

The National Guard and Elections

Legal Authorities and Guidance for Judge Advocates

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Executive Summary

Domestic military missions during election season raise unique issues that require careful examination. Given the National Guard's domestic presence, National Guard judge advocates and command staff must know the laws and regulations that ensure the administration of free and fair elections is never undermined, even inadvertently, by those sworn to defend the Constitution.

This guidance offers a structured way to evaluate requests to use Guard forces during election season, organizing the analysis around five questions:

Who commands the force? The Guard's legal obligations turn on duty status, so whether a mission is pursued under state active duty, Title 32, or Title 10 is the threshold question. Counsel must also confirm that a lawful mobilization authority — the power to “call up” servicemembers from civilian status — supports the mission.

What legal authority authorizes the mission? Counsel must confirm there is proper mission authority, i.e., the power to lawfully perform the proposed duties. Federal missions involving law enforcement activity must also comply with the Posse Comitatus Act (PCA). A valid invocation of the Insurrection Act temporarily suspends the PCA's prohibitions, but cannot confer power to violate the Constitution or displace laws prohibiting military interference in elections. Recent court decisions have reinforced that domestic deployments must comply with applicable legal protections and are subject to judicial review.

What laws prohibit or restrict military activity during elections? Federal criminal statutes prohibit the military's use where elections are held, subject to a narrow exception, and separately bar military interference in elections and voter intimidation. State law can impose similar restrictions.

What DoD, National Guard, or state regulations and policies apply? Other authorities — which in many cases have the full force of law and are binding on covered personnel — reinforce statutory restrictions and, at times, further limit permissible conduct. DoD policy, for example, forbids DoD personnel and Guard personnel in Title 32 status from conducting operations at polling places.

Is this an appropriate use of the National Guard? Aside from questions of strict mission legality, this guidance urges TAGs and counsel to engage in deliberate preparation before election season; question legally doubtful directives; weigh how the public will perceive any Guard presence; and keep missions narrowly scoped in support of civilian authorities.

* * *

In sum, any missions during the election season demand caution. Guard activity must not interfere, or reasonably appear to interfere, with the administration of or free participation in an election. Judge advocates must help ensure that our men and women in uniform never undermine the fundamental right on which all other rights depend.

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Introduction

Free and fair elections are essential to our democracy, and the law prohibits the military from interfering in them. Federal law imposes strict restrictions on federal officials ordering or maintaining troops or armed personnel at places where elections are held, subject to a narrow statutory exception. Separate federal and state laws further prohibit interference in elections and voter intimidation. These protections sit atop a broader framework — federal law bars the military from domestic law enforcement absent express constitutional or statutory authorization, and DoD policy forbids DoD personnel and National Guard members in Title 32 status from conducting operations at polling places or interfering with elections.

Given the National Guard’s role in domestic missions, National Guard judge advocates and command staff must be familiar with the laws and regulations that ensure the administration of free and fair elections is never undermined, even inadvertently, by those sworn to defend the Constitution.ⁱ This resource provides an overview of the law governing the military and elections, including when the Guard may be deployed, what missions it may perform in each duty status, the federal and state laws that limit military activity during elections, and the DoD policies that implement those restrictions. This resource is organized around five questions to ask when a request for Guard support arrives during election season:

- Who commands the force?
- What legal authority authorizes the mission?
- What laws prohibit or restrict military activity during elections?
- What DoD, National Guard, or state regulations and policies apply?
- Is this an appropriate use of the National Guard?

By working through these questions, judge advocates and command staff can ensure that any election-season mission rests on lawful authority, stays within legal boundaries, and preserves the public’s trust in the Guard as an institution that serves all Americans.

A NOTE ON JUDICIAL REVIEW

Recent litigation over National Guard deployments has underscored that domestic military missions — in light of the distinct risks to individual civilians and servicemembers, and the civil-military balance itself — must comply with applicable legal protections and are subject to judicial review.¹ Notably, in *Trump v. Illinois*, the U.S. Supreme Court adopted a restrictive construction of a provision of the mobilization statute at issue, concluding that the government had likely failed to satisfy certain conditions for the provision’s lawful use.² When confronting novel issues in the context of proposed election-season missions, judge advocates should consult these recent decisions and account for judicial scrutiny of a proposed election-season mission.ⁱⁱ

ⁱ Though this guidance focuses on National Guard judge advocates and staff, the laws and regulations discussed herein are also applicable to their active-duty counterparts analyzing a proposed election-season mission. This guidance also uses footnotes for points of immediate practical significance, and endnotes for supporting citations and sourcing. Footnotes are marked with roman numerals and appear on the page; endnotes are numbered and collected beginning on page 19.

ⁱⁱ This guidance discusses binding statutes, regulations, directives, and controlling judicial decisions along with developing case law and the authors’ interpretations or recommended practices. Judge advocates should confirm the current status of all authorities before relying on this resource for operational legal advice.

Who commands the force?

The National Guard's legal obligations turn on its duty status: a Guard unit may be a state force under its governor, a state-commanded force on a federally funded mission, or federalized under Title 10. Thus, when confronted with a request for Guard support during election season, the first question is what duty status applies. This section discusses command and control in each status and the concept of mobilization authority, i.e., the power to “call up” reserve component servicemembers from civilian status to conduct a military mission.³ This guidance distinguishes mobilization authority from mission authority, i.e., the military's power to perform a specific duty, which is discussed in the next section.⁴

State active duty

When in state active duty (SAD) status, the governor commands the state's Guard units, and Guard personnel pursue state missions, are paid with state funds, and are subject to state laws and regulations.ⁱⁱⁱ Each governor generally appoints The Adjutant General (TAG) to serve as the highest military leader administering the state's forces. In SAD status, mobilization authority comes from state law and regulation, which can set forth specific procedural and substantive requirements for a lawful mobilization. While a survey of state authorities is beyond this guidance's scope, judge advocates and staff should first ensure that any proposed mission complies with such authorities.^{iv}

The D.C. National Guard is unique. Congress gave the President full-time command of the D.C. National Guard at a time when Washington, D.C., had no independent local government, and the President retains such command today.⁵ Presidents have delegated this command authority to the Secretary of Defense, who has in turn delegated certain responsibilities to the Secretary of the Army (for the D.C. Army National Guard) and the Secretary of the Air Force (for the D.C. Air National Guard).⁶ For any situation in which the D.C. National Guard is in militia status to aid civil authorities, the Secretary of the Army (through the Commanding General of the D.C. National Guard) commands all operations of both the Army and Air National Guard elements.⁷

Title 32 or hybrid status

Under Title 32 or “hybrid” status, Guard units are federally funded and work in service of federal missions, but remain under state command and control. In this status, Guard personnel may pursue federal missions requested by the President or Secretary of Defense, but only with the governor's consent.⁸ Guard personnel in Title 32 status are subject to the federal statutes that authorize and fund their duty, and to the DoD and National Guard Bureau policies that apply to Title 32 status — including the prohibitions on operations at polling places and interference in elections.^v

Just as any mobilization under SAD must comply with applicable state law and regulations, so too must any mobilization under Title 32.⁹ For example, in November 2025, a Tennessee court temporarily enjoined a Title 32 deployment in Memphis after concluding that the governor failed to execute the required steps to activate the Guard under state law.¹⁰

ⁱⁱⁱ This guidance focuses on domestic missions within the fifty states and the District of Columbia. Much of the analysis set forth here applies equally to a mission conducted within a U.S. territory. Any potential differences are outside the scope of this document.

^{iv} The Brennan Center produced a compendium of state laws covering National Guard and state defense force deployment criteria, law enforcement powers, and related provisions. See Joseph Nunn, Cayleigh Soderholm, & Anna Zhuravlova, *State and Territorial Laws Governing the National Guard*, Brennan Ctr. for Just. (June 23, 2026), <https://www.brennancenter.org/our-work/research-reports/state-and-territorial-laws-governing-national-guard>.

^v For a more detailed discussion of relevant DoD and National Guard Bureau policies, see pages 13–14, *infra*.

On appeal, the injunction was reversed on standing grounds, allowing the deployment to proceed without a final resolution of the merits question of whether the mobilization complied with Tennessee law.¹¹

Federal command and control

National Guard units ordinarily operate under state command, but can be “called up” (federalized) under Title 10 and placed under federal command and control. The chain of command for federal forces runs from the President to the Secretary of Defense to the relevant combatant command.¹² There are multiple federal mobilization authorities, including voluntary orders, partial and full mobilization, and various operational call-ups.^{vi}

Another federal mobilization authority, 10 U.S.C. § 12406, was recently the subject of litigation. In the summer and fall of 2025, the President attempted to federalize National Guard units in California, Illinois, and Oregon. Litigation in the Seventh and Ninth Circuits largely focused on whether the factual conditions in Los Angeles, Chicago, and Portland amounted to a “rebellion” or otherwise prevented execution of the law, as well as the degree of deference owed to the President’s determinations on these questions.¹³ In *Trump v. Illinois*, the Supreme Court instead focused on a separate question of law, concluding that the President likely failed to satisfy the statutory requirement that he was “unable with the regular forces to execute the laws of the United States.”¹⁴

The Court concluded that the term “regular forces” in § 12406(3) likely refers to federal active-duty armed forces, and thus the President may not federalize the Guard under that provision unless (1) there is legal authority to deploy federal active-duty armed forces to execute the laws and (2) the President is unable to execute the laws with those active-duty armed forces.¹⁵ The government failed at the first step by failing to identify a source of authority that would allow the military to execute the laws in light of the default prohibition on such activity under the Posse Comitatus Act: the President had not invoked the Insurrection Act or any other statutory authority that would authorize such conduct.¹⁶ Thus, § 12406(3) alone likely cannot support federalizing the Guard; the President likely must show some separate “statutory or constitutional authority to execute the laws with the regular military and must be ‘unable’ with those forces to perform that function.”¹⁷

^{vi} The Insurrection Act allows the President to call the National Guard into federal service and use the federal military to, among other things, suppress insurrections. See 10 U.S.C. §§ 251–253. While aspects of the Act provide mobilization authority, this guidance discusses the Insurrection Act below in the context of assessing mission authority.

What legal authority authorizes the mission?

Once you determine who commands the force, the next question is what authority allows the proposed mission. As *Trump v. Illinois* confirms, lawful mobilization authority may depend on a separate, lawful mission authority. This section outlines key principles of mission authority, then turns to a discussion of two important statutes: the Posse Comitatus Act (which generally prohibits federal military personnel from engaging in domestic law enforcement activity) and the Insurrection Act (which permits such activity, when properly invoked by the President).

Mission authority — SAD, Title 32, and Title 10

- **State active duty.** For Guard forces in SAD status, mission authority comes from state law. Such missions may include search and rescue, flood and hurricane recovery, and response to civil disturbances, among others. Counsel and staff should confirm that any proposed mission is authorized by state law and regulation, and not prohibited by the state constitution. For those missions that cross state lines, ensure that the receiving state consents and that the proposed mission is also lawful under the receiving state’s laws.¹⁸
- **Title 32.** Title 32 duty was originally limited to training; Congress later added specific mission authorities, such as counter-drug support and homeland defense activities, and amended Section 502 to authorize federally assigned “training or other duty” under Section 502(f).¹⁹ Statutory text and legislative history support that Section 502(f) was intended to facilitate federal payment for Guard activities authorized elsewhere in Title 32 (such as homeland defense) and certain other traditional Guard functions (such as disaster relief).²⁰ There is no indication from text or legislative history that Section 502(f) provides mission authority for operations at polling places or other election-related missions.^{vii}
- **Title 10.** For federal forces, mission authorities include Chapter 15 of Title 10 (enumerated forms of support to civilian law enforcement agencies) and disaster-relief work under the Stafford Act.²¹ But no statute specifically authorizes a federal military election mission. Instead, as discussed further below, the statutes that address the military and elections broadly prohibit military interference in elections and specifically bar the presence of federal troops or armed personnel at places where elections are held absent extreme circumstances.

Federal missions involving law enforcement activity

Every federal military mission on U.S. soil involving law enforcement activity must comply with the Posse Comitatus Act (PCA). Most of the potential exceptions to the PCA address specific circumstances unlikely to arise in the election context, so they are not set forth here.²² One notable exception, the Insurrection Act, is discussed briefly below.

The Posse Comitatus Act

Enacted after the Civil War to limit military participation in domestic law enforcement, including military interference in elections, the PCA prohibits the willful use of federal military personnel “to execute the laws” unless “expressly

^{vii} There is active litigation concerning the scope of Section 502(f). See *District of Columbia v. Trump*, 810 F. Supp. 3d 19 (D.D.C. 2025), stay pending appeal granted, No. 25-5418, 2025 WL 3673674 (D.C. Cir. Dec. 17, 2025).

authorized by the Constitution or Act of Congress.”²³ The PCA therefore applies to the National Guard when it is federalized, violations are subject to judicial review, and servicemembers who violate the PCA can incur criminal penalties.²⁴ Federal courts have applied three tests to assess compliance with the PCA:

- **The Red Feather test** – does the military conduct constitute “direct” and “active” involvement in civilian law enforcement. *United States v. Red Feather*, 392 F. Supp. 916, 925 (D.S.D. 1975) (explaining that “direct active use” includes making arrests, seizing evidence, searching persons or buildings, interviewing witnesses, or pursuing suspects).
- **The Jaramillo test** – does the military conduct “pervade[]” the civilian law enforcement activities. *United States v. Jaramillo*, 380 F. Supp. 1375, 1379 (D. Neb. 1974) (finding a reasonable doubt whether federal authorities were lawfully engaged when military personnel counseled civilian law enforcement on use of force decisions, advised on negotiations, and dictated defensive restrictions).
- **The McArthur test** – is the use of the military in civilian law enforcement “regulatory, proscriptive, or compulsory in nature” over civilians. *United States v. McArthur*, 419 F. Supp. 186, 194 (D.N.D. 1975); *see also United States v. Yunis*, 681 F. Supp. 891, 895–96 (D.D.C. 1988) (explaining that “regulatory” power “controls or directs,” “proscriptive” power “prohibits or condemns,” and “compulsory” power “exerts some coercive force”).

Federal military personnel directly participating in law enforcement activity concerning elections are “executing the laws” under all three tests, and no provision of the Constitution or federal law expressly authorizes such conduct.²⁵ Absent valid invocation of a recognized statutory exception like the Insurrection Act, such activity violates the PCA and exposes Guard personnel to criminal liability. And, as discussed below, even military activity that does not qualify as “executing the laws” may nevertheless violate other state and federal laws.

The Insurrection Act

The Insurrection Act authorizes the president to deploy federal forces, including active-duty armed forces and Guard forces federalized under Title 10, in certain extraordinary circumstances involving civil unrest, violence, or lawlessness akin to insurrection or rebellion conditions.²⁶ The Act’s three operative provisions are:

- Section 251 allows the president, “[w]henver there is an insurrection in any State against its government” and “upon the request of its legislature or of its governor if the legislature cannot be convened,” to “call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.”²⁷
- Section 252 allows deployment without the consent of the receiving governor whenever “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.”²⁸
- Section 253 allows the president to deploy troops without the consent of a state’s governor when “necessary to suppress . . . any insurrection, domestic violence, unlawful combination, or conspiracy” that either (1) “hinders the execution of” state and federal laws in a manner that deprives residents of that state of their federal constitutional rights, and the state authorities “are unable, fail, or refuse to protect that right,” or (2) obstructs or opposes the execution of federal law or impedes “the course of justice” under such law.²⁹

Counsel should understand the scope — and limits — of an Insurrection Act invocation. The Act is an established “express” statutory exception to the PCA, and its valid invocation temporarily suspends the PCA’s default prohibition on law enforcement activity for the servicemembers engaged in that mission.³⁰ Appropriate invocation of an Insurrection

Act provision therefore authorizes federal personnel to engage in conduct that would otherwise be forbidden under the PCA when necessary to suppress extraordinary violence or respond to rebellion and insurrection-like conditions that hinder the execution of law. However, invocation **does not** suspend or displace other laws and has no impact on the application of the U.S. Constitution, meaning that servicemembers deployed under the Act must respect constitutional protections, such as the Fourth Amendment's limits on searches and seizures, First Amendment-protected rights, the fundamental right to vote, and equal protection requirements.³¹

Additionally, the Insurrection Act's authorities do not exist in a vacuum. As discussed in detail below, Congress has enacted various statutes prohibiting voter intimidation and military interference in elections.³² Under ordinary principles of statutory interpretation, these specific restrictions apply to deployments under the Insurrection Act.³³ Indeed, in one of these statutes — 18 U.S.C. § 592 — Congress removed an earlier exception that permitted troops at the polls to “keep the peace,” leaving the “repel armed enemies” clause as the statute's only stated exception.³⁴ Finally, while the PCA permits exceptions when “expressly authorized by the Constitution or Act of Congress,” the statutes protecting elections from troops in the vicinity of voting locations, military interference, and voter intimidation contain no such carveout for acts of Congress like the Insurrection Act.³⁵

Thus, even a valid invocation of the Insurrection Act cannot authorize what the Constitution and specific statutory protections ensuring free and fair elections forbid.

Protective power & military purpose doctrine

Counsel should be aware of two additional legal theories that may bear on the authority to conduct specific military actions on U.S. soil.

First, in recent litigation, the federal government has argued that Article II affords the President an implied “protective power” to use federal troops domestically to protect federal personnel, functions, and property.³⁶ In *Trump v. Illinois*, the Supreme Court cited the Executive Branch's position that performing protective functions does not constitute “execut[ing] the laws” under the PCA, holding the protective power is thus incompatible with deployments under § 12406(3) because such deployments require that the president is “unable with the regular forces to execute the laws of the United States.”³⁷ While judicial guidance on this theory is limited, counsel should examine whether a mission based on the protective power violates statutory and constitutional limits on domestic deployments.³⁸

Second, the military purpose doctrine is an implied exception to the PCA for “[a]ctions taken for the primary purpose of furthering a DoD or foreign affairs function of the United States,” such as law enforcement on military installations to maintain good order and discipline.³⁹ DoD policy clarifies, however, that the doctrine cannot be used “for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the Posse Comitatus Act.”⁴⁰ Whether conduct outside of military installations satisfies this implied exception is a fact-specific inquiry; reported cases considering the doctrine involved limited operations arising from on-base crimes or servicemember misconduct.⁴¹ Indeed, the Ninth Circuit has rejected the doctrine's application when the underlying activity reached predominantly civilian conduct with an inadequate military nexus.⁴²

To the extent a proposed election-season mission is premised on either theory, counsel should scrutinize whether that theory supplies independent, lawful authority for military personnel to conduct the proposed activities. Counsel should also confirm that the mission does not violate other limitations on military activity during elections, discussed below.

What laws prohibit or restrict military activity during elections?

Beyond ensuring appropriate mobilization and mission authority, counsel must assess whether the proposed election-season mission complies with all other applicable law. Even a valid mobilization and mission authority confers no power to violate the Constitution. Federal law also specifically prohibits use of the military where elections are held and military conduct that interferes with or intimidates voters.⁴³ Moreover, at least fourteen states have constitutional prohibitions against military interference in elections, some state laws specifically prohibit military presence at voting places, and a variety of state laws prohibit voter intimidation. Together, these laws reflect the imperative that Guard activity must not — even inadvertently, through the good-faith pursuit of other mission objectives — interfere with elections or intimidate voters.

Constitutional allocation of authority over election administration

The Constitution assigns the power to administer elections principally to the states. The Elections Clause empowers the States to prescribe the “[t]he Times, Places and Manner of holding” congressional elections, reserving to Congress a secondary power to “make or alter” State election laws.⁴⁴ Absent an Act of Congress, the Constitution therefore leaves voter qualifications to the states, tying eligibility to vote in federal elections to each state’s rules.⁴⁵ The Tenth Amendment reinforces this allocation: powers not delegated to the federal government are reserved to the states. To the extent the federal government has authority over elections, it belongs to Congress. The Constitution does not grant the President any powers over elections other than an obligation to “take Care that the Laws” passed by Congress “be faithfully executed.”⁴⁶

Recent litigation confirms this structure. Beginning in 2025, the President issued executive orders directing changes to election administration, asserting authority under Article II and the Take Care Clause.⁴⁷ To date, federal courts have rejected the President’s asserted authority to regulate significant aspects of federal elections and have enjoined several provisions of the executive orders on the ground that the Constitution commits election administration to the states and Congress.⁴⁸ The President likewise lacks constitutional authority to deploy military personnel to alter or interfere with the administration of elections established by state law or federal statute.

Constitutional rights ensure voters can freely participate in elections

Even an otherwise valid mobilization and mission authority — state or federal — cannot authorize conduct that violates applicable constitutional protections.⁴⁹ Counsel should thus analyze any proposed election-season mission under the U.S. Constitution and, where state actors or authority are involved, the relevant state constitution, paying particular attention to the following rights:

- **The fundamental right to vote.** The U.S. Supreme Court has recognized that voting is a fundamental constitutional right,⁵⁰ a principle that DoD policy echoes: “[t]he right of U.S. citizens to vote is a fundamental right afforded protection by the U.S. Constitution.”⁵¹ State constitutions also reflect this right and may provide additional protections.⁵² Military presence or activity that burdens, deters, delays, or obstructs voters in exercising that right may implicate state and federal constitutional protections.
- **The First Amendment.** Voters enjoy a range of First Amendment-protected rights in connection with election-related activity.⁵³ State constitutions may provide additional protections. Counsel should consider whether

missions near voting locations or concerning elections risk burdening, chilling, or interfering with rights to protected speech, expression, and/or association.

- **The Fourth Amendment.** Stopping, detaining, or subjecting voters to coercive questioning may constitute seizures implicating the Fourth Amendment. Any searches of persons, vehicles, facilities, or election-related materials must likewise satisfy the Fourth Amendment’s requirements. Counsel should assess whether a proposed mission complies with the Fourth Amendment, applicable state constitutional protections, and, where applicable, the Posse Comitatus Act.
- **Equal protection.** The Equal Protection Clause prohibits arbitrary and disparate treatment of similarly situated voters in the exercise of the franchise.⁵⁴ Counsel should assess whether a proposed mission burdens voters in some localities but not similarly situated voters in others, as such a disparity may raise equal protection concerns under the Fifth and Fourteenth Amendments. State constitutions may also provide equal protection rights.⁵⁵

Specific legal restrictions on military conduct during elections

Beyond constitutional protections, federal and state laws contain specific limitations on military activity during elections. Civil War-era abuses by military personnel at polling stations inspired the codification of these explicit protections.⁵⁶ The prohibitions that grew from this history, and the state and federal laws that have since developed alongside them, are addressed below in the context of four potential uses of the Guard around elections: (1) sending troops to places where voting occurs; (2) interference in election administration; (3) intimidation of voters; and (4) influence on servicemember voting.

1. Laws that prohibit sending troops to places where voting occurs

BLUF: Unless deployment is necessary to repel armed enemies of the United States, it is illegal for federal officials to order, bring, keep, or control troops or armed personnel at any place where a general or special election is held. DoD policy recognizes that this restriction applies to Guard personnel in Title 32 status. In some jurisdictions, state law separately restricts military presence or carrying weapons at polling sites. Counsel and staff must scrutinize any requested deployment of Guard personnel to places where voting occurs.

18 U.S.C. § 592 – Troops at polls. Federal law makes it a crime for an “officer of the Army or Navy, or other person in the civil, military, or naval service of the United States” to order, bring, keep, or have under their authority or control any troops or “armed men” “at any place where a general or special election is held,” unless such force is necessary to “repel armed enemies of the United States.” Violation carries a criminal penalty of up to five years’ imprisonment and disqualification from “holding any office of honor, profit, or trust under the United States.” This statute applies to civilian federal officials like the Secretary of Defense and federalized Guard personnel, among others. The statute may also apply to federal officials who bring or keep Guard personnel in Title 32 status at any place where a general or special election is held.⁵⁷

- **“[R]epel armed enemies of the United States.”** To date, no court has applied 18 U.S.C. § 592 to determine when force would be “necessary to repel armed enemies of the United States.” But the exception’s text, history, and legal context point to a narrow reading. First, “enemies of the United States” is historically a legal term of art reserved for organized hostile powers.⁵⁸ Second, “repel” contemplates a defensive response to an armed attack. Third, the statutory history of § 592 cuts against any reading authorizing troops to be used for domestic disturbances at the polls: in 1909, Congress removed an exception to § 592 that allowed troops to “keep the peace” at the polls, leaving only the exception for repelling “armed enemies of the United States.”⁵⁹ An accompanying conference report explained that the deleted language was “inoperative” because no law authorized the use of troops to keep the peace at the polls.⁶⁰
- **The “armed enemies” exception does not extend beyond § 592.** Even in the extreme circumstance when military presence would be necessary “to repel armed enemies of the United States,” there is no comparable exception for the prohibitions on military interference in elections and voter intimidation found in 18 U.S.C. §§ 593–594, discussed below. Thus, while a demonstrable need to “repel armed enemies” might permit the presence of troops, military personnel must nonetheless abstain from conduct that violates these other applicable laws.
- **Proximity to voting locations.** Counsel should scrutinize the proximity of any military mission to polling places and note the Department of Justice has traditionally viewed 18 U.S.C. § 592’s protections to apply in the vicinity of any voting locations, not just the interior.⁶¹ This is consistent with the statute’s broad language covering “any place where a general or special election is held.” Counsel and staff should therefore consider a mission’s proximity to any location where ballots are cast, including ballot drop boxes. State law and local ordinances establish buffer zones prohibiting electioneering and other potentially disruptive conduct around polling locations, drop boxes, and other sensitive election locations.⁶² These restrictions provide a useful minimum range for military missions, though counsel should consider if the presence of military personnel warrants additional distance.

18 U.S.C. § 609 – Use of military authority to influence vote of member of the Armed Forces. Section 609 prohibits a “commissioned, noncommissioned, warrant, or petty officer of an Armed Force” from, among other things, requiring “a member of the Armed Forces to march to a polling place” or attempting to do so. While courts have not interpreted this provision, its plain language suggests that an order requiring servicemembers to move to a polling place, particularly where the purpose is to influence those servicemembers’ votes, is a criminal act carrying a penalty of up to five years imprisonment.

State law may restrict military presence at voting places. In addition to federal law, some states explicitly prohibit military presence at voting places.⁶³ For instance, Delaware makes it a felony for a “citizen or inhabitant” of Delaware to send, bring, or assist in bringing “any armed soldier to be present at any voting place in this State or within 5 miles thereof” on any election day.⁶⁴ Pennsylvania law states that “[n]o body of troops in the Army of the United States or of this Commonwealth shall be present, either armed or unarmed, at any place of election within this Commonwealth during the time of any primary or election”⁶⁵ In 2026, New Mexico made it a crime for “[a] person acting under color of law or otherwise” to order, bring, or keep “a troop or armed person or persons in the civil, military, or naval service of the United States to any location used as a polling place, including parking areas for the polling location, or within 50 feet of a monitored secured container . . . unless such force is necessary to repel armed enemies of the United States.”⁶⁶

Some states also have restrictions that could implicitly limit military presence at voting places. California makes it a crime for “any person” to hire or arrange “for any other person in possession of a firearm or any uniformed law enforcement officer, private guard, or security personnel or any person who is wearing a uniform of a law enforcement officer, guard, or security personnel, to be stationed in the immediate vicinity of, or posted at, a polling place or a county elections

office” without written authorization from an appropriate elections official or written authorization by a federal court order.⁶⁷ As of 2025, at least twelve states and Washington, D.C., prohibit both open and concealed carry in polling places. Nine additional states impose limited restrictions on guns in polling locations. And several other states prohibit guns from government buildings, schools, libraries, or houses of worship (which often serve as polling sites).⁶⁸ Exceptions to these laws may exist for law enforcement, but their parameters vary.⁶⁹

2. Laws that prohibit military interference in election administration

BLUF: It is illegal for federal military personnel to interfere in an election. Such activities include, but are not limited to, prescribing voter qualifications, preventing a qualified voter from voting, imposing election regulations different from those prescribed by law, seizing ballots or other election equipment or materials, or otherwise interfering with an election officer’s duties. There is no exception for repelling armed enemies of the United States. DoD policy extends this restriction to Guard members in Title 32 status. State or local law may likewise prohibit military interference in elections. Counsel and staff must scrutinize any proposed mission that could involve Guard personnel with election administration activities.

18 U.S.C. § 593 – Interference by armed forces. Federal law prohibits officers or members of the federal armed forces (including federalized Guard forces) from interfering in an election in a number of ways, including:

- Prescribing or fixing or attempting to prescribe or fix, whether by proclamation, order, or otherwise, the qualifications of voters at any election in any state;
- Preventing or attempting to prevent by force, threat, intimidation, advice, or otherwise any qualified voter of any state from fully exercising the right of suffrage at any general or special election;
- Ordering or compelling or attempting to compel any election officer in any state to receive a vote from a person not legally qualified to vote;
- Imposing or attempting to impose any regulations for conducting any general or special election in a state, different from those prescribed by law; or
- Interfering in any manner with an election officer’s discharge of their duties.

Counsel should be alert to any mission involving federal military personnel prescribing or fixing voter qualifications, including demanding documentary proof of citizenship as a prerequisite to voting. Violation of this statute carries a criminal penalty and requires disqualification “from holding any office of honor, profit or trust under the United States.” Further, 18 U.S.C. § 593 *contains no exception* for repelling armed enemies, demonstrating that even when troops are present at voting locations to “repel armed enemies of the United States,” the military still cannot “interfere” with elections.

52 U.S.C. § 10102 – Interference with freedom of elections. Traceable to the same Civil War-era legislation as 18 U.S.C. §§ 592–593, § 10102 is the civil counterpart to those criminal statutes. It prohibits any officer of the Army, Navy, or Air Force from (1) prescribing or fixing, or attempting to prescribe or fix, the qualifications of voters in any state, or (2) interfering “in any manner . . . with the freedom of any election in any State, or with the exercise of the free right of

suffrage in any State.” The statute’s second clause — barring U.S. military interference in “any manner” with an election’s freedom or the free exercise of the right to vote — sweeps broader than the specific acts enumerated in 18 U.S.C. §§ 592–593.

State law may restrict military interference in elections. At least fourteen states have constitutional prohibitions against military interference in elections, including:

- **Arizona** — Ariz. Const. art. II, § 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.”
- **Arkansas** — Ark. Const. art. 3, § 2: “Elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage; nor shall any law be enacted whereby such right shall be impaired or forfeited, except for the commission of a felony, upon lawful conviction thereof.”
- **Colorado** — Colo. Const. art. II, § 5: “All elections shall be free and open; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”
- **Pennsylvania** — 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.”
- **South Carolina** — S.C. Const. art. II, § 2: “No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State.”^{viii}

3. Laws that prohibit the intimidation of voters generally

BLUF: Multiple state and federal laws prohibit anyone from intimidating a person for the purpose of interfering with their right to vote. These prohibitions are broader than those barring Guard personnel from the polls: counsel and staff should scrutinize any proposed mission that puts Guard personnel into situations where their conduct could — even if inadvertently — have a threatening, coercing, or intimidating effect on voters.

18 U.S.C. § 594 – Intimidation of voters. This statute makes it a crime for anyone to intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such person to vote or to vote as they may choose, in any election held solely or in part for the purpose of electing a federal candidate.

52 U.S.C. § 10307(b) – Voter intimidation by any actor. Section 10307(b) prohibits any person, “whether acting under color of law or otherwise,” from intimidating, threatening, or coercing — or attempting to intimidate, threaten, or coerce — any person for voting or attempting to vote, or for urging or aiding another person to vote or attempt to vote. Courts have held that actions inspiring fear of “legal repercussions, privacy violations, and even surveillance can constitute

^{viii} The remaining nine states with constitutional prohibitions against military interference in elections are Idaho (Idaho Const. art. I, § 19), Missouri (Mo. Const. art. I, § 25), Montana (Mont. Const. art. II, § 13), New Mexico (N.M. Const. art. II, § 8), Oklahoma (Okla. Const. art. III, § 5), South Dakota (S.D. Const. art. VI, § 19), Utah (Utah Const. art. I, § 17), Washington (Wash. Const. art. I, § 19), and Wyoming (Wyo. Const. art. I, § 27).

unlawful threats or intimidation” under § 10307(b).⁷⁰ Further, the statute contains no express requirement that the defendant act with a subjective intent to intimidate, threaten, or coerce.⁷¹

42 U.S.C. § 1985(3) – Conspiracies against voters. Section 1985(3) was originally enacted as part of the Civil Rights Act of 1871, and it prohibits, among other things, conspiracies against voters in federal elections. The statute prohibits conspiracies to prevent, by force, intimidation, or threat, any citizen lawfully entitled to vote from giving their support or advocacy in a federal election. It also covers conspiracies to injure any citizen, in person or property, on account of such support or advocacy. Courts have recently applied the provision to voter intimidation carried out through deceptive robocalls and drop-box surveillance by armed individuals wearing tactical military gear.⁷²

State intimidation law. Every state prohibits interference with voters or voter intimidation. For instance, Florida’s Voter Protection Act criminalizes direct or indirect use or threat of force, violence, intimidation, or coercion to induce or compel voting behavior.⁷³ Georgia prohibits using or threatening to use force and violence or acting in any other manner to intimidate any person to vote or refrain from voting in defined elections.⁷⁴ Counsel should ensure they are familiar with the relevant state law on voter interference and voter intimidation.

4. Laws that prohibit military authority to influence servicemember voting

BLUF: Military authority cannot be used to influence how servicemembers vote. Counsel and staff must scrutinize any mission that uses military authority to influence how a servicemember votes or otherwise prevents them from voting.

18 U.S.C. § 609 – Use of military authority to influence vote of member of the Armed Forces. Section 609 also prohibits a “commissioned, noncommissioned, warrant, or petty officer of an Armed Force” from using “military authority to influence the vote of a member of the Armed Forces” or attempting to do so. While this provision focuses on command influence over servicemember voting, it nevertheless reinforces Congress’s consistent judgment that military authority cannot be used to influence voting.

What DoD, National Guard, or state regulations and policies apply?

The statutory prohibitions described above are reinforced and extended by federal and state regulations and policies. It is DoD policy that “[t]he right of U.S. citizens to vote is a fundamental right afforded protection by the U.S. Constitution.”⁷⁵ In recognition of that “fundamental right,” DoD has embedded the statutory prohibitions on military involvement in elections in multiple rules and regulations, discussed below. These regulations are binding: under the *Accardi* doctrine, a federal agency must comply with its own regulations, and executive action taken in violation of them is unlawful.⁷⁶

DoD Directive 3025.18 (Defense Support of Civil Authorities)

DoD Directive (DoDD) 3025.18, which governs DoD support to civil authorities, states 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 18.⁷⁷ The directive is notable in two respects. First, it applies the prohibitions of 18 U.S.C. §§ 592–594 to Guard personnel in Title 32 status. Second, its instruction to refrain from activities “similar to” those prohibited by §§ 592–594 creates a greater buffer around voting activities.

32 C.F.R. § 233.4 and DoDI 1000.04

In the context of the DoD’s Federal Voting Assistance Program (FVAP), 32 C.F.R. § 233.4 states that “[a]ll persons assisting in the voting process shall take all necessary steps to prevent discrimination, fraud, intimidation or coercion, and unfair registration and voting assistance procedures” by “preventing actions such as . . . [u]sing military authority to influence the vote of any other member of the uniformed services or to require any member to march to any polling place or place of voting as proscribed by 18 U.S.C. 592, 18 U.S.C. 593, and 18 U.S.C. 609.”⁷⁸

Similarly, DoDI 1000.04, which governs the FVAP, directs that “DoD personnel will take steps to prevent discrimination, fraud, intimidation or coercion, and unfair voter registration and assistance procedures” by “preventing actions such as . . . [i]nterfering with the conduct of an election or preventing a member of the uniformed services from exercising their right to vote as prescribed by Sections 592 and 593 of Title 18, U.S.C.”⁷⁹

DoDI 3025.21 (Defense Support of Civilian Law Enforcement Agencies)

DoD Instruction 3025.21 governs defense support to civilian law enforcement agencies. Among other matters, the instruction implements 10 U.S.C. § 275, which commands the Secretary of Defense to prescribe regulations ensuring that military assistance to civilian law enforcement “does not include or permit direct participation” by servicemembers in “a search, seizure, arrest, or other similar activity” unless otherwise authorized by law.

Enclosure 3 of the instruction spells out what “direct participation” means, prohibiting DoD personnel from, among other activities, conducting searches or seizures; making arrests, apprehensions, or stops, or interviewing, interrogating, or questioning witnesses; using or brandishing weapons except in defense of self or others; collecting evidence, performing security functions, controlling crowds or traffic, or operating checkpoints; and conducting surveillance or pursuit of individuals, vehicles, or locations, or serving as undercover agents, informants, investigators, or interrogators.⁸⁰

Enclosure 4 of the instruction emphasizes that “[a]ny employment of Federal military forces in support of law enforcement operations shall maintain the primacy of civilian authority.”⁸¹

Chief of the National Guard Bureau Instruction 3000.04A

Chief of the National Guard Bureau Instruction (CNGBI) 3000.04A establishes that Guard “domestic operations will only be conducted when authorized by appropriate approval authorities” and in accordance with “applicable Federal and State statutes” and departmental policy. The instruction continues that domestic operations “for State activities will be performed with the approval of State officials using State resources,” while operations that use federal resources must be performed in accordance with DoD policy.⁸² That DoD policy includes DoDD 3025.18 (and its prohibition on operations at polling places and activities similar to those prohibited by 18 U.S.C. §§ 592-594, applicable to Guard personnel in Title 32 status), which is incorporated as a required reference.⁸³

State regulations

Counsel and staff should also ensure that any proposed election-season mission complies with state election regulations and Guard regulations, especially in states that specifically criminalize military interference with elections.

Is this an appropriate use of the National Guard?

The legal framework described above sets the outer boundaries of what the Guard may lawfully do during election season, but there is a separate question of what the Guard should do. Much of the responsibility for determining that answer falls to TAGs, and, by extension, to the judge advocates and staff who counsel them. The five principles that follow — deliberate preparation, managing tension between military obligation and civilian direction, preserving public trust, scoping missions appropriately, and capturing lessons afterward — are offered as a framework for advising commanders regarding how the Guard should be used during election season, and complement the “CARRLL” factors commanders must weigh under DoD policy when evaluating a request for civil support.⁸⁴ The principles share a common foundation that anchors every decision point: any Guard mission should reinforce civilian authority over elections and never substitute for or undermine it; perception is as important as reality; and statutory and regulatory redlines must be obeyed.^{ix}

Principle 1 – Engaging in deliberate preparation

The decisions that matter most in an election context are rarely made on Election Day; they are made in the months and weeks before: in the relationships built with civilian counterparts, the legal reviews conducted in advance, and the rules for the use of force written before any decision points arrive.

- **Building relationships.** Counsel should encourage TAGs to establish effective working relationships with state and local election officials, the State Attorney General’s office, and relevant state agencies — and should build parallel relationships with the lawyers in those offices, so that legal questions arising during a mission can be resolved counsel-to-counsel. Communication structures should be in place so that any possible violations of the law or complaints can be elevated and quickly addressed.
- **Anticipating scenarios.** Judge advocates should help design and participate in tabletop exercises covering potential requests for Guard support, cyber incident response, and disaster and emergency situations that might arise around Election Day. For each scenario, counsel should identify the applicable federal and state authorities, distinguish between activities that could be lawfully performed and those that cannot, and surface other critical considerations. The Standing Rules for the Use of Force and state Rules for the Use of Force (RUF) should be exercised for issues that may arise when applied for disaster and emergency situations that are temporally or physically close to elections.
- **Providing guidance.** Counsel should prepare clear, plain-language guidance for TAG approval — grounded in applicable state and federal laws, regulations, and directives — that outlines the limits of the Guard’s role with regard to voters, physical locations, and election infrastructure. Materials should also include constitutional protections, such as the Fourth Amendment’s limits on searches and seizures, First Amendment-protected rights, the fundamental right to vote, and equal protection requirements. State RUF should be reviewed to ensure protections are adequate for constitutional rights and specific election-related rights and laws. Personnel

^{ix} These principles are modeled after a similar set of principles for TAGs concerning use of the National Guard during election season. Judge advocates should advise their clients to read these principles and review the election resources available at the TAG Toolkit website. See Maj. Gen. Daryl Bohac (Ret.) & Maj. Gen. Timothy Orr (Ret.), *Statement of Principles on the Use of the National Guard During Election Season* (June 2026), <https://www.tagtoolkit.org/blog-2-1/statement-of-principles-on-the-use-of-the-national-guard-during-election-season>.

should have mission-specific training on applicable legal restrictions, election-related laws, activities that could result in unlawful interference even when not purposeful, and RUF.

Principle 2 – Navigating pressure from civil authorities

TAGs operate at the intersection of military discipline and civilian control, and election season can surface tension between those obligations. Civilian leaders may request missions that raise questions of legality, appropriateness, operational risk, or the Guard’s nonpartisan institutional role. Counsel should work through foreseeable scenarios in advance so TAGs are better positioned to handle them if the moment arrives.

- **Obedying the law.** The principle of civilian control of the military does not require compliance with unlawful orders. In situations of unclear legality, TAGs and their counsel should feel responsible to get appropriate answers to their questions to assess legality. Ethical concerns should be elevated to civilian leaders. Civilian control remains foundational, but neither civilian control nor military discipline requires execution of an unlawful order. TAGs and their counsel must provide candid advice, identify unresolved legal questions, and act through established command and legal channels.
- **Naming uncertainty.** Counsel should advise TAGs to raise concerns clearly, preferably in writing, and through appropriate channels before a mission is authorized. Documenting concerns protects TAGs, the Guard, and the integrity of the mission.
- **Consulting legal experts.** When TAGs face pressure to expand a mission beyond its lawful scope, to deploy in a manner inconsistent with these principles, or to take action that could be perceived as influencing an ongoing election, counsel should already know the escalation paths: engagement with the National Guard Bureau and, if necessary, the state Attorney General.

Principle 3 – Preserving public trust

The Guard’s effectiveness rests on the public’s trust in its nonpartisan character, and any missions during election season necessarily put that trust under heightened scrutiny. Decisions regarding the scope and nature of any Guard activity during this period must consider the extent to which it would strengthen or strain the public’s confidence in the Guard as an institution that serves all Americans equally.

- **Minding perceptions.** The appearance of the Guard’s involvement matters as much as the mission’s intended purpose. A deployment that is technically lawful and properly scoped can still do lasting damage if local communities perceive the Guard’s presence and conduct as partisan or intimidating. Counsel should advise consideration of how a deployment will be perceived across different communities and its second- and third-order effects, especially with regard to the electoral process.
- **Avoiding election involvement.** Guard activity must not interfere — or reasonably appear to interfere — with election administration, voter choice, or public confidence in election neutrality. For example, 52 U.S.C. § 10102 prohibits any officer of the federal military from interfering “in any manner” with the freedom of any election or with the exercise of the right of suffrage. The lack of intentionality in this law means that inadvertent interference could pose a legal risk, and thus, operational planning should apply in any activity that is proximately close to election sites, including interacting with voters or providing a presence that could be perceived as intimidating voters.
- **Preparing public affairs strategy.** While the governor’s office typically leads public and media engagement, counsel should review public affairs documents concerning Guard activity during election season in advance.

Principle 4 – Undertaking appropriate missions

The Guard can bring genuine capability to election-adjacent missions, from cybersecurity support to disaster response, and election officials have welcomed that support when properly executed. Counsel should help TAGs begin with the right question: not “what can the Guard do here?” but “is the Guard the right instrument for this mission?”

- **Supporting civilian authorities.** For any mission, counsel’s review should confirm a clear legal basis, an explicit civilian request, and a mission design that keeps the Guard visibly in a support role. The Guard’s presence should reinforce civilian authority over elections, never substitute for it or overshadow it.^x
- **Following the plan.** Counsel should advise heightened scrutiny of last-minute requests for Guard involvement in election-related missions.
- **Scoping cybersecurity support.** As a recommended best practice, in states where the Guard is the sole actor capable of providing adequate election cybersecurity support, counsel should ensure mission authorizations limit the Guard’s role to advising and providing guidance to other IT actors — not performing offensive or defensive cyber operations on state or local systems.

Principle 5 – Directing after-actions and institutional learning

Election season missions are among the most scrutinized the Guard will conduct, and what the Guard does — and is perceived to have done — will shape its credibility for future missions. Counsel should engage in and contribute to the after-action process.

- **Deactivating missions.** Deactivation deserves the same deliberate attention as activation. The criteria for standing down should be established before the mission begins and executed cleanly, with a clear public record that the Guard has returned to its normal posture.
- **Reviewing deployments.** Following any election season activation, counsel should help TAGs structure a review that addresses not only operational effectiveness but public perception, legal compliance, and the integrity of civil-military boundaries throughout the mission.
- **Documenting findings.** Findings should be documented and, where appropriate, shared with the National Guard Bureau and civilian leadership to build institutional knowledge. Where incidents occurred, counsel should ensure those are documented with particular care, both to protect the individuals involved and to inform future guidance, and should consider whether any incident triggers separate reporting obligations.

^x During the 2020 elections, Guard personnel in several states — activated in SAD status, at the request of civilian election officials, and unarmed and in civilian clothes — served as poll workers and provided other administrative and technical support to compensate for pandemic-related shortages of election workers. These support missions, undertaken as a last resort in a public-health emergency, illustrate a narrow category of lawful Guard election assistance. See Davis Winkie, *Here’s How the National Guard Is Supporting the Nov. 3 Election*, Mil. 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/>.

Conclusion

Federal law prohibits military interference in elections and, absent an extreme circumstance, bars federal officials from deploying troops or armed personnel to places where elections are held. DoD policy independently forbids polling-place operations by federal and Title 32 forces. And a dense overlay of state law constrains what remains. But the strength of this legal architecture depends on the practitioners inside and alongside the institution knowing it in advance, recognizing the red flags, and being prepared to act promptly. Judge advocates must stand ready to help ensure that the National Guard never harms the fundamental right on which every other right depends.

Endnotes

- ¹ See, e.g., *Trump v. Illinois*, 146 S. Ct. 432 (2025) (per curiam); *Illinois v. Trump*, 155 F.4th 929, 937 (7th Cir. 2025); *Newsom v. Trump*, 797 F. Supp. 3d 1092 (N.D. Cal. 2025).
- ² *Trump v. Illinois*, 146 S. Ct. at 434.
- ³ See Loren Voss, *Tracking Domestic Deployments of the U.S. Military*, Lawfare, <https://www.lawfaremedia.org/projects-series/trials-of-the-trump-administration/tracking-domestic-deployments-of-the-u.s.-military> (last visited Sept. 8, 2026) (“The law requires a mobilization authority to call up National Guard members from their civilian status to conduct a military mission.”).
- ⁴ The DoD has previously distinguished mobilization authority from mission authority. See Christopher Mirasola, *Sovereignty, Article II, and the Military During Domestic Unrest*, 15 Harv. Nat’l Sec. J. 199, 203 n.17 (2023) (noting certain DoD Directives distinguish authority to perform a military duty from the authority to mobilize Guard personnel); see also Voss, *supra* note 3 (explaining that “[m]obilization authority, which allows the president to order National Guard personnel into active duty, differs from mission authority, which authorizes the purpose for which the National Guard will be used.”).
- ⁵ D.C. Code § 49-409.
- ⁶ Exec. Order No. 11,485, 34 Fed. Reg. 15411, § 1 (1969); Memorandum from the Sec’y of Def. to the Sec’y of the Army and the Sec’y of the Air Force, *Supervision and Control of the National Guard of the District of Columbia* (Oct. 10, 1969) (hereinafter, “1969 DCNG Memorandum”); Memorandum from the Sec’y of Def. to the Sec’y of the Army, *Authority to Approve District of Columbia Government Requests for District of Columbia National Guard Support Assistance* (Dec. 30, 2021).
- ⁷ 1969 DCNG Memorandum, *supra* note 6.
- ⁸ 32 U.S.C. §§ 328, 502(f)(2)(A).
- ⁹ See *District of Columbia v. Trump*, No. 25-5418, 2025 WL 3673674, at *9 (D.C. Cir. Dec. 17, 2025) (explaining that “[t]o perform a mission under Section 502(f)(2)(A), a state Guard’s commander in chief—the governor—must receive a request from the President or Secretary of Defense, evaluate the scope of the requested mission and the availability of the State’s guard resources, and then determine whether the duties to be performed are authorized under state law.”).
- ¹⁰ *Harris v. Lee*, No. 25-1461-I (Tenn. Ch. Nov. 21, 2025), *rev’d*, No. M2025-01915-COA-R9-CV, 2026 WL 1144357 (Tenn. Ct. App. Apr. 28, 2026).
- ¹¹ *Harris*, 2026 WL 1144357.
- ¹² See 10 U.S.C. § 161; Robert Switzer & Clare Ribando Seelke, Cong. Rsch. Serv., IF13044, *Defense Primer: U.S. Northern Command (USNORTHCOM)* (2025).
- ¹³ *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 reh’g en banc*, 165 F.4th 1158 (9th Cir. 2025); *Illinois*, 155 F.4th at 933.
- ¹⁴ *Trump v. Illinois*, 146 S. Ct. at 434.
- ¹⁵ *Id.*
- ¹⁶ *Id.*
- ¹⁷ *Id.*
- ¹⁸ Cross-border SAD missions are commonly effectuated through the Emergency Management Assistance Compact (EMAC), Pub. L. No. 104-321, 110 Stat. 3877 (1996). See Judge Advocate Gen.’s Legal Ctr. & Sch., *Domestic Operational Law Handbook for Legal Personnel*, at 240–41 (2024) (hereinafter “DOMOPS Handbook”).
- ¹⁹ 32 U.S.C. § 502(f)(1). Section 502(f) is part of a law addressing “Required drills and field exercises.” It states that Guard members may “be ordered to perform training or other duty,” which includes “[s]upport of operations or missions undertaken by the member’s unit at the request of the President or Secretary of Defense.”
- ²⁰ For example, Section 502 is housed in Chapter 5 of Title 32, which is entitled “TRAINING.” Section 502 itself is entitled “Required drills and field exercises.”
- ²¹ See 10 U.S.C. §§ 271–284 (authorizing enumerated forms of military support to civilian law enforcement); 42 U.S.C. §§ 5170a–5170b, 5192 (authorizing federal agencies to perform defined categories of disaster and emergency work).
- ²² See U.S. Dep’t of Def., Instr. No. 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, encl. 3 para. 1.b(5) (Feb. 27, 2013) (hereinafter “DoDI 3025.21”) (listing PCA exceptions); DOMOPS Handbook, *supra* note 18, at 96–97 (same).
- ²³ 18 U.S.C. § 1385. For a brief history of the Posse Comitatus Act and a recent case analyzing the law in the context of a domestic military deployment, see *Newsom*, 797 F. Supp. 3d at 1109–11.
- ²⁴ Jennifer K. Elsea, Cong. Rsch. Serv. R42659, *The Posse Comitatus Act and Related Matters: The Use of the Military to Execute Civilian Law*, at 61 n.416 (2018).
- ²⁵ Courts have concluded that failing any of these three tests would be sufficient to find a PCA violation. See *United States v. Dreyer*, 804 F.3d 1266, 1275 (9th Cir. 2015) (en banc); *Newsom*, 797 F. Supp. 3d at 1118. For a helpful discussion of PCA jurisprudence, and a critique of a recent Office of Legal Counsel opinion regarding the PCA, see Chris Mirasola, *OLC’s Dangerous, and Wrong, Opinion About the Posse Comitatus Act*, Lawfare (Aug. 24, 2026), <https://www.lawfaremedia.org/article/olc-s-dangerous--and-wrong--opinion-about-the-posse-comitatus-act>.
- ²⁶ See 10 U.S.C. §§ 251–253.
- ²⁷ 10 U.S.C. § 251.
- ²⁸ 10 U.S.C. § 252.
- ²⁹ 10 U.S.C. § 253.
- ³⁰ See Joseph Nunn & Elizabeth Goitein, *The Insurrection Act, Explained*, Brennan Ctr. for Just. (Nov. 12, 2025), <https://www.brennancenter.org/our-work/research-reports/insurrection-act-explained>.
- ³¹ See *Sterling v. Constantin*, 287 U.S. 378, 397–401 (1932) (holding that the governor’s deployment of the National Guard under state emergency authority remains subject to constitutional limits and judicial review); *Ex parte Milligan*, 71 U.S. (4 Wall.) 2, 120–21

- (1866) (affirming that the Constitution applies “equally in war and in peace”); *Duncan v. Kahanamoku*, 327 U.S. 304, 318–24 (1946) (holding that statutory martial-law authority did not displace constitutional protections for civilians); *Almeida-Sanchez v. United States*, 413 U.S. 266, 272 (1973) (declaring that “no Act of Congress can authorize a violation of the Constitution.”); *Bissonette v. Haig*, 776 F.2d 1384, 1389–93 (8th Cir. 1985) (noting that the Fourth Amendment governs seizures by military personnel during a domestic deployment).
- ³² 18 U.S.C. §§ 592–594; *see infra* pp. 7–12 (discussing federal laws specifically prohibiting various forms of election interference).
- ³³ *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”).
- ³⁴ Natalie K. Orpett, Molly Roberts & Loren Voss, *The Military and Elections, Part II: Deploy First, Litigate Later*, Lawfare (July 8, 2026), <https://www.lawfaremedia.org/article/the-military-and-elections--part-ii--deploy-first--litigate-later>.
- ³⁵ *Id.*
- ³⁶ *See id.*
- ³⁷ *Trump v. Illinois*, 146 S. Ct. at 434; Orpett, Roberts & Voss, *supra* note 34.
- ³⁸ *See* Chris Mirasola, *Confronting the Protective Power*, Lawfare (Nov. 20, 2025), <https://www.lawfaremedia.org/article/confronting-the-protective-power> (explaining that Congress may constrain or displace presidential authority as long as Congress is acting within its own powers); *see also* Elizabeth Goitein, *Trump v. Illinois: A Narrow Supreme Court Decision with Broad Implications*, Just Security (Jan. 9, 2026), <https://www.justsecurity.org/128371/trump-v-illinois-supreme-court/>.
- ³⁹ *See* DoDI 3025.21, *supra* note 22, encl. 3, para.1.b(1); Mirasola, *supra* note 25.
- ⁴⁰ DoDI 3025.21, *supra* note 22, encl. 3, para.1.c.
- ⁴¹ Mirasola, *supra* note 25 (discussing relevant caselaw).
- ⁴² *See United States v. Dreyer*, 804 F.3d 1266, 1276 (9th Cir. 2015) (en banc) (finding that “[t]he investigation in this case was not reasonably tied to military bases, military facilities, military personnel, or military equipment.”).
- ⁴³ *See* 18 U.S.C. §§ 592–594; 52 U.S.C. §§ 10101(b), 10102, 10307(b); 42 U.S.C. § 1985(3).
- ⁴⁴ U.S. Const. art. I, § 4, cl. 1.
- ⁴⁵ U.S. Const. art. I, § 2, cl. 1; *id.* amend. XVII.
- ⁴⁶ U.S. Const. art. II, § 3.
- ⁴⁷ Exec. Order No. 14,399, 91 Fed. Reg. 17125 (Apr. 3, 2026); Exec. Order No. 14,248, 90 Fed. Reg. 14005 (Mar. 28, 2025).
- ⁴⁸ *See, e.g., League of United Latin Am. Citizens v. Exec. Off. of the President*, 808 F. Supp. 3d 29 (D.D.C. 2025); *Washington v. Trump*, 814 F. Supp. 3d 1173 (W.D. Wash. 2026); *California v. Trump*, No. 25-CV-10810-DJC, 2026 WL 1826535 (D. Mass. June 24, 2026); *League of Women Voters of Mass. v. Trump*, Nos. 1:26-CV-11549-IT, 1:26-CV-13917-IT, 2026 WL 2620871 (D. Mass. Sept. 4, 2026).
- ⁴⁹ *See, e.g., Sterling*, 287 U.S. at 397–401; *Milligan*, 71 U.S. (4 Wall.) at 120–21; *Duncan*, 327 U.S. at 318–24; *Almeida-Sanchez*, 413 U.S. at 272; *Bissonette*, 776 F.2d at 1389–93.
- ⁵⁰ *See, e.g., Reynolds v. Sims*, 377 U.S. 533, 554–55 (1964); *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).
- ⁵¹ U.S. Dep’t of Def., Instr. 1000.04, Federal Voting Assistance Program (FVAP) para. 1.2.a (2019) (hereinafter “DoDI 1000.04”); *see also* 32 C.F.R. § 233.4 (2025).
- ⁵² *See, e.g., Mich. Const. art. II, § 4(1)(a)* (recognizing the “fundamental right to vote” and prohibiting conduct that has the intent or effect of denying, abridging, interfering with, or unreasonably burdening that right).
- ⁵³ *See* Armand Derfner & J. Gerald Hebert, *Voting Is Speech*, 34 Yale L. & Pol’y Rev. 471, 487 (2016) (collecting cases supporting speech interest in election activity).
- ⁵⁴ *See Bush v. Gore*, 531 U.S. 98, 104–05 (2000) (per curiam) (emphasizing that “[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.”); *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 665 (1966) (holding that “once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment.”).
- ⁵⁵ *See, e.g., Mich. Const. art. I, § 2* (providing that “[n]o person shall be denied the equal protection of the laws”); N.C. Const. art. I, § 19 (providing that “[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.”).
- ⁵⁶ For instance, in Maryland, federal troops arrested public officials and screened voters at polling locations. In Kentucky, military officials arrested candidates who criticized the federal government, with some placed in military confinement until after the election was over. And in Delaware, federal troops guarded polls and rejected voters who held ballots opposed to the administration. *See* Chris Mirasola, *Domestic Military Deployments After Trump v. United States*, 67 Wm. & Mary L. Rev. 189, 203–05 (2025).
- ⁵⁷ Whether § 592 applies to Guard personnel in Title 32 status is an unsettled question of statutory interpretation. *See id.* at 233–36 (stating “the best reading of 18 U.S.C. § 592 is that it still applies to National Guard personnel in a § 502(f) duty status,” though noting uncertainty).
- ⁵⁸ In the context of the offense of treason, courts have held that “enemies” means “the subjects of a foreign power in a state of open hostility with us.” *United States v. Greathouse*, 26 F. Cas. 18, 22 (C.C.N.D. Cal. 1863); *Stephan v. United States*, 133 F.2d 87, 94 (6th Cir. 1943) (clarifying that “Krug was an ‘enemy’ as that term is used in the constitutional clause defining treason. He was the subject of a foreign power in a state of open hostility with us.”). And in *The Prize Cases*, the Supreme Court described an “enemy” as “an organized, hostile and belligerent power.” 67 U.S. (2 Black) 635, 674 (1863); *cf. Ex parte Quirin*, 317 U.S. 1, 37 (1942) (distinguishing the “armed forces of the enemy” from all others).
- ⁵⁹ Mirasola, *supra* note 56, at 208; *see also* 43 Cong. Rec. 3735 (1909).
- ⁶⁰ Natalie K. Orpett, Molly Roberts & Loren Voss, *The Military and Elections, Part I: The Legal Wall*, Lawfare (July 8, 2026),

<https://www.lawfaremedia.org/article/the-military-and-elections--part-i--the-legal-wall>.

- ⁶¹ The 2017 edition of the Department of Justice's Federal Prosecution of Election Offenses Manual stated that "a federal statute makes it a felony for any federal official to send 'armed men' to the vicinity of open polling places. 18 U.S.C. § 592. In light of these considerations, Department and FBI policy requires that any investigative action that involves an intrusion by federal investigators into the area immediately surrounding an open polling place be approved by the Criminal Division's Public Integrity Section." U.S. Dep't of Justice, *Federal Prosecution of Election Offenses* § 9 (2017), <https://perma.cc/6C48-HS6N>.
- ⁶² See, e.g., *Electioneering Prohibitions Near Polling Places*, Nat'l Conf. of State Legislatures (Sept. 2026), <https://www.ncsl.org/elections-and-campaigns/electioneering-prohibitions>. For example, the National Guard mission in Washington, D.C. recently used the District's buffer zone rules to instruct personnel to avoid proximity to drop boxes during the June 2026 primary elections.
- ⁶³ See Danielle Friedman, Bryna Godar & Emily Lau, *Can State Prohibitions on Election Interference Constrain Federal Actors?*, State Democracy Rsch. Initiative, Univ. of Wis. L. Sch. (July 17, 2026), <https://statedemocracy.law.wisc.edu/our-work/can-state-prohibitions-on-election-interference-constrain-federal-actors>.
- ⁶⁴ Del. Code Ann. tit. 15, § 5301 (2025).
- ⁶⁵ 25 Pa. Stat. § 3047 (2025).
- ⁶⁶ Act of Mar. 9, 2026, ch. 58, § 3, 2026 N.M. Laws __ (to be codified at N.M. Stat. Ann. § 1-1-31); N.M. Sec'y of State, *Rumor vs. Reality*, <https://www.sos.nm.gov/voting-and-elections/rumor-vs-reality/> (last visited Aug. 27, 2026).
- ⁶⁷ Cal. Elec. Code § 18545(a) (2025).
- ⁶⁸ See Eliza Sweren-Becker & Jasleen Singh, *Guide to Laws Against Intimidation of Voters and Election Workers*, Brennan Ctr. for Just. (June 18, 2024), <https://www.brennancenter.org/our-work/research-reports/guide-laws-against-intimidation-voters-and-election-workers>; Allison Anderman, *Chart: State Prohibitions on Guns at Election Locations*, Brennan Ctr. for Just. (Mar. 7, 2025), <https://www.brennancenter.org/our-work/research-reports/chart-state-prohibitions-guns-election-locations>.
- ⁶⁹ Friedman et al., *supra* note 63.
- ⁷⁰ See *Nat'l Coal. on Black Civic Participation v. Wohl*, 512 F. Supp. 3d 500, 509 (S.D.N.Y. 2021); see also *League of United Latin Am. Citizens – Richmond Region Council 4614 v. Pub. Interest Legal Found.*, No. 1:18-CV-00423, 2018 WL 3848404, at *4 (E.D. Va. Aug. 13, 2018) (holding that conduct that put the plaintiff "in fear of harassment and interference with their right to vote" was sufficient to allege intimidation under § 10307(b)).
- ⁷¹ *Nat'l Coal. on Black Civic Participation v. Wohl*, 661 F. Supp. 3d 78, 116 (S.D.N.Y. 2023). Another statute, 52 U.S.C. § 10101(b), also prohibits intimidating, threatening, or coercing voters, but requires proof of intent to interfere with that person's right to vote for federal office.
- ⁷² See, e.g., *Wohl*, 661 F. Supp. 3d at 124–26 (applying § 1985(3) to deceptive robocalls used to intimidate voters); *Arizona All. for Retired Ams. v. Clean Elections USA*, No. CV-22-01823-PHX-MTL, 2022 WL 17088041 (D. Ariz. Nov. 1, 2022) (granting temporary restraining order against private voter intimidation and surveillance at ballot drop boxes); Terry Tang, *Judge orders armed group away from Arizona ballot drop boxes*, AP News (Nov. 2, 2022), <https://apnews.com/article/2022-midterm-elections-arizona-phoenix-5353cfd0774727e6dd03bdf48c12211>.
- ⁷³ Fla. Stat. § 104.0615 (2025).
- ⁷⁴ Ga. Code Ann. § 21-2-567 (2025).
- ⁷⁵ See *supra* note 51.
- ⁷⁶ *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954).
- ⁷⁷ U.S. Dep't of Def., Dir. 3025.18, Defense Support of Civil Authorities (DSCA) para. 4.t (2018) (hereinafter "DoDD 3025.18"); see also DOMOPS Handbook, *supra* note 18, at 114 (noting that pursuant to DoDD 3025.18, "DoD personnel and NG 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 of the U.S. Code (and section 10102 of Title 52 of the U.S. Code).").
- ⁷⁸ The FVAP is the DoD's voter assistance and education program, established to ensure servicemembers are aware of their right to vote and have the tools to do so. U.S. Dep't of Def., Fed. Voting Assistance Program, *Purpose of FVAP*, <https://www.fvap.gov/info/about/purpose>.
- ⁷⁹ DoDI 1000.04, *supra* note 51, at para. 1.2.d.
- ⁸⁰ DoDI 3025.21, *supra* note 22, encl. 3, para. 1.c.
- ⁸¹ *Id.* encl. 4, para. 1.c.
- ⁸² Chief, Nat'l Guard Bureau, Instr. 3000.04A, National Guard Domestic Operations para. 4 (Feb. 26, 2026).
- ⁸³ See *id.* encl. B.
- ⁸⁴ See DoDD 3025.18, *supra* note 77, para. 4.e (stating all requests from civil authorities shall be evaluated for Cost, Appropriateness, Readiness, Risk, Legality, and Lethality).