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

POLICY DIRECTIVES AND RESOLUTIONS

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Debate over election policy has intensified and continues to attract national attention. Public confidence in the integrity of our elections is of utmost importance to both state and federal policymakers and is fundamental to our democracy.

The Constitution of the United States explicitly grants state legislatures the authority to regulate the time, place, and manner of elections. Even minor changes to federal election laws and policy affects states. Consequently, state legislatures must be equal partners with Congress when considering any potential election legislation.

As the organization representing state legislatures, National Conference of State Legislatures (NCSL) stands ready to partner with federal officials to develop appropriate federal legislation and/or regulations that respect state sovereignty.

NCSL encourages the fiscally responsible appropriation of federal funds to supplement the resources already allocated by state and local governments for the purposes of:

- Facilitating voter registration, maintenance, and accuracy of voter rolls;
- Improving ballot design and accessibility;
- Modernizing election equipment and systems;
- Providing training and educational opportunities for election personnel;
- Protecting equal access to the right to vote; and
- Enhancing the security of election procedures.

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

Given the states’ responsibility to conduct fair and accurate elections, NCSL maintains
that it must be an equal partner with Congress or any federal agency or commission
charged with regulating or establishing elections guidelines because even minor
changes to federal election laws and policy will impact states in varying degrees. NCSL
supports working in partnership with federal officials to ensure that federal election
reform efforts do not unnecessarily preempt existing state policy. In this respect, NCSL
believes that federal legislation and guidance documents that affect the states should
be drafted with substantial input from those who would be responsible for their
implementation. Federal legislation or guidance impacting state election policies or
procedures should not curtail state innovation and NCSL believes that federal legislation
should include reasonable timeframes for implementing state and local programs.

In light of nation state actors’ efforts to probe state elections systems, NCSL urges
congress and the administration to partner with states on cybersecurity to ensure
elections remain fair, accurate, and free from foreign interference.

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

In the specific area of cybersecurity, federal support of state actions is now required. In 2002 when HAVA was enacted, cybersecurity was a virtually unknown concern. Now it is paramount, and states do not have the resources or capacity to protect against cyber interference in election systems without federal assistance. Federal assistance must include accurate and timely communications to states about threats and known cyber events as well as sufficient federal funding. Therefore, NCSL supports additional federal formula grant funding to states for the following broad purposes:

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

Improving election technology, systems and ballot design;

Facilitating states’ processes for voter registration, verification and maintenance of voter rolls;

Educating citizens on representative democracy and election processes and systems;

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

Providing training and education opportunities for elections personnel.

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

Continuity of Congress

NCSL acknowledges the possibility that a catastrophic national emergency may render the U.S. House of Representatives unable to conduct the business of the country due to the death or permanent incapacitation of more than 100 of its members. Periodically, Congress introduces legislation that proposes a national uniform special elections
process containing federal mandates for the timing of such elections without taking into account state laws and procedures for conducting special elections. Special elections have traditionally been a state responsibility that does not warrant federal intervention and all states have a special elections process in place that is procedurally best for that state. Therefore, NCSL supports federal legislation that allows for state flexibility with respect to the timing of and other rules governing special elections and opposes federal legislation that would preempt state laws governing special elections outright.
State legislators recognize that data collection and related infrastructure in the criminal justice field, including the ability to track and understand information about the people who go through state criminal justice systems, is an important component for state legislatures when making policy decisions and allocating state resources to their criminal justice, juvenile justice, and court systems.

Any efforts undertaken by the federal government to consult on, collect or distribute criminal justice, juvenile justice, or court data should not infringe on state transparency, privacy, and data collection laws, however states could benefit from consultation with the U.S. Department of Justice regarding options for data collection and strategies for streamlining state practices to collect the best and most comprehensive information. Similarly, the federal government can assist states through federal grants that support state data infrastructure and collection.

The federal government is in the best position to urge collection and distribution of state criminal justice, juvenile justice, and court data that can be used for cross state comparison. States should be able to provide input to the U.S. Department of Justice on the data that is the most useful and ideas on how data collection can be improved and released timely.

The National Conference of State Legislatures supports efforts by the U.S. Department of Justice for collection of criminal justice, juvenile justice, and court data that is useful for cross-state comparison in the least burdensome manner possible and dissemination of the data in a timely and useful manner. The National Conference of State Legislatures also urges U.S. Department of Justice to provide funding for and technical
assistance to states, localities, criminal and juvenile justice agencies, and courts for

data collection and infrastructure.
The National Conference of State Legislatures (NCSL) maintains that the federal government should respect state decisions to regulate cannabis, including hemp in non-FDA approved cannabis products. NCSL recognizes that its members have differing views on how to treat cannabis in their states and believes that states and localities should be able to set whatever policies work best to improve the public safety, health, and economic development of their communities.

NCSL believes that federal laws, including the Controlled Substances Act (CSA), should be amended to remove cannabis (marijuana) and cannabis derivatives from the Controlled Substance Schedules and explicitly allow states to set their own cannabis policies without federal interference and urges the administration not to undermine state cannabis policies. Where states have authorized cannabis production, distribution, and possession by establishing an effective regulatory scheme, the administration should direct federal prosecutors to respect state cannabis laws when exercising discretion around enforcement. NCSL maintains that, until cannabis is federally de-scheduled, the administration should prioritize its enforcement actions against criminal enterprises engaged in illicit cannabis production and sale, and not against citizens who are compliant with state cannabis laws. Furthermore, NCSL urges Congress to prohibit the administration from using federal funds to enforce the CSA in a manner inconsistent with these enforcement priorities.
Under federal law, cannabis businesses in states that have legalized the sale of cannabis are unable to utilize the country’s banking system, forcing them to operate as primarily cash-only entities. This reliance on cash makes cannabis businesses prime targets for theft, burglary, armed robbery, and other property crimes. NCSL urges Congress to pass legislation allowing financial institutions to provide banking services to legitimate state authorized cannabis-related businesses.

The National Academies of Sciences, Engineering, and Medicine identified challenges and barriers in conducting cannabis research in a 2017 report: *The Health Effects of Cannabis and Cannabinoids*. NCSL urges Congress and the administration to address the challenges and barriers identified in this report. NCSL believes that it is especially important that Congress and the administration provide researchers access to cannabis in the quantity, quality, and type necessary to research the health effects of cannabis use and that adequate funding sources are made available to support cannabis and cannabinoid research that explores the health benefits and risks of cannabis use.
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

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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.