
From: Finkel, Jacob [REDACTED]
Sent: Sun 11/3/2024 9:36:29 AM (UTC-05:00)
To: Osher, Daniel [REDACTED] Barnes, Mel - GOV [REDACTED]
Subject: Re: [External] Time-Sensitive Election Question - PA, AZ, MI, WI

Sounds good, thanks. I'll send around an invite and am going to add a few folks on my team who are tracking this.

From: Osher, Daniel <[REDACTED]>
Date: Sunday, November 3, 2024 at 9:35 AM
To: Finkel, Jacob <[REDACTED]> Barnes, Mel - GOV <[REDACTED]>
Subject: Re: [External] Time-Sensitive Election Question - PA, AZ, MI, WI

I also don't have much to share but would be interested in folks' thoughts. I can also do 11:30 central.

Daniel Osher
Deputy Legal Counsel
Executive Office of Governor Gretchen Whitmer
[REDACTED]

From: Finkel, Jacob <[REDACTED]>
Sent: Sunday, November 3, 2024 9:28:44 AM
To: Barnes, Mel - GOV <[REDACTED]> [REDACTED] <[REDACTED]> Osher, Daniel <[REDACTED]>
Subject: Re: [External] Time-Sensitive Election Question - PA, AZ, MI, WI

CAUTION: This is an External email. Please send suspicious emails to abuse@michigan.gov

Thanks, Mel. I can make any of those times work. If anyone else has a preferred time, please let me know, otherwise I can give you a call directly, Mel, at 11:30am CT.

Thanks,
Jacob

From: Barnes, Mel - GOV <[REDACTED]>
Date: Sunday, November 3, 2024 at 8:50 AM
To: Finkel, Jacob <[REDACTED]> [REDACTED] <[REDACTED]> Osher, Daniel <[REDACTED]>
Subject: Re: [External] Time-Sensitive Election Question - PA, AZ, MI, WI
Hi Jacob,

I don't know that I have a ton to share about this, but I'm free for a call between 11 and 2:30 CT if folks want to chat, or after 7pm CT.

Best,
Mel

Mel Barnes

Chief Legal Counsel

Office of Governor Tony Evers

p: (608) [REDACTED]

e: [REDACTED]mailto:[REDACTED]

PLEASE NOTE: While government records are generally subject to disclosure pursuant to the public records law, this email, including any attachments, may contain confidential and/or privileged information exempt from public disclosure. If you are not the intended recipient or believe that you received this email in error, please notify the sender immediately.

Get Outlook for

iOS<[https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Faka.ms%2Fo0ukef&data=05%7C02%7C\[REDACTED\]%7C7c456603473a4fd8b8ec08dcfc13d467%7Cd5fb7087377742ad966a892ef47225d1%7C0%7C0%7C638662409318324428%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=3MgMzsEdp%2BUJSZvIQ1ZCV9zKuYbxoha8kitM9Q1jFdo%3D&reserved=0](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Faka.ms%2Fo0ukef&data=05%7C02%7C[REDACTED]%7C7c456603473a4fd8b8ec08dcfc13d467%7Cd5fb7087377742ad966a892ef47225d1%7C0%7C0%7C638662409318324428%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=3MgMzsEdp%2BUJSZvIQ1ZCV9zKuYbxoha8kitM9Q1jFdo%3D&reserved=0)>

From: Finkel, Jacob <[REDACTED]>
Sent: Sunday, November 3, 2024 12:33:37 AM
To: [REDACTED] <[REDACTED]> Barnes, Mel - GOV <[REDACTED]> Osher, Daniel <[REDACTED]>
Subject: Re: [External] Time-Sensitive Election Question - PA, AZ, MI, WI

CAUTION: This email originated from outside the organization.
Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thanks so much, Julia, for making this connection. Appreciate it, and moving you to bcc to spare your inbox as we coordinate.

Hi Will, Mel, and Dan,

As Julia mentioned, I have the elections portfolio in the Governor's Policy Office here in PA—glad to meet you all.

We've just recently become aware of a new federal

law<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.congress.gov%2Fbill%2F118th-congress%2Fhouse->

[bill%2F6513&data=05%7C02%7C%7C7c456603473a4fd8b8ec08dcfc13d467%7Cd5fb7087377742ad966a892ef47225d1%7C0%7C0%7C638662409318347925%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=6wZXI%2BGqdvWSu6DDR7JTvCfKjG4LoElkd9d1ly%2BtF5c%3D&reserved=0](https://www.pa.gov/content/dam/oc/pagov/pagov/documents/documents/cofense-report-phishing-user-guide.pdf&data=05%7C02%7C%7C7c456603473a4fd8b8ec08dcfc13d467%7Cd5fb7087377742ad966a892ef47225d1%7C0%7C0%7C638662409318347925%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=6wZXI%2BGqdvWSu6DDR7JTvCfKjG4LoElkd9d1ly%2BtF5c%3D&reserved=0)>—

signed Oct. 4th—authorizing the long-running congressional observer program. I understand that some of your states have hosted observers in the past and may be doing so again this year, so was curious for your perspective.

If there's interest in chatting on this, I'm glad to coordinate a time tomorrow (Sunday) to discuss further.

Thanks,
Jacob

From: Julia Spiegel <[REDACTED]>
Date: Sunday, November 3, 2024 at 12:09 AM
To: Finkel, Jacob <[REDACTED]> <[REDACTED]> Barnes, Mel - GOV
<[REDACTED]> Osher, Daniel <[REDACTED]>
Subject: [External] Time-Sensitive Election Question - PA, AZ, MI, WI

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<<https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.pa.gov%2Fcontent%2Fdam%2Fcopapwp-pagov%2Fen%2Ffoa%2Fdocuments%2Fdocuments%2Fcofense-report-phishing-user-guide.pdf&data=05%7C02%7C%7C7c456603473a4fd8b8ec08dcfc13d467%7Cd5fb7087377742ad966a892ef47225d1%7C0%7C0%7C638662409318363200%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IjEhaWwiLCJXVCi6Mn0%3D%7C0%7C%7C%7C&sdata=%2BLJH0a%2BrOOPSODIQTFMtkskkC5n0kJ%2FqNvijTZzZ8sl%3D&reserved=0>>

All,

I'm putting you in touch at the request of Jacob Finkel, the elections lead in Gov. Shapiro's office. He has a question for this group, and rather than intermediate, I thought I'd put you all in direct touch.

Jacob, on this thread you have Will Gaona from Gov. Hobbs' office, Mel Barnes from Gov. Evers' office, and Dan Osher from Gov. Whitmer's office.

Just say the word if I can help with anything else!

Julia

Julia Spiegel
CEO & Founder
[signature_2559959167]

[REDACTED] mailto:[REDACTED]
+ [REDACTED] (calls only)

Patel, Meghna

[REDACTED]

Christina
Emma

Chang
Clough

Mizrahi
Hassan

Rubab

Celine

khuffman

Shanna Gong

Subject: [External] Additional GovAct Messaging Resources: Election & Litigation Scenarios (Confidential)

***ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

All,

Thank you, again, to everyone who joined us on Monday, October 28 to hear from our guest speakers about election and litigation scenarios that we may see in the coming days and weeks. Several attendees requested messaging for governors to use, so we'd like to share a few helpful resources. These messages are suggested for use before, during, and after certification of election results.

The deck and toolkit linked below, created by advocacy and messaging experts at Protect Democracy and Election Sabotage Response Network, are a great summary of the consensus around timeline and messaging across the field. They provide an overview of **how long we can expect vote counting and certification to take** and include a set of **embedded one-pagers with non-partisan messaging** to respond to different - and evolving - post-election scenarios and threats to certification. Where relevant, please customize these messages to the specific circumstances you are experiencing in your state.

We hope that you and your offices find this content, linked below, helpful to counter mis- and disinformation narratives being proliferated around elections. Please don't hesitate to reach out with any questions.

Resources:

- [The 2024 Vote Count: What to Expect](#) (Protect Democracy)
- [Non-Partisan Messaging Toolkit](#) (Election Sabotage Response Network)

Feel free to send any other requests for info or resources my way!
Julia

Julia Spiegel
CEO & Founder
GOV/ACT

(calls only)

From: Julia Spiegel <[REDACTED]>
Date: Wednesday, October 30, 2024 at 12:39 PM
To: [REDACTED]

Sheley, Karen A <[REDACTED]>

Miller, Emily (GOV) <[REDACTED]>

Christina Chang <

Emma Clough

Celine Mizrahi

Rubab Hassan

khuffman <

Shanna

Gong <

Subject: Comms Resources re: Virginia SCOTUS Ruling & Election Results
(Confidential)

Hi all,

Second update for you today, given breaking news out of the U.S. Supreme Court.

1. MAGA Justices on the U.S. Supreme Court Allow Vote Purging in Virginia:

Earlier this summer, Virginia Gov. Glenn Youngkin issued an executive order requiring local elections officials to illegally remove eligible people from the voter rolls, spreading misinformation about citizenship and voting. A federal district court blocked Virginia's illegal program to purge voters from the Commonwealth's rolls. With less than a week left until the election, the MAGA Justices on the Supreme Court, in a 6-3 ruling, overturned the Fourth Circuit's denial of an emergency stay pending appeal, allowing Virginia Republicans to purge voters and take away the freedom to vote from Virginians. Talking points on this ruling by Anat Shenker-Osorio are attached.

2. Messaging on Integrity of the Election: As promised, attached is a social media

toolkit on managing expectations for election results and why we must count every vote. This toolkit has been assembled by the Declaration for American Democracy, the Democracy Initiative, Election Protection, Voting Rights Lab, Common Cause, and the Leadership Conference on Civil and Human Rights. The toolkit focuses on preparing voters to understand that we may not know the winner of the election on election night, and that ensuring every vote is counted is more important than speedy election results.

As always, let me know what else you might need!

Julia

Julia Spiegel
CEO & Founder

GOV/ACT

(calls only)

Julia Spiegel

Tue 11/5/2024 7:20:41 PM (UTC-05:00)

To:

Sheley, Karen

A

Miller, Emily

(GOV)

Finkel, Jacob

Patel, Meghna

[REDACTED]

Christina
Emma

Chang
Clough

Mizrahi
Hassan

Rubab

Celine

khuffman

Shanna Gong

Subject: [External] *TOPLINE* Election Messaging Guidance & Reminder: 11/7 GovAct Election Check-In (Confidential)

***ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).*

Hi All,

I wanted to share priority [election messaging guidance](#) we received from the Election Sabotage Response Network (ESRN) to start using this evening, including guidance on inoculating against any candidate's premature declaration of victory. ESRN is also offering a 501(c)(3) message and breaking developments briefing **this evening at 11pm ET**. The link to register is [here](#).

As a reminder, we will meet for a **Post-Election GovAct Check-In this Thursday, Nov. 7, 12:30-1:30 ET / 9:30-10:30 PT**, to discuss election outcomes and Governor Offices' emerging needs.

Please reach out with any questions in the meantime.
Julia

—

Sample inoculation posts:

- As polls close and election officials do their duty to #CountEveryVote, let's remember that results are only final when the state calls them.
- In battleground states, results are official when state election officials call them. #CountEveryVote (or #EveryVoteCounts)
- While we wait for election results, remember that politicians, pundits and billionaires can say whatever they want but that does not make it true. #CountEveryVote (or #EveryVoteCounts)

- REMINDER: Voters decide elections, not politicians or Elon Musk. We're waiting for official battleground results from state officials as they #CountEveryVote.

Sample content:

- **Premature Victory Declarations Content – [c3](#)**
- **[Count Every Vote Content Folder](#)**
- **[c3 Social Toolkit](#)**

Disinfo Update

We are continuing to see a high volume of disinformation claims about all parts of the voting process, including voter registration, mail ballots, overseas ballots, immigrants, and voting machines. This suggests a “flood the zone strategy” in which election deniers promote a large number of claims to sow doubts broadly, even if specific claims do not hold up to scrutiny. The best inoculation strategy is to repeat our proactive narrative and reinforce the checks and balances that exist to ensure that every vote is counted accurately, without repeating the lies.

Messaging Guidance

- **Lead with values.** Talk about our freedom to vote and the importance of every vote being counted and every voice being heard.
- **Center the will of the voters, not candidates.** Our throughline regardless of what happens is that the will of the people must prevail. In the vote counting period, the narrative is about voters having our voices heard, not about which candidate wins. We can also speak to the barriers voters were forced to overcome. Certain politicians erected barriers to silence voters, and we turned out despite this.
- **Reinforce the vote counting process.** Remind voters that it is critical for election officials to count every vote and that there are checks and balances in place to ensure that every ballot is verified and counted accurately.
- **Declare that results in battleground states are official when the state calls them.** To inoculate against partisan actors or news outlets preemptively declaring victory, remind voters that results are only official when the state official reports them.
- **Call out the intentions of pre-emptive declarations of victory.** Certain actors may spread lies to sow doubts and claim victory, but we have stopped these attacks before and can do it again.
- **Describe what voters are for.** Focus on the issues that voters turned out to vote for and how we are ready to move forward after the votes are counted.
- **Set a confident tone.** Uplift that the overwhelming will of the people will prevail.

Sample Narrative

- *In America, we value our **freedom to cast our votes and have them counted.***
- *Now that **voters have done our job** to turn out and cast our ballots, election officials must do theirs to **count and certify every vote.***
- *The results will be accurate and official in the battleground states only **when the state reports them.***
- *Some **politicians are so desperate** that they may try to claim victory and spread lies to sow doubts about our election so they can try to seize power if they lose.*
- *They tried this before and failed and we won't let anything stand in the way of counting and certifying every vote and ensuring that the **will of the people prevails.***

—

(calls only)

From: Julia Spiegel <[REDACTED]>

Date: Monday, November 4, 2024 at 8:32 AM

To: [REDACTED] <[REDACTED]> [REDACTED] <[REDACTED]>

Sheley, Karen A <

Miller, Emily (GOV) <

A black and white photograph of a large, dark, textured rock formation, possibly a cave entrance or a large rock face. The rock is covered in numerous small, white, triangular markers or tags, which are likely used for scientific research or mapping. The markers are scattered across the entire surface, with some clusters and some isolated. The background is dark and indistinct.

Christina Chang <

Emma Clough

Celine Mizrahi

Rubab Hassan

khuffman <

Shanna

Gong <

Subject: Additional GovAct Messaging Resources: Election & Litigation Scenarios (Confidential)

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- [Non-Partisan Messaging Toolkit](#) (Election Sabotage Response Network)

Feel free to send any other requests for info or resources my way!
Julia

Julia Spiegel
CEO & Founder
GOV/ACT

(calls only)

From: Julia Spiegel <[REDACTED]>
Date: Wednesday, October 30, 2024 at 12:39 PM
To: [REDACTED] <[REDACTED]> [REDACTED]

Sheley, Karen A <

Miller, Emily (GOV) <

Christina Chang <

Emma Clough

Celine Mizrahi
Rubab Hassan

khuffman <

Shanna

Gong <

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(Confidential)

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As always, let me know what else you might need!

Julia

Julia Spiegel
CEO & Founder

GOV/ACT

[REDACTED]
[REDACTED] (calls only)

Julia Spiegel

khuffman; ntraina; Chang; Emma Clough; Hassan; Victoria Fong; Celine Mizrahi; Erin Pelton; Nicole Flotteron; Grace Na

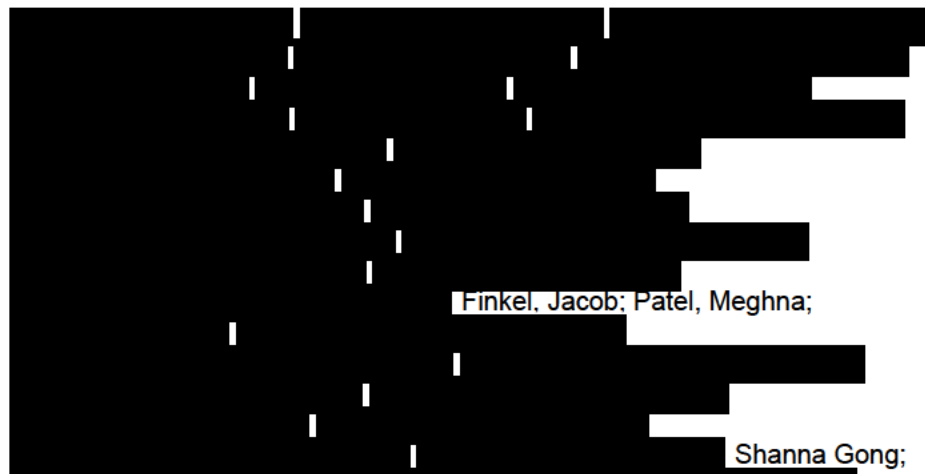
Governors Safeguarding Democracy (GSD) Alliance Launch (Confidential)

Normal

Thur 11/7/2024 12:30:00 PM (UTC-05:00)

Thur 11/7/2024 1:00:00 PM (UTC-05:00)

[illegible]



Finkel, Jacob; Patel, Meghna;

khuffman; ntraina;
Chang; Emma Clough; Shanna Gong; Christina
Hassan; Victoria Fong; Celine Mizrahi; Erin Pelton; Hannah Tyrrell; Rubab

From: Finkel, Jacob[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=607B30D05398433CAA0BF98BB78FA2B4-D2132AAE-04]

Location:

Subject: Accepted: Governors Safeguarding Democracy (GSD) Alliance Launch (Confidential)

Importance: Normal

Start Time: Thur 11/7/2024 12:30:00 PM (UTC-05:00)

End Time: Thur 11/7/2024 1:00:00 PM (UTC-05:00)

Required Attendees: Julia Spiegel

Emma Clough

Civitas/GovAct; Emma Clough: [REDACTED]

[illegible]

GovAct/GSD Briefing: Common Interest, Biden Asks, & Staffing (Confidential)

Normal

Mon 12/2/2024 1:00:00 PM (UTC-05:00)

Mon 12/2/2024 2:00:00 PM (UTC-05:00)

Civitas/GovAct; Emma Clough; [REDACTED] [REDACTED]

1. *Journal of the American Medical Association*, 2000; 283: 2689-2693.



All:

We look forward to reconvening to discuss action plans for the coming weeks as your offices prepare for a new federal administration. A proposed agenda is below.

Please share this invite with your legal team so that at least one lawyer from each office can join for the first 15-20 minutes of the meeting. GSD's counsel will present on the contours of a proposed common interest agreement, after which the lawyers are welcome to stay on or hop off.

Proposed Agenda:

- Welcome from Co-Chairs (5 min)
- Common Interest Agreement Presentation & Discussion (15 min)
- Priority Asks of the Biden Administration & WH Meeting (20 min)
- Staffing Presentation & Discussion (20 min)

See you soon,
Julia

Meeting Information

Join Zoom Meeting



Meeting ID: [REDACTED]
Passcode: [REDACTED]

Emma Clough

Civitas/GovAct; Emma Clough: [REDACTED]

[REDACTED]

COS Public; Finkel, Jacob;

Tyrrell:

Celine Mizrahi;

Christina Chang:

khuffman; Hannah

Grace Na,

GovAct/GSD Briefing: Sensitive Data and National Guard Protections
(Confidential)

Normal

Thur 12/12/2024 1:00:00 PM (UTC-05:00)

Thur 12/12/2024 2:00:00 PM (UTC-05:00)

Civitas/GovAct: Emma Clough: [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED]



Meeting ID: [REDACTED]
Passcode: [REDACTED]

6) Domestic Deployment of the National Guard

Concept

Governors, particularly when acting in concert, can influence public debate regarding appropriate use of National Guard deployment. They can reassert the importance of separation between military and civilian law enforcement. Governors can also limit their state's cooperation with another state's National Guard should it be deployed to their state over their objection.

Former President Donald Trump and his campaign surrogates have repeatedly threatened domestic deployment of the National Guard, and the military more generally, in ways that profoundly threaten civil rights and civil liberties. Most recently, he [has described using the National Guard against](#) “the enemy from within” and “radical left lunatics.”

This model executive order would do both. It would apply the principles of the Posse Comitatus Act to your state's National Guard when it operates at the request of the federal government, i.e. Title 32 status. It would also (except as required by state or federal law) prohibit assistance to another state's National Guard unit, or to federal law enforcement agencies, in certain circumstances. This executive order could be adapted into legislation dependent on existing state law and existing governor authorities.

TIMING: Post-election

STATE GOVERNMENT TARGETS: Governors, attorneys general, and legislatures (see separate memo with background and recommendations)

SUGGESTED MECHANISM: Executive order, legislation

MODEL:

Model Gubernatorial Executive Order

Whereas separation between the military and civilian government is a foundational American tradition and principle reflected in the U.S. Constitution and other laws; and

Whereas the Posse Comitatus Act, enacted in 1878, today reflects this American history and tradition of limiting direct military involvement in civilian affairs and law enforcement and makes it a federal crime to “willfully” use U.S. military forces to “execute the law”; and

Whereas deployment of National Guard service members to engage in domestic civilian law enforcement

activities would undermine our state's protection of civil rights and civil liberties, could expose National Guard service members to criminal liability, and unfairly require them to act in roles for which they have little or no training;

NOW, THEREFORE, I, [Name], Governor of the State of [your state] by virtue of the authority vested in me by the Constitution and the laws of the State of [your state], including Sections [your state laws governing National Guard], do hereby order as follows:

1. **Posse Comitatus.** The armed forces of this State, when called into active service pursuant to Title 32 of the U.S. Code, shall comply with federal law and policy prohibiting direct participation in civilian law enforcement activities, which includes The Posse Comitatus Act, as amended, 18 U.S.C. Section 1385 and related federal directives.
2. **No Assistance to Deployments Over Objection of the Office of the Governor.** Except as required by federal or state law, the Adjutant General or his designee, and through him, the commanding officer of any unit of the armed forces of this State called into active service pursuant to authorities granted under state law or Title 32 of the U.S. Code shall provide no time, money, facilities, property, equipment, personnel, or other resources for purposes of:
 - a. Assistance to any National Guard unit of another state that is deployed to this State, if the Office of the Governor of [this State] has objected to such deployment; or
 - b. Assistance to any National Guard unit or law enforcement agency of another State or federal law enforcement, intelligence, or homeland security agency, if the Office of the Governor of [this State] has reasonable grounds to believe that either the actions of the unit or agency, or provision of assistance, would violate one or more of the following: the Constitution of the United States, federal law, the Constitution of the State of [your state], or the laws of [your state].
3. Nothing in this order shall be construed as prohibiting the armed forces of this state from providing indirect assistance to civilian law enforcement activities taking place in another state, such as technical support and administrative assistance, including such assistance provided to support emergency, humanitarian, or related operations in a declared state of emergency.
4. Nothing in this order shall be construed as prohibiting preparation to support civilian law enforcement agencies or other National Guard units, consistent with the needs of military preparedness of the United States.
5. **Definitions.**
 - a. "Direct participation in civilian law enforcement activities" means activities prohibited by U.S. Department of Defense, including those described in Instruction 3025.21.
 - b. "Law enforcement agency" means a sheriff and their office and department, the police departments of a municipality and other subdivision of a state, prosecutorial office, court, correctional facility, probation office or any other entity in the State charged with enforcement of State laws or the custody of detained persons.
6. **Severability Clause.** If any part of this Executive Order is found to be invalid by a court of competent jurisdiction the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.

7. **Scope and Effective Date.** Any other executive orders inconsistent with the provisions of this Order are hereby rescinded. This Executive Order shall continue in effect until amended or revoked by subsequent executive order.

ACLU National Support Staff

Naureen Shah, Deputy Director of Government Affairs, Equality Division ([REDACTED])

Kia Hamadanchy, Senior Policy Counsel, Democracy and Technology Division ([REDACTED])

Firewall for Freedom – Template Gubernatorial Executive Order

Options/Adjustments in Blue

[Whereas clauses]

NOW, THEREFORE, I, [Name], Governor of the State of [your state] by virtue of the authority vested in me by the Constitution and the laws of the State of [your state], do hereby order as follows:

1. **No Assistance in Violations of Civil Rights or Civil Liberties.** Except as required by valid federal or [your state] law, no State agency, employee or agent may comply with a request for information or assistance if they have reason to believe the request is in furtherance of any investigation, arrest, prosecution, or other sanction of conduct initiated by federal authorities or out-of-state authorities that seeks—
 - a. to impose civil or criminal liability or professional sanction upon a person or entity for the provision, supplying, assistance with, securing, or receipt of, or any inquiry concerning or relating to, health care services if the services as provided would have been lawful under State law and consistent with good medical practice if they occurred entirely in this State;
 - b. to identify or impose civil or criminal liability upon a person or entity based on their participation in activities protected by the First Amendment of the U.S. Constitution or [provision of state constitution] including assembly, petitioning and speech;
 - c. to impose civil or criminal liability, or other penalties, upon a person or entity for provision of humanitarian assistance, legal assistance or other aid to benefit a noncitizen if that provision would have been lawful if it occurred entirely in this State;
 - d. to identify or apprehend a person in order to subject them to civil immigration detention, removal or deportation proceedings; or
 - e. to prosecute a person or persons for offenses related to immigration status, including but not limited to violations of Sections 1253, 1304(e), 1306(a) and (b), 1324, 1325, or 1326 of Title 8 of the United States Code, or violations of Sections 1028A or 1546 of Title 18 of the United States Code.

Notwithstanding the general prohibition of this section, a State Agency, employee or agent may provide such information or assistance if the requesting authority includes an attestation, made

under penalty of perjury, stating that the request does not relate to an investigation or other proceeding described in subsections (a) – (e) of this Section.

2. **Assessment of Requests.** In the event a State agency, employee or agent receives a request that they have reason to believe is in furtherance of an investigation, arrest, prosecution or other sanction described in Section 1(a)-(e) of this Order, they shall notify the agency director and refer the request to the Governor’s Office of General Counsel. Upon receipt of the referral, the Office of General Counsel shall—
 - a. Assess, including by consulting with relevant federal authorities or out-of-state authorities as appropriate, whether information or assistance is being requested or commanded.
 - b. Where a court order, subpoena, warrant or other legal process is presented, assess its validity and application.
 - c. Assess whether, in light of the federal authorities’ or out-of-state authorities’ stated or apparent purposes, complying with the request would violate Section 1 of this Order
 - d. Assess whether, in light of the federal authorities’ or out-of-state authorities’ stated or apparent purposes, complying with the request would violate potentially applicable state statutory or constitutional provisions. Such provisions may include, but are not limited to, statutory and constitutional protections for privacy rights, speech and association, healthcare, abortion, due process, equal protection, and other civil rights and civil liberties guarantees.
 - e. Provide these assessments to the referring employee and agency and direct them to deny or grant the request.
 - f. If directing that the request be granted, provide a written summary of these assessments to the referring agency. The summary shall be retained for as long as applicable law may require, but in any event no less than six years after the date of execution.
3. **Annual Report.** On an annual basis, the Office of the Governor may release a public report, in print and on its website, describing threats to civil rights and civil liberties of [State] residents posed by federal or out-of-state agencies, which may include a summary of requests assessed under Section 2.
4. **Agreements Compliance.** Any State agency or law enforcement agency taking part in or seeking to enter into an agreement with federal authorities, out-of-state authorities, or a private entity, for the purpose of sharing of personal information with federal authorities or out-of-state authorities, including through or for a joint federal-state operation such as a fusion center, joint terrorism task force or delegation pursuant to 8 U.S.C. §1357(g)

(known as 287(g) agreements), shall ensure compliance with this Order within 180 days—

- a. For any agreement in existence at the time this Order is signed, the State agency shall seek and receive written authorization from the Governor’s Office of General Counsel that it is in compliance with Section 1 of this Order and applicable state law. If the Governor’s Office of General Counsel determines that the agreement is not compliant with Section 1 of this Order, the agreement shall be terminated.
 - b. Prior to renewal or establishment of a new agreement, the agency shall seek and receive prior approval of the Governor’s Office of General Counsel that it is in compliance with Section 1 of this Order and applicable state law. Such authorization shall be made in writing.
 - c. Written authorization under this Section and associated documents shall be retained for as long as applicable law may require, but in any event no less than six years after the date of execution.
5. **Enforcement.** Whenever the office of the Governor obtains information that a State agency, employee or agent may have engaged in conduct in violation of Section 1 of this Order, the Governor shall determine appropriate actions, which may include a recommendation that the Attorney General initiate enforcement actions in relation to such violation in accordance with [state statute concerning attorney general authority, applicable state civil rights laws--both civil and criminal)].
6. **Unfair or Deceptive Acts or Practices.** The [state consumer protection agency] [shall/is encouraged to] begin rulemaking under [state administrative law] within 180 days of this Order clarifying when data practices, including regarding geolocation and consumer health data, constitute unfair or deceptive acts or practices under [state consumer protection law].
7. **Grantees and contractors.** All State agencies shall review contracts and agreements with grantees and contractors to determine whether they comply with [state laws and regulations regarding the protection of personal information].
8. **Definitions.** For the purposes of this order, the terms listed below shall have the following meanings:
 - a. “Assistance” includes any provision of time, money, facilities, property, equipment, personnel or other resources.
 - b. “State agency” includes the office of the Governor, any executive office of [your state], as defined by section [X] of chapter [X] of the General Laws, and any

agency, bureau, department, office, or division of the State within or reporting to such an executive office of the State.

- c. “Employee or agent” means any individual employed by or acting on behalf of any State agency or subdivision.
- d. “Request” includes any court order, warrant, subpoena or informal request for information or assistance made by federal authorities or another state’s authorities.
- e. “Federal authorities” includes any federal agency.
- f. “Out-of-state authorities” includes any agency of another state government or subdivision thereof.
- g. “Health care services” includes all medical, surgical, therapeutic, counseling, or referral services.
- h. “Humanitarian assistance” means assistance to meet humanitarian needs, including food, medicine, clothing, shelter, transportation, and mental and physical health services.
- i. “Legal assistance” means legal advice and/or representation provided by an attorney or an individual under the direct supervision of an attorney.
- j. “Agreement” is any contract, agreement, or memorandum of understanding to which the government of the United States or another state is party, regardless of subject matter. It includes any deputization of authority by the government of the United States or any other conferral of authority to act with the power of an officer or employee of the government of the United States, including pursuant to Sections 0.19(a)(3) and 0.112 of title 28 of the Code of Federal Regulations.
- k. “Law enforcement agency” means a sheriff and their office and department, the police departments of a municipality or other subdivision of the State, prosecutorial office, court, correctional facility, probation office or any other entity in the State charged with enforcement of State laws or the custody of detained persons.
- l. “Personal information” means any information that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable individual, or a device that identifies or is linked or reasonably linkable to an individual, including geolocation.
- m. “Geolocation” means information derived from technology, including, but not limited to, latitude and longitude coordinates from global positioning system

mechanisms or other similar positional data, that reveals the past or present physical location of an individual or device that identifies or is linked or reasonably linkable to 1 or more individuals within a radius of one thousand seven hundred fifty feet. “Geolocation” does not include the content of communications, a photograph or video, or metadata associated with a photograph or video.

- n. “Consumer health data” means any personal information, including derived or inferred information, that describes or reveals an individual's past, present, or future physical or mental health condition or diagnosis, and includes, but is not limited to, gender-affirming health data, HIV status, and reproductive or sexual health data.
 - o. “Grantee” means any legal entity to which a state agency awards or administers a grant.
9. **Severability Clause.** If any part of this Executive Order is found to be invalid by a court of competent jurisdiction the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.
10. **Scope and Effective Date.** All State agency, employees, agents and grantees shall fully comply with this Order. Any provisions of prior Executive Orders inconsistent with the provisions of this Order are hereby rescinded. This Executive Order shall continue in effect until amended or revoked by subsequent Executive Order.

Firewall for Freedom – Template Gubernatorial Executive Order

Explanatory Memo

Section 1.

General Prohibition on Voluntary Assistance and Information-Sharing.

This Section generally prohibits state employees from voluntarily complying with a request to provide information or assistance to federal authorities or authorities of another state, if they have reason to believe that the request is in furtherance of an investigation or proceeding described in subsections (a)-(e), which pertain to healthcare, First Amendment-protected activity, assistance to non-citizens, and immigration status. All of these are civil liberties areas of serious, urgent concern due to recent legal actions by other states, as well as the agenda of Project 2025 and the Trump campaign.

Assessing Federal Requests -- Tenth Amendment Anti-Commandeering Principle

Under the anti-commandeering principle of the Tenth Amendment of the US Constitution, the federal government generally cannot compel state and local governments to enact or administer a federal regulatory program.¹ Consistent with that limitation on federal power, the federal government sometimes asks state and local governments to provide *voluntary* assistance with federal law enforcement and intelligence programs. But under the Tenth Amendment, states are free to refuse those requests, and to prohibit state employees from assisting in federal enforcement actions. Indeed, several states have enacted laws restricting state employees from assisting the federal government with immigration enforcement.² Additionally, as of May 2024, 23 states and the District of Columbia have a type of “shield law” protection, designed to be a buffer against legal proceedings initiated by out-of-state actors seeking to penalize abortion or gender-affirming care.³ While most if not all of these shield laws could be interpreted to apply to the federal government as well, a handful of states have provisions that explicitly apply to federal law enforcement.

Consistent with the anti-commandeering principle, where federal law allows but does not require states to take some action, state law may flatly prohibit state and local officials from taking that action. For example, while federal law makes marijuana possession a federal crime, it does not compel states to investigate that crime. Thus, in several states that have decriminalized marijuana possession under state law, state supreme courts have held that their state statutes or constitutions prohibit conducting vehicle searches based solely on the odor of burnt marijuana.⁴ In one of those decisions, the Massachusetts Supreme Judicial Court carefully explained how state law can bar its officers from enforcing marijuana prohibition even though marijuana possession remains a federal crime. Specifically, “[w]hile State law *may* authorize local and State police to enforce Federal criminal statutes”—except where federal law

¹ See *New York v. United States*, 505 U.S. 144, 161-63 (1992); *Printz v. United States*, 521 U.S. 898, 926–32 (1997).

² See Immigrant Legal Resource Center, *State Map on Immigration Enforcement*, <https://www.ilrc.org/state-map-immigration-enforcement>.

³ See Guttmacher Institute, *State Policy Trends 2023* (Dec. 2023), <https://www.guttmacher.org/2023/12/state-policy-trends-2023-first-full-year-roe-fell-tumultuous-year-abortion-and-other>; Guttmacher Institute, *Midyear 2024 State Policy Trends* (June 2024), <https://www.guttmacher.org/2024/06/midyear2024-state-policy-trends-many-us-states-attack-reproductive-health-care-other>.

⁴ See *People v. Redmond*, 2024 IL 129201, ¶ 54, 2024 WL 4231539 (Ill. Sept. 19, 2024); *State v. Torgerson*, 995 N.W.2d 164 (Minn. 2023); *Commonwealth v. Barr*, 266 A.3d 25, 44 (2021).

preempts such enforcement—“it need not do so.”⁵ In Massachusetts, the court explained, when the voters enacted an initiative decriminalizing the possession of small amounts of marijuana, they had permissibly “curtail[ed] [state and local] police authority to enforce the Federal prohibition of possession of small amounts of marijuana.”⁶ The proposed executive order operates according to these same principles; it suggests that in certain contexts where federal law gives states the *option* of taking some enforcement action, states should bar their officials from taking that action.

Exception -- Valid Federal or State Law

The general prohibition set out in this Section of the proposed executive order makes exception for actions required by your state law or *valid* federal law. However, state officials can contest federal laws as invalid on constitutional grounds. For example, a federal law that directly commands officers of state or local government to implement federal law, or directly prohibits certain actions, could be held invalid.⁷

Adjustments to Section 1 and Options for Your State

Some states already have laws governing information-sharing and assistance to federal law enforcement and intelligence agencies in contexts such as healthcare, immigration enforcement and data privacy. For these states, the proposed executive order provides instruction and clarifies implementation. We recommend you assess the language of this template Order to ensure it is consistent with state law.

We also recommend you alter the language of this template Order to ensure it provides the greatest possible protection based on existing state laws and state constitutional protections. Your state law and constitution may be a source of additional protections that could be added to subsections (a)-(e), for instance, with regard to the operation of charitable institutions, unlawful search and seizure, data privacy, equal protection, housing, education, and voting.

As written, this Section applies to state agencies and employees, but not local government entities and employees; we recommend you assess whether and how to include local government entities, depending on the laws of your state and other dynamics.⁸

This Section also includes an optional provision to address ambiguous situations where the State employee does not have reason to believe that providing information or assistance would violate the Order. It provides that if the federal or out-of-state authority attests under penalty of perjury that the request does not relate to an investigation or proceeding described in subsections (a)-(e), the employee

⁵ *Commonwealth v. Craan*, 13 N.E.3d 569, 577–78 (2014) (footnote omitted); see also *Miller v. United States*, 357 U.S. 301, 305 (1958) (where states police officers make arrest for violation of Federal law, “lawfulness of the arrest without warrant is to be determined by reference to state law”).

⁶ *Id.* at 578.

⁷ See *New York v. United States*, 505 U.S. 144, 166 (1992) (“even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to *compel the States* to require or prohibit those acts.” (emphasis added)); see, e.g., *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 329–30 (E.D. Pa. 2018), *aff’d in part and vacated in part sub nom. City of Philadelphia v. Att’y Gen. of U.S.*, 916 F.3d 276 (3d Cir. 2019); *City of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 953 (N.D. Cal. 2018), *aff’d in part and vacated in part sub nom. City of San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020), petition for cert. filed, No. 20-666 (U.S. Nov. 13, 2020); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 866–73 (N.D. Ill. 2018), *aff’d sub nom. on other grounds, City of Chicago v. Barr*, 961 F.3d 882, 908–09 (7th Cir. 2020) (not reaching the constitutional question but noting that, under *Murphy*, “it does not matter that § 1373 prohibits the state from taking an action, as opposed to requiring an action” because “either situation involves the exercise of control over the state”)

⁸ We recommend you consider whether to modify definitions in Section 8, including 8(b) and 8(c). Optional Section 7 of the proposed executive order would also apply existing state law to contracts with local government entities.

may comply with the request. However, we do not advise you to include this provision since it could blunt the impact of the proposed executive order and create confusion.

Section 2. Assessment of Requests

This Section directs state employees who receive a request to provide information or assistance described by Section 1 to refer it to the Governor's Office of General Counsel. It directs the General Counsel to assess whether information or assistance is being requested or commanded; the validity and application of any court order that is presented; and the legality of complying with the request. It directs the General Counsel to provide these assessments to the employee and agency and instruct them to deny or grant the request.

Section 2(b) addresses requests that are court orders, subpoenas, warrants or other legal process. States generally cannot avoid complying with a legally valid court order, judicial warrant or subpoena.⁹ Even then, however, state officials can contest federal legal process they believe to be invalid because, for instance, it is overbroad or unduly burdensome, exceeds statutory authority, or seeks information that goes beyond what is relevant to a permissible investigation.¹⁰

Section 2(f) is an optional provision requiring a written summary of these assessments be provided to the referring agency and be retained, if the agency is directed to grant the request. This would provide assurance and a written record to state employees and agencies concerned with demonstrating compliance with the proposed executive order and state law.

Section 3. Annual Report (Optional)

This Section serves public transparency by providing for an optional annual report on requests for information or assistance made by federal or out-of-state agencies and assessed under Section 2. This would provide a platform for governors to share about threats posed to civil rights and civil liberties by out-of-state and federal actors, and to publicize actions taken by state officials to protect residents.

There are examples of reporting provisions in gubernatorial executive orders concerning reproductive care, although they do not concern specific requests. For example, Pennsylvania and Michigan orders direct agencies to consider communicating with the public concerning the cost and availability of reproductive health care.¹¹

⁹ Because administrative subpoenas are not self-executing, the recipient of a subpoena may initially decline to comply with it and can only be forced to comply if the federal government files a motion to compel and obtains a court order directing compliance. *See, e.g., United States v. Sturm, Ruger & Co.*, 84 F.3d 1, 3 (1st Cir. 1996); *Belle Fourche Pipeline Co. v. United States*, 751 F.2d 332, 334 (10th Cir. 1984).

¹⁰ *See In re Grand Jury Subpoena, JK-15-029*, 828 F.3d 1083 (9th Cir. 2016) (quashing overbroad federal grand jury subpoena seeking former governor's email records held on Oregon state servers); *In re Grand Jury Subpoena for THCF Med. Clinic Recs.*, 504 F. Supp. 2d 1085, 1090 (E.D. Wash. 2007) (quashing federal subpoena to state agency as unreasonable because "it sought records that have marginal, if any, relevance" and those records "contain highly personal, confidential, and sensitive information"). *See also Oregon Prescription Drug Monitoring Program v. U.S. Drug Enf't Admin.*, 860 F.3d 1228, 1236 (9th Cir. 2017) (noting state's "option to contest subpoenas for protected information" issued by the federal government, which is "a critical safeguard" when "particularly important privacy interest[s]" are implicated); *In re Grand Jury Matter*, 762 F. Supp. 333, 335 (S.D. Fla. 1991) (recognizing state's ability to challenge enforcement of federal subpoena seeking state agency records on basis that "compliance with the subpoena would be 'unreasonable or oppressive' under Fed. R. Crim. P. 17(c)").

¹¹ Commonwealth of Pennsylvania Governor's Office, Executive Order 2022-01 – Reproductive Health Care, July 12, 2022, <https://www.oa.pa.gov/Policies/eo/Documents/2022-01.pdf>; Executive Office of the Governor, Executive Directive 2022-5: Reproductive Rights in Michigan, May 25, 2022, <https://www.michigan.gov/whitmer/news/state->

Section 4. Agreements Compliance (Optional)

This Section applies the Order’s general prohibition to partnerships between state agencies and out-of-state and federal agencies, as well as private entities, for information-sharing. If you include “any state agency or law enforcement agency” in this Section, it applies to all law enforcement, homeland security and intelligence agencies in your state that may join such partnerships; whether to include this depends on the governor’s authorities over these agencies in your state.

This Section would apply to fusion centers, a network of 80 state and locality-run entities developed, supported, and funded by the federal Department of Homeland Security as intelligence hubs to collect and disseminate counterterrorism and other alleged criminal information. It would also apply to Joint Terrorism Task Forces (JTTFs), which are FBI-operated task forces that are intended to work with state and local law enforcement agencies to conduct terrorism investigations. There are about 200 JTTFs throughout the country. JTTFs and fusion centers operate with little transparency and raise serious concerns about privacy, civil rights, and civil liberties violations, as well as lack of meaningful oversight. In recent years, misuse of JTTFs and fusion centers has included monitoring and disseminating intelligence reports on racial justice, environmental, and other social justice protests, as well as other First Amendment-protected activities—without establishing any connection to criminal activity. For example, the Trump administration deployed JTTFs for political ends in response to the 2020 racial justice protests.

This Section would also apply to 287(g) agreements, through which the federal Department of Homeland Security delegates federal immigration enforcement responsibilities to state and local law enforcement agencies. These agreements enable US Immigration and Customs Enforcement (ICE) to identify, detain and deport immigrants—with information provided by state and local law enforcement. This proposed executive order would effectively require termination of any existing 287(g) agreements. In some states, existing law already prohibits these agreements.

Section 5 Enforcement.

This Section provides that the Governor shall take all appropriate actions to enforce the proposed executive order. This is similar to recently issued executive orders concerning protection of abortion care.¹²

We recommend you assess whether you can strengthen this section, based on the governor’s legal authority in your state and existing state law for particular contexts. For example, a North Carolina executive order protecting abortion care directs the state’s department of public safety to “ensure the enforcement” of state law concerning access to and egress from health care facilities.¹³

[orders-and-directives/2022/05/25/ed-2022-5-reproductive-rights-in-michigan#:~:text=Reproductive%20rights%20are%20under%20threat,about%20their%20health%20and%20bodies](#)

¹² See Office of the Governor of the Commonwealth of Massachusetts, Executive Order No. 633, June 24, 2024, <https://www.mass.gov/doc/eo-633/download>; see also Commonwealth of Pennsylvania Governor’s Office, Executive Order 2022-01 – Reproductive Health Care, July 12, 2022, <https://www.oa.pa.gov/Policies/eo/Documents/202201.pdf> (“shall take all steps necessary to implement this Executive Order”).

¹³ See State of North Carolina, Executive Order No. 263, Protecting Access to Reproductive Health Care Services in North Carolina, July 6, 2022, <https://governor.nc.gov/executiveorder-no-263/open>.

Relatedly, many executive orders concerning protection of health care services specify that the governor intends to use their discretion to decline interstate extradition requests.¹⁴ We recommend you assess state law to determine whether to include such a provision.

Section 6. Unfair or Deceptive Acts or Practices.

This Section instructs the appropriate state agency or subagency – likely the state equivalent of the Federal Trade Commission (FTC), which may report to the state attorney general – to investigate specific data practices as an unfair or deceptive act or practice. Because these agencies may be independent of the governor, this section provides alternative language merely encouraging such investigations. “Unfair or deceptive acts or practices” is a term of art used in consumer protection and privacy law. Although definitions of “unfair” or “deceptive” may vary across jurisdictions, they often adhere closely to interpretations by the FTC, which have been shaped by statute and 90 years of practice. The FTC defines the terms as follows:

- A practice is “unfair” if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”¹⁵
- A practice is “deceptive” if it is a material representation, omission, or practice that is likely to mislead a consumer acting reasonably in the circumstances.¹⁶

The FTC and state equivalents have further developed these definitions through enforcement actions. Unfair practices have included software that surreptitiously collected users’ location through third party applications to profile them, including profiles based on medical care they had received.¹⁷ The FTC has also found that using facial recognition technology to – inaccurately and discriminatorily – identify customers in stores is an unfair practice.¹⁸ Conversely, making false or unsubstantiated claims about data collection practices or the accuracy of AI technology may be deceptive.¹⁹

Section 7. Grants or Contractors (Optional)

¹⁴ See, e.g., Office of the Governor, Maine, Executive Order 4: An Order Protecting Access to Reproductive Health Care Services in Maine, FY 21/22, https://www.maine.gov/governor/mills/official_documents/executive_orders/2022-07-executive-order-4-order-protecting-access-reproductive; Office of the Governor, State of New Mexico, Executive Order 2022-107, Protecting Access to Reproductive Health Care Services in New Mexico, June 27, 2022; State of Maryland Executive Department, Executive Order 01.01.2023.08, Protecting the Right to Seek Gender-Affirming Treatment in Maryland, June 5, 2023,

https://governor.maryland.gov/Lists/ExecutiveOrders/Attachments/11/EO_01.01.2023.08_accessible.pdf

¹⁵ 15 U.S.C. § 45(n); FTC, Policy Statement on Unfairness (1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>.

¹⁶ FTC, Policy Statement on Deception (1983),

https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

¹⁷ *FTC Cracks Down on Mass Data Collectors: A Closer Look at Avast, X-Mode, and InMarket* (Mar. 4, 2024), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/03/ftc-cracks-down-mass-data-collectors-closer-look-avast-x-mode-inmarket>; *What Goes on in the Shadows* (Jan. 9, 2024), <https://www.ftc.gov/business-guidance/blog/2024/01/what-goes-shadows-ftc-action-against-data-broker-sheds-light-unfair-deceptive-sale-consumer-location>.

¹⁸ *Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards* (Dec. 19, 2023), 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-s>.

¹⁹ *FTC Warns About Misuses of Biometric Information and Harm to Consumers* (May 18, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-warns-about-misuses-biometric-information-harm-consumers>.

This Section directs state agencies to assess whether their agreements with grantees and contractors—defined in the next section to include local government entities—are in compliance with existing state privacy and data protection laws.

From:

Julia Spiegel [REDACTED]

Sent:

Sun 12/1/2024 7:27:10 PM (UTC-05:00)

To:

Civitas/GovAct [REDACTED]

[REDACTED]

Benjamin

Lazarus

[REDACTED]

[REDACTED] Ben
Henderson [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] COS
Public Finkel, Jacob [REDACTED]
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khuffman Hannah Tyrrell [REDACTED]
[REDACTED] Celine
Mizrahi [REDACTED]
[REDACTED]
[REDACTED] Grace
Na Christina
Chang [REDACTED]
[REDACTED] Miller, Katherine
(GOV) [REDACTED]
[REDACTED]
[REDACTED]
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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Berke, Barry
H. [REDACTED]
Cc: Allegra Chapman [REDACTED] Emma
Clough [REDACTED]
Subject: [External] TOMORROW: GovAct/GSD Briefing: Common Interest, Biden Asks, &
Staffing (Confidential)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Hi all,

We look forward to seeing you [tomorrow \(Monday\), 10-11 am PT / 1-2 pm ET](#). Please include counsel if possible.

More info below.

Thanks,
Julia

Julia Spiegel
CEO & Founder
GOV/ACT

(calls only)

From: [REDACTED]
When: 10:00 AM - 11:00 AM December 2, 2024
Subject: GovAct/GSD Briefing: Common Interest, Biden Asks, & Staffing (Confidential)
Location: [REDACTED]

All:

We look forward to reconvening to discuss action plans for the coming weeks as your offices prepare for a new federal administration. A proposed agenda is below.

Please share this invite with your legal team so that at least one lawyer from each office can join for the first 15-20 minutes of the meeting. GSD's counsel will present on the contours of a proposed common interest agreement, after which the lawyers are welcome to stay on or hop off.

Proposed Agenda:

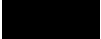
- Welcome from Co-Chairs (5 min)
- Common Interest Agreement Presentation & Discussion (15 min)
- Priority Asks of the Biden Administration & WH Meeting (20 min)
- Staffing Presentation & Discussion (20 min)

See you soon,
Julia

Meeting Information

Join Zoom Meeting

Meeting ID: [REDACTED]

Passcode: 

Civitas/GovAct [REDACTED] Emma
Clough [REDACTED]

Public Finkel, Jacob

Finkel, Jacob

[REDACTED]

khuffman
rhassan
Mizrahi
VFond

htyrrell

Celine

gna Christina
Chang

Christina

Lazarus [REDACTED] Allegra [REDACTED]
Chapman [REDACTED] Ben [REDACTED]
Henderson [REDACTED] Miller, Katherine [REDACTED]
(GOV) [REDACTED] Ruiz Marquez, Yuliana - [REDACTED]
GOV [REDACTED] Natalia Ahn -GOV- [REDACTED]

Allegra

Benjamin

Ben

Miller, Katherine

Ruiz Marquez, Yuliana -
Natalia Ahn -GOV-

Cc: Allegra Chapman [REDACTED] Emma

Allegre Chapman [REDACTED] Emma
Clough [REDACTED] Berke, Barry
H. [REDACTED]
Civitas/GovAct [REDACTED]

Emma

Berke, Barry

H. [REDACTED]

Civitas/GovAct

Subject: [External] Follow Up Re: 12/2 GovAct/GSD Briefing: Common Interest, Bid

[External] Follow Up Re: 12/2 GovAct/GSD Briefing: Common Interest, Bid
Asks, & Staffing (Confidential)

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

All,

Thank you so much for joining us for the GSD briefing yesterday. We are looking forward to more great discussions and information sharing among your offices.

Below is contact information and next steps on the agenda items that we discussed:

1. Common Interest Agreement (CIA)

- We will share a draft CIA shortly for your review and signature shortly.
- If you have any outstanding questions about the CIA or your state law, please reach out to Barry Berke at [REDACTED] to schedule a meeting.

2. WH Meeting & Priority Asks

- Gov. Pritzker's Chief of Staff Anne Caprera will host a call with the Administration to discuss lock-in asks. If your office would like to join this meeting, please email Julia Spiegel at [REDACTED] by the end of this week.

3. Staffing Support Interest

- Charlie Posner - [REDACTED] [interest form shared](#).
- Monika Hansen, Civic Match - [REDACTED] has offered white glove service to support staffing efforts at the state level (gov offices and agencies). If of interest, please feel free to reach out directly.

As a reminder, we will hold our next GSD briefing on **Thursday, December 12 at 1 pm ET/10 am PT to discuss sensitive data and national guard protections**. You should have already received a calendar invitation; if not, let us know and we'll send it your way.

We look forward to more great discussions and information-sharing ahead.

Julia

Julia Spiegel
CEO & Founder
GOV/ACT

[REDACTED]
[REDACTED] (calls only)

From: [REDACTED]

When: 10:00 AM - 11:00 AM December 2, 2024

Subject: GovAct/GSD Briefing: Common Interest, Biden Asks, & Staffing (Confidential)

Location:
[REDACTED]

All:

We look forward to reconvening to discuss action plans for the coming weeks as your offices prepare for a new federal administration. A proposed agenda is below.

Please share this invite with your legal team so that at least one lawyer from each office can join for the first 15-20 minutes of the meeting. GSD's counsel will present on the contours of a proposed common interest agreement, after which the lawyers are welcome to stay on or hop off.

Proposed Agenda:

- Welcome from Co-Chairs (5 min)
- Common Interest Agreement Presentation & Discussion (15 min)
- Priority Asks of the Biden Administration & WH Meeting (20 min)
- Staffing Presentation & Discussion (20 min)

See you soon,
Julia

Meeting Information

Join Zoom Meeting
[REDACTED]

Meeting ID: [REDACTED]

Passcode: [REDACTED]

Location: [REDACTED]

End Time: Thur 12/12/2024 2:00:00 PM (UTC-05:00)

Required Attendees:

Richard Figueroa;

karen.a.sheley;

Sarah.Sabshon;

emily.kirby;

Courtney.Kerster;

COS Public; Finkel, Jacob;

khuffman; Hannah Tyrrell; rhassan; Celine Mizrahi;

Victoria Fong;

Clough; Allegra Chapman;

Civitas/GovAct

Attachment: Firewalling Freedom Template Gubernatorial EO Explanatory Memo.pdf

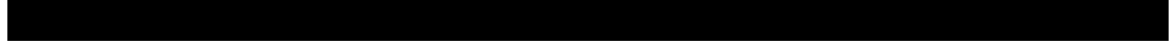
All: Please join for a briefing on executive actions governors can take to protect sensitive data and prepare for potential national guard deployments. See attached for template Executive Orders we will discuss. Please feel free to invite counsel.

Thank you,

Julia

Meeting Information

Join Zoom Meeting



Meeting ID: [REDACTED]

Passcode: [REDACTED]

6) Domestic Deployment of the National Guard

Concept

Governors, particularly when acting in concert, can influence public debate regarding appropriate use of National Guard deployment. They can reassert the importance of separation between military and civilian law enforcement. Governors can also limit their state's cooperation with another state's National Guard should it be deployed to their state over their objection.

Former President Donald Trump and his campaign surrogates have repeatedly threatened domestic deployment of the National Guard, and the military more generally, in ways that profoundly threaten civil rights and civil liberties. Most recently, he [has described using the National Guard against](#) “the enemy from within” and “radical left lunatics.”

This model executive order would do both. It would apply the principles of the Posse Comitatus Act to your state's National Guard when it operates at the request of the federal government, i.e. Title 32 status. It would also (except as required by state or federal law) prohibit assistance to another state's National Guard unit, or to federal law enforcement agencies, in certain circumstances. This executive order could be adapted into legislation dependent on existing state law and existing governor authorities.

TIMING: Post-election

STATE GOVERNMENT TARGETS: Governors, attorneys general, and legislatures (see separate memo with background and recommendations)

SUGGESTED MECHANISM: Executive order, legislation

MODEL:

Model Gubernatorial Executive Order

Whereas separation between the military and civilian government is a foundational American tradition and principle reflected in the U.S. Constitution and other laws; and

Whereas the Posse Comitatus Act, enacted in 1878, today reflects this American history and tradition of limiting direct military involvement in civilian affairs and law enforcement and makes it a federal crime to “willfully” use U.S. military forces to “execute the law”; and

Whereas deployment of National Guard service members to engage in domestic civilian law enforcement

activities would undermine our state's protection of civil rights and civil liberties, could expose National Guard service members to criminal liability, and unfairly require them to act in roles for which they have little or no training;

NOW, THEREFORE, I, [Name], Governor of the State of [your state] by virtue of the authority vested in me by the Constitution and the laws of the State of [your state], including Sections [your state laws governing National Guard], do hereby order as follows:

1. **Posse Comitatus.** The armed forces of this State, when called into active service pursuant to Title 32 of the U.S. Code, shall comply with federal law and policy prohibiting direct participation in civilian law enforcement activities, which includes The Posse Comitatus Act, as amended, 18 U.S.C. Section 1385 and related federal directives.
2. **No Assistance to Deployments Over Objection of the Office of the Governor.** Except as required by federal or state law, the Adjutant General or his designee, and through him, the commanding officer of any unit of the armed forces of this State called into active service pursuant to authorities granted under state law or Title 32 of the U.S. Code shall provide no time, money, facilities, property, equipment, personnel, or other resources for purposes of:
 - a. Assistance to any National Guard unit of another state that is deployed to this State, if the Office of the Governor of [this State] has objected to such deployment; or
 - b. Assistance to any National Guard unit or law enforcement agency of another State or federal law enforcement, intelligence, or homeland security agency, if the Office of the Governor of [this State] has reasonable grounds to believe that either the actions of the unit or agency, or provision of assistance, would violate one or more of the following: the Constitution of the United States, federal law, the Constitution of the State of [your state], or the laws of [your state].
3. Nothing in this order shall be construed as prohibiting the armed forces of this state from providing indirect assistance to civilian law enforcement activities taking place in another state, such as technical support and administrative assistance, including such assistance provided to support emergency, humanitarian, or related operations in a declared state of emergency.
4. Nothing in this order shall be construed as prohibiting preparation to support civilian law enforcement agencies or other National Guard units, consistent with the needs of military preparedness of the United States.
5. **Definitions.**
 - a. "Direct participation in civilian law enforcement activities" means activities prohibited by U.S. Department of Defense, including those described in Instruction 3025.21.
 - b. "Law enforcement agency" means a sheriff and their office and department, the police departments of a municipality and other subdivision of a state, prosecutorial office, court, correctional facility, probation office or any other entity in the State charged with enforcement of State laws or the custody of detained persons.
6. **Severability Clause.** If any part of this Executive Order is found to be invalid by a court of competent jurisdiction the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.

7. **Scope and Effective Date.** Any other executive orders inconsistent with the provisions of this Order are hereby rescinded. This Executive Order shall continue in effect until amended or revoked by subsequent executive order.

ACLU National Support Staff

Naureen Shah, Deputy Director of Government Affairs, Equality Division ([REDACTED])

Kia Hamadanchy, Senior Policy Counsel, Democracy and Technology Division ([REDACTED])

Firewall for Freedom – Template Gubernatorial Executive Order

Options/Adjustments in Blue

[Whereas clauses]

NOW, THEREFORE, I, [Name], Governor of the State of [your state] by virtue of the authority vested in me by the Constitution and the laws of the State of [your state], do hereby order as follows:

1. **No Assistance in Violations of Civil Rights or Civil Liberties.** Except as required by valid federal or [your state] law, no State agency, employee or agent may comply with a request for information or assistance if they have reason to believe the request is in furtherance of any investigation, arrest, prosecution, or other sanction of conduct initiated by federal authorities or out-of-state authorities that seeks—
 - a. to impose civil or criminal liability or professional sanction upon a person or entity for the provision, supplying, assistance with, securing, or receipt of, or any inquiry concerning or relating to, health care services if the services as provided would have been lawful under State law and consistent with good medical practice if they occurred entirely in this State;
 - b. to identify or impose civil or criminal liability upon a person or entity based on their participation in activities protected by the First Amendment of the U.S. Constitution or [provision of state constitution] including assembly, petitioning and speech;
 - c. to impose civil or criminal liability, or other penalties, upon a person or entity for provision of humanitarian assistance, legal assistance or other aid to benefit a noncitizen if that provision would have been lawful if it occurred entirely in this State;
 - d. to identify or apprehend a person in order to subject them to civil immigration detention, removal or deportation proceedings; or
 - e. to prosecute a person or persons for offenses related to immigration status, including but not limited to violations of Sections 1253, 1304(e), 1306(a) and (b), 1324, 1325, or 1326 of Title 8 of the United States Code, or violations of Sections 1028A or 1546 of Title 18 of the United States Code.

Notwithstanding the general prohibition of this section, a State Agency, employee or agent may provide such information or assistance if the requesting authority includes an attestation, made

under penalty of perjury, stating that the request does not relate to an investigation or other proceeding described in subsections (a) – (e) of this Section.

2. **Assessment of Requests.** In the event a State agency, employee or agent receives a request that they have reason to believe is in furtherance of an investigation, arrest, prosecution or other sanction described in Section 1(a)-(e) of this Order, they shall notify the agency director and refer the request to the Governor’s Office of General Counsel. Upon receipt of the referral, the Office of General Counsel shall—
 - a. Assess, including by consulting with relevant federal authorities or out-of-state authorities as appropriate, whether information or assistance is being requested or commanded.
 - b. Where a court order, subpoena, warrant or other legal process is presented, assess its validity and application.
 - c. Assess whether, in light of the federal authorities’ or out-of-state authorities’ stated or apparent purposes, complying with the request would violate Section 1 of this Order
 - d. Assess whether, in light of the federal authorities’ or out-of-state authorities’ stated or apparent purposes, complying with the request would violate potentially applicable state statutory or constitutional provisions. Such provisions may include, but are not limited to, statutory and constitutional protections for privacy rights, speech and association, healthcare, abortion, due process, equal protection, and other civil rights and civil liberties guarantees.
 - e. Provide these assessments to the referring employee and agency and direct them to deny or grant the request.
 - f. If directing that the request be granted, provide a written summary of these assessments to the referring agency. The summary shall be retained for as long as applicable law may require, but in any event no less than six years after the date of execution.
3. **Annual Report.** On an annual basis, the Office of the Governor may release a public report, in print and on its website, describing threats to civil rights and civil liberties of [State] residents posed by federal or out-of-state agencies, which may include a summary of requests assessed under Section 2.
4. **Agreements Compliance.** Any State agency or law enforcement agency taking part in or seeking to enter into an agreement with federal authorities, out-of-state authorities, or a private entity, for the purpose of sharing of personal information with federal authorities or out-of-state authorities, including through or for a joint federal-state operation such as a fusion center, joint terrorism task force or delegation pursuant to 8 U.S.C. §1357(g)

(known as 287(g) agreements), shall ensure compliance with this Order within 180 days—

- a. For any agreement in existence at the time this Order is signed, the State agency shall seek and receive written authorization from the Governor’s Office of General Counsel that it is in compliance with Section 1 of this Order and applicable state law. If the Governor’s Office of General Counsel determines that the agreement is not compliant with Section 1 of this Order, the agreement shall be terminated.
 - b. Prior to renewal or establishment of a new agreement, the agency shall seek and receive prior approval of the Governor’s Office of General Counsel that it is in compliance with Section 1 of this Order and applicable state law. Such authorization shall be made in writing.
 - c. Written authorization under this Section and associated documents shall be retained for as long as applicable law may require, but in any event no less than six years after the date of execution.
5. **Enforcement.** Whenever the office of the Governor obtains information that a State agency, employee or agent may have engaged in conduct in violation of Section 1 of this Order, the Governor shall determine appropriate actions, which may include a recommendation that the Attorney General initiate enforcement actions in relation to such violation in accordance with [state statute concerning attorney general authority, applicable state civil rights laws--both civil and criminal)].
6. **Unfair or Deceptive Acts or Practices.** The [state consumer protection agency] [shall/is encouraged to] begin rulemaking under [state administrative law] within 180 days of this Order clarifying when data practices, including regarding geolocation and consumer health data, constitute unfair or deceptive acts or practices under [state consumer protection law].
7. **Grantees and contractors.** All State agencies shall review contracts and agreements with grantees and contractors to determine whether they comply with [state laws and regulations regarding the protection of personal information].
8. **Definitions.** For the purposes of this order, the terms listed below shall have the following meanings:
 - a. “Assistance” includes any provision of time, money, facilities, property, equipment, personnel or other resources.
 - b. “State agency” includes the office of the Governor, any executive office of [your state], as defined by section [X] of chapter [X] of the General Laws, and any

agency, bureau, department, office, or division of the State within or reporting to such an executive office of the State.

- c. “Employee or agent” means any individual employed by or acting on behalf of any State agency or subdivision.
- d. “Request” includes any court order, warrant, subpoena or informal request for information or assistance made by federal authorities or another state’s authorities.
- e. “Federal authorities” includes any federal agency.
- f. “Out-of-state authorities” includes any agency of another state government or subdivision thereof.
- g. “Health care services” includes all medical, surgical, therapeutic, counseling, or referral services.
- h. “Humanitarian assistance” means assistance to meet humanitarian needs, including food, medicine, clothing, shelter, transportation, and mental and physical health services.
- i. “Legal assistance” means legal advice and/or representation provided by an attorney or an individual under the direct supervision of an attorney.
- j. “Agreement” is any contract, agreement, or memorandum of understanding to which the government of the United States or another state is party, regardless of subject matter. It includes any deputization of authority by the government of the United States or any other conferral of authority to act with the power of an officer or employee of the government of the United States, including pursuant to Sections 0.19(a)(3) and 0.112 of title 28 of the Code of Federal Regulations.
- k. “Law enforcement agency” means a sheriff and their office and department, the police departments of a municipality or other subdivision of the State, prosecutorial office, court, correctional facility, probation office or any other entity in the State charged with enforcement of State laws or the custody of detained persons.
- l. “Personal information” means any information that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable individual, or a device that identifies or is linked or reasonably linkable to an individual, including geolocation.
- m. “Geolocation” means information derived from technology, including, but not limited to, latitude and longitude coordinates from global positioning system

mechanisms or other similar positional data, that reveals the past or present physical location of an individual or device that identifies or is linked or reasonably linkable to 1 or more individuals within a radius of one thousand seven hundred fifty feet. “Geolocation” does not include the content of communications, a photograph or video, or metadata associated with a photograph or video.

- n. “Consumer health data” means any personal information, including derived or inferred information, that describes or reveals an individual's past, present, or future physical or mental health condition or diagnosis, and includes, but is not limited to, gender-affirming health data, HIV status, and reproductive or sexual health data.
 - o. “Grantee” means any legal entity to which a state agency awards or administers a grant.
9. **Severability Clause.** If any part of this Executive Order is found to be invalid by a court of competent jurisdiction the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.
10. **Scope and Effective Date.** All State agency, employees, agents and grantees shall fully comply with this Order. Any provisions of prior Executive Orders inconsistent with the provisions of this Order are hereby rescinded. This Executive Order shall continue in effect until amended or revoked by subsequent Executive Order.

Firewall for Freedom – Template Gubernatorial Executive Order

Explanatory Memo

Section 1.

General Prohibition on Voluntary Assistance and Information-Sharing.

This Section generally prohibits state employees from voluntarily complying with a request to provide information or assistance to federal authorities or authorities of another state, if they have reason to believe that the request is in furtherance of an investigation or proceeding described in subsections (a)-(e), which pertain to healthcare, First Amendment-protected activity, assistance to non-citizens, and immigration status. All of these are civil liberties areas of serious, urgent concern due to recent legal actions by other states, as well as the agenda of Project 2025 and the Trump campaign.

Assessing Federal Requests -- Tenth Amendment Anti-Commandeering Principle

Under the anti-commandeering principle of the Tenth Amendment of the US Constitution, the federal government generally cannot compel state and local governments to enact or administer a federal regulatory program.¹ Consistent with that limitation on federal power, the federal government sometimes asks state and local governments to provide *voluntary* assistance with federal law enforcement and intelligence programs. But under the Tenth Amendment, states are free to refuse those requests, and to prohibit state employees from assisting in federal enforcement actions. Indeed, several states have enacted laws restricting state employees from assisting the federal government with immigration enforcement.² Additionally, as of May 2024, 23 states and the District of Columbia have a type of “shield law” protection, designed to be a buffer against legal proceedings initiated by out-of-state actors seeking to penalize abortion or gender-affirming care.³ While most if not all of these shield laws could be interpreted to apply to the federal government as well, a handful of states have provisions that explicitly apply to federal law enforcement.

Consistent with the anti-commandeering principle, where federal law allows but does not require states to take some action, state law may flatly prohibit state and local officials from taking that action. For example, while federal law makes marijuana possession a federal crime, it does not compel states to investigate that crime. Thus, in several states that have decriminalized marijuana possession under state law, state supreme courts have held that their state statutes or constitutions prohibit conducting vehicle searches based solely on the odor of burnt marijuana.⁴ In one of those decisions, the Massachusetts Supreme Judicial Court carefully explained how state law can bar its officers from enforcing marijuana prohibition even though marijuana possession remains a federal crime. Specifically, “[w]hile State law *may* authorize local and State police to enforce Federal criminal statutes”—except where federal law

¹ See *New York v. United States*, 505 U.S. 144, 161-63 (1992); *Printz v. United States*, 521 U.S. 898, 926-32 (1997).

² See Immigrant Legal Resource Center, *State Map on Immigration Enforcement*, <https://www.ilrc.org/state-map-immigration-enforcement>.

³ See Guttmacher Institute, *State Policy Trends 2023* (Dec. 2023), <https://www.guttmacher.org/2023/12/state-policy-trends-2023-first-full-year-roe-fell-tumultuous-year-abortion-and-other>; Guttmacher Institute, *Midyear 2024 State Policy Trends* (June 2024), <https://www.guttmacher.org/2024/06/midyear2024-state-policy-trends-many-us-states-attack-reproductive-health-care-other>.

⁴ See *People v. Redmond*, 2024 IL 129201, ¶ 54, 2024 WL 4231539 (Ill. Sept. 19, 2024); *State v. Torgerson*, 995 N.W.2d 164 (Minn. 2023); *Commonwealth v. Barr*, 266 A.3d 25, 44 (2021).

preempts such enforcement—“it need not do so.”⁵ In Massachusetts, the court explained, when the voters enacted an initiative decriminalizing the possession of small amounts of marijuana, they had permissibly “curtail[ed] [state and local] police authority to enforce the Federal prohibition of possession of small amounts of marijuana.”⁶ The proposed executive order operates according to these same principles; it suggests that in certain contexts where federal law gives states the *option* of taking some enforcement action, states should bar their officials from taking that action.

Exception -- Valid Federal or State Law

The general prohibition set out in this Section of the proposed executive order makes exception for actions required by your state law or *valid* federal law. However, state officials can contest federal laws as invalid on constitutional grounds. For example, a federal law that directly commands officers of state or local government to implement federal law, or directly prohibits certain actions, could be held invalid.⁷

Adjustments to Section 1 and Options for Your State

Some states already have laws governing information-sharing and assistance to federal law enforcement and intelligence agencies in contexts such as healthcare, immigration enforcement and data privacy. For these states, the proposed executive order provides instruction and clarifies implementation. We recommend you assess the language of this template Order to ensure it is consistent with state law.

We also recommend you alter the language of this template Order to ensure it provides the greatest possible protection based on existing state laws and state constitutional protections. Your state law and constitution may be a source of additional protections that could be added to subsections (a)-(e), for instance, with regard to the operation of charitable institutions, unlawful search and seizure, data privacy, equal protection, housing, education, and voting.

As written, this Section applies to state agencies and employees, but not local government entities and employees; we recommend you assess whether and how to include local government entities, depending on the laws of your state and other dynamics.⁸

This Section also includes an optional provision to address ambiguous situations where the State employee does not have reason to believe that providing information or assistance would violate the Order. It provides that if the federal or out-of-state authority attests under penalty of perjury that the request does not relate to an investigation or proceeding described in subsections (a)-(e), the employee

⁵ *Commonwealth v. Craan*, 13 N.E.3d 569, 577–78 (2014) (footnote omitted); see also *Miller v. United States*, 357 U.S. 301, 305 (1958) (where states police officers make arrest for violation of Federal law, “lawfulness of the arrest without warrant is to be determined by reference to state law”).

⁶ *Id.* at 578.

⁷ See *New York v. United States*, 505 U.S. 144, 166 (1992) (“even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to *compel the States* to require or prohibit those acts.” (emphasis added)); see, e.g., *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 329–30 (E.D. Pa. 2018), *aff’d in part and vacated in part sub nom. City of Philadelphia v. Att’y Gen. of U.S.*, 916 F.3d 276 (3d Cir. 2019); *City of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 953 (N.D. Cal. 2018), *aff’d in part and vacated in part sub nom. City of San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020), petition for cert. filed, No. 20-666 (U.S. Nov. 13, 2020); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 866–73 (N.D. Ill. 2018), *aff’d sub nom. on other grounds, City of Chicago v. Barr*, 961 F.3d 882, 908–09 (7th Cir. 2020) (not reaching the constitutional question but noting that, under *Murphy*, “it does not matter that § 1373 prohibits the state from taking an action, as opposed to requiring an action” because “either situation involves the exercise of control over the state”).

⁸ We recommend you consider whether to modify definitions in Section 8, including 8(b) and 8(c). Optional Section 7 of the proposed executive order would also apply existing state law to contracts with local government entities.

may comply with the request. However, we do not advise you to include this provision since it could blunt the impact of the proposed executive order and create confusion.

Section 2. Assessment of Requests

This Section directs state employees who receive a request to provide information or assistance described by Section 1 to refer it to the Governor's Office of General Counsel. It directs the General Counsel to assess whether information or assistance is being requested or commanded; the validity and application of any court order that is presented; and the legality of complying with the request. It directs the General Counsel to provide these assessments to the employee and agency and instruct them to deny or grant the request.

Section 2(b) addresses requests that are court orders, subpoenas, warrants or other legal process. States generally cannot avoid complying with a legally valid court order, judicial warrant or subpoena.⁹ Even then, however, state officials can contest federal legal process they believe to be invalid because, for instance, it is overbroad or unduly burdensome, exceeds statutory authority, or seeks information that goes beyond what is relevant to a permissible investigation.¹⁰

Section 2(f) is an optional provision requiring a written summary of these assessments be provided to the referring agency and be retained, if the agency is directed to grant the request. This would provide assurance and a written record to state employees and agencies concerned with demonstrating compliance with the proposed executive order and state law.

Section 3. Annual Report (Optional)

This Section serves public transparency by providing for an optional annual report on requests for information or assistance made by federal or out-of-state agencies and assessed under Section 2. This would provide a platform for governors to share about threats posed to civil rights and civil liberties by out-of-state and federal actors, and to publicize actions taken by state officials to protect residents.

There are examples of reporting provisions in gubernatorial executive orders concerning reproductive care, although they do not concern specific requests. For example, Pennsylvania and Michigan orders direct agencies to consider communicating with the public concerning the cost and availability of reproductive health care.¹¹

⁹ Because administrative subpoenas are not self-executing, the recipient of a subpoena may initially decline to comply with it and can only be forced to comply if the federal government files a motion to compel and obtains a court order directing compliance. *See, e.g., United States v. Sturm, Ruger & Co.*, 84 F.3d 1, 3 (1st Cir. 1996); *Belle Fourche Pipeline Co. V. United States*, 751 F.2d 332, 334 (10th Cir. 1984).

¹⁰ *See In re Grand Jury Subpoena, JK-15-029*, 828 F.3d 1083 (9th Cir. 2016) (quashing overbroad federal grand jury subpoena seeking former governor's email records held on Oregon state servers); *In re Grand Jury Subpoena for THCF Med. Clinic Recs.*, 504 F. Supp. 2d 1085, 1090 (E.D. Wash. 2007) (quashing federal subpoena to state agency as unreasonable because "it sought records that have marginal, if any, relevance" and those records "contain highly personal, confidential, and sensitive information"). *See also Oregon Prescription Drug Monitoring Program v. U.S. Drug Enf't Admin.*, 860 F.3d 1228, 1236 (9th Cir. 2017) (noting state's "option to contest subpoenas for protected information" issued by the federal government, which is "a critical safeguard" when "particularly important privacy interest[s]" are implicated); *In re Grand Jury Matter*, 762 F. Supp. 333, 335 (S.D. Fla. 1991) (recognizing state's ability to challenge enforcement of federal subpoena seeking state agency records on basis that "compliance with the subpoena would be 'unreasonable or oppressive' under Fed. R. Crim. P. 17(c)").

¹¹ Commonwealth of Pennsylvania Governor's Office, Executive Order 2022-01 – Reproductive Health Care, July 12, 2022, <https://www.oa.pa.gov/Policies/eo/Documents/2022-01.pdf>; Executive Office of the Governor, Executive Directive 2022-5: Reproductive Rights in Michigan, May 25, 2022, <https://www.michigan.gov/whitmer/news/state->

Section 4. Agreements Compliance (Optional)

This Section applies the Order’s general prohibition to partnerships between state agencies and out-of-state and federal agencies, as well as private entities, for information-sharing. If you include “any state agency or law enforcement agency” in this Section, it applies to all law enforcement, homeland security and intelligence agencies in your state that may join such partnerships; whether to include this depends on the governor’s authorities over these agencies in your state.

This Section would apply to fusion centers, a network of 80 state and locality-run entities developed, supported, and funded by the federal Department of Homeland Security as intelligence hubs to collect and disseminate counterterrorism and other alleged criminal information. It would also apply to Joint Terrorism Task Forces (JTTFs), which are FBI-operated task forces that are intended to work with state and local law enforcement agencies to conduct terrorism investigations. There are about 200 JTTFs throughout the country. JTTFs and fusion centers operate with little transparency and raise serious concerns about privacy, civil rights, and civil liberties violations, as well as lack of meaningful oversight. In recent years, misuse of JTTFs and fusion centers has included monitoring and disseminating intelligence reports on racial justice, environmental, and other social justice protests, as well as other First Amendment-protected activities—without establishing any connection to criminal activity. For example, the Trump administration deployed JTTFs for political ends in response to the 2020 racial justice protests.

This Section would also apply to 287(g) agreements, through which the federal Department of Homeland Security delegates federal immigration enforcement responsibilities to state and local law enforcement agencies. These agreements enable US Immigration and Customs Enforcement (ICE) to identify, detain and deport immigrants—with information provided by state and local law enforcement. This proposed executive order would effectively require termination of any existing 287(g) agreements. In some states, existing law already prohibits these agreements.

Section 5 Enforcement.

This Section provides that the Governor shall take all appropriate actions to enforce the proposed executive order. This is similar to recently issued executive orders concerning protection of abortion care.¹²

We recommend you assess whether you can strengthen this section, based on the governor’s legal authority in your state and existing state law for particular contexts. For example, a North Carolina executive order protecting abortion care directs the state’s department of public safety to “ensure the enforcement” of state law concerning access to and egress from health care facilities.¹³

[orders-and-directives/2022/05/25/ed-2022-5-reproductive-rights-in-michigan#:~:text=Reproductive%20rights%20are%20under%20threat,about%20their%20health%20and%20bodies](#)

¹² See Office of the Governor of the Commonwealth of Massachusetts, Executive Order No. 633, June 24, 2024, <https://www.mass.gov/doc/eo-633/download>; see also Commonwealth of Pennsylvania Governor’s Office, Executive Order 2022-01 – Reproductive Health Care, July 12, 2022, <https://www.oa.pa.gov/Policies/eo/Documents/202201.pdf> (“shall take all steps necessary to implement this Executive Order”).

¹³ See State of North Carolina, Executive Order No. 263, Protecting Access to Reproductive Health Care Services in North Carolina, July 6, 2022, <https://governor.nc.gov/executiveorder-no-263/open>.

Relatedly, many executive orders concerning protection of health care services specify that the governor intends to use their discretion to decline interstate extradition requests.¹⁴ We recommend you assess state law to determine whether to include such a provision.

Section 6. Unfair or Deceptive Acts or Practices.

This Section instructs the appropriate state agency or subagency – likely the state equivalent of the Federal Trade Commission (FTC), which may report to the state attorney general – to investigate specific data practices as an unfair or deceptive act or practice. Because these agencies may be independent of the governor, this section provides alternative language merely encouraging such investigations. “Unfair or deceptive acts or practices” is a term of art used in consumer protection and privacy law. Although definitions of “unfair” or “deceptive” may vary across jurisdictions, they often adhere closely to interpretations by the FTC, which have been shaped by statute and 90 years of practice. The FTC defines the terms as follows:

- A practice is “unfair” if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”¹⁵
- A practice is “deceptive” if it is a material representation, omission, or practice that is likely to mislead a consumer acting reasonably in the circumstances.¹⁶

The FTC and state equivalents have further developed these definitions through enforcement actions. Unfair practices have included software that surreptitiously collected users’ location through third party applications to profile them, including profiles based on medical care they had received.¹⁷ The FTC has also found that using facial recognition technology to – inaccurately and discriminatorily – identify customers in stores is an unfair practice.¹⁸ Conversely, making false or unsubstantiated claims about data collection practices or the accuracy of AI technology may be deceptive.¹⁹

Section 7. Grants or Contractors (Optional)

¹⁴ See, e.g., Office of the Governor, Maine, Executive Order 4: An Order Protecting Access to Reproductive Health Care Services in Maine, FY 21/22, https://www.maine.gov/governor/mills/official_documents/executive_orders/2022-07-executive-order-4-order-protecting-access-reproductive; Office of the Governor, State of New Mexico, Executive Order 2022-107, Protecting Access to Reproductive Health Care Services in New Mexico, June 27, 2022; State of Maryland Executive Department, Executive Order 01.01.2023.08, Protecting the Right to Seek Gender-Affirming Treatment in Maryland, June 5, 2023,

https://governor.maryland.gov/Lists/ExecutiveOrders/Attachments/11/EO_01.01.2023.08_accessible.pdf

¹⁵ 15 U.S.C. § 45(n); FTC, Policy Statement on Unfairness (1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>.

¹⁶ FTC, Policy Statement on Deception (1983),

https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

¹⁷ *FTC Cracks Down on Mass Data Collectors: A Closer Look at Avast, X-Mode, and InMarket* (Mar. 4, 2024), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/03/ftc-cracks-down-mass-data-collectors-closer-look-avast-x-mode-inmarket>; *What Goes on in the Shadows* (Jan. 9, 2024), <https://www.ftc.gov/business-guidance/blog/2024/01/what-goes-shadows-ftc-action-against-data-broker-sheds-light-unfair-deceptive-sale-consumer-location>.

¹⁸ *Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards* (Dec. 19, 2023), 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-s>.

¹⁹ *FTC Warns About Misuses of Biometric Information and Harm to Consumers* (May 18, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-warns-about-misuses-biometric-information-harm-consumers>.

This Section directs state agencies to assess whether their agreements with grantees and contractors—defined in the next section to include local government entities—are in compliance with existing state privacy and data protection laws.

Emma Clough

Richard Figueroa;

Civitas/GovAct

Richard Figueroa;

[REDACTED] karen.a.sheley;
[REDACTED]
[REDACTED]
[REDACTED] Sarah.Sabshon;
[REDACTED]
[REDACTED] emily.kirby;
[REDACTED]
[REDACTED] Courtney.Kerster;
[REDACTED]
[REDACTED]
[REDACTED] COS Public: Finkel, Jacob;
[REDACTED]
[REDACTED]
[REDACTED] khuffman; Hannah Tyrrell; rhassan; Celine Mizrahi;
Victoria Fong; qna: Christina Chang; Emma
Clough; Allegra Chapman;
[REDACTED]
[REDACTED] Civitas/GovAct

****Resending to make sure folks received.****

All: Please join for a briefing on executive actions governors can take to protect sensitive data and prepare for potential national guard deployments. See attached for template Executive Orders we will discuss. Please feel free to invite counsel.

Thank you,

Julia

Meeting Information

Join Zoom Meeting

[REDACTED]

Meeting ID: [REDACTED]
Passcode: [REDACTED]

Emma Clough

Richard Figueroa;

Sarah.Sabshon;

Courtney.Kerster;

COS Public; Finkel, Jacob;

khuffman; Hannah Tyrrell; rhassan; Celine Mizrahi;

Victoria Fong;

qna; Christina Chang; Emma

Clough; Allegra Chapman;

Civitas/GovAct

Subject:

GovAct/GSD Briefing: Sensitive Data and National Guard Protections
(Confidential)

Normal

Thur 12/12/2024 1:00:00 PM (UTC-05:00)

Thur 12/12/2024 2:00:00 PM (UTC-05:00)

Required Attendees:

Richard Figueroa;

[REDACTED] karen.a.sheley;
[REDACTED]
[REDACTED]
[REDACTED] Sarah.Sabshon;
[REDACTED]
[REDACTED] emily.kirby;
[REDACTED]
[REDACTED] Courtney.Kerster;
[REDACTED]
[REDACTED] COS Public: Finkel, Jacob;
[REDACTED]
[REDACTED]
[REDACTED] khuffman; Hannah Tyrrell; rhassan; Celine Mizrahi;
Victoria Fong; qna: Christina Chang; Emma
Clough; Allegra Chapman;
[REDACTED]
[REDACTED] Civitas/GovAct

Attachment: National Guard Executive Order[5].pdf

Attachment: Firewalling for Freedom - Template Gubernatorial Executive Order[7].pdf

Attachment: Firewalling Freedom Template Gubernatorial EO Explanatory Memo[2].pdf

****Resending to make sure folks received.****

All: Please join for a briefing on executive actions governors can take to protect sensitive data and prepare for potential national guard deployments. See attached for template Executive Orders we will discuss. Please feel free to invite counsel.

Thank you,

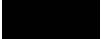
Julia

Meeting Information

Join Zoom Meeting

[REDACTED]

Meeting ID: [REDACTED]

Passcode: 

6) Domestic Deployment of the National Guard

Concept

Governors, particularly when acting in concert, can influence public debate regarding appropriate use of National Guard deployment. They can reassert the importance of separation between military and civilian law enforcement. Governors can also limit their state's cooperation with another state's National Guard should it be deployed to their state over their objection.

Former President Donald Trump and his campaign surrogates have repeatedly threatened domestic deployment of the National Guard, and the military more generally, in ways that profoundly threaten civil rights and civil liberties. Most recently, he [has described using the National Guard against](#) “the enemy from within” and “radical left lunatics.”

This model executive order would do both. It would apply the principles of the Posse Comitatus Act to your state's National Guard when it operates at the request of the federal government, i.e. Title 32 status. It would also (except as required by state or federal law) prohibit assistance to another state's National Guard unit, or to federal law enforcement agencies, in certain circumstances. This executive order could be adapted into legislation dependent on existing state law and existing governor authorities.

TIMING: Post-election

STATE GOVERNMENT TARGETS: Governors, attorneys general, and legislatures (see separate memo with background and recommendations)

SUGGESTED MECHANISM: Executive order, legislation

MODEL:

Model Gubernatorial Executive Order

Whereas separation between the military and civilian government is a foundational American tradition and principle reflected in the U.S. Constitution and other laws; and

Whereas the Posse Comitatus Act, enacted in 1878, today reflects this American history and tradition of limiting direct military involvement in civilian affairs and law enforcement and makes it a federal crime to “willfully” use U.S. military forces to “execute the law”; and

Whereas deployment of National Guard service members to engage in domestic civilian law enforcement

activities would undermine our state's protection of civil rights and civil liberties, could expose National Guard service members to criminal liability, and unfairly require them to act in roles for which they have little or no training;

NOW, THEREFORE, I, [Name], Governor of the State of [your state] by virtue of the authority vested in me by the Constitution and the laws of the State of [your state], including Sections [your state laws governing National Guard], do hereby order as follows:

1. **Posse Comitatus.** The armed forces of this State, when called into active service pursuant to Title 32 of the U.S. Code, shall comply with federal law and policy prohibiting direct participation in civilian law enforcement activities, which includes The Posse Comitatus Act, as amended, 18 U.S.C. Section 1385 and related federal directives.
2. **No Assistance to Deployments Over Objection of the Office of the Governor.** Except as required by federal or state law, the Adjutant General or his designee, and through him, the commanding officer of any unit of the armed forces of this State called into active service pursuant to authorities granted under state law or Title 32 of the U.S. Code shall provide no time, money, facilities, property, equipment, personnel, or other resources for purposes of:
 - a. Assistance to any National Guard unit of another state that is deployed to this State, if the Office of the Governor of [this State] has objected to such deployment; or
 - b. Assistance to any National Guard unit or law enforcement agency of another State or federal law enforcement, intelligence, or homeland security agency, if the Office of the Governor of [this State] has reasonable grounds to believe that either the actions of the unit or agency, or provision of assistance, would violate one or more of the following: the Constitution of the United States, federal law, the Constitution of the State of [your state], or the laws of [your state].
3. Nothing in this order shall be construed as prohibiting the armed forces of this state from providing indirect assistance to civilian law enforcement activities taking place in another state, such as technical support and administrative assistance, including such assistance provided to support emergency, humanitarian, or related operations in a declared state of emergency.
4. Nothing in this order shall be construed as prohibiting preparation to support civilian law enforcement agencies or other National Guard units, consistent with the needs of military preparedness of the United States.
5. **Definitions.**
 - a. "Direct participation in civilian law enforcement activities" means activities prohibited by U.S. Department of Defense, including those described in Instruction 3025.21.
 - b. "Law enforcement agency" means a sheriff and their office and department, the police departments of a municipality and other subdivision of a state, prosecutorial office, court, correctional facility, probation office or any other entity in the State charged with enforcement of State laws or the custody of detained persons.
6. **Severability Clause.** If any part of this Executive Order is found to be invalid by a court of competent jurisdiction the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.

7. **Scope and Effective Date.** Any other executive orders inconsistent with the provisions of this Order are hereby rescinded. This Executive Order shall continue in effect until amended or revoked by subsequent executive order.

ACLU National Support Staff

Naureen Shah, Deputy Director of Government Affairs, Equality Division ([REDACTED])

Kia Hamadanchy, Senior Policy Counsel, Democracy and Technology Division ([REDACTED])

Firewall for Freedom – Template Gubernatorial Executive Order

Options/Adjustments in Blue

[Whereas clauses]

NOW, THEREFORE, I, [Name], Governor of the State of [your state] by virtue of the authority vested in me by the Constitution and the laws of the State of [your state], do hereby order as follows:

1. **No Assistance in Violations of Civil Rights or Civil Liberties.** Except as required by valid federal or [your state] law, no State agency, employee or agent may comply with a request for information or assistance if they have reason to believe the request is in furtherance of any investigation, arrest, prosecution, or other sanction of conduct initiated by federal authorities or out-of-state authorities that seeks—
 - a. to impose civil or criminal liability or professional sanction upon a person or entity for the provision, supplying, assistance with, securing, or receipt of, or any inquiry concerning or relating to, health care services if the services as provided would have been lawful under State law and consistent with good medical practice if they occurred entirely in this State;
 - b. to identify or impose civil or criminal liability upon a person or entity based on their participation in activities protected by the First Amendment of the U.S. Constitution or [provision of state constitution] including assembly, petitioning and speech;
 - c. to impose civil or criminal liability, or other penalties, upon a person or entity for provision of humanitarian assistance, legal assistance or other aid to benefit a noncitizen if that provision would have been lawful if it occurred entirely in this State;
 - d. to identify or apprehend a person in order to subject them to civil immigration detention, removal or deportation proceedings; or
 - e. to prosecute a person or persons for offenses related to immigration status, including but not limited to violations of Sections 1253, 1304(e), 1306(a) and (b), 1324, 1325, or 1326 of Title 8 of the United States Code, or violations of Sections 1028A or 1546 of Title 18 of the United States Code.

Notwithstanding the general prohibition of this section, a State Agency, employee or agent may provide such information or assistance if the requesting authority includes an attestation, made

under penalty of perjury, stating that the request does not relate to an investigation or other proceeding described in subsections (a) – (e) of this Section.

2. **Assessment of Requests.** In the event a State agency, employee or agent receives a request that they have reason to believe is in furtherance of an investigation, arrest, prosecution or other sanction described in Section 1(a)-(e) of this Order, they shall notify the agency director and refer the request to the Governor’s Office of General Counsel. Upon receipt of the referral, the Office of General Counsel shall—
 - a. Assess, including by consulting with relevant federal authorities or out-of-state authorities as appropriate, whether information or assistance is being requested or commanded.
 - b. Where a court order, subpoena, warrant or other legal process is presented, assess its validity and application.
 - c. Assess whether, in light of the federal authorities’ or out-of-state authorities’ stated or apparent purposes, complying with the request would violate Section 1 of this Order
 - d. Assess whether, in light of the federal authorities’ or out-of-state authorities’ stated or apparent purposes, complying with the request would violate potentially applicable state statutory or constitutional provisions. Such provisions may include, but are not limited to, statutory and constitutional protections for privacy rights, speech and association, healthcare, abortion, due process, equal protection, and other civil rights and civil liberties guarantees.
 - e. Provide these assessments to the referring employee and agency and direct them to deny or grant the request.
 - f. If directing that the request be granted, provide a written summary of these assessments to the referring agency. The summary shall be retained for as long as applicable law may require, but in any event no less than six years after the date of execution.
3. **Annual Report.** On an annual basis, the Office of the Governor may release a public report, in print and on its website, describing threats to civil rights and civil liberties of [State] residents posed by federal or out-of-state agencies, which may include a summary of requests assessed under Section 2.
4. **Agreements Compliance.** Any State agency or law enforcement agency taking part in or seeking to enter into an agreement with federal authorities, out-of-state authorities, or a private entity, for the purpose of sharing of personal information with federal authorities or out-of-state authorities, including through or for a joint federal-state operation such as a fusion center, joint terrorism task force or delegation pursuant to 8 U.S.C. §1357(g)

(known as 287(g) agreements), shall ensure compliance with this Order within 180 days—

- a. For any agreement in existence at the time this Order is signed, the State agency shall seek and receive written authorization from the Governor’s Office of General Counsel that it is in compliance with Section 1 of this Order and applicable state law. If the Governor’s Office of General Counsel determines that the agreement is not compliant with Section 1 of this Order, the agreement shall be terminated.
 - b. Prior to renewal or establishment of a new agreement, the agency shall seek and receive prior approval of the Governor’s Office of General Counsel that it is in compliance with Section 1 of this Order and applicable state law. Such authorization shall be made in writing.
 - c. Written authorization under this Section and associated documents shall be retained for as long as applicable law may require, but in any event no less than six years after the date of execution.
5. **Enforcement.** Whenever the office of the Governor obtains information that a State agency, employee or agent may have engaged in conduct in violation of Section 1 of this Order, the Governor shall determine appropriate actions, which may include a recommendation that the Attorney General initiate enforcement actions in relation to such violation in accordance with [state statute concerning attorney general authority, applicable state civil rights laws--both civil and criminal)].
6. **Unfair or Deceptive Acts or Practices.** The [state consumer protection agency] [shall/is encouraged to] begin rulemaking under [state administrative law] within 180 days of this Order clarifying when data practices, including regarding geolocation and consumer health data, constitute unfair or deceptive acts or practices under [state consumer protection law].
7. **Grantees and contractors.** All State agencies shall review contracts and agreements with grantees and contractors to determine whether they comply with [state laws and regulations regarding the protection of personal information].
8. **Definitions.** For the purposes of this order, the terms listed below shall have the following meanings:
 - a. “Assistance” includes any provision of time, money, facilities, property, equipment, personnel or other resources.
 - b. “State agency” includes the office of the Governor, any executive office of [your state], as defined by section [X] of chapter [X] of the General Laws, and any

agency, bureau, department, office, or division of the State within or reporting to such an executive office of the State.

- c. “Employee or agent” means any individual employed by or acting on behalf of any State agency or subdivision.
- d. “Request” includes any court order, warrant, subpoena or informal request for information or assistance made by federal authorities or another state’s authorities.
- e. “Federal authorities” includes any federal agency.
- f. “Out-of-state authorities” includes any agency of another state government or subdivision thereof.
- g. “Health care services” includes all medical, surgical, therapeutic, counseling, or referral services.
- h. “Humanitarian assistance” means assistance to meet humanitarian needs, including food, medicine, clothing, shelter, transportation, and mental and physical health services.
- i. “Legal assistance” means legal advice and/or representation provided by an attorney or an individual under the direct supervision of an attorney.
- j. “Agreement” is any contract, agreement, or memorandum of understanding to which the government of the United States or another state is party, regardless of subject matter. It includes any deputization of authority by the government of the United States or any other conferral of authority to act with the power of an officer or employee of the government of the United States, including pursuant to Sections 0.19(a)(3) and 0.112 of title 28 of the Code of Federal Regulations.
- k. “Law enforcement agency” means a sheriff and their office and department, the police departments of a municipality or other subdivision of the State, prosecutorial office, court, correctional facility, probation office or any other entity in the State charged with enforcement of State laws or the custody of detained persons.
- l. “Personal information” means any information that is linked or reasonably linkable, alone or in combination with other information, to an identified or identifiable individual, or a device that identifies or is linked or reasonably linkable to an individual, including geolocation.
- m. “Geolocation” means information derived from technology, including, but not limited to, latitude and longitude coordinates from global positioning system

mechanisms or other similar positional data, that reveals the past or present physical location of an individual or device that identifies or is linked or reasonably linkable to 1 or more individuals within a radius of one thousand seven hundred fifty feet. “Geolocation” does not include the content of communications, a photograph or video, or metadata associated with a photograph or video.

- n. “Consumer health data” means any personal information, including derived or inferred information, that describes or reveals an individual's past, present, or future physical or mental health condition or diagnosis, and includes, but is not limited to, gender-affirming health data, HIV status, and reproductive or sexual health data.
 - o. “Grantee” means any legal entity to which a state agency awards or administers a grant.
9. **Severability Clause.** If any part of this Executive Order is found to be invalid by a court of competent jurisdiction the remaining provisions shall remain in full force and effect. The provisions of this Executive Order are severable.
10. **Scope and Effective Date.** All State agency, employees, agents and grantees shall fully comply with this Order. Any provisions of prior Executive Orders inconsistent with the provisions of this Order are hereby rescinded. This Executive Order shall continue in effect until amended or revoked by subsequent Executive Order.

Firewall for Freedom – Template Gubernatorial Executive Order

Explanatory Memo

Section 1.

General Prohibition on Voluntary Assistance and Information-Sharing.

This Section generally prohibits state employees from voluntarily complying with a request to provide information or assistance to federal authorities or authorities of another state, if they have reason to believe that the request is in furtherance of an investigation or proceeding described in subsections (a)-(e), which pertain to healthcare, First Amendment-protected activity, assistance to non-citizens, and immigration status. All of these are civil liberties areas of serious, urgent concern due to recent legal actions by other states, as well as the agenda of Project 2025 and the Trump campaign.

Assessing Federal Requests -- Tenth Amendment Anti-Commandeering Principle

Under the anti-commandeering principle of the Tenth Amendment of the US Constitution, the federal government generally cannot compel state and local governments to enact or administer a federal regulatory program.¹ Consistent with that limitation on federal power, the federal government sometimes asks state and local governments to provide *voluntary* assistance with federal law enforcement and intelligence programs. But under the Tenth Amendment, states are free to refuse those requests, and to prohibit state employees from assisting in federal enforcement actions. Indeed, several states have enacted laws restricting state employees from assisting the federal government with immigration enforcement.² Additionally, as of May 2024, 23 states and the District of Columbia have a type of “shield law” protection, designed to be a buffer against legal proceedings initiated by out-of-state actors seeking to penalize abortion or gender-affirming care.³ While most if not all of these shield laws could be interpreted to apply to the federal government as well, a handful of states have provisions that explicitly apply to federal law enforcement.

Consistent with the anti-commandeering principle, where federal law allows but does not require states to take some action, state law may flatly prohibit state and local officials from taking that action. For example, while federal law makes marijuana possession a federal crime, it does not compel states to investigate that crime. Thus, in several states that have decriminalized marijuana possession under state law, state supreme courts have held that their state statutes or constitutions prohibit conducting vehicle searches based solely on the odor of burnt marijuana.⁴ In one of those decisions, the Massachusetts Supreme Judicial Court carefully explained how state law can bar its officers from enforcing marijuana prohibition even though marijuana possession remains a federal crime. Specifically, “[w]hile State law *may* authorize local and State police to enforce Federal criminal statutes”—except where federal law

¹ See *New York v. United States*, 505 U.S. 144, 161-63 (1992); *Printz v. United States*, 521 U.S. 898, 926–32 (1997).

² See Immigrant Legal Resource Center, *State Map on Immigration Enforcement*, <https://www.ilrc.org/state-map-immigration-enforcement>.

³ See Guttmacher Institute, *State Policy Trends 2023* (Dec. 2023), <https://www.guttmacher.org/2023/12/state-policy-trends-2023-first-full-year-roe-fell-tumultuous-year-abortion-and-other>; Guttmacher Institute, *Midyear 2024 State Policy Trends* (June 2024), <https://www.guttmacher.org/2024/06/midyear2024-state-policy-trends-many-us-states-attack-reproductive-health-care-other>.

⁴ See *People v. Redmond*, 2024 IL 129201, ¶ 54, 2024 WL 4231539 (Ill. Sept. 19, 2024); *State v. Torgerson*, 995 N.W.2d 164 (Minn. 2023); *Commonwealth v. Barr*, 266 A.3d 25, 44 (2021).

preempts such enforcement—“it need not do so.”⁵ In Massachusetts, the court explained, when the voters enacted an initiative decriminalizing the possession of small amounts of marijuana, they had permissibly “curtail[ed] [state and local] police authority to enforce the Federal prohibition of possession of small amounts of marijuana.”⁶ The proposed executive order operates according to these same principles; it suggests that in certain contexts where federal law gives states the *option* of taking some enforcement action, states should bar their officials from taking that action.

Exception -- Valid Federal or State Law

The general prohibition set out in this Section of the proposed executive order makes exception for actions required by your state law or *valid* federal law. However, state officials can contest federal laws as invalid on constitutional grounds. For example, a federal law that directly commands officers of state or local government to implement federal law, or directly prohibits certain actions, could be held invalid.⁷

Adjustments to Section 1 and Options for Your State

Some states already have laws governing information-sharing and assistance to federal law enforcement and intelligence agencies in contexts such as healthcare, immigration enforcement and data privacy. For these states, the proposed executive order provides instruction and clarifies implementation. We recommend you assess the language of this template Order to ensure it is consistent with state law.

We also recommend you alter the language of this template Order to ensure it provides the greatest possible protection based on existing state laws and state constitutional protections. Your state law and constitution may be a source of additional protections that could be added to subsections (a)-(e), for instance, with regard to the operation of charitable institutions, unlawful search and seizure, data privacy, equal protection, housing, education, and voting.

As written, this Section applies to state agencies and employees, but not local government entities and employees; we recommend you assess whether and how to include local government entities, depending on the laws of your state and other dynamics.⁸

This Section also includes an optional provision to address ambiguous situations where the State employee does not have reason to believe that providing information or assistance would violate the Order. It provides that if the federal or out-of-state authority attests under penalty of perjury that the request does not relate to an investigation or proceeding described in subsections (a)-(e), the employee

⁵ *Commonwealth v. Craan*, 13 N.E.3d 569, 577–78 (2014) (footnote omitted); see also *Miller v. United States*, 357 U.S. 301, 305 (1958) (where states police officers make arrest for violation of Federal law, “lawfulness of the arrest without warrant is to be determined by reference to state law”).

⁶ *Id.* at 578.

⁷ See *New York v. United States*, 505 U.S. 144, 166 (1992) (“even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to *compel the States* to require or prohibit those acts.” (emphasis added)); see, e.g., *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 329–30 (E.D. Pa. 2018), *aff’d in part and vacated in part sub nom. City of Philadelphia v. Att’y Gen. of U.S.*, 916 F.3d 276 (3d Cir. 2019); *City of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 953 (N.D. Cal. 2018), *aff’d in part and vacated in part sub nom. City of San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020), petition for cert. filed, No. 20-666 (U.S. Nov. 13, 2020); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 866–73 (N.D. Ill. 2018), *aff’d sub nom. on other grounds, City of Chicago v. Barr*, 961 F.3d 882, 908–09 (7th Cir. 2020) (not reaching the constitutional question but noting that, under *Murphy*, “it does not matter that § 1373 prohibits the state from taking an action, as opposed to requiring an action” because “either situation involves the exercise of control over the state”).

⁸ We recommend you consider whether to modify definitions in Section 8, including 8(b) and 8(c). Optional Section 7 of the proposed executive order would also apply existing state law to contracts with local government entities.

may comply with the request. However, we do not advise you to include this provision since it could blunt the impact of the proposed executive order and create confusion.

Section 2. Assessment of Requests

This Section directs state employees who receive a request to provide information or assistance described by Section 1 to refer it to the Governor's Office of General Counsel. It directs the General Counsel to assess whether information or assistance is being requested or commanded; the validity and application of any court order that is presented; and the legality of complying with the request. It directs the General Counsel to provide these assessments to the employee and agency and instruct them to deny or grant the request.

Section 2(b) addresses requests that are court orders, subpoenas, warrants or other legal process. States generally cannot avoid complying with a legally valid court order, judicial warrant or subpoena.⁹ Even then, however, state officials can contest federal legal process they believe to be invalid because, for instance, it is overbroad or unduly burdensome, exceeds statutory authority, or seeks information that goes beyond what is relevant to a permissible investigation.¹⁰

Section 2(f) is an optional provision requiring a written summary of these assessments be provided to the referring agency and be retained, if the agency is directed to grant the request. This would provide assurance and a written record to state employees and agencies concerned with demonstrating compliance with the proposed executive order and state law.

Section 3. Annual Report (Optional)

This Section serves public transparency by providing for an optional annual report on requests for information or assistance made by federal or out-of-state agencies and assessed under Section 2. This would provide a platform for governors to share about threats posed to civil rights and civil liberties by out-of-state and federal actors, and to publicize actions taken by state officials to protect residents.

There are examples of reporting provisions in gubernatorial executive orders concerning reproductive care, although they do not concern specific requests. For example, Pennsylvania and Michigan orders direct agencies to consider communicating with the public concerning the cost and availability of reproductive health care.¹¹

⁹ Because administrative subpoenas are not self-executing, the recipient of a subpoena may initially decline to comply with it and can only be forced to comply if the federal government files a motion to compel and obtains a court order directing compliance. *See, e.g., United States v. Sturm, Ruger & Co.*, 84 F.3d 1, 3 (1st Cir. 1996); *Belle Fourche Pipeline Co. V. United States*, 751 F.2d 332, 334 (10th Cir. 1984).

¹⁰ *See In re Grand Jury Subpoena, JK-15-029*, 828 F.3d 1083 (9th Cir. 2016) (quashing overbroad federal grand jury subpoena seeking former governor's email records held on Oregon state servers); *In re Grand Jury Subpoena for THCF Med. Clinic Recs.*, 504 F. Supp. 2d 1085, 1090 (E.D. Wash. 2007) (quashing federal subpoena to state agency as unreasonable because "it sought records that have marginal, if any, relevance" and those records "contain highly personal, confidential, and sensitive information"). *See also Oregon Prescription Drug Monitoring Program v. U.S. Drug Enf't Admin.*, 860 F.3d 1228, 1236 (9th Cir. 2017) (noting state's "option to contest subpoenas for protected information" issued by the federal government, which is "a critical safeguard" when "particularly important privacy interest[s]" are implicated); *In re Grand Jury Matter*, 762 F. Supp. 333, 335 (S.D. Fla. 1991) (recognizing state's ability to challenge enforcement of federal subpoena seeking state agency records on basis that "compliance with the subpoena would be 'unreasonable or oppressive' under Fed. R. Crim. P. 17(c)").

¹¹ Commonwealth of Pennsylvania Governor's Office, Executive Order 2022-01 – Reproductive Health Care, July 12, 2022, <https://www.oa.pa.gov/Policies/eo/Documents/2022-01.pdf>; Executive Office of the Governor, Executive Directive 2022-5: Reproductive Rights in Michigan, May 25, 2022, <https://www.michigan.gov/whitmer/news/state->

Section 4. Agreements Compliance (Optional)

This Section applies the Order’s general prohibition to partnerships between state agencies and out-of-state and federal agencies, as well as private entities, for information-sharing. If you include “any state agency or law enforcement agency” in this Section, it applies to all law enforcement, homeland security and intelligence agencies in your state that may join such partnerships; whether to include this depends on the governor’s authorities over these agencies in your state.

This Section would apply to fusion centers, a network of 80 state and locality-run entities developed, supported, and funded by the federal Department of Homeland Security as intelligence hubs to collect and disseminate counterterrorism and other alleged criminal information. It would also apply to Joint Terrorism Task Forces (JTTFs), which are FBI-operated task forces that are intended to work with state and local law enforcement agencies to conduct terrorism investigations. There are about 200 JTTFs throughout the country. JTTFs and fusion centers operate with little transparency and raise serious concerns about privacy, civil rights, and civil liberties violations, as well as lack of meaningful oversight. In recent years, misuse of JTTFs and fusion centers has included monitoring and disseminating intelligence reports on racial justice, environmental, and other social justice protests, as well as other First Amendment-protected activities—without establishing any connection to criminal activity. For example, the Trump administration deployed JTTFs for political ends in response to the 2020 racial justice protests.

This Section would also apply to 287(g) agreements, through which the federal Department of Homeland Security delegates federal immigration enforcement responsibilities to state and local law enforcement agencies. These agreements enable US Immigration and Customs Enforcement (ICE) to identify, detain and deport immigrants—with information provided by state and local law enforcement. This proposed executive order would effectively require termination of any existing 287(g) agreements. In some states, existing law already prohibits these agreements.

Section 5 Enforcement.

This Section provides that the Governor shall take all appropriate actions to enforce the proposed executive order. This is similar to recently issued executive orders concerning protection of abortion care.¹²

We recommend you assess whether you can strengthen this section, based on the governor’s legal authority in your state and existing state law for particular contexts. For example, a North Carolina executive order protecting abortion care directs the state’s department of public safety to “ensure the enforcement” of state law concerning access to and egress from health care facilities.¹³

[orders-and-directives/2022/05/25/ed-2022-5-reproductive-rights-in-michigan#:~:text=Reproductive%20rights%20are%20under%20threat,about%20their%20health%20and%20bodies](#)

¹² See Office of the Governor of the Commonwealth of Massachusetts, Executive Order No. 633, June 24, 2024, <https://www.mass.gov/doc/eo-633/download>; see also Commonwealth of Pennsylvania Governor’s Office, Executive Order 2022-01 – Reproductive Health Care, July 12, 2022, <https://www.oa.pa.gov/Policies/eo/Documents/202201.pdf> (“shall take all steps necessary to implement this Executive Order”).

¹³ See State of North Carolina, Executive Order No. 263, Protecting Access to Reproductive Health Care Services in North Carolina, July 6, 2022, <https://governor.nc.gov/executiveorder-no-263/open>.

Relatedly, many executive orders concerning protection of health care services specify that the governor intends to use their discretion to decline interstate extradition requests.¹⁴ We recommend you assess state law to determine whether to include such a provision.

Section 6. Unfair or Deceptive Acts or Practices.

This Section instructs the appropriate state agency or subagency – likely the state equivalent of the Federal Trade Commission (FTC), which may report to the state attorney general – to investigate specific data practices as an unfair or deceptive act or practice. Because these agencies may be independent of the governor, this section provides alternative language merely encouraging such investigations. “Unfair or deceptive acts or practices” is a term of art used in consumer protection and privacy law. Although definitions of “unfair” or “deceptive” may vary across jurisdictions, they often adhere closely to interpretations by the FTC, which have been shaped by statute and 90 years of practice. The FTC defines the terms as follows:

- A practice is “unfair” if it “causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.”¹⁵
- A practice is “deceptive” if it is a material representation, omission, or practice that is likely to mislead a consumer acting reasonably in the circumstances.¹⁶

The FTC and state equivalents have further developed these definitions through enforcement actions. Unfair practices have included software that surreptitiously collected users’ location through third party applications to profile them, including profiles based on medical care they had received.¹⁷ The FTC has also found that using facial recognition technology to – inaccurately and discriminatorily – identify customers in stores is an unfair practice.¹⁸ Conversely, making false or unsubstantiated claims about data collection practices or the accuracy of AI technology may be deceptive.¹⁹

Section 7. Grants or Contractors (Optional)

¹⁴ See, e.g., Office of the Governor, Maine, Executive Order 4: An Order Protecting Access to Reproductive Health Care Services in Maine, FY 21/22, https://www.maine.gov/governor/mills/official_documents/executive_orders/2022-07-executive-order-4-order-protecting-access-reproductive; Office of the Governor, State of New Mexico, Executive Order 2022-107, Protecting Access to Reproductive Health Care Services in New Mexico, June 27, 2022; State of Maryland Executive Department, Executive Order 01.01.2023.08, Protecting the Right to Seek Gender-Affirming Treatment in Maryland, June 5, 2023,

https://governor.maryland.gov/Lists/ExecutiveOrders/Attachments/11/EO_01.01.2023.08_accessible.pdf

¹⁵ 15 U.S.C. § 45(n); FTC, Policy Statement on Unfairness (1980), <https://www.ftc.gov/legal-library/browse/ftc-policy-statement-unfairness>.

¹⁶ FTC, Policy Statement on Deception (1983),

https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

¹⁷ *FTC Cracks Down on Mass Data Collectors: A Closer Look at Avast, X-Mode, and InMarket* (Mar. 4, 2024), <https://www.ftc.gov/policy/advocacy-research/tech-at-ftc/2024/03/ftc-cracks-down-mass-data-collectors-closer-look-avast-x-mode-inmarket>; *What Goes on in the Shadows* (Jan. 9, 2024), <https://www.ftc.gov/business-guidance/blog/2024/01/what-goes-shadows-ftc-action-against-data-broker-sheds-light-unfair-deceptive-sale-consumer-location>.

¹⁸ *Rite Aid Banned from Using AI Facial Recognition After FTC Says Retailer Deployed Technology without Reasonable Safeguards* (Dec. 19, 2023), 19, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/rite-aid-banned-using-ai-facial-recognition-after-ftc-s>.

¹⁹ *FTC Warns About Misuses of Biometric Information and Harm to Consumers* (May 18, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-warns-about-misuses-biometric-information-harm-consumers>.

This Section directs state agencies to assess whether their agreements with grantees and contractors—defined in the next section to include local government entities—are in compliance with existing state privacy and data protection laws.

Emma Clough

Richard Figueroa;

Sarah.Sabshon;

Courtney.Kerster;

khuffman; Hannah Tyrrell; rhassan; Celine Mizrahi;

qna: Christina Chang; Emma

Civitas/GovAct; Emily Kirby;

Benjamin Lazarus; Sanchez, Odessa (GOV); Maduka, Cynthia

Subject:

White House Prep Call

Normal

Fri 12/13/2024 11:30:00 AM (UTC-05:00)

Fri 12/13/2024 12:00:00 PM (UTC-05:00)

Richard Figueroa;

[REDACTED] karen.a.sheley;
[REDACTED]
[REDACTED]
[REDACTED] Sarah.Sabshon;
[REDACTED]
[REDACTED] emily.kirby;
[REDACTED]
[REDACTED] Courtney.Kerster;
[REDACTED]
[REDACTED]
[REDACTED] COS Public: Finkel, Jacob;
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] khuffman; Hannah Tyrrell; rhassan; Celine Mizrahi;
Victoria Fong; qna: Christina Chang; Emma
Clough; Allegra Chapman;
[REDACTED]
[REDACTED]
[REDACTED] Civitas/GovAct; Emily Kirby;
Benjamin Lazarus; Sanchez, Odessa (GOV); Maduka, Cynthia

To discuss next steps; reach out to our team with questions.

Zoom link:

[REDACTED]

Meeting ID:

Passcode:

From: Finkel, Jacob[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=607B30D05398433CAA0BF98BB78FA2B4-D2132AAE-04]

Location:

[REDACTED]

Subject: Tentative: White House Prep Call

Importance: Normal

Start Time: Fri 12/13/2024 11:30:00 AM (UTC-05:00)

End Time: Fri 12/13/2024 12:00:00 PM (UTC-05:00)

Required Attendees: Julia Spiegel

From:

Allegra Chapman [REDACTED]

Sent:

Thur 12/12/2024 9:01:26 PM (UTC-05:00)

To:

[REDACTED] Richard
Figueroa

[REDACTED]

[REDACTED]
Sarah.Sabshon

[REDACTED]
Courtney.Kerster

[REDACTED] COS

[REDACTED]

Julia Spiegel	Emily
Kirby	Emma
Clough	khuffman
	Veitch - GovOffice,
Kara	
karen.a.shelev	
	Miller, Emily
(GOV)	
gna	Katherine
Grainger	Victoria
Fong	Celine
Mizrahi	
rhassan	Hannah
Tyrrell	Christina
Chang	Jason
Rubin	
Civitas/GovAct	

Attachment: FAQ - Govs Safeguarding Democracy[5][13].pdf

Hi All,

Thank you for joining the GovAct/GSD Briefing: Sensitive Data and National Guard Protections meeting earlier today. We're grateful for your participation.

As a reminder, we're meeting with the White House on Monday 12/16 (9:30am PT/10:30am MT/11:30am CT/12:30pm ET) and have a prep call scheduled for **tomorrow, Friday, 12/13** (8:30am PT/9:30am MT/10:30am CT/11:30am ET). If you are interested in joining these calls, please email Julia Spiegel at [REDACTED] or Allegra Chapman at [REDACTED]

We are also circulating contact info for Naureen and Cody from the ACLU if folks would like to direct any questions towards them about their presentation or materials.

- Naureen Shah, Deputy Director of Government Affairs, Equality Division, ACLU: [REDACTED]
- Cody Venzke, Senior Policy Counsel in the ACLU's National Political Advocacy Department: [REDACTED]

And we have attached an FAQ for Governor's Safeguarding Democracy (GSD) that your office can reference internally.

Separately, we want to remind folks that while the Common Interest Agreement is in development, you are still welcome to reach out to the GovAct team or Barry Berke at [REDACTED] directly with questions at any time. We plan to share the agreement **next week**.

Best,
Allegra

Allegra Chapman
Managing Director, Governors Safeguarding Democracy (GSD)
Governors Action Alliance (GovAct)
[REDACTED]

Governors Safeguarding Democracy:
Frequently Asked Questions - For Governor Offices Only

1. Why have you launched Governors Safeguarding Democracy (GSD) at this time?

GSD decided to launch the public side of its work after the November election to avoid confusion during the election itself. With the election over, GSD's public-facing work is aimed at reassuring the public that governors are committed to working together for the purpose of strengthening and protecting state institutions of democracy in concrete, tangible ways. A recent post-election poll GovAct's 501(c)(4) arm (GovAct & Affiliates Action Fund) conducted reinforced the importance of this work, finding that a strong majority of Americans, across parties, describe the threat to American democracy as major and want to see significant changes as a result. GSD is committed to helping governors effectuate that change.

As you know, governors' offices have been working together for several months on ways to help ensure that longstanding democratic institutions and norms become stronger with time, no matter who sits in the White House or controls Congress.

2. Why should I join now?

The purpose of GSD is to provide governors and their staff with a vehicle to work together in a sustained, coordinated, and affirmative way that protects fundamental freedoms and rights, as with the Reproductive Freedom Alliance. The principle underlying GSD is a belief that when our offices work together, the whole can be so much greater than the sum of its parts. Given the scope and scale of the challenges our states are facing, we believe that the whole needs to be as big and strong as possible. GovAct Affiliates & Action Fund's poll found that a majority of voters trust governors, providing a great foundation for this work.

GSD is also able to provide resources to support your office with surge capacity and other implementation tools. Please inquire with GSD staff if you are interested in learning more about support.

3. Do I need to formally sign on, or can my staff continue to participate in briefings?

Any governors' office that is committed to protecting and strengthening democracy is welcome to continue participating in briefings, trainings, and other convenings. However, some materials will only be available to offices that have a common interest with the other members of GSD.

4. How does the Alliance make policy/governance/operational decisions?

All Alliance priorities and actions are determined by the governors and their senior staff based on their urgency and on the opportunity for meaningful intervention and impact. GSD serves as a nexus through which governors exchange ideas, strategize, and discuss best practices, but each office will of course arrive at its own decisions on any actions or implementation.

5. If I join the Alliance, am I bound to all future actions the Alliance may take?

No. It will be up to you and your office, action by action and issue by issue, to determine what makes sense for you and your state.

6. As a Governor, will statements be issued in my name?

Statements will not be the standard form of communication for GSD unless the governors would like them to be. If statements or use of your name are desired, GSD will ensure appropriate signoff has been secured from you and/or your designated staff.

7. How will you determine what actions will be done collectively and which will require state by state sign off?

Collective versus coalition actions will be determined on a case-by-case basis, depending on the interests of the group. Over time, GSD will aim to formalize this process with clear procedures and protocols.

8. What will the Alliance do, specifically? Does it have a set of core focus areas?

GSD, in partnership with a range of experts and organizations, is focused on working with governors' offices on a range of issues, including:

- Preparing to mitigate the impacts of mass deportation and related operations;
- Securing sensitive data and records maintained by our states;
- Augmenting staffing at the state level, drawing upon federal expertise as desired;
- Protecting federal funding streams;
- Preparing for potential regulatory threats and increased state-level needs;
- Fortifying election processes and procedures; and
- Developing a set of aligned democracy protection and advancement actions.

GSD will work with participating governors' offices to determine future focus areas as they arise in a potentially fast-changing climate.

9. What is the difference between GSD, DGA/RGA, NGA, States United Democracy Center, and other related entities?

GSD's unique role is to work with all governors dedicated to fundamental freedoms to:

- Help build a network of staff across governors' offices to coordinate on strategy and actions;
- Leverage the knowledge of governors and their teams to foster cross-state collaboration for the purpose of designing and implementing affirmative strategies that strengthen state institutions and protect the rule of law – using all tools and powers available to governors (e.g., budgets, legislation, executive actions, agencies, procurement, clemency, etc.);
- Marshal expertise and partners to provide trainings, briefings, and other relevant materials tailored to governors' offices;
- Incubate innovative new policy approaches and strategies; and
- Facilitate rapid response and action plans as needed and desired.

The DGA and RGA are organizations with explicit partisan missions to elect Democratic and Republican Governors and candidates, respectively. NGA is a nonpartisan governors' organization focused on convenings and toolkits. States United Democracy Center provides organizational expertise to governors and attorneys general on an attorney-client basis, with a focus on election protection and political violence. These are all critical institutions that we believe are great partners and complementary to GSD's work and mission.

GSD Summary - For Governors Offices

- **Mission**
 - Governors Safeguarding Democracy (GSD) is a nonpartisan group of governors working together to uphold and fortify U.S. democracy.
 - GSD is focused on working together across offices to share best practices, craft plans, laws, and policies to protect states' rights; strengthen state institutions; combat misinformation; and support the rule of law using governors' unique authorities as the chief executives of their states.
- **Members**
 - GSD is co-chaired by Governors Pritzker and Polis and has been working with over 20 governors' offices for several months. Governors' teams are welcome to continue working with GSD in this capacity, though some materials will be privileged and only available to those offices that share a common interest.
 - Any governors supporting the mission of GSD are welcome to join – GSD is open to all governors with a demonstrated commitment to upholding and fortifying democracy, regardless of political affiliation.
- **GSD's Distinct Benefits**
 - ☞ GSD provides a set of unique benefits, including:
 - (1) tapping into the power of solidarity and **collective action**
 - (2) building a **leadership network** across governors' offices
 - (3) providing **new capacities** to leverage the tools and powers available to governors (e.g., budgets, legislation, executive actions, agencies, procurement)

- (4) facilitating coordinated **rapid response** to breaking developments
 - (5) incubating **innovative new policy approaches** and strategies
- GSD complements the work of organizations like DGA and groups that are focused on election protection to think about how to build out the infrastructures needed within state governments and take actions together when we can. We are working closely with a wide range of partners and are eager to continue enhancing and supporting the work that is underway.
- **Current Priority Areas of Work**
 - GSD is working on a set of urgent post-election actions, including:
 - Preparing to mitigate the impacts of mass deportation and related operations;
 - Securing sensitive data and records maintained by our states;
 - Augmenting staffing at the state level, drawing upon federal expertise as desired;
 - Protecting federal funding streams;
 - Preparing for potential regulatory threats and increased state-level needs;
 - Fortifying election processes and procedures; and
 - Developing a set of aligned democracy protection and advancement actions.
- **Risk/Retaliation Mitigation**
 - GSD is pursuing a belt and suspenders approach to maintaining confidentiality across governors' offices. Please reach out to GSD staff to learn more.

For questions about GSD, please contact **Allegra Chapman:** [REDACTED]

Emma Clough

Richard Figueroa:

karen.a.sheley;

Sarah.Sabshon;

Sarah.Sabshon;

Finkel, Jacob: COS Public; Patel, Meghna;

Emily Kirby;

khuffman; Hannah Tyrrell; rhassan; Celine Mizrahi; Victoria Fong; krainger; qna; Christina Chang;

Day 1 Immigration Plan (Confidential)

Normal

Fri 1/10/2025 12:30:00 PM (UTC-05:00)

Fri 1/10/2025 1:30:00 PM (UTC-05:00)

Richard

Figueroa;

karen.a.sheley;

Sarah.Sabshon;

Courtney.Kerster;

Finkel, Jacob; COS Public; Patel, Meghna;

Emily Kirby;

Allegra Chapman; Emma Clough;

khuffman; Hannah Tyrrell; rhassan; Celine Mizrahi; Victoria Fong; kqrainger; qna; Christina Chang;

More information and a Zoom link will be added closer to the date. Thank you.

From: Finkel, Jacob[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=607B30D05398433CAA0BF98BB78FA2B4-D2132AAE-04]
Sent: Sat 1/4/2025 2:47:00 PM (UTC-05:00)
To: Emily Kirby [REDACTED]
Subject: Re: [External] General Counsel Contact info?

Hi Emily, sorry to have missed this note. Are you able to send the materials to me and I can route them internally?

Best,
Jacob

On Jan 2, 2025, at 2:07 PM, Emily Kirby <[REDACTED]>
wrote:

***ATTENTION:** This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook.](#)*

Hi, Jacob,

Happy New Year and hope you're well. We have a document to send to you and your General Counsel; would you mind sharing his or her email address?

Thank you!
Best,
Emily

--

Emily Kirby
Legal Strategy and Policy Director
<image001.png>

[REDACTED]

GOV/ACT

From: Julia Spiegel [REDACTED]
Sent: Thur 1/9/2025 9:31:48 PM (UTC-05:00)
To: Julia Spiegel [REDACTED]
Cc: Emily Kirby [REDACTED] Allegra Chapman [REDACTED] Emma Clough [REDACTED]
Subject: [External] REMINDER: Day 1 Immigration Plan Briefing Tomorrow (PRIVILEGED & CONFIDENTIAL)

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All,

This is a quick reminder to please join us for a briefing on anticipated immigration actions **TOMORROW, January 10th from 12:30pm – 1:30pm ET | 11:30am-12:30pm CT | 10:30am-11:30am MT | 9:30am-10:30am PT**. Please also feel free to include additional counsel or immigration leads in your office. Below is a topline agenda and meeting information.

If your office has yet to sign the common interest agreement, you are still welcome to join for this briefing. We ask that you agree to keep discussions from the briefing confidential and remind you that if your office would like access to accompanying legal memoranda and documents, those confidential and privileged materials will be made available upon signing of the common interest agreement.

Thank you,
Julia

Day 1 Immigration Plan Briefing Agenda 1.10.25

- Welcome
- Common Interest Agreement
- Presentation on Day 1 Immigration Plans & Potential Governor Actions
- Q&A and Discussion
- Closing and Next Steps

Meeting Information

Join Zoom Meeting

[REDACTED]

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- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 646 558 8656 US (New York)
- +1 646 931 3860 US
- +1 689 278 1000 US
- +1 301 715 8592 US (Washington DC)
- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 360 209 5623 US
- +1 386 347 5053 US

Meeting ID:



Passcode:



Find your local number: <https://us06web.zoom.us/j/kd2ahGtnjN>

From:

Emma Clough [REDACTED]

Attendees:

[REDACTED] Richard
Figueroa; [REDACTED]
[REDACTED]
[REDACTED] karen.a.sheley;
[REDACTED]
[REDACTED]
[REDACTED] Sarah.Sabshon;
[REDACTED]
[REDACTED] Courtney.Kerster;
[REDACTED]
[REDACTED] Finkel, Jacob; COS Public; Patel, Meghna;
[REDACTED]
[REDACTED] Emily Kirby;
Allegra Chapman; Emma Clough;
[REDACTED] khuffman; Hannah
Tyrrell; rhassan; Celine Mizrahi; Victoria Fong; krainger; qna; Christina Chang;
[REDACTED]
Emily Gutierrez; Amaal Idoui;
[REDACTED]

Location:

[REDACTED]

Subject:

Day 1 Immigration Plan (Confidential)

Importance:

Normal

Start Time:

Fri 1/10/2025 12:30:00 PM (UTC-05:00)

End Time:

Fri 1/10/2025 1:30:00 PM (UTC-05:00)

Required Attendees:

[REDACTED] Richard
Figueroa;
[REDACTED]

[REDACTED]

karen.a.shelev;

[REDACTED]

[REDACTED]

Sarah.Sabshon;

[REDACTED]

Courtney.Kerster;

[REDACTED]

Finkel, Jacob; COS Public; Patel, Meghna;

[REDACTED]

Emily Kirby;

Allegra Chapman; Emma Clough;

[REDACTED]

Khuffman; Hannah Tyrrell; rhassan; Celine Mizrahi; Victoria Fong; korainger; ana; Christina Chang;

[REDACTED]

Emily Gutierrez; Amaal Idoui;

[REDACTED]

Below is a topline agenda and meeting information.

Day 1 Immigration Plan Briefing Agenda 1.10.25

- Welcome
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Meeting Information

Join Zoom Meeting

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- +1 646 931 3860 US
- +1 689 278 1000 US
- +1 301 715 8592 US (Washington DC)
- +1 305 224 1968 US
- +1 309 205 3325 US
- +1 312 626 6799 US (Chicago)
- +1 360 209 5623 US
- +1 386 347 5053 US

Meeting ID:



Passcode:



Find your local number: <https://us06web.zoom.us/j/kd2ahGtnjN>

From: Emily Kirby [REDACTED]
Sent: Fri 1/10/2025 6:03:01 PM (UTC-05:00)
To: Julia Spiegel [REDACTED]
Cc: Allegra Chapman [REDACTED] Emma Clough [REDACTED]
Subject: [External] Follow up from Day 1 Immigration Plan Briefing (PRIVILEGED & CONFIDENTIAL)

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All,

Thank you for joining the briefing today on anticipated immigration actions, we're grateful for your participation and engagement on this important issue.

If you have signed the common interest agreement, we will follow up shortly with legal memos. As a reminder, our immigration team is ready to conduct individual consultations for those offices and offer tailored services and templates to respond to the unique needs of your state and office.

If you have questions regarding the common interest agreement or would like to learn more, please reach out directly and we can discuss.

We look forward to our next briefing.

Best,
Emily

--

Emily Kirby
Legal Strategy and Policy Director/Acting General Counsel


[REDACTED]

From: Julia Spiegel <[REDACTED]>
Date: Thursday, January 9, 2025 at 9:32 PM
To: Julia Spiegel <[REDACTED]>
Cc: Emily Kirby <[REDACTED]> Allegra Chapman <[REDACTED]> Emma Clough <[REDACTED]>

Subject: REMINDER: Day 1 Immigration Plan Briefing Tomorrow (PRIVILEGED & CONFIDENTIAL)

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Thank you,
Julia

Day 1 Immigration Plan Briefing Agenda 1.10.25

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Meeting Information

Join Zoom Meeting

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- +1 386 347 5053 US

Meeting ID: [REDACTED]
Passcode: [REDACTED]

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From: Emma Clough [REDACTED]

Attendees: Emily Gutierrez; karen.a.shelev; [REDACTED]
[REDACTED]
Allegra Chapman; Emma Clough; Emily Kirby;
Civitas/GovAct; Daniel Dobin; Ben Olinsky; [REDACTED]
[REDACTED] Richard
Figueroa; [REDACTED]
[REDACTED] Borcky, Jessica
(Governor); [REDACTED]
[REDACTED]
[REDACTED]
Sarah Sabshon;
[REDACTED]
[REDACTED]
Courtney Kerster; [REDACTED]
[REDACTED]
[REDACTED]
Finkel, Jacob; COS Public; Patel, Meghna;
[REDACTED]
[REDACTED]
Barnes, Mel - GOV; [REDACTED]
[REDACTED] khuffman; Rubab
Hassan; Celine Mizrahi; Victoria Fonq; kgrainder; gna; Christina Chang;
[REDACTED]
[REDACTED] Hannah Tyrrell

Location: [REDACTED]
[REDACTED]

Subject: Day 1 EOs: What Govs Need to Know with Norm Eisen, Protect Democracy, and Immigration Experts (Confidential/Privileged)

Importance: Normal

Start Time: Tue 1/21/2025 2:30:00 PM (UTC-05:00)

End Time: Tue 1/21/2025 3:30:00 PM (UTC-05:00)

Required Attendees: Emily Gutierrez; karen.a.shelev; [REDACTED]
[REDACTED]
[REDACTED] Allegra Chapman; Emma Clough; Emily Kirby;

Civitas/GovAct; Daniel Dobin; Ben Olinsky; [REDACTED]
[REDACTED] Richard
Figueroa; [REDACTED]
[REDACTED] Borcky, Jessica
(Governor); [REDACTED]
[REDACTED]
[REDACTED] Sarah.Sabshon;
[REDACTED]
[REDACTED] Courtney.Kerster;
[REDACTED]
[REDACTED] Finkel, Jacob; COS Public; Patel, Meghna;
[REDACTED]
[REDACTED] Barnes, Mel - GOV;
[REDACTED] khuffman; Rubab
Hassan; Celine Mizrahi; Victoria Fong; karainder; gna; Christina Chang;
[REDACTED]

Confidential/Privileged

All,

Please hold this time for a briefing providing an overview on the incoming administration's executive orders that will have the biggest impact on states. The briefing will be facilitated by Norm Eisen, Protect Democracy, and our team of immigration experts, and will focus on providing high-level overviews of those executive orders which Governors should be most prepared for. Please see meeting information below.

Meeting Information

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Passcode:



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From: Finkel, Jacob[/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=607B30D05398433CAA0BF98BB78FA2B4-D2132AAE-04]

Location:

Subject: Tentative: Day 1 EOs: What Gvs Need to Know with Norm Eisen, Protect Democracy, and Immigration Experts (Confidential/Privileged)

Importance: Normal

Start Time: Tue 1/21/2025 2:30:00 PM (UTC-05:00)

End Time: Tue 1/21/2025 3:30:00 PM (UTC-05:00)

Required Attendees: Julia Spiegel

From: Allegra Chapman [REDACTED]
Sent: Sun 1/19/2025 10:06:46 PM (UTC-05:00)
To: Allegra Chapman [REDACTED] Emily Kirby [REDACTED]
Subject: [External] Immigration resources for Day 1
Attachment: Deportation and Immigration Polling & Strategic Messaging Recommendations .pdf
Attachment: Immigration Attorneys for Rapid Response to Fed Imm Enforcement.docx

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All,

In advance of tomorrow's inauguration, and given some reports on incoming-President Trump's executive orders, we're providing a couple resources to address immediate immigration matters that might impact your state and on which your office could seek additional assistance. Several offices have requested these materials, and we're passing them along to yours, in case they might be helpful.

Attached above is messaging guidance for use in the event immigration enforcement happens quickly or chaotically in your state. Also attached is a list of attorneys prepared for rapid response on federal immigration enforcement matters. Please feel free to forward these to press or constituents, as you see fit.

Note, too, that on **Tuesday, Jan. 21**, at 11:30 am PST/12:30 pm MT/1:30 pm CT/ and 2:30 pm EST, Governors Safeguarding Democracy will hold a briefing on **Day 1 Executive Orders: What Governors Need to Know**, with Norm Eisen, former ethics czar to Pres. Obama, Protect Democracy, and our team of immigration experts, who remain at the ready to assist with related matters as they occur. You should already have an invitation in your inbox.

In the meantime, don't hesitate to reach out with questions or requests. In the coming months, we'll provide briefings and resources on a host of matters relevant to most any state: health policy, elections security, and other state agency concerns. We're open to additional ideas, too.

All best,
Allegra

Allegra Chapman
Managing Director, Governors Safeguarding Democracy (GSD)
Governors Action Alliance (GovAct)
[REDACTED]

How to Talk About Trump's Mass Deportations

STRATEGIC RECOMMENDATIONS: BALANCING THE NEED TO GOVERN IMMIGRATION WITH VALUE OF MIGRANT CONTRIBUTIONS

If the past is prologue, President Donald Trump will overread public sentiment on immigration and will overreach. Based on his public statements, the public reporting of the thinking of his inner circle and what he did in his first term, **he will opt for extreme remedies like breaking up families, deporting DREAMers, raiding homes, schools, houses of worship and workplaces and creating chaos, terror and hysteria.** And regardless of whatever he and his allies may say, we know that these plans will likely **target individuals who do not deserve punishment.**

The recommendations within this document are geared toward helping office holders balance the need to govern with credibility and commonsense, navigate the difficult political terrain, and reclaim the political high ground from Republican demagoguery on the issue of immigration.

Americans have complex feelings about immigration and the idea of “mass deportations.” It gets more complicated when you take theory and turn it into practical application. Because the concept of deportation is so abstract for everyday Americans, it is necessary to **consistently communicate what deportation policy looks like in reality and the negative impact it has on the public and our economy.**

Despite the strong feelings on immigration that is represented in polling, that same polling also signals that Americans want **commonsense, not chaos**, when it comes to immigration reform. And to the extent that this issue is of resonance in your state, it is recommended that you **emphasize your desire to be a problem solver, show the chaotic outcome of President Trump's policies and describe how Trump's policies negatively impact people's lives, families and communities.**

To that end, it is recommended that you do the following to address the real concerns that your constituents have about immigration:

- **Affirm** immigration as a challenge that requires commonsense solutions;
- **Highlight** the chaos that is resulting from President Trump's immigration policy choices and point out how that chaos is not making any of us more safe or secure;
- **Humanize** migrants and communicate their attempts to be contributing members of our communities, their desire to contribute and make a better life for their families and the roles they play as a backbone of the American economy;
- **Demonstrate** how President Trump's actions fit into a narrative about concentrating power in the hands of wealthy elites and how those wealthy elites will benefit from an immigration system that exploits BOTH workers and migrants.
- **Avoid** traps around criminality that play into negative stereotypes about migrants...

- ...But **assert** support for accountability and stiff penalties for all those who commit violent and serious crimes, not just migrants.

MESSAGE GUIDANCE

Based on the polling that is summarized below and the above strategic recommendations, we recommend leaning into public messaging that reaffirms your commitment to your duty as a public official, your commitment to your constituents' safety and emphasizing that President Trump's mass deportation policies are only creating chaos in our communities and making none of us more safe or secure. This guidance below is also consistent with recent message testing with Grow Progress, an opinion research partner, and includes key messages that resonate well with the registered voter respondents who participated.

Communications Story

The American people signed up for commonsense solutions, not chaos. Hours into his presidency, President Trump is unleashing **chaos, terror and disorder** on the American people. In every corner of the country, families are being **torn apart**, neighborhoods are being **turned against each other** and communities are being **destabilized**.

Because of what President Trump and Republicans are doing, Americans will see those who they have **shared houses of worship, schools, workplaces and neighborhoods for years targeted and sent away**. This chaos won't make our communities safer, it won't make our economy stronger, and it won't bring this country together.

Suggested Talking Points

- All of us deserve to feel safe and secure in our homes and communities. I'm committed to keeping you and your family protected. That is the job I was elected to do.
- Our immigration system is deeply broken. It's easy to say what's wrong with our immigration system but we need leaders with commonsense solutions. The last thing we need is another four years of chaos and bad judgment under President Trump.
- President Trump's plans will not fix this serious problem; he will only unleash more chaos and terror on the American people and make our communities less safe.
- Trump Republican immigration extremism is targeting trusted members of our communities: our friends, neighbors, our children's playmates and small business owners. This chaos is tearing families apart and turning our neighborhoods and communities against each other.
- Regardless of someone's immigration status, we're going to keep following the law and hold people accountable if they break it. Immigrants in our state are contributing to our economy and communities, working hard to achieve the American Dream. We will not

help President Trump tear children away from their parents and turn our communities against each other.

- Trump and Republicans are not serious about reforming immigration; he's only out for himself. They want to create an immigration system that does not solve our core issues while exploiting workers AND migrants.
- We can protect our communities, ensure everyone plays by the same rules, and achieve commonsense reform.

POLLING SNAPSHOT: AMERICANS HAVE MIXED VIEWS ON IMMIGRATION; BROADLY PREFER COMMONSENSE OVER CHAOS

WHILE A MAJORITY OF AMERICANS CLAIM SUPPORT FOR “MASS DEPORTATION”, A LARGER MAJORITY SUPPORT A PATHWAY TO CITIZENSHIP FOR DREAMERS: [Ipsos](#) found 54% of American adults in September, and 52% in November supported a mass deportation plan of undocumented immigrants, while, at the same time in the same poll, 68% would also support a “pathway to citizenship for undocumented immigrants who arrived in the US as children.”

THREE IN FIVE OPPOSE DEPORTATION FOR UNDOCUMENTED MIGRANTS WHEN REQUIREMENTS ARE MET AND SIMILAR MAJORITY OPPOSE DEPORTATION FOR THOSE EMPLOYED AND IN MIXED STATUS MARRIAGES: According to [Vox](#), “..about 6 in 10 registered voters say that undocumented immigrants should be allowed to ‘stay in the country legally, if certain requirements are met.’ And a similar share, 58 percent, favored ‘allowing undocumented immigrants to legally work and stay in the country if they are married to a US citizen.’”

A MAJORITY REJECT MILITARY ENCAMPMENTS FOR UNDOCUMENTED MIGRANTS WHILE MAJORITY SUPPORT EXISTS FOR A PATH TO CITIZENSHIP: A [Public Religion Research Institute \(PRRI\) poll](#) from late summer, people split evenly on a tougher take - - “rounding up and deporting immigrants who are in the country illegally, even if it takes setting up encampments guarded by the U.S. military,” with 47% in favor to 50% opposed. In PRRI’s same poll, 56% wanted to allow them to become citizens if they met certain criteria, 35% wanted to deport them, and 11% allow them to become permanent legal residents but not citizens.

MAJORITIES SUPPORT DEPORTATION FOR RECENT BORDER CROSSINGS AND MIGRANTS WHO COMMIT VIOLENT CRIME, BUT NOT FOR DREAMERS, ASYLUM SEEKERS AND THOSE WITH TPS: According to [Data for Progress](#) polling in October, once specific cases and populations are raised, a majority of voters only want mass deportations enacted for a person who **recently** crossed the border illegally (70%) and a person who crossed the border illegally and **has a criminal record for a nonviolent offense** (67%). On the flip side, they do not think that immigrants with other cases, including those who have U.S.-born

children, own a small business, are covered by TPS, or are seeking asylum, should be deported.

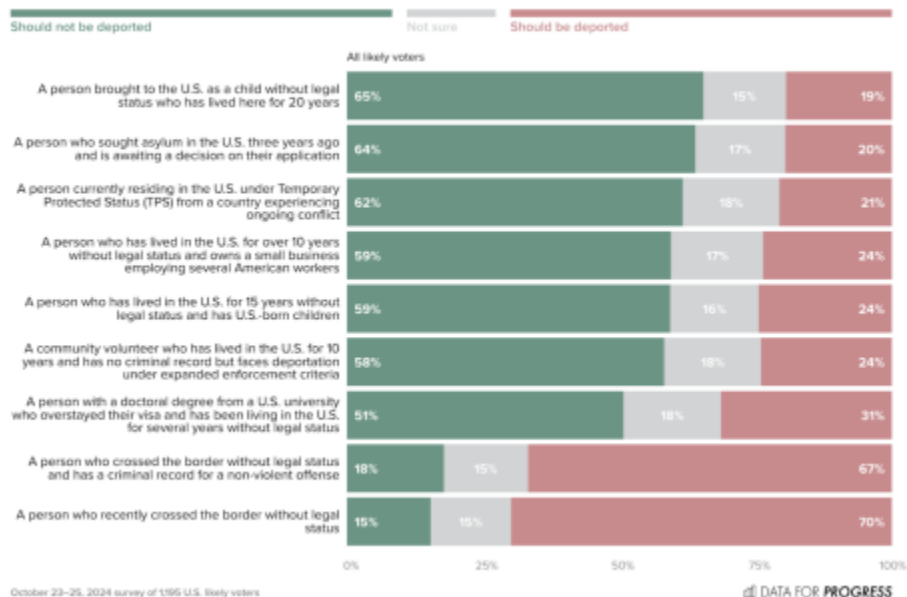
WHEN HUMANITARIAN AND ECONOMIC CONCERNS ARE RAISED, SUPPORT FOR DEPORTATION DROPS SIGNIFICANTLY: A November [Ipsos](#) poll shows support for mass deportation of undocumented immigrants dropped from 52% to 43% if prices would go up as a result and down to 38% if families would be separated.

POLLING THAT SHOWS STRONG FAVORABILITY FOR TRUMP, SHOWS NEAR 60% OPPOSITION TO DEPORTING THOSE MIGRANTS EMPLOYED WITH NO VIOLENT CRIMINAL RECORD: Post-election [polling by Marquette University](#) last December showed 49% approval for Donald Trump also showed that 58% of respondents opposed deportation for migrants who have been in the U.S. for years, are employed and have no criminal record.

RECENT POLLING SHOWS IMMIGRATION TRAILING FIGHTING INFLATION AND JOB CREATION AS PRIORITY ISSUE FOR VOTERS COMING INTO THE TRUMP PRESIDENCY: A [January 2025 Navigator poll](#) shows that while 60% of voters have fighting inflation and 43% have “jobs and the economy” as a top 5 issue, 36% rank immigration as a top five issue. The same poll shows that more than 70% believe that Republicans will treat immigration as a top five issue, the largest delta between issue preference and perception in the poll. This demonstrates that Republicans risk overindexing public sentiment behind their immigration focus.

In Many Cases, Voters Do Not Support Deporting Undocumented Immigrants

Below are descriptions of people who might be affected by deportation policies. For each, please state whether you think they should be deported or not.



Mass Deportation vs Path to Citizenship		
Survey	Support for Mass Deportation	Support for Path to Citizenship
Scripps/Ipsos (Sept 2024) ¹	National: 54-42	National: 68-32
Scripps/Ipsos (Sept 2024)	Arizona: 49-47	Arizona: 72-25
Pew (August 2024)	National: 52-42 ²	National: 61 ³ -38 ⁴
NYT/Siena poll of Hispanics (Oct 2024)	National: 45-48 ⁵	National: 67-29 ⁶
¹ Mass deportation: "The mass deportation of undocumented immigrants;" Path to Citizenship: "Giving a pathway to citizenship for undocumented immigrants who arrived in the U.S. as children" ² Question asked support for "Enforcing mass deportations of immigrants living in the country illegally"; ³ The 61% in support of a pathway to citizenship included 33% of Trump supporters.; ⁴ Question asked: "Which comes closer to your view about how to handle undocumented immigrants who are now living in the U.S.?" respondents had an option of "They should not be allowed to stay in the country legally" (oppose) or "There should be a way for them to stay in the country legally, if certain requirements are met" (support). ⁵ Support for "Deporting immigrants living in the United States illegally back to their home countries" ⁶ Support for "Providing a pathway to citizenship for all undocumented immigrants currently living in the United States"		

The following attorneys may be available for assistance with rapid federal immigration enforcement matters:

Mike Wishnie, Yale Law School
Interior Enforcement, Habeas, Litigation

[REDACTED]

Muneer Ahmed, Yale Law School
Interior Enforcement, Labor

[REDACTED]

Michael Tan, Yale Law School
Interior Enforcement, Detention

[REDACTED]

Laurie Ball Cooper, Intl Refugee Assistance Project
Asylum, Border, Legal Pathways

[REDACTED]

Conchita Cuz, Asylum Seeker Advocacy Project
Asylum, Birthright Citizenship, Work Permits

[REDACTED]

From: Allegra Chapman [REDACTED]
Sent: Tue 1/21/2025 12:45:20 PM (UTC-05:00)
To: Julia Spiegel [REDACTED] Emily Kirby [REDACTED] Allegra Chapman [REDACTED]
Subject: [External] Day 1 EOs: What Gvs Need to Know with Norm Eisen, Protect Democracy, and Immigration Experts (Confidential/Privileged)

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Confidential & Privileged

All,

Please join us in a couple hours (11:30 am PST/12:30 pm MT/1:30 pm CT/2:30 pm EST) for a briefing on **Day 1 Executive Orders: What Governors Need to Know** - with Amb. Norm Eisen, Protect Democracy, and Immigration experts.

Looking forward to connecting and to hearing your concerns and questions after.

Allegra Chapman
Managing Director, Governors Safeguarding Democracy (GSD)
Governors Action Alliance (GovAct)
[REDACTED]

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From: [REDACTED]
When: 2:30 PM - 3:30 PM January 21, 2025
Subject: Day 1 EOs: What Govs Need to Know with Norm Eisen, Protect Democracy, and Immigration Experts (Confidential/Privileged)
Location: [REDACTED]

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All,

Please hold this time for a briefing providing an overview on the incoming administration's executive orders that will have the biggest impact on states. The briefing will be facilitated by Norm Eisen, Protect Democracy, and our team of immigration experts, and will focus on providing high-level overviews of those executive orders which Governors should be most prepared for. Please see meeting information below.

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Emma Clough

Richard Figueroa;

karen.a.sheley;

Sarah.Sabshon;

Courtney.Kerster;

Finkel, Jacob; COS Public; Patel, Meghna;

Barnes, Mel - GOV;

Christina Chang; Emma Clough; Julia Spiegel;

Subject:

Immigration EOs: National Guard – What Governors Need to Know (Confidential/Privileged)

Normal

Tue 1/28/2025 2:30:00 PM (UTC-05:00)

Tue 1/28/2025 3:30:00 PM (UTC-05:00)

Required Attendees:

Richard Figueroa;



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From: Emma Clough [REDACTED]

Location: [REDACTED]

Subject: Risks to State Federal Funds

Importance: Normal

Start Time: Fri 1/31/2025 12:00:00 PM (UTC-05:00)

End Time: Fri 1/31/2025 1:00:00 PM (UTC-05:00)

Time: Jan 31, 2025 09:00 AM Pacific Time (US and Canada)

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Sent: Tue 1/28/2025 1:17:38 PM (UTC-05:00)
To: Allegra Chapman [REDACTED] Julia Spiegel [REDACTED] Emily Kirby [REDACTED] Emma Clough [REDACTED]
Subject: [External] Re: Immigration EOs: National Guard – What Governors Need to Know (Confidential/Privileged)

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All,

Please join is an about an hour for a briefing on EOs: National Guard – What Governors Need to Know. Details below.

We'll also address some ***breaking news*** at the top and tee up a pertinent briefing on that topic this Friday.

Best,
Allegra

Join Zoom Meeting

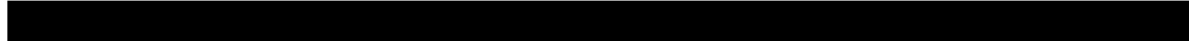
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Allegra Chapman
Managing Director, Governors Safeguarding Democracy (GSD)
Governors Action Alliance (GovAct)
[REDACTED]

From: [REDACTED]
When: 2:30 PM - 3:30 PM January 28, 2025
Subject: Immigration EOs: National Guard – What Governors Need to Know (Confidential/Privileged)
Location: [REDACTED]

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