urges the federal government to continue the health screening that is currently provided to the refugees, where possible, before they arrive in the United States and to improve follow-up. Follow-up should include, but not be limited to, providing instruction for continued medical care to refugees in the home. Improved outreach and orientation to our health care system is critical especially in light of language and cultural differences. State health screening support is critical and should not be eliminated.

NCSL urges the federal government to coordinate and consult with state and local governments is an integral component of a successful placement policy and we urge
the federal government to improve its efforts in this area. It is equally important to have
the voluntary agencies and organizations representing refugees participate in this
coordinated effort. NCSL supports extended protection to victims of trafficking, victims
of domestic violence, and unaccompanied minors.

CITIZENSHIP AND INTEGRATION

Naturalization and Integration

NCSL supports the promotion of citizenship as a national priority. Delays in citizenship
applications are unjustified. The federal government should allocate sufficient resources
to a for more efficient citizenship adjudication and integration processes. The costs of
becoming a citizen are excessive and a barrier to those working families who seek
citizenship. NCSL strongly urges the federal government to assist the states in their
efforts to promote naturalization and to address all barriers to naturalization.