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Our American federalism creatively unites states with unique cultural, political, and social diversity into a strong nation. It is built on the concepts of shared sovereignty and delineated powers. The Tenth Amendment is the cornerstone of constitutional federalism and reserves broad powers to the states and to the people. Federalism protects liberty, enhances accountability and fosters innovation with less risk to the nation. NCSL strongly urges federal lawmakers to maintain a collaborative federalism that respects states' roles and empowers states to appropriately implement federal standards, permit diversity without causing division, and foster unity and coordination among states without enshrining uniformity. To revitalize federalism, the three branches of the national government should carefully examine and refrain from enacting proposals that would limit the ability of state legislatures to exercise discretion over basic and traditional functions of state government.

The Constitution divides authority between federal and state governments for the protection of individuals." New York v. United States 505 U.S. 144 (1992). This careful balance enhances the express protections of civil liberties within the Constitution. Effective governance requires appropriate devolution of decision-making authority from the federal government to the states in order to encourage participation and inclusion in our federalist system.

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

It is a suitable role for the federal government to encourage innovation by states. Our
country’s founders did not contemplate a perfect union, but rather a more perfect union,
meaning, there must be room for policy experimentation and different methods of self-
government at the state level. States are inherently capable of moving more quickly
than the federal Congress to correct errors observed in policy and can be more
sensitive to public needs.

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

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

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Pre-emption

Congress must allow states flexibility to shape public policy. Creative solutions to public problems can be achieved more readily when state laws are accorded due respect.

Every preemptive law diminishes other expressions of self-government; therefore, NCSL maintains that state laws should never be preempted without substantial justification, compelling need, and broad consensus. Our federalism anticipates diversity; our unity does not anticipate uniformity. While proponents of pre-emption may claim expected benefits, any benefit must be balanced against the potential loss of accountability, innovation, and responsiveness.

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

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

Congress shall provide reasonable notice to state legislative leaders and governors of any congressional intent to preempt and shall provide them with opportunity for formal and informal comment prior to enactment. To ensure that Congress knows the effects of its decisions on states, members of Congress shall investigate which of their state's laws would be preempted by federal legislation before they vote on the pre-emptive
legislation. Congress shall develop processes and seek early and regular consultation with state legislatures to fully understand the fiscal and other policy impacts of proposed bills on states. NCSL supports the creation of congressional intergovernmental committees or subcommittees and maintains that Congress shall refer bills that affect state powers and administration to these intergovernmental committees or subcommittees.

States should not be undercut through the regulatory process. It is not acceptable for unelected federal agency officials to exercise legislative authority through regulation that preempts the decisions of the elected legislatures of the sovereign states. Any agency intending to preempt state laws and rules must have the express statutory authority from Congress to preemp. The Executive Order on Federalism (E.O. 13132) provides guidance for agency examination of intergovernmental impact. NCSL urges the codification of E.O. 13132 and enforcement of its provisions. NCSL also advocates against agency circumvention of rule-making procedures through interim final rule-making and urges its prohibition. NCSL supports the creation of an appropriate congressional committee to review agency regulations to identify unjustified intrusions into state sovereignty.

State Contracts

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

Grant Conditions and Mandates

When national policymakers ignore the fiscal impact of proposals that are to be implemented at the state level, it confronts states with an impossible choice – ignore federal law and face stiff financial penalties or underfund other important state priorities.
in order to comply with federal unfunded mandates. Ignoring state impact also creates a rift in intergovernmental relations between states and the federal government. The federal government must be accountable for its policy decisions that ultimately affect the level of services states provide or the level at which states are compelled to tax their citizens. NCSL believes that states must retain the predominant role in shaping policies for which they will allocate the predominant share of resources.

Among the distortions caused by the excessive power of the national government is the separation of decisions to tax from decisions to spend. The intractable federal debt makes federal spending decisions more difficult and increases state reliance on mandates or grant conditions to accomplish congressionally set goals. NCSL maintains that the federal government must fully appropriate designated funds before application of penalties to states contained in authorized programs. Where statutes are ambiguous, agencies must establish regulatory guidance before states become subject to penalties. Federal resources shall be adequate to offer meaningful encouragement to state efforts and, at a minimum, to provide technical assistance and oversight.

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

NCSL believes that federal grants to states can achieve national goals without disrupting state laws and procedures. NCSL supports federal legislation that respects the role of the legislature and that does not create an unnecessary preference for state executive decision-making. NCSL maintains that funds received by a state under
provisions of federal law shall be subject to appropriation by the state legislature, consistent with the terms and conditions required under such federal law. Legislatures shall also retain authority to designate implementing agencies and to review state plans and applications for assistance. State court systems shall not be commandeered to implement federal policies; in the event federal actions will result in an increased burden on state courts, then the federal government shall also provide funds to implement action by the courts.

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

Sovereign Immunity

The Supreme Court has held that the powers delegated to Congress under Article I of the United States Constitution do not include the power to subject non-consenting States to private suits for damages in state courts (Alden v. Maine (1999)). The Court in *Alden* also recognized that sovereign immunity does not derive from the 11th Amendment, but from the structure of the original Constitution itself. The states have been recognized as sovereign entities even before the ratification of the U.S. Constitution.

The Court further constrained Congress’ ability to abrogate state sovereign immunity under Section 5 of the 14th Amendment to the Constitution in *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board* (1999). The Court held that Congress' powers under § 5 of the 14th Amendment are powers of enforcement only, and that these enforcement powers are remedial. This means that in order for sovereign immunity of a state to be waived under Section 5, Congress must be able to identify a

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pervasive pattern of wrongdoing under the 14th Amendment, and the federal legislation seeking to remedy the wrongdoing, must be narrowly tailored to do so.

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

Criminal Jurisdiction

Federal expansion of criminal jurisdiction, while not specifically preempting state laws, diminishes the role of state legislatures by permitting federal and state prosecutors to circumvent state law. The choice to prosecute in federal court based upon federal penalties entails a choice to bypass state legislative responsibility. NCSL opposes the federalizing of state criminal offenses because federalism is weakened and because the role of federal courts as courts of limited jurisdiction is thereby undermined. NCSL recognizes that specific crimes may be appropriate for federal action if a systemic failure makes state action impossible or ineffective; such crimes may include those that have complex international or interstate implications, which relate to the protection of civil rights, or where conflicts prevent effective state or local prosecution. NCSL deems inadequacy of state resources to be an insufficient reason for federal takeover of criminal jurisdiction.

Courts

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

Conclusion
NCSL endorses periodic examination by Congress of the state of American federalism. Members of Congress shall expand formal and informal communications with their state legislatures in order to defend federal legislation that diminishes state powers and to explore less intrusive means of achieving national goals. In exploring the dimensions of federalism, Congress shall consider the need for statutory and constitutional remedies to restore balance. Together, we should revive appreciation for the principle that sharing power between levels of government enhances America's ability to develop responsive policy in a changing world.
The National Conference of State Legislatures maintains that response to natural disasters and terrorist attacks begins at the local level where the event occurs, and involves state and federal response as local, then state, resources are overwhelmed by the magnitude of the event. NCSL urges Congress and the Administration to partner with NCSL and other organizations representing state and local government to prepare our nation for national disasters and threats to homeland security. NCSL urges Congress and the administration to:

- Continue to channel funding directly to the states to ensure compliance with statewide strategies for maximum coordination and require that such funds be subject to the state legislative oversight or the state appropriation process;
- Recognize the roles of state legislatures in the development of future guidance frameworks and Congressional legislation;
- Consult with state entities when creating or amending post-disaster relief programs and applications in order to streamline their procedures to deliver appropriated funds to governments and individuals struggling to recover from devastating disasters;
- Provide state flexibility among grant program categories for spending-planning, training, equipment, and exercises allowing transfer of funds across categories;
- Continue to provide a minimum grant in states that appear to have low risk, vulnerability, and criticality factors, in order to sustain the basic response infrastructure for public safety and public health emergencies;
- Consult with NCSL and state legislatures regarding each state's cost for the development and implementation of performance standards and other accountability measurements related to grant programs;
• Ensure that funding for any new grant programs complements, and DOES NOT replace, existing funding sources for other key programs such as first responder programs;
• Permit citizen rescue and aid efforts to assist in disaster recovery pursuant to state Good Samaritan laws without fear of federal penalties; and
• Where practicable, allow states to purchase surplus emergency management equipment from the federal government following response and recovery efforts.

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

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

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

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

Cybersecurity

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

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

Border Security and Enforcement

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

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

Emergency Management and Presidential Disaster Declarations

NCSL believes effective emergency management involves both preparing for and responding to disasters. According to a 2018 National Institute of Building Sciences (NIBS) study, every $1 invested in disaster mitigation by the federal government saves communities $6. Recognition that states need to allocate state funding and receive
federal funding before a disaster strikes is a necessity in order to sufficiently prepare for
disasters and ultimately save communities money. NCSL urges FEMA and Congress to
make federal disaster assistance available for a range of pre-disaster mitigation
activities – from flooding to wildfires and beyond - that will promote advance planning for
disasters and save both states and the federal government money in the long run.

Specifically, NCSL urges:

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

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

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

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

NCSL calls upon the Administration to:

- Consult with states and requests transparency in its review and reform standards, policies, and procedures.
- When determining aid per capita for states, recognize and respect individual designations of localities within states. Likewise, when FEMA considers whether to recommend a disaster declaration for any given state, NCSL urges consideration of inordinately extensive impact to localities.
- Avoid federal action, such as stringent licensing requirements, that would discourage Good Samaritan aid or inhibit liability protections for voluntary civilian aid at the state level.
- Exercise the greatest level of flexibility possible in granting FEMA public assistance disaster relief funds that respect the distinctiveness of different states.
- Remain united in prioritizing the efficient appropriation of needed aid to disaster-stricken states and territories.
WHEREAS, the Deferred Action for Childhood Arrivals (DACA) program, established by executive order in 2012, safeguarded individuals who applied for protection under the program from deportation. These individuals entered the country under the age of 16 prior to June 15, 2012, have continuously resided in the United States since 2007, have no prior serious criminal history, and have either served in the United States Armed Forces, completed, or are currently enrolled in high school or a GED program; and

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

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

WHEREAS, DACA has been subject to near constant litigation in the federal court system regarding the constitutionality of the program. Congress has failed to pass legislation addressing this population causing instability that forces Dreamers and DACA recipients to live in fear of someday being arrested and deported to a country which, in many cases, they do not remember living in; and
NOW, THEREFORE, BE IT RESOLVED, the National Conference of State Legislatures urges Congress to pass a stand-alone piece of legislation that ensures that Dreamers and DACA recipients are allowed to reside in the United States without fear of deportation or persecution.
WHEREAS, the United States has a vested interest in securing its borders; and
WHEREAS, promoting legal immigration is paramount to the prosperity of the United States; and
WHEREAS, the right to seek and enjoy asylum from persecution is a commonly accepted human right in the international community that the United States upholds; and

NOW, THEREFORE, BE IT RESOLVED, the National Conference of State Legislatures urges Congress and the Administration to invest in procedural and technological improvements to its ports of entry and judicial system in order to facilitate a safe, efficient, timely, and humane immigration process for asylum seekers.
WHEREAS, there is currently a labor shortage in key U.S. industries and increased cultural and ethnic diversity is a recognized benefit to our society; and

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

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

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

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

WHEREAS, according to the United States Department of State, permanent employment-based immigration is statutorily limited to 140,000 principals and dependents annually. To illustrate the low number of visas available in certain sectors, the number of H-2B visas is statutorily limited to 66,000, and the number of H-1B visas is limited to 65,000 with an additional 20,000 visas available for those with a master’s...
degree or doctorate. There are countless other industries with statutory visa caps that
are not commensurate with workforce needs; and

WHEREAS, these visa caps are often met within the first few months of each year; and

WHEREAS, many visa recipients must reapply yearly and these applications can be
lengthy and burdensome; and

NOW, THEREFORE, BE IT RESOLVED, the National Conference of State Legislatures
urges Congress to significantly increase the statutory visa caps and simplify the
application and reapplication processes to allow employment-based visa recipients to
easily maintain their visa status; and

LET IT BE FURTHER RESOLVED, the National Conference of State Legislatures
urges Congress and the Administration to create legal pathways to immigration and
streamline the process for immigration into our country in order to fortify the labor
market and achieve economic prosperity.
WHEREAS, Temporary Protected Status (TPS) is a crucial designation that allows those whose home countries have been ravaged by natural disasters and war to gain lawful entry and temporary residency in the United States; and

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

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

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

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

WHEREAS, TPS recipients often do not have a clear pathway to citizenship. Those who have resided in the United States for long periods of time and have built a life for themselves in the country would face an uncertain future. Pursuant to Sanchez v. Mayorkas, the Supreme Court held that TPS recipients who entered the US without
inspection must return to their country of origin to have their visa application processed by a consular post. This is a process that would prevent most TPS holders from gaining approval to re-enter the US for multiple years; and

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

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

NOW THEREFORE BE IT FURTHER RESOLVED, the National Conference of State Legislatures urges Congress and the Administration to develop a fair and consistent process to evaluate and approve TPS applications on an expedited basis, without forcing applicants to return to the dangers in their home country while they await the outcome of their application.
WHEREAS, the official record of all eligible voters in a state, voter registration rolls are the foundation of free, fair, and secure elections;

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

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

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

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