

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

POLICY DIRECTIVES AND RESOLUTIONS

**2023 NCSL Legislative Summit
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1 **COMMITTEE:** **LAW, CRIMINAL JUSTICE, AND PUBLIC SAFETY**

2 **POLICY:** **FEDERALISM**

3 **TYPE:** **DIRECTIVE**

4

5 Our American federalism creatively unites states with unique cultural, political, and

6 social diversity into a strong ~~nation.~~nation. It is built on the concepts of shared

7 sovereignty and delineated powers. The Tenth Amendment is the cornerstone of

8 constitutional federalism and reserves broad powers to the states and to the people.

9 Federalism protects liberty, enhances accountability and fosters innovation with less risk

10 to the nation. NCSL strongly urges federal lawmakers to maintain a collaborative

11 federalism that respects states' roles and empowers states to appropriately implement

12 federal standards, permit diversity without causing division, and ~~that fosters~~ unity and

13 coordination among states without enshrining uniformity. To revitalize federalism, the

14 three branches of the national government should carefully examine and refrain from

15 enacting proposals that would limit the ability of state legislatures to exercise discretion

16 over basic and traditional functions of state government.

17

18 ~~Individual liberties can be protected by dividing power between levels of government.~~

19 ~~"The Constitution does not protect the sovereignty of states for the benefit of the States~~

20 ~~or state governments as abstract political entities, or even for the benefit of public~~

21 ~~officials governing the States. To the contrary, t~~The Constitution divides authority

22 between federal and state governments for the protection of individuals." New York v.

23 United States 505 U.S. 144 (1992). ~~New York v. United States, (1992).~~ This careful

24 balance enhances the express protections of civil liberties within the Constitution.

25 Effective governance requires appropriate devolution of decision-making authority from

26 the federal government to the states in order to encourage participation and inclusion in

27 our federalist system.

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29 By retaining power to govern, states can more confidently innovate in response to
30 changing needs. As Justice Brandeis wrote: "It is one of the happy incidents of the
31 federal system that a single courageous state may, if its citizens choose, serve as a
32 laboratory; and try novel social and economic experiments without risk to the rest of the
33 country." *New State Ice Co. v. Liebmann*, ~~(1932)~~ 285 U.S. 262 (1932)

34 - It is a suitable role for the federal government to encourage innovation by states. Our
35 country's founders did not contemplate a perfect union, but rather a more perfect union,
36 meaning, there must be room for policy experimentation and different methods of self-
37 government at the state level. ~~Federal officials should recognize that failure is a risk~~
38 ~~associated with experimentation and permit states room to act and evaluate without~~
39 ~~judging prematurely the value of innovative programs.~~ States are inherently capable of
40 moving more quickly than the federal Congress to correct errors observed in policy and
41 can be more sensitive to public needs.

42
43 The Supreme Court has sent a strong message to Congress that its powers under the
44 Commerce Clause have boundaries (*United States v. Lopez*, (1995). Congress must
45 heed the wisdom of *Lopez* and not exercise its commerce powers without a compelling
46 need to do so. Similarly, The Supreme Court has recognized the negative practical effect
47 that federal overreach under the dormant Commerce Clause would have on states in
48 our global economy, and that such overreach would "cast a shadow over laws long
49 understood to represent valid exercises of the States' constitutionally reserved powers."
50 (*National Pork Producers Council v. Ross* (2023) ~~the~~) The Supreme Court should add to
51 the ability of states to respond to pressing social and economic problems by interpreting
52 the dormant Commerce Clause in a restrained manner sensitive to the ~~powers of~~
53 states states constitutionally derived authority in the federal system.

54
55 ~~Responsiveness to constituencies within state boundaries is diminished as the power of~~
56 ~~the federal government grows disproportionately. Disturbingly, federal constraints upon~~
57 ~~state action grow even as states are increasingly acknowledged as innovators in public~~
58 ~~policy. To revitalize federalism, the three branches of the national government should~~

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59 ~~carefully examine and refrain from enacting proposals that would limit the ability of state~~
60 ~~legislatures to exercise discretion over basic and traditional functions of state~~
61 ~~government.~~

62
63 NCSL dedicates itself to restoring balance to federalism through changes in the political
64 process and through thoughtful consideration and broad national debate of proposals to
65 amend the Constitution or to clarify federal law that are specifically intended to redress
66 the erosion of state powers under the Constitution. NCSL does not ~~by this policy~~
67 endorse any specific proposal for or against constitutional change or call for a
68 constitutional convention. NCSL continues to support all civil rights laws in force in this
69 country.

70
71 Pre-emption
72 Congress must allow states flexibility to shape public policy. Creative solutions to public
73 problems can be achieved more readily when state laws are accorded due respect.
74 Every pre-emptive law diminishes other expressions of self-government; therefore, ~~state~~
75 ~~legislators believe~~ NCSL maintains that state laws should never be pre-empted without
76 substantial justification, compelling need, and broad consensus. Our federalism
77 anticipates diversity; our unity does not anticipate uniformity. While proponents of pre-
78 emption may claim expected benefits, ~~these~~ any benefit must be balanced against the
79 potential loss of accountability, innovation, and responsiveness.

80
81 Pre-emption may be warranted in specific instances when it is clearly based upon
82 provisions of the U.S. Constitution authorizing such pre-emption and only when it is
83 clearly shown (1) that the exercise of authority in a particular area by individual states
84 has resulted in widespread and serious conflicts imposing a severe burden on national
85 economic activity or other national goals; (2) that solving the problem is not merely
86 desirable, but necessary to achieve a compelling national objective; and (3) that pre-
87 emption of state laws is the only reasonable means of correcting the problem.

88

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89 The authority of Congress under the Supremacy Clause to pre-empt state legislation is
90 exercised by the federal government assuming responsibility for regulating under
91 federal law. In addition, the Supremacy Clause allows the federal government to offer
92 states the option of regulating pursuant to federal standards. The power of Congress to
93 thus pre-empt state authority must not be expanded to permit the federal government to
94 commandeer states to administer federal programs.

95
96 Congress shall provide reasonable notice to state legislative leaders and governors of
97 any congressional intent to pre-empt and shall provide them with opportunity for formal
98 and informal comment prior to enactment. To ensure that ~~the national~~
99 ~~legislature~~Congress knows the effects of its decisions on ~~other levels of~~
100 ~~government~~states, members of Congress shall investigate which of their state's laws
101 would be pre-empted by federal legislation before they vote on the pre-emptive
102 legislation. Congress shall develop processes and seek early and regular consultation
103 with state legislatures to fully understand ~~better~~ the fiscal and other policy impacts of
104 proposed bills on ~~states federalism~~. NCSL supports the creation of congressional
105 intergovernmental committees or subcommittees and maintains that Congress shall
106 refer bills that affect state powers and administration to these intergovernmental
107 committees or subcommittees.

108
109 States should not be undercut through the regulatory process. It is not acceptable for
110 unelected federal agency officials to exercise legislative authority ~~in the guise of~~through
111 regulation ~~and to that~~ pre-empt~~s~~ the decisions of the elected legislatures of the
112 sovereign states. Any agency intending to pre-empt state laws and rules must have the
113 express statutory authority ~~or clear evidence~~ from Congress ~~of the intent~~ to pre-empt.
114 The Executive Order on Federalism (E.O. 13132) provides guidance for agency
115 examination of intergovernmental impact. NCSL urges the -and should be-codificationed
116 of E.O. 13132 and -and-enforcement of its provisions. NCSL also advocates against
117 agency circumvention of rule-making procedures through interim final rule-making and
118 urges its prohibition and the like, should be prohibited. NCSL supports the creation of

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119 ~~a~~An appropriate congressional committee ~~shall to~~ review agency regulations to identify
120 unjustified intrusions into state sovereignty.

121

122 **State Contracts**

123 NCSL believes that states should partner or contract with religious organizations and
124 engage in charitable choice initiatives pursuant to state and local laws and prerogatives,
125 not nationally mandated standards.

126

127 ~~NCSL opposes any charitable choice legislation that preempts state and local laws, is~~
128 ~~retroactive in its application, undermines existing state federal grant programs and~~
129 ~~partnerships by offsetting their funding, creates new private rights of action for~~
130 ~~individuals to sue states in federal court, and mandates participation on the states~~
131 ~~according to federal guidelines. NCSL does not support charitable choice legislation that~~
132 ~~creates an individual entitlement to services in programs where such entitlement does~~
133 ~~not exist, especially where additional funding is not provided.~~

134

135 **Fifth Amendment Takings**

136 ~~NCSL strongly opposes any federal legislation or regulation that would: (1) attempt to~~
137 ~~define or categorize compensable "takings" under the Fifth Amendment to the United~~
138 ~~States Constitution; (2) interfere with a state's ability to define and categorize regulatory~~
139 ~~takings requiring state compensation; (3) preempt state eminent domain constitutional~~
140 ~~provisions or statutes; or (4) infringe on state sovereignty under the Eleventh~~
141 ~~Amendment. NCSL supports collaborative examinations of state and federal use of~~
142 ~~eminent domain authority.~~

143

144 **Grant Conditions and Mandates**

145 When national policy-makers ignore the fiscal impact of proposals that are to be
146 implemented at the state level, it confronts states with an impossible choice – ignore
147 federal law and face stiff financial penalties or underfund other important state priorities
148 in order to comply with federal unfunded mandates. Ignoring state impact also creates a

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149 rift in intergovernmental relations between states and the federal government. ~~The~~
150 federal government must be accountable for its policy decisions that ultimately affect the
151 level of services states ~~provided by the states~~ or the level at which states are compelled
152 to tax their citizens. NCSL believes that sStates must retain the predominant role in
153 shaping policies for which they will allocate the predominant share of resources.

154
155 Among the distortions caused by the excessive power of the national government is the
156 separation of decisions to tax from decisions to spend. The intractable federal debt
157 makes federal spending decisions more difficult and increases state reliance on
158 mandates or grant conditions to accomplish congressionally set goals. ~~set by Congress.~~
159 NCSL maintains that the federal government must fully appropriate designated funds ~~for~~
160 before application of penalties to states contained in authorized programs ~~are applied.~~
161 Where statutes are ~~not clear~~ ambiguous, agencies must establish regulatory guidance
162 ~~must be established~~ before states become subject to penalties. Federal resources shall
163 be adequate to offer meaningful encouragement to state efforts and, at a minimum, to
164 provide technical assistance and oversight.

165
166 In *New York v. United States*, the Supreme Court outlined guidelines appropriate for
167 limiting regulation under the Spending Clause. Conditions should be unambiguous and
168 should be reasonably related to the purpose of the expenditure. NCSL opposes
169 conditions on grants made to the states beyond such conditions that are necessary to
170 specify the purpose of the expenditure, except where the conditions, such as those
171 relating to civil and individual rights, may fulfill powers expressly delegated to Congress
172 by the Constitution. Existing grants should not automatically become subject to new
173 conditions.

174
175 NCSL believes that federal grants to states can achieve national goals without
176 disrupting state laws and procedures. NCSL supports federal legislation that respects
177 the role of the legislature and that does not create an unnecessary preference for state
178 executive decision-making. NCSL maintains that funds received by a state under

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179 provisions of federal law shall be subject to appropriation by the state legislature,
180 consistent with the terms and conditions required under such federal law. Legislatures
181 shall also retain authority to designate implementing agencies and to review state plans
182 and applications for assistance. State court systems shall not be commandeered to
183 implement federal policies; in the event federal actions will result in an increased burden
184 on state courts, then the federal government shall also provide funds to implement
185 action by the courts.

186
187 NCSL opposes Congress placing responsibility for administrative oversight of grant
188 conditions in the federal courts by relying on beneficiaries to enforce federal grant
189 requirements through lawsuits. In the event the courts are to be relied upon for
190 enforcement, then the federal government shall waive its sovereign immunity and
191 become subject to suit for failures in administration of programs. This policy does not
192 relate to access to federal courts for enforcement of constitutional rights.

193
194 Sovereign Immunity

195 ~~The Supreme Court has held that In *Seminole Tribe of Florida v. Florida* (1996), and its~~
196 ~~progeny, including *Alden v. Maine* (1999), *Florida Prepaid Postsecondary Education*~~
197 ~~*Expense Board v. College Savings Bank* (1999), *College Savings Bank v. Florida*~~
198 ~~*Prepaid Postsecondary Education Expense Bd.* (1999), and *Kimel v. Florida Bd. Of*~~
199 ~~*Regents* (2000) the Supreme Court strengthened the concept of federalism by~~
200 ~~recognizing a major limitation on Congress' Article I Commerce Clause power and its~~
201 ~~power under Section 5 of the 14th Amendment as applied to the States. In so doing, the~~
202 ~~Court confirmed that the Eleventh Amendment to the Constitution is a protection of state~~
203 ~~sovereignty that is purposeful in our federal design. In *Seminole Tribe*, the Court held~~
204 ~~that Congress lacks power under Article I to abrogate the states' sovereign immunity~~
205 ~~from suits commenced or prosecuted in the federal courts. This ruling was extended in~~
206 ~~*Alden v. Maine* where the Court held that the powers delegated to Congress under~~
207 Article I of the United States Constitution do not include the power to subject non-
208 consenting States to private suits for damages in state courts ([Alden v. Maine \(1999\)](#)).

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209 The Court in *Alden* also recognized that sovereign immunity does not derive from the
210 11th Amendment, but from the structure of the original Constitution itself. The states
211 have been recognized as sovereign entities even before the ratification of the U.S.
212 Constitution.

213
214 The Court further constrained Congress' ability to abrogate state sovereign immunity
215 under Section 5 of the 14th Amendment to the Constitution in [College Savings Bank v.](#)
216 Florida Prepaid [Postsecondary Education Expense Board \(1999\)](#). The Court held that
217 Congress' powers under § 5 of the 14th Amendment are powers of enforcement only,
218 and that these enforcement powers are remedial. This means that in order for sovereign
219 immunity of a state to be waived under Section 5, Congress must be able to identify a
220 pervasive pattern of wrongdoing under the 14th Amendment, and the federal legislation
221 seeking to remedy the wrongdoing, must be narrowly tailored to do so.

222
223 It is NCSL's position that if Congress intends to abrogate state sovereign immunity it
224 must state its intent in unmistakably clear language, and the federal government should
225 waive its own immunity in order to enhance legislative consideration of the risks.
226 Normally, equitable and injunctive remedies are sufficient safeguards for ensuring
227 compliance with the law.

228
229 Criminal Jurisdiction
230 Federal expansion of criminal jurisdiction, while not specifically preempting state laws,
231 diminishes the role of state legislatures by permitting federal and state prosecutors to
232 circumvent state law. The choice to prosecute in federal court based upon federal
233 penalties entails a choice to by-pass state legislative responsibility. NCSL opposes the
234 federalizing of state criminal offenses because federalism is weakened and because the
235 role of federal courts as courts of limited jurisdiction is thereby undermined. NCSL
236 recognizes that specific crimes may be appropriate for federal action if a systemic
237 failure makes state action impossible or ineffective; such crimes may include those that
238 have complex international or interstate implications, which relate to the protection of

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239 civil rights, or where conflicts prevent effective state or local prosecution. NCSL deems
240 inadequacy of state resources to be an insufficient reason for federal takeover of
241 criminal jurisdiction.

242

243 Courts

244 It is NCSL's position that in the process of selecting nominees to the federal courts, the
245 President and the Senate should -- among other considerations -- be mindful of the vital
246 role federalism plays within our constitutional framework.

247

248 Conclusion

249 NCSL endorses periodic examination by Congress of the state of American federalism.
250 Members of Congress shall expand formal and informal communications with their state
251 legislatures in order to defend federal legislation that diminishes state powers and to
252 explore less intrusive means of achieving national goals. In exploring the dimensions of
253 federalism, Congress shall consider the need for statutory and constitutional remedies
254 to restore balance. Together, we should revive appreciation for the principle that sharing
255 power between levels of government enhances America's ability to develop responsive
256 policy in a changing world.

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1 **COMMITTEE: LAW, CRIMINAL JUSTICE, AND PUBLIC SAFETY**

2 **POLICY: HOMELAND SECURITY AND EMERGENCY**

3 **MANAGEMENT**

4 **TYPE: DIRECTIVE**

5 The National Conference of State Legislatures maintains that response to natural
6 disasters and terrorist attacks begins at the local level where the event occurs, and
7 involves state and federal response as local, then state, resources are overwhelmed by
8 the magnitude of the event. NCSL urges Congress and the Administration to partner
9 with NCSL and other organizations representing state and local government to prepare
10 our nation for national disasters and threats to homeland security. NCSL urges
11 Congress and the administration to:

- 12 • Continue to channel funding directly to the states to ensure compliance with
13 statewide strategies for maximum coordination and require that such funds be
14 subject to the state legislative oversight or the state appropriation process;
- 15 • Recognize the roles of state legislatures in the development of future guidance
16 frameworks and Congressional legislation;
- 17 • Consult with state entities when creating or amending post-disaster relief
18 programs and applications in order to streamline their procedures to deliver
19 appropriated funds to governments and individuals struggling to recover from
20 devastating disasters;
- 21 • Provide state flexibility among grant program categories for spending-planning,
22 training, equipment, and exercises allowing transfer of funds across categories;
- 23 • Continue to provide a minimum grant in states that appear to have low risk,
24 vulnerability, and criticality factors, in order to sustain the basic response
25 infrastructure for public safety and public health emergencies;
- 26 • Consult with NCSL and state legislatures regarding each state's cost for the
27 development and implementation of performance standards and other
28 accountability measurements related to grant programs;

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- 29 • Ensure that funding for any new grant programs complements, and DOES NOT
30 replace, existing funding sources for other key programs such as first responder
31 programs;
- 32 • Permit citizen rescue and aid efforts to assist in disaster recovery pursuant to
33 state Good Samaritan laws without fear of federal penalties; and
- 34 • Where practicable, allow states to purchase surplus emergency management
35 equipment from the federal government following response and recovery efforts.

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

42 NCSL urges the Department of Homeland Security (DHS) and the Federal Emergency
43 Management Agency (FEMA) to develop a centralized grant application process for
44 homeland security and emergency preparedness activities; utilize an all-hazards
45 approach including terrorism, natural and man-made disasters, and public health
46 emergencies; and avoid adding new compliance requirements to existing grant
47 programs. NCSL insists that FEMA streamline grants administration processes at FEMA
48 as well as work together with other federal agencies that oversee disaster assistance –
49 such as the Department of Housing and Urban Development (HUD) and the Small
50 Business Administration (SBA) – to streamline and improve the efficiency of disaster
51 assistance administration as a whole. Where possible, grants should be administered at
52 the state level.

53 NCSL supports the funding of the Emergency Management Planning Grants (EMPG) at
54 a level that meets current needs, and supports funding for the Emergency Management
55 Assistance Compact (EMAC).

56 The Department of Homeland Security (DHS) DHS should work closely with NCSL,
57 individual state legislatures, state emergency management and public safety leaders to
58 meet the goal of fully funded and fully operating Fusion Centers that blend relevant law

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59 enforcement and intelligence information analysis and coordinate security measures to
60 reduce threats in their communities and to continue to improve the quality and quantity
61 of analytical intelligence products that are provided to state and local governments.

62 **Cybersecurity**

63 NCSL recognizes that the nation's information infrastructure is rapidly becoming one of
64 the most serious threats our country has ever encountered. In order to combat this
65 increasing threat, it is essential that all levels of government work together to develop
66 proper solutions. NCSL urges Congress and the Administration to:

- 67 • View state and local governments as critical stakeholders;
- 68 • Avoid unfunded federal mandates and preemptions on state and local partners;
- 69 • Collaborate with state and local governments to invest in cybersecurity
70 awareness; and
- 71 • Maintain the civil liberties and privacy of all citizens while sustaining the safety
72 and stability of the internet and electronic communications.

73 **Border Security and Enforcement**

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

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

84 **Emergency Management and Presidential Disaster Declarations**

85 NCSL believes effective emergency management involves both preparing for and
86 responding to disasters. According to a 2018 National Institute of Building Sciences
87 (NIBS) study, every \$1 invested in disaster mitigation by the federal government saves
88 communities \$6. Recognition that states need to allocate state funding and receive

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89 federal funding before a disaster strikes is a necessity in order to sufficiently prepare for
90 disasters and ultimately save communities money. NCSL urges FEMA and Congress to
91 make federal disaster assistance available for a range of pre-disaster mitigation
92 activities – from flooding to wildfires and beyond - that will promote advance planning for
93 disasters and save both states and the federal government money in the long run.

94 Specifically, NCSL urges:

95 • Congress to pass legislation that will increase assistance for wildfire mitigation,
96 given the significant and increasing threat wildfires pose to air quality, water quality, and
97 the safety of residents in affected states.

98 • FEMA to co-locate federal with state emergency management staff to 1) better
99 administer disaster preparedness training on the state and local level and 2) learn from
100 state and local staff the disaster risk profile specific to the area rather than assuming a
101 one-size-fits-all approach.

102 • The Federal government to provide state emergency management personnel
103 proper access to federal lands for the purpose of mitigation activities, including but not
104 limited to forest maintenance and fuel load reduction.

105 In considering procedures for when disasters do occur, FEMA should not make
106 changes to existing systems in the absence of state consultation. Upon the issuance of
107 a Presidential Disaster Declaration (PDD), FEMA calculates federal aid to states based
108 on a per capita equation tied to state or local population pursuant to 44 C.F.R. Section
109 206.4. FEMA uses this per capita figure as one of several contributing factors when
110 deciding whether to grant public assistance to a state. NCSL urges FEMA to exercise
111 caution when determining whether to alter this existing formula. While NCSL
112 appreciates FEMA's goals of reducing disaster costs overall and incentivizing pre-
113 disaster planning and mitigation, any changes in the current statutory scheme must be
114 constitutional, and must not contain burdensome cost shifts to states, or unwarranted
115 preemption of state law. NCSL urges FEMA to engage in extensive consultation with
116 state legislators in order to alleviate any intergovernmental issues that could aggravate
117 the federal-state-local relationship. NCSL would oppose changes to the existing disaster

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118 declaration framework that would slow down the distribution of federal funds that
119 contribute to state recovery from natural disasters.

120 NCSL calls upon the Administration to:

- 121 • Consult with states and requests transparency in its review and reform
122 standards, policies, and procedures.
- 123 • When determining aid per capita for states, recognize and respect individual
124 designations of localities within states. Likewise, when FEMA considers whether to
125 recommend a disaster declaration for any given state, NCSL urges consideration of
126 inordinately extensive impact to localities.
- 127 • Avoid federal action, such as stringent licensing requirements, that would
128 discourage Good Samaritan aid or inhibit liability protections for voluntary civilian aid at
129 the state level.
- 130 • _____ Exercise the greatest level of flexibility possible in granting FEMA public
131 assistance disaster relief funds that respect the distinctiveness of different states.
- 132 • _____ R
- 133 • _____ Remain united in prioritizing the efficient appropriation of needed aid to disaster-
134 stricken states and territories.

135

1 **COMMITTEE: LAW, CRIMINAL JUSTICE, AND PUBLIC SAFETY**

2 **POLICY: DEFERRED ACTION FOR CHILDHOOD ARRIVALS**
3 **PROGRAM CODIFICATION**

4 **TYPE: RESOLUTION (NEW)**

5 **WHEREAS**, the Deferred Action for Childhood Arrivals (DACA) program, established by
6 executive order in 2012, safeguarded individuals who applied for protection under the
7 program from deportation. These individuals entered the country under the age of 16
8 prior to June 15, 2012, have continuously resided in the United States since 2007, have
9 no prior serious criminal history, and have either served in the United States Armed
10 Forces, completed, or are currently enrolled in high school or a GED program; and

11 **WHEREAS**, Dreamers are a broader category of young people who entered the United
12 States as children but have not yet applied for or received DACA program protections.
13 Both Dreamers and DACA recipients are most familiar with and loyal to the United
14 States, not their birth country; and

15 **WHEREAS**, These young immigrants are hardworking and educated individuals who
16 are tax paying members of the American workforce, annually contributing about \$5.7
17 billion in federal taxes and \$3.1 billion in state and local taxes according to the Center
18 for American Progress; and

19 **WHEREAS**, DACA has been subject to near constant litigation in the federal court
20 system regarding the constitutionality of the program. Congress has failed to pass
21 legislation addressing this population causing instability that forces Dreamers and
22 DACA recipients to live in fear of someday being arrested and deported to a country
23 which, in many cases, they do not remember living in; and

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24 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
25 urges Congress to pass a stand-alone piece of legislation that ensures that Dreamers
26 and DACA recipients are allowed to reside in the United States without fear of
27 deportation or persecution.

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1 **COMMITTEE: LAW, CRIMINAL JUSTICE, AND PUBLIC SAFETY**

2 **POLICY: HUMANE TREATMENT OF ASYLUM SEEKERS AT**
3 **SOUTHERN BORDER AND PORTS OF ENTRY**

4 **TYPE: RESOLUTION ~~(NEW)~~**

5 **WHEREAS**, the United States has a vested interest in securing its borders; and

6 **WHEREAS**, promoting legal immigration is paramount to the prosperity of the United
7 States; and

8 **WHEREAS**, the right to seek and enjoy asylum from persecution is a commonly
9 accepted human right in the international community that the United States upholds;
10 and

11 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
12 urges Congress and the Administration to invest in procedural and technological
13 improvements to its ports of entry and judicial system in order to facilitate a safe,
14 efficient, timely, and humane immigration process for asylum seekers.

15

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1 **COMMITTEE: LAW, CRIMINAL JUSTICE, AND PUBLIC SAFETY**

2 **POLICY: INCREASING VISA CAPS AND LEGAL IMMIGRATION**
3 **TO END LABOR SHORTAGE**

4 **TYPE: RESOLUTION ~~(NEW)~~**

5 **WHEREAS**, there is currently a labor shortage in key U.S. industries and increased
6 cultural and ethnic diversity is a recognized benefit to our society; and

7 **WHEREAS**, the pandemic highlighted the need for a diverse and robust workforce able
8 to withstand shocks and unforeseen circumstances, particularly in industries such as
9 healthcare, manufacturing, agriculture, education, and trade industries that continue to
10 experience shortages, amounting in total to over 10 million unfilled jobs; and

11 **WHEREAS**, immigrants tend to be of optimal working age and eager to find
12 employment; and

13 **WHEREAS**, employment-based visa holders are non-citizen workers that complement
14 U.S. workers and help to fill labor gaps in critical industries; and

15 **WHEREAS**, employment-based visa holders benefit the country not only with their
16 gainful employment but also by contributing to the tax base, as they pay federal, state,
17 Social Security, and Medicare taxes proportional to their wages; and

18 **WHEREAS**, according to the United States Department of State, permanent
19 employment-based immigration is statutorily limited to 140,000 principals and
20 dependents annually. To illustrate the low number of visas available in certain sectors,
21 the number of H-2B visas is statutorily limited to 66,000, and the number of H-1B visas
22 is limited to 65,000 with an additional 20,000 visas available for those with a master's

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23 degree or doctorate. There are countless other industries with statutory visa caps that
24 are not commensurate with workforce needs; and
25 **WHEREAS**, these visa caps are often met within the first few months of each year; and
26 **WHEREAS**, many visa recipients must reapply yearly and these applications can be
27 lengthy and burdensome; and
28 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
29 urges Congress to significantly increase the statutory visa caps and simplify the
30 application and reapplication processes to allow employment-based visa recipients to
31 easily maintain their visa status; and
32 **LET IT BE FURTHER RESOLVED**, the National Conference of State Legislatures
33 urges Congress and the Administration to create legal pathways to immigration and
34 streamline the process for immigration into our country in order to fortify the labor
35 market and achieve economic prosperity.

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1 **COMMITTEE: LAW, CRIMINAL JUSTICE, AND PUBLIC SAFETY**

2 **POLICY: PATHWAY TO CITIZENSHIP FOR REFUGEES**

3 **TYPE: RESOLUTION ~~(NEW)~~**

4 **WHEREAS**, Temporary Protected Status (TPS) is a crucial designation that allows
5 those whose home countries have been ravaged by natural disasters and war to gain
6 lawful entry and temporary residency in the United States; and

7 **WHEREAS**, violence and instability in Afghanistan, Yemen, Ukraine, Myanmar, Syria,
8 and many other regions worldwide have created a global refugee population of over 30
9 million people, half of them being children according to the United Nations High
10 Commissioner for Refugees; and

11 **WHEREAS**, nationals from 13 countries are currently eligible to apply for TPS in the
12 United States through the stringent and thorough application process, consisting of
13 background checks and application fees; and

14 **WHEREAS**, the majority of TPS holders have resided in the country for over a decade;
15 and

16 **WHEREAS**, the Center for Migration Studies reports TPS holders have labor
17 participation rates of over 80% and are thus beneficial to the economy, projected to
18 contribute \$164 billion to the economy over the next decade; and

19 **WHEREAS**, TPS recipients often do not have a clear pathway to citizenship. Those who
20 have resided in the United States for long periods of time and have built a life for
21 themselves in the country would face an uncertain future. Pursuant to *Sanchez v.*
22 *Mayorkas*, the Supreme Court held that TPS recipients who entered the US without

23 inspection must return to their country of origin to have their visa application processed
24 by a consular post. This is a process that would prevent most TPS holders from gaining
25 approval to re-enter the US for multiple years; and

26 **WHEREAS**, the Department of Homeland Security has the authority to designate
27 countries for TPS, leaving TPS protections largely in the hands of the executive branch,
28 which can change drastically in terms of priorities depending on the administration; and

29 **NOW, THEREFORE, BE IT RESOLVED**, the National Conference of State Legislatures
30 urges Congress to pass legislation granting those in the United States with TPS a
31 pathway to citizenship.

32 **NOW THEREFORE BE IT FURTHER RESOLVED**, the National Conference of State
33 Legislatures urges Congress and the Administration to develop a fair and consistent
34 process to evaluate and approve TPS applications on an expedited basis, without
35 forcing applicants to return to the dangers in their home country while they await the
36 outcome of their application.

37

38 **COMMITTEE: LAW, CRIMINAL JUSTICE, AND PUBLIC SAFETY**

39 **POLICY: VOTER REGISTRATION LIST MAINTENANCE**

40 **TYPE: RESOLUTION (NEW)**

41

42 **WHEREAS, the official record of all eligible voters in a state, voter registration rolls are**
43 **the foundation of free, fair, and secure elections;**

44 **WHEREAS, voters move or die every day; election officials may not get this information**
45 **in a timely manner;**

46 **WHEREAS, maintaining accurate and updated voter rolls through a nonpartisan,**
47 **nondiscriminatory, and effective system is vital to strengthening trust and confidence in**
48 **election results;**

49 **WHEREAS, Federal/State coordination can help identify and remove ineligible or**
50 **deceased voters and update eligible voters' records;**

51 **LET IT BE RESOLVED, to increase voter confidence, NCSL urges the United States**
52 **Congress to collaborate with the states to ensure fair and effective list maintenance.**

53