

Understanding Federal Demands for Election Records in Arizona

An overview for election officials and government attorneys on what the law says and how to prepare ahead of the midterms

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Introduction

This overview is intended to help election officials and government attorneys prepare for a scenario where federal authorities seek custody of ballots or other election records during the 2026 midterm elections or while post-election processes required by state law are still ongoing.

This scenario is no longer hypothetical. In 2026, federal authorities sought, and in some cases obtained, election records in several jurisdictions. In January, the FBI executed a search warrant¹ in Fulton County, Georgia, and seized hundreds of boxes of records from the 2020 general election.² In April, the U.S. Department of Justice sent a written demand to Wayne County, Michigan, for all ballots, ballot receipts, and ballot envelopes from the November 2024 federal election.³ Federal authorities have also subpoenaed⁴ 2020 election materials held by the Arizona State Senate.⁵

These examples involve records from past elections, but they illustrate the mechanisms through which federal law enforcement could seek election materials during an ongoing election, when the legal and practical stakes are highest. As explained below (and by multiple prominent election experts elsewhere⁶), federal law imposes strict limitations on whether and how federal law enforcement can obtain election-related materials from state or local election officials. Moreover, such efforts to obtain ballots may conflict with numerous state election laws, including chain of custody, certification timelines, confidentiality, and criminal laws. Accordingly, it is important that election officials and their attorneys understand the limits of federal law in this area in order to ensure that state election laws are followed.

This overview proceeds in three parts. **Part I** explains the limited role of federal actors in elections and outlines the narrow circumstances in which they may lawfully seek election records. **Part II** summarizes the Arizona laws governing custody, confidentiality, and security of election materials that would be implicated by any such effort. **Part III** provides a practical checklist as a starting point to help election officials and government attorneys think through how to prepare for, scrutinize, and respond to a demand for election materials.

¹ *Application & Affidavit for Search Warrant*, 1:26-MC-0177 (N.D. Ga. Jan. 28, 2026), https://storage.courtlistener.com/recap/gov.uscourts.qand.355087/qov.uscourts.qand.355087.22.2_3.pdf.

² Barrett, Devlin, Richard Fausset & Nick Corasaniti, F.B.I. agents search Georgia Election Center, N.Y. Times (Jan. 28, 2026), <https://www.nytimes.com/2026/01/28/us/politics/fbi-search-election-center-georgia.html>.

³ Letter from Harmeet K. Dhillon, Assistant Att'y Gen., C.R. Div., U.S. Dep't of Just., to Demand for Wayne County, Mich., *Demand for Wayne County 2024 Federal Election Ballots and Records*, U.S. Dep't of Justice, (Apr. 14, 2026), <https://embed.documentcloud.org/documents/28055350-doj-letter-to-wayne-county?embed=true&responsive=false&sidebar=false>.

⁴ Grand Jury Subpoena, U.S. Dep't of Justice, D. Ariz., (Mar. 5, 2026), <https://www.documentcloud.org/documents/27897134-fbi-subpoena/>.

⁵ Hupka, Sasha, "Trump administration subpoenas 2020 records from Maricopa County amid push to investigate election," Votebeat (March 9, 2026), <https://www.votebeat.org/arizona/2026/03/09/maricopa-county-2020-election-fbi-records-warren-petersen/>.

⁶ See Richard L. Hasen & Shelby Wayment, *A Judicial Guide to Search Warrants Seeking Election Materials: How Alternatives to Election Material and Ballot Seizures Can Avoid Irreparable Harm, Promote Election Integrity, and Further the Public Interest*, Safeguarding Democracy Project, UCLA Sch. of L. (Sep. 9, 2026), https://law.ucla.edu/sites/default/files/PDFs/Safeguarding_Democracy/Judicial_Guide_to_Search_Warrants.pdf; Richard D. Bernstein, *Congress Has Precluded Seizures of Ballots or Voting Machines During the Counting and Certifying Processes*, Election L. Blog, <https://electionlawblog.org/wp-content/uploads/berstein-seizure.pdf>; Justin Levitt & John Keller, *Election-Related Search Warrants*, 74 UCLA

The Limits of Federal Authority Over Election Records

The federal government has a limited role in election administration. Article I, Section 4 of the U.S. Constitution assigns state legislatures the power to determine the "Times, Places and Manner" of elections, subject to laws passed by Congress. The Constitution therefore assigns default authority over election administration to the states, and federal actors may take action regarding elections only where Congress has specifically authorized it by statute. While Congress has granted the President certain emergency powers,⁷ none of those statutory grants extends to elections.⁸ Any attempted federal search or seizure of election records is further constrained by the Fourth Amendment, which requires a warrant issued by a court upon probable cause,⁹ and that any seizure be reasonable.¹⁰

Within these limits, federal officials may seek election materials only through a small number of mechanisms, each tied to a narrow purpose: primarily, investigating suspected violations of federal law. A federal effort to obtain such materials generally is most likely to arrive in one of four forms — search warrants, grand jury or administrative subpoenas, or statutory inspection demands — each with different legal requirements and different implications for election officials.

1 Judge-signed criminal search warrant

A search warrant signed by a judge is the only mechanism by which federal officials may lawfully take physical custody of election materials immediately without the custodian's consent. To obtain a warrant, the government must apply to a federal magistrate judge and establish, through a sworn affidavit, probable cause: a fair probability that evidence of a specific federal crime will be found in the particular place to be searched. The warrant must describe with particularity the place to be searched and the items to be seized; a warrant may not authorize a general exploratory searching through election records.¹¹ Legal experts have also explained that a warrant seeking federal custody of election materials while results are pending would generally be unreasonable under the Fourth Amendment, even if supported by probable cause, and that federal access should instead be limited to inspection and copying.¹²

⁷ Brennan Ctr. for Just., *A Guide to Emergency Powers and Their Use* (July 1, 2025), <https://www.brennancenter.org/our-work/research-reports/guide-emergency-powers-and-their-use>.

⁸ *Watson v. Republican Nat'l Comm.*, No. 24-12602026 WL 1855462, at *3 (June 29, 2026) ("As Alexander Hamilton put it, the Constitution lodges power over congressional elections in state legislatures 'primarily' and in Congress 'ultimately.'" (quoting *The Federalist* No. 59, at 362)).

⁹ Edley Ctr. on L. & Democracy, UC Berkeley Sch. of L., *Search Warrants for Election Materials* (June 2026), <https://acrobat.adobe.com/id/urn:aaid:sc:US:4243044e-7cea-4f72-9ade-379f076eab5>.

¹⁰ U.S. Const. amend. IV; Fed. R. Crim. P. 41.

¹¹ *United States v. Grubbs*, 547 U.S. 90, 95 (2006).

¹² Justin Levitt & John Keller, *Election-Related Search Warrants*, 74 U.C.L.A. L. Rev. Discourse ____ (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7227158.

A warrant is executed without advance notice. It is also conceivable that agents could attempt to assert that they need no warrant at all due to “exigent circumstances,” such as a risk that evidence will imminently be destroyed.¹³ However, this narrow exception to the warrant requirement is especially unlikely in the election context given the state’s obligations to maintain chain of custody of election materials. Searches should never be physically interfered with or obstructed, but it should be noted that officials are never required to affirmatively consent to a search or surrender of materials (law enforcement may ask for “permission” or “consent” to search, which can have legal ramifications); instead, contact counsel immediately so any dispute over exigency can be resolved by a court.

Importantly, even if election materials are seized pursuant to a warrant, election officials can seek emergency relief in court requesting that they be returned or requesting other safeguards to protect the materials (most typically, through a Rule 41(g) motion). In considering such a motion, courts may find it helpful to understand how the seizure violates or frustrates state election laws, whether the alleged crimes in the supporting affidavit were not supported by the evidence, or if the affidavit rested on unreliable information or allegations that have previously been investigated and remain unsubstantiated.

2 Grand jury subpoena

A grand jury subpoena is a demand to produce materials or testimony as part of a criminal investigation, and is not an authorization to seize materials immediately. The threshold for issuance is low: grand jury subpoenas do not require probable cause and are presumed valid so long as they seek information relevant to a legitimate investigation. But that presumption has limits. A recipient may move to quash a subpoena that is unreasonable or oppressive,¹⁴ and courts have granted such motions in the election context. For instance, in July 2026, a federal judge quashed a grand jury subpoena for the identities of all Fulton County election workers and volunteers from the 2020 election, finding it unreasonable, untethered to any prosecutable offense, and likely to chill participation in future elections.¹⁵ Unlike a warrant, a subpoena is not self-executing, so a recipient does not need to immediately produce the sought materials. Instead, through counsel, the recipient of a subpoena can move to quash, negotiate the scope and timing of production, or decline to produce while the objection is litigated.¹⁶ The government can compel compliance only by obtaining a court order.

This generally holds true even for a so-called “forthwith” subpoena, an extremely rare type of subpoena that demands the production of materials “forthwith” or immediately. However, a forthwith subpoena is not a search warrant and does not necessarily authorize agents to seize materials on the spot, and USDOJ’s own manual permits such subpoenas only where an immediate response is justified and with prior approval of the United States Attorney.¹⁷ A recipient faced with a forthwith

¹³ See, e.g., *Kentucky v. King*, 563 U.S. 452 (2011).

¹⁴ Fed. R. Crim. P. 17(c)(2).

¹⁵ *Fulton County Board of Registration and Elections v. United States*, No. 1:26-cv-02777, 2026 WL 1959461, 11-12 (N.D. Ga. July 7, 2026).

¹⁶ See *Trump v. Vance*, 591 U.S. 786, 809–10 (2020) (stating the right of “every ... citizen” to “challenge the subpoena” and describing the “inherent authority” of state and federal courts to “quash or modify the subpoena”).

¹⁷ U.S. Dep’t of Just., Just. Manual § 9-11.140 (2018); see also *In re Nwamu*, 421 F. Supp. 1361, 1365–67 (S.D.N.Y. 1976) (agent’s use of a forthwith subpoena to compel immediate surrender of documents, without consent or exigency, constituted an unlawful seizure).

subpoena should immediately contact counsel to discuss their options because a court could hold that, by immediately complying with such a subpoena, a recipient may have waived their right to challenge it after the fact by consenting.¹⁸

3 Subpoena from a federal agency ("administrative subpoena")

Some federal agencies have statutory authority to issue administrative subpoenas: records demands issued by the agency itself, with no court or grand jury involved.¹⁹ No statute specifically authorizes any agency to subpoena election records. Critically, an administrative subpoena is issued with less process than a grand jury subpoena, and like any subpoena it is not self-executing, meaning the subpoena recipient faces no penalty for declining to produce materials unless and until the federal agency persuades a court to order compliance.²⁰ Accepting service and engaging counsel before producing documents can help preserve objections and avoid inadvertent waiver of privilege or other protections.

4 Written demand for inspection under 52 U.S.C. § 20703

The U.S. Attorney General may make a written demand, which must state a legitimate basis and purpose, to inspect, reproduce, and copy the specific records that 52 U.S.C. section 20701 requires custodians to retain for twenty-two months after a federal election. This mechanism requires no judicial approval at the outset, but it is also the narrowest of the four. It authorizes the Attorney General to demand only those records "relating to any application, registration, payment of poll tax, or other act requisite to voting." That is generally understood to include voter registration materials and similar records of a voter's qualifications, although federal authorities have recently asserted a broader reading, including ballots and electronic materials, and counsel should assess the covered status of each category of records named in any demand. This provision also applies only to records of an already-conducted federal election, and it entitles federal officials only to inspect and copy records at the custodian's principal office, not to take custody of them. If the custodian declines to comply, the government's sole remedy is to seek a court order compelling production under 52 U.S.C. § 20705. A section 20703 demand, standing alone, never justifies transferring possession of ballots or records to federal authorities, and to the extent a demand requests materials outside section 20701's scope, there may be strong arguments that there is no statutory authority to make the demand.

¹⁸ See Charles Doyle, Cong. Rsch. Serv., *The Federal Grand Jury* (updated May 7, 2015) (noting forthwith subpoenas have generally been upheld either because the recipient complied or consented, or because exigent circumstances existed), available at <https://www.congress.gov/crs-product/95-1135#fn126>; see also *United States v. Barr*, 605 F. Supp. 114, 119 (S.D.N.Y. 1985).

¹⁹ See, e.g., 8 U.S.C. § 1225(d)(4)(A) (immigration enforcement); 8 U.S.C. § 1324a(e)(2) (employment verification); 19 U.S.C. § 1509 (customs summonses); 18 U.S.C. § 1968 (civil investigative demand under RICO).

²⁰ Compare Fed. R. Crim. P. 41(g)-(h) (allowing an individual subject to an unlawful warrant to move for the return of property and/or a motion to suppress) with 8 U.S.C. § 1225(d)(4) (providing that, in case of noncompliance with subpoena issued by an immigration officer the agency may invoke the aid of a U.S. district court, which may order compliance); 39 U.S.C. § 3016(c)(1) ("The Postmaster General may request that the Attorney General seek enforcement of the subpoena in the district court of the United States").

What about an informal demand — a letter, phone call, or in-person request?

No federal authority exists to obtain election materials by simply asking for them, even by federal law enforcement. A federal agent who appears at an elections office without a warrant, or an agency that sends a letter demanding records, is invoking no legal process at all unless the demand fits one of the four mechanisms above. A demand letter, at most, may qualify as a section 20703 inspection demand, with all of that provision's limits, as outlined above. Upon receipt of an informal demand, requesting the demand be put in writing, contacting counsel immediately, and understanding that the law does not obligate a transfer of materials (subject to counsel's advice) can help avoid potentially violating state law by breaking the chain of custody. Indeed, one important reason for involving counsel is that complying with such an informal demand could risk violating state law.

Longstanding DOJ policy reinforces these limits

DOJ's own longstanding guidance recognizes that "seizure by federal authorities of documentation generated by the election process may deprive state election and judicial authorities of critical materials needed to resolve election disputes, conduct recounts, and certify the ultimate winners."²¹ The Department's election-offenses manual instructs that "[i]n most cases, election-related documents should not be taken from the custody of local election administrators until the election to which they pertain has been certified and the time for contesting the election results has expired,"²² and that "election officials should not be deprived of documents necessary to tally and recount the ballots and to certify the election results. Accordingly, copies in lieu of originals should be accepted until the state's need for the documentation expires."²³ Federal regulation likewise directs that a search warrant "should not be used" for documentary materials where less intrusive means would suffice.²⁴ Any demand that departs from these long-established standards deserves careful scrutiny.

²¹ U.S. Dep't of Justice, Federal Prosecution of Election Offenses, 9 (8th ed. Dec. 2017).

²² *Id.* at 11 (noting that this practice "avoids interfering with the governmental processes affected by the election").

²³ *Id.* at 83.

²⁴ 28 C.F.R. § 59.4(a)(1).

Arizona Election Law

Arizona law protects election materials through three overlapping bodies of law, each of which could be implicated by a federal effort to obtain election materials:

- 1 Chain-of-custody laws and procedures** impose an affirmative obligation on election officials to keep records documenting an unbroken chain of custody over all ballots and election equipment throughout the election cycle, ensuring accountability for election materials is documented and traceable at each phase of the process.
- 2 Restrictions on access to and disclosure of election materials** — some arising from the custody rules themselves and some applying independently — under which voted ballots are sealed and may be opened or examined only upon order of a court; ballot images and electronic data must be protected against unauthorized access, and specified voter registration information may not be accessed or reproduced except in narrow, enumerated circumstances; and
- 3 Criminal provisions** that penalize removing ballots, election records, or voting equipment from the possession of the person authorized by law to have custody of them; interfering with an election officer in the discharge of their duties; and an official's knowing failure to perform election duties.

A federal demand for election materials, even if it is supported by a valid judicial process, could leave state officials stuck between conflicting legal obligations.

Chain of Custody Through the Election Cycle

Arizona law mandates an unbroken chain of custody for election materials, and imposes extensive chain-of-custody obligations on election officials under both Title 16 of the Arizona Revised Statutes²⁵ and the Secretary of State's 2025 Elections Procedures Manual ("EPM").²⁶ The EPM carries the force and effect of law unless a court determines that a provision is inconsistent with applicable statutes.²⁷ These requirements govern the entire election process and ballot lifecycle,

²⁵ Ariz. Rev. Stat. Ann. tit 16 (2026 (hereinafter "A.R.S.")).

²⁶ Ariz. Sec'y of State, *2025 Elections Procedures Manual* (2025) (Dec. 22, 2025), <https://apps.azsos.gov/election/files/epm/2025/Election-Procedures-Manual-2025--FINAL-12-22-25.pdf> (hereinafter "2025 EPM").

²⁷ The 2025 EPM governs the 2026 General Election. Under Arizona law, every odd-numbered year, after consultation with each county, the Secretary must prescribe rules in an "official instructions and procedures manual" to achieve "the maximum degree of correctness, impartiality, uniformity and efficiency" in election procedures. A.R.S. § 16-452(A)–(B). The Secretary must submit the EPM to the Governor and Attorney General for approval by October 1. A.R.S. § 16-452(B). Upon approval, the EPM must be issued by December 31 of that year. *Id.* After being issued, the EPM carries the force of law and violations of the rules therein are punishable as

from the initial delivery of ballots through counting, canvassing, certification, and post-election retention.²⁸

The governing statutes and rules outline the following chain of custody requirements:

● Before voting

Before voting begins, each county board of supervisors is responsible for delivering ballots to each voting precinct.²⁹ The ballots must be sent in sealed packages with marks on the outside of the package clearly designating the polling place for which they are intended and the number of ballots enclosed.³⁰ The package is delivered to the inspector of each election board, who must confirm receipt upon delivery to the board of supervisors.³¹

Arizona has strict mandates surrounding the physical security of electronic voting machines before voting, requiring among other things that hardware: include a unique serial number for tracking and auditing;³² be stored in a locked, secure location that prevents unauthorized access, with a documented access log;³³ be accessed by elections staff only to the extent necessary to perform their authorized task;³⁴ be sealed with tamper-resistant or tamper-evident seals once programmed, with the seal number logged as corresponding with particular voting equipment.³⁵ This log should be preserved with the election returns.³⁶ Further, hardware must be safeguarded from unauthorized access when being moved, transferred, serviced, programmed, or temporarily stored,³⁷ and must be witnessed by two or more election staff members (of different political parties if possible) when being moved or transferred.³⁸ An inventory of the equipment and documentation of the chain of custody before and after the move or transfer must be maintained.³⁹

a class 2 misdemeanor. A.R.S. § 16-452(C); *Ariz. Pub. Integrity All. v. Fontes*, 475 P.3d 303, 308 ¶ 16 (Ariz. 2020); *Republican Nat'l Comm. v. Fontes*, 592 P.3d 752, 754 (Ariz. 2026).

²⁸ See e.g., A.R.S. § 16-621(E) (requiring "county recorder or other officer in charge of elections" to "maintain records that record the chain of custody for all election equipment and ballots during early voting through the completion of provisional voting tabulation").

²⁹ A.R.S. § 16-509.

³⁰ A.R.S. § 16-509.

³¹ A.R.S. § 16-509.

³² 2025 EPM, Ch. 4, § II(A)(1).

³³ 2025 EPM, Ch. 4, § II(A)(3).

³⁴ 2025 EPM, Ch. 4, § II(A)(6).

³⁵ 2025 EPM, Ch. 4, § II(A)(4).

³⁶ *Id.*

³⁷ 2025 EPM, Ch. 4, § II(A)(5).

³⁸ 2025 EPM, Ch. 4, § II(A)(7).

³⁹ *Id.*

• Early in-person voting

Early in-person voting begins on October 7 and continues through 7:00pm the Friday before Election Day (October 30, 2026).⁴⁰ The County Recorder or other officer in charge of elections is responsible for the safekeeping of early ballots in the recorder's or other officer's office⁴¹ until delivered for tallying to early election boards.⁴² If challenged,⁴³ early ballots are required to remain in the custody of the early election board or the officer in charge of early ballot processing throughout the challenge process.⁴⁴ Arizona law also requires that rejected ballots be preserved unopened with the rejection grounds marked and retained with official returns.⁴⁵

• Mail ballots

Voted mail ballots must be received by the county recorder or other officer in charge of elections, or deposited at any polling place in the county, no later than 7:00 pm on Election Day.⁴⁶ The recorder or other officer in charge of elections is responsible for safely keeping these ballots (alongside their accompanying affidavit envelopes)⁴⁷ and must deliver them to the early election boards for processing as provided in the rules of the Secretary of State.⁴⁸ There are also additional strict procedures and custody rules for counties that provide for mail ballots to be tabulated at voting sites;⁴⁹ as well as, beginning in 2026, for the ballots of voters who present identification when returning a mail ballot in person.⁵⁰ If a voter provides identification when returning a mail ballot in person, election officials are responsible for maintaining and documenting the chain of custody for these ballots, including signing an affidavit attesting to sufficient information to record and maintain the chain of custody for these ballots.⁵¹

⁴⁰ A.R.S. § 16-542 (E).

⁴¹ A.R.S. § 16-550(B).

⁴² A.R.S. § 16-551.

⁴³ A.R.S. § 16-552(C).

⁴⁴ A.R.S. § 16-552 (D).

⁴⁵ A.R.S. § 16-552(G).

⁴⁶ A.R.S. § 16-548(A).

⁴⁷ A.R.S. § 16-550(B).

⁴⁸ A.R.S. § 16-551(C); *see also* 2025 EPM, Ch. 2, § VI(B)(1) (establishing logging requirements for early ballot board that tabulates early ballots); 2025 EPM, Ch. 2, § VI(B) (instituting other chain of custody requirements for early ballots, including that "If the early ballot boards retire and reconvene, all materials shall be secured under the control of the Board of Supervisors or officer in charge of elections until the time for the boards to reconvene.")

⁴⁹ *See* A.R.S. §§ 16-579.01; 16-579.02; 2025 EPM, Ch. 9, § VII.

⁵⁰ A.R.S. § 16-579(A)(4)(c)-(d). If the voter presents identification when returning their mail ballot, the election official in charge of the signature roster must stamp the signed affidavit with a stamp that reads "ID verified" and place the stamped affidavit that contains the early ballot in a secured ballot box that is labeled for early ballots, and must maintain a tally of the number of ballots that have been deposited in the secured ballot box and sign an affidavit that includes the election official's name, the polling location, the time and date, the number of early ballots deposited according to the tally maintained by the election official and a statement sufficient to record and maintain the chain of custody for those ballots.

⁵¹ A.R.S. § 16-579(A)(4).

• Drop boxes

Drop boxes for mail ballots are also subject to strict security and chain of custody rules.⁵² This includes that only an election official or designated ballot retriever shall have access to them.⁵³ Further, the EPM requires that each County Recorder develop and implement secure ballot retrieval and chain of custody procedures.⁵⁴ It establishes specific parameters for these chain of custody procedures, including that ballot retrievers must be two individuals of two different political parties,⁵⁵ and must document chain of custody⁵⁶ as well as requires the County Recorder upon receipt of such ballots to conduct and document an inspection.⁵⁷

• Election Day

Each polling location is the responsibility of members of an election board, who take an oath of office to faithfully perform the duties imposed on them by law.⁵⁸ The inspector is chairperson of the election board.⁵⁹

Unvoted Ballots: On opening the polls, the polling site's inspector⁶⁰ produces the sealed package of official ballots and publicly opens it and delivers one book or block of ballots to the judges of election at the polling site.⁶¹ Throughout election day, one of the judges of election must keep the unvoted ballots within the polling place in plain view of the public and deliver them only to qualified voters.⁶² It is unlawful for anyone to take or remove a ballot from the polling place before the polls are closed.⁶³

Voting Equipment: Before opening the polls, the election board must generate and verify a "zero report" from any precinct voting equipment or accessible voting equipment that independently tabulates votes to ensure that the machine contains no votes prior to the start of voting.⁶⁴ As part of this, the election board confirms that tamper resistant or tamper evident seals are intact.⁶⁵

Voting machines are placed and protected so as to be accessible to only one voter at a time and in full view of all election officers and observers.⁶⁶ Any port, plug, door or other method of physical or electronic access to the voting machine or to any electronic pollbook must be secured in a way to prevent any unauthorized access to the voting machine or electronic

⁵² 2025 EPM, Ch. 2, § I(H).

⁵³ 2025 EPM, Ch. 2, § I(H)(4).

⁵⁴ 2025 EPM, Ch. 2, § I(H)(9).

⁵⁵ 2025 EPM, Ch. 2, § I(H)(9)(b).

⁵⁶ 2025 EPM, Ch. 2, § I(H)(9)(f).

⁵⁷ 2025 EPM, Ch. 2, § I(H)(9)(h).

⁵⁸ 2025 EPM, Ch. 9, § II; A.R.S. § 16-534(C).

⁵⁹ A.R.S. § 16-534(A).

⁶⁰ The inspector is chair of the election board at the voting location, leads and assigns duties to other poll workers, and exercises authority over all election-related activities at the voting location under the direction of the county officer in charge of elections. 2025 EPM, Ch. 8, § II(B)(1)(a), pp. 149-50.

⁶¹ A.R.S. § 16-572(A).

⁶² A.R.S. § 16-572(B).

⁶³ A.R.S. § 16-572(C).

⁶⁴ 2025 EPM, Ch. 9, § II.

⁶⁵ *Id.*

⁶⁶ A.R.S. § 16-570(B).

pollbook.⁶⁷ The county or other officer in charge of elections must document and verify security procedures regarding access before a voting machine or electronic pollbook is placed into service for an election.⁶⁸ The law specifies that during elections, the door or other compartment of voting machines cannot be unlocked or opened or the counters exposed except for “good and sufficient” reasons, a statement of which must be made and signed by the election officers and attached to the returns.⁶⁹

Ballot boxes holding voted ballots: The election board is responsible for the security of the ballot boxes.⁷⁰ Before receiving any ballots, the election board must open, exhibit and lock the ballot box.⁷¹ Thereafter it cannot be removed from the polling place or presence of the bystanders until all ballots are counted, nor opened until after the polls are finally closed, except in an emergency.⁷² If the box must be moved, at least two members of the election board who are not members of the same political party must accompany the locked ballot box.⁷³ If practicable and available, a law enforcement officer shall aid in the transfer.⁷⁴

● After voting ends

Once polls close and the last voter votes, the voting devices must be sealed, and all unused ballots must be placed in a sealed container and returned to the board of supervisors or other officer in charge of elections.⁷⁵

At the close of voting, the election board is responsible for preparing a report in duplicate of the number of voters.⁷⁶ Then, two members of the election board of two different political parties are responsible for “promptly” delivering the voted ballots and this report in a sealed (with a numbered seal) ballot box or metal container to the central counting place or other receiving station designated by the board of supervisors which cannot not be more than fifty miles from the polling place.⁷⁷ The two members then receive a numbered receipt from the person in charge of receiving ballots upon delivery.⁷⁸ The chairperson of the county committee of each political party represented on the ballot may designate a member of their party to accompany the ballots from each polling place to the central counting place.⁷⁹

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ A.R.S. § 16-570(C).

⁷⁰ A.R.S. § 16-564(A).

⁷¹ *Id.*

⁷² *Id.*

⁷³ A.R.S. § 16-564(B).

⁷⁴ A.R.S. § 16-564(B)(1).

⁷⁵ A.R.S. § 16-566(B).

⁷⁶ A.R.S. § 16-608(A).

⁷⁷ *Id.* see also A.R.S. § 16-615 (providing the process for the return of other election materials besides counted ballots, including the signed poll list and spoiled ballots; see also 2025 EPM Ch. 8, § VII(4-5); Ch. 9, §IX(B)).

⁷⁸ A.R.S. § 16-608(A).

⁷⁹ A.R.S. § 16-608(B).

• Central counting place

The Board of Supervisors or other officer in charge of elections is responsible for directing all proceedings at the counting center.⁸⁰ Chapter 10 of the 2025 Elections Procedures manual establishes detailed requirements for central counting place procedures.⁸¹ It mandates that at the central counting place, there is a designated “Receiving Board” (two members of different political parties)⁸² who receive the above items from polling places.⁸³ The Receiving Board must ensure proper documentation, including chain of custody documentation, for all items received.⁸⁴ An Inspection Board is responsible for breaking the seal on the ballot container, and the EPM establishes specific procedures for this and for escalating to the officer in charge of elections if anything is missing or a seal is broken.⁸⁵

Arizona law requires additional protections relating to chain of custody. During counting, only authorized persons may touch ballots and those ballot handlers be deputized and sworn.⁸⁶ Further, the County Recorder or officer in charge of elections is responsible for providing a live video recording of the custody of all ballots while they are present in a tabulation room.⁸⁷

• Retention

After the canvass has been completed, the officer in charge of elections, (the county board of supervisors or their appointee) deposits the package or envelope containing the ballots in a secure facility managed by the county treasurer, who must keep it unopened and unaltered for twenty-four months for elections for a federal office (six months for non-federal), at which time the Treasurer shall destroy the package or envelope without opening or examining the contents.⁸⁸

If a recount is ordered or a contest begins within six months of an election, a court may order the county treasurer to deliver to it the packages or envelopes containing the ballots, and then they are in the custody and control of the court.⁸⁹ Irregular ballots must be preserved for six months after the election and the packages containing them may be opened and the contents examined only upon an order of court.⁹⁰

In sum, at every stage of the election cycle, from the preparation of ballots through their 6- or 24-month retention, Arizona law places election materials in the hands of a designated custodian and requires that custody be maintained, secured, and documented at each transfer.⁹¹ There is no

⁸⁰ A.R.S. § 16-621(A).

⁸¹ 2025 EPM, Ch. 10, § II(A).

⁸² *Id.*

⁸³ *Id.*

⁸⁴ 2025 EPM, Ch. 10, § II(A).

⁸⁵ 2025 EPM, Ch. 10, § II(B)(1),.

⁸⁶ A.R.S. § 16-621(A).

⁸⁷ A.R.S. § 16-621(D); 2025 EPM, Ch. 10, § I(B).

⁸⁸ A.R.S. 16-624(A).

⁸⁹ A.R.S. § 16-624(D).

⁹⁰ A.R.S. § 16-624(B).

⁹¹ See A.R.S. § 16-621(E) (requiring the “county recorder or other officer in charge of elections” to “maintain records that record the chain of custody for all election equipment and ballots during early voting through the completion of provisional voting tabulation.”).

point in the process at which election materials may lawfully sit outside this documented chain, and no provision for transferring them to anyone other than the next authorized custodian absent a court order or, in some circumstances, a legally valid and enforceable subpoena.⁹²

Criminal Provisions Protecting Election Materials

Election officers who knowingly fail or refuse to perform their duties,⁹³ or who knowingly act in violation of the law,⁹⁴ are subject to potential criminal penalties as well.

Arizona law criminalizes conduct threatening the security of election materials. This includes the following misdemeanors:

- destroying or defacing a ballot;⁹⁵
- knowingly delaying the delivery of a ballot;⁹⁶
- intentionally disabling or removing from the polling place, on-site early voting location or custody of an election official a voting machine or a voting record;⁹⁷
- knowingly removing an official ballot from a polling place before closing the polls;⁹⁸ and
- knowingly receiving an official ballot from a person other than an election official having charge of the ballots.

Further, Arizona law criminalizes as a felony certain conduct threatening the security of election materials, including:

- knowingly interfering in any manner with an election officer in the discharge of the officer's duty⁹⁹; or impersonating an election official¹⁰⁰;
- knowingly modifying the software hardware or source code for voting equipment without receiving approval or certification;¹⁰¹
- ballot abuse¹⁰² (including collecting ballots and failing to turn them into an election official¹⁰³ or misrepresenting oneself as an election official and or ballot repository¹⁰⁴);
- unlawful collection of early ballots;¹⁰⁵

⁹² See below for more on ensuring a subpoena is proper and responding to a subpoena, including moving to quash if appropriate.

⁹³ A.R.S. § 16-1009.

⁹⁴ A.R.S. § 16-1010.

⁹⁵ A.R.S. § 16-1003.

⁹⁶ *Id.*

⁹⁷ A.R.S. § 16-1018(2).

⁹⁸ A.R.S. § 16-1018(3).

⁹⁹ A.R.S. § 16-1004(A).

¹⁰⁰ A.R.S. § 16-1004(C).

¹⁰¹ A.R.S. § 16-1004(B).

¹⁰² A.R.S. § 16-1005.

¹⁰³ A.R.S. § 16-1005(F).

¹⁰⁴ A.R.S. § 16-1005(E).

¹⁰⁵ A.R.S. § 16-1005(H)–(I).

- knowingly moving, polluting, or destroying a ballot or ballot box¹⁰⁶ (including knowingly destroying a ballot¹⁰⁷ or ballot box with the intent to interrupt or invalidate an election,¹⁰⁸ removing or concealing ballots or ballot boxes from a polling place,¹⁰⁹ knowing detaining, altering, or destroying ballots or election returns¹¹⁰); and
- counterfeiting or tampering with election returns.¹¹¹

The Attorney General may bring civil and criminal actions to enforce these laws.¹¹² Criminal penalties for chain-of-custody-related offenses range from class 2 and class 3 misdemeanors (A.R.S. §§ 16-452(C)¹¹³, 16-1009, 16-1003) to class 5 and class 6 felonies (A.R.S. §§ 16-1016, 16-1004(B), 16-1005(H)) and class 3 felonies for tampering with election returns (A.R.S. § 16-1011(A)–(C)).

Confidentiality of Voted Ballots and Voter Registration Records

In addition to strict chain-of-custody laws, a federal effort to obtain election materials might also run afoul of state confidentiality and privacy protections.

Voted ballots

As discussed above, after an election, Arizona law requires physical ballots to be deposited in a secure facility managed by the county treasurer, who “shall keep it unopened and unaltered”¹¹⁴ for 24 months for elections for a federal office or for six months for all other elections, at which time the county treasurer shall destroy such records “without opening or examining the contents.”¹¹⁵ A.R.S. § 16-624 prohibits ballots from being opened and the contents examined unless pursuant to a court order or in some circumstances, a legally valid and enforceable subpoena that has not been quashed.¹¹⁶

Arizona law also establishes specific protections for electronic and digital images of ballots.¹¹⁷ The officer in charge of elections is required to protect images of electronic and digital ballots (and data from these ballots) from physical and electronic access,¹¹⁸ including unauthorized copying or transfer,¹¹⁹ and requires that all security measures are “at least as protective” as those for paper ballots.¹²⁰

¹⁰⁶ A.R.S. § 16-1016.

¹⁰⁷ A.R.S. § 16-1016(6).

¹⁰⁸ A.R.S. § 16-1016(10)–(11).

¹⁰⁹ A.R.S. § 16-1016(9).

¹¹⁰ A.R.S. § 16-1016(11).

¹¹¹ A.R.S. § 16-1011(A)–(B).

¹¹² A.R.S. § 16-1021.

¹¹³ A.R.S. § 16-452 makes any violation of the requirements in the 2025 EPM a class 2 misdemeanor. See A.R.S. § 16-452(C) (“A person who violates any rule adopted pursuant to this section is guilty of a class 2 misdemeanor.”)

¹¹⁴ A.R.S. § 16-624(A).

¹¹⁵ *Id.*

¹¹⁶ A.R.S. § 16-624(B), (D).

¹¹⁷ A.R.S. § 16-625.

¹¹⁸ *Id.*; see also *AUDIT-USA v. Maricopa Cnty.*, 254 Ariz. 536, 525 P.3d 279, 281-82 (Ariz. Ct. App. 2023).

¹¹⁹ *Id.*

¹²⁰ *Id.*

Voter registration records

While the public may view portions of the voter registration file, Arizona law makes certain registration information not available to the public, including a voter's month and day of birth, Social Security number, driver license or nonoperating ID number, Indian census number, father's name or mother's maiden name, state or country of birth, and records containing the voter's signature and email address.¹²¹ Those are accessible only to the voter, subject to specified exceptions.¹²² A voter's email address can't be released for any reason.¹²³

Certain eligible persons (and others they live with) may request that a court seal all of the information in their voter registration records for five years, including personal information and voting record, making this information confidential.¹²⁴ The list of eligible persons is broad, and includes public officials, law enforcement, judicial officers, election officials, and persons protected under an order of protection or injunction against harassment.¹²⁵ Arizona also has an Address Confidentiality Program (ACP) through which victims of domestic violence and other offenses are eligible to shield their residence address in public records.¹²⁶ The voter registration records of protected voters and ACP participants "shall not be disclosed and is not a public record."¹²⁷

These state law protections are significant because, unlike the inspection authority for post-election records under 52 U.S.C. § 20703, there is no federal statute authorizing federal officials to demand confidential voter registration data held by a state or county. As of this writing, at least 26 federal courts (including the Federal District Court for the District of Arizona) have held that the U.S. Department of Justice lacks authority to make broad demands for state-held voter file data, which includes information that state law makes confidential.¹²⁸

¹²¹ A.R.S. § 16-168 (F).

¹²² *Id.* (stating that "an authorized government official in the scope of the official's duties, for any purpose by an entity designated by the secretary of state as a voter registration agency pursuant to the national voter registration act of 1993 (P.L. 103-31; 107 Stat. 77), for signature verification on petitions and candidate filings, for election purposes and for news gathering purposes by a person engaged in newspaper, radio, television or reportorial work, or connected with or employed by a newspaper, radio or television station or pursuant to a court order.")

¹²³ *Id.*

¹²⁴ A.R.S. § 16-153(A).

¹²⁵ See A.R.S. § 16-153(K)(5) (stating that an "eligible" person includes "a health professional, election officer, public official, former public official, peace officer, spouse of a peace officer, spouse or minor child of a deceased peace officer, justice, judge, commissioner, hearing officer, public defender, prosecutor, member of the commission on appellate court appointments, code enforcement officer, adult or juvenile corrections officer, corrections support staff member, probation officer, member of the board of executive clemency, law enforcement support staff member, employee of the department of child safety or employee of adult protective services who has direct contact with families in the course of employment, national guard member who is acting in support of a law enforcement agency, person who is protected under an order of protection or injunction against harassment or firefighter who is assigned to the Arizona counter terrorism information center in the department of public safety.").

¹²⁶ A.R.S. §§ 41-162, 41-165.

¹²⁷ A.R.S. § 16-153(J).

¹²⁸ *United States v. Fontes*, No. CV-26-00066-PHX-SMB, 2026 WL 1145626 (D. Ariz. Apr. 28, 2026), *amended and superseded by* 832 F. Supp. 3d 944 (D. Ariz. 2026); *see also, e.g., United States v. Benson*, 819 F. Supp. 3d 753 (W.D. Mich. 2026), *aff'd* 179 F.4th 470 (6th Cir. 2026); *United States v. Koski*, No. 3:26CV42, 2026 WL 2032532 (E.D.Va. July 14, 2026); *United States v. Warner*, No. 2:26-cv-00156, 2026 WL 2018877 (S.D. W.Va. July 13, 2026).

Preparedness and Response Considerations

The checklists below are designed to help both election officials and government attorneys, each of whom has a distinct and essential role, understand steps to consider to protect the chain of custody and respond quickly and lawfully to any attempt to seize election materials. Review this list with your attorney to discuss and create your individualized plan of action.

For Election Officials

Prepare before the election

- ☐ **Review the legal authorities** discussed above with your attorneys and confirm how to reach counsel at any hour during the election period. Getting counsel involved early is important so you can plan together to protect the chain of custody for election materials.
- ☐ **Brief election workers and volunteers** on chain-of-custody requirements and on the escalation path if anyone, including a federal officer, demands ballots, records, or equipment. For example, tabulation center official → County Recorder → Board of Supervisors → Secretary of State's Office.
- ☐ **Keep chain-of-custody documentation** (transfer forms, sealed containers, courier logs) complete and current, and keep key reference guides accessible at the board office. Examine office inventory procedures and ensure there is an accurate and updated inventory of all election records and material coming in or out of the office.
- ☐ **Plan for continuity if materials are seized:** in consultation with counsel and consistent with statutes, the EPM and Secretary of State guidance, identify which records exist in duplicate form (for example, results tapes, ballot images, backup memory cards, electronic data) and ensure backups are created where lawful, stored separately from originals, and subject to the same documented chain of custody.

If a demand arrives, contact counsel and proceed cautiously

- ☐ **Unless the demand is a judge-signed warrant or court order**, recipients generally have the opportunity to discuss with counsel before turning over any materials. Verify the agent's identity (agency, badge/ID — write it down or photograph it) and ask to see what judge or court-ordered documents they have, if any. Then, contact your legal counsel.

- ☐ **If agents present a judge-signed search warrant**, recipients are permitted to inspect the warrant to check that it has the correct office, address, judge's signature, date, and to confirm what materials are being sought. Recipients may obtain a copy of the warrant. As with subpoenas or other requests, contact counsel immediately for legal guidance on how to proceed. Counsel should try to be physically present as soon as possible. Be aware, however, that agents are not required to wait for an attorney to arrive before proceeding with execution of the warrant.
- ☐ **Recipients should never obstruct agents but are permitted to observe closely and document the search.** Recipients can monitor the process without interfering by requesting permission to inventory everything taken or searched, in as much detail as possible, including any numbers or identifiers for boxes or machines. Recipients may request a complete inventory from the agents executing the warrant as well. If agents appear to search or seize beyond what the warrant authorizes, recipients should be prepared to state objections, document them, and relay the situation to counsel immediately.
- ☐ **Recipients may also consider taking video or audio recordings**, in a non-escalatory and non-obstructive manner, as long as the recording does not capture voters in a polling place or images of any completed ballots.
- ☐ **A letter, email, phone call, or in-person request does not require turning over anything immediately.** Only valid judicial process (a judge-signed warrant or a court order) can compel transfer of election materials, and Arizona law does not generally authorize surrendering custody without a court order. Engaging counsel and declining to immediately fulfil an informal request is lawful (and in many cases legally required).
- ☐ **A subpoena (however official-sounding) does not require immediate production.** Recipients are permitted to accept service only and tell the person serving the subpoena that they need to confer with counsel. The requesting agency can demand production for materials sought by a subpoena only if a court later compels production through a separate order.
- ☐ **Whether an officer has a warrant or not, recipients are not required** to answer questions beyond acknowledging the request. Ask for the officer's name and contact information so counsel can follow up.
- ☐ **Retain everything once any demand is received.** Do not alter, move, or destroy anything, and document the chain of custody throughout, including any break caused by a seizure.

Afterward

- ☐ **Discuss with your attorney** whether they advise that the recipient and anyone else present write a detailed account of what happened while memories are fresh. This is also a good time to notify the Secretary of State's Office if they haven't been already, and work with counsel on next steps and any public communications.

For Government Attorneys

Prepare before the election

- ☐ **Prepare emergency response papers in advance.** Ready-to-finalize legal papers for each potential scenario, including a motion to quash, an emergency TRO/preliminary injunction motion to halt an unlawful seizure; a Fed. R. Crim. P. 41(g) motion for return of property; and a written response to a section 20703 demand or other written demands can save valuable time. Legal arguments will depend on the mechanism used and the specific facts, but counsel may want to consider arguments such as: irreparable harm, lack of statutory authority for the demand, overbreadth, failure to account for state-law requirements (chain-of-custody, confidentiality), and reasonable alternatives to immediate seizure of materials (e.g., providing materials after tabulation and certification of results, or providing copies rather than original materials).
- ☐ **Train election officials and pollworkers on the essentials of how to respond to a demand for election materials:** first, to contact counsel immediately (make sure they have up-to-date names and phone numbers for all hours); then, to verify the identity of agents, ask to review the demand for whether it is a judicial warrant, and never obstruct execution of a judicial warrant; next, that other types of demands can wait for counsel to intervene, and they should protect the chain of custody if approached with informal requests or a subpoena or other request that lacks a court order; and finally, that they do not need to consent to answer substantive questions without counsel present.

If a demand arrives

- ☐ **Review the demand immediately.** Identify what it is — judicial warrant, subpoena/summons, section 20703 inspection demand, or an informal request—and verify service and facial validity. If a warrant has been issued, consider calling the issuing magistrate judge and/or the prosecutor immediately.
- ☐ **Advise per mechanism** (as appropriate, based on the facts): for a warrant, guide officials through execution and documentation, and assess challenges (including whether the affidavit is based on faulty information or fails to account for competing state-law chain-of-custody requirements); for a subpoena, calendar the deadline, negotiate scope, assert privilege, and file the motion to quash if grounds exist; for a section 20703 demand, confirm it is written, states basis and purpose, and concerns a completed election — compliance means inspection and copying at the custodian's office, never transfer of custody; for anything else, advise that no compliance is required and respond in writing requesting the claimed legal basis.
- ☐ **If an unlawful seizure is threatened or underway,** consider filing legal papers immediately using the pre-drafted TRO papers to protect materials.

- ☐ If a subpoena is provided, consider whether it is appropriate to issue a legal hold notice to relevant document custodians to ensure preservation of documents pending legal proceedings on the subpoena.

Afterward

- ☐ **Evaluate litigation options and deadlines;** preserve all records; debrief with officials about what occurred.



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