

Understanding Federal Demands for Election Records in Texas

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.

While this scenario may seem improbable, it 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 on the Fulton County, Georgia, elections office 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 elsewhere,⁶ 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 Texas 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.gand.355087/gov.uscourts.gand.355087.22.2.3.pdf>.

² Barrett, Devlin, Richard Fausset, and Nick Corasaniti, "F.B.I. agents search Georgia Election Center," *The New York Times*, January 28, 2026, <https://www.nytimes.com/2026/01/28/us/politics/fbi-search-election-center-georgia.html>.

³ Harmeet K. Dhillon, 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 Waymont, *A Judicial Guide to Search Warrants Seeking Election Materials*, UCLA School of Law: Safeguarding Democracy Project, 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 Law Blog, <https://electionlawblog.org/wp-content/uploads/berstein-seizure.pdf>; Justin Levitt & John Keller, *Election-Related Search Warrants*, Aug. 24, 2026, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7227158.

The Limits of Federal Authority Over Election Records

The federal government plays 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 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.¹² 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

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

⁸ *Watson v. Republican Nat'l Comm.*, 609 U.S. ---, 2026 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, p. 362)).

⁹ Search Warrants for Election Materials, UC Berkeley Edley Center on Law and Democracy, June 2026, <https://acrobat.adobe.com/id/urn:aaid:sc:US:4243044e-7cea-4f72-9ade-379f076eab59?viewer%21megaVerb=group-discover>.

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

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

¹² See, e.g., *Kentucky v. King*, 563 U.S. 452 (2011).

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,¹³ 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.¹⁴ 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.¹⁵ 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 represents to demand production of materials “forthwith” or immediately. 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.¹⁶ A recipient faced with a forthwith 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.¹⁷

¹³ Fed. R. Crim. P. 17(c)(2).

¹⁴ *Fulton County Board of Registration and Elections v. United States*, 11-12 2026 WL 1959461 (N.D. Ga. July 7, 2026).

¹⁵ 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”).

¹⁶ 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).

¹⁷ See Charles Doyle, Cong. Rsch. Serv., *The Federal Grand Jury* (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 (S.D.N.Y. 1985).

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.¹⁸ 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.¹⁹ 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.

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

¹⁸ 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).

¹⁹ Compare Fed. R. Crim. Proc. Rule 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) ("Postmaster General may request that the Attorney General seek enforcement of the subpoena in the district court of the United States").

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."²⁰ 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,"²¹ 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."²² Federal regulation likewise directs that a search warrant "should not be used" for documentary materials where less intrusive means would suffice.²³ Any demand that departs from these long-established standards deserves careful scrutiny.

²⁰ U.S. Dep't of Justice, Federal Prosecution of Election Offenses, 9 (8th ed. Dec. 2017).

²¹ *Id.* at 11 (noting that this practice "avoids interfering with the governmental processes affected by the election").

²² *Id.* at 83.

²³ 28 C.F.R. § 59.4(a)(1).

Texas Election Law

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

- 1 **Chain-of-custody rules** that assign continuous, mandatory responsibility for election materials to specific officials at every stage of the election cycle
- 2 **Criminal provisions** that penalize interference with a legal custodian's possession of election materials and an official's failure to perform custody related duties; and
- 3 **Redaction and public access** timing requirements governing voted ballots, together with confidentiality protections for voter registration records.

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

Chain of Custody Through the Election Cycle

Texas law mandates an unbroken chain of custody for election materials, from the distribution of election supplies through the close of the retention period. At every stage, a specific official is responsible for the security of election materials, though which official varies by stage and by the specific item involved. An extralegal transfer of ballots to federal officials does not fit anywhere in this framework.

The governing statute and regulations outline the following chain of custody:

• Before voting

Before it is distributed, voting system equipment must be kept in a locked room, and the county commissioners court is responsible for its proper maintenance and storage.²⁴ For the midterms, the county clerk or election administrator must distribute election supplies — equipment, ballots, etc. — to each presiding judge not later than one hour before the polls are required to open, and to the early voting clerk before early voting begins.²⁵ Delivery of that equipment and those supplies may be made by the distributing authority itself, the presiding

²⁴ Tex. Elec. Code § 123.034.

²⁵ Tex. Elec. Code §§ 51.001, 51.004.

judge, or, for this kind of election, the sheriff or a constable.²⁶ If a judge hasn't obtained supplies directly, the sheriff must deliver them on the clerk's request, though the sheriff isn't required to transport anything too large for a passenger vehicle.²⁷ Ballots specifically must be sealed and marked with the ballot count and serial-number range before distribution, except for ballots the early voting clerk holds for early voting.²⁸

• Mail ballots

A marked ballot must be returned to the early voting clerk by mail, a common or contract carrier, or in person while polls are open on election day, and must arrive before polls close on election day. Two exceptions extend that deadline. A ballot placed in the mail before election day, carrying a cancellation mark showing it entered the mail system by 7 p.m. on election day, has until 5 p.m. the following day.²⁹ A ballot cast from an address outside the United States has until the fifth day after the election (or the next business day, if that day falls on a Saturday, Sunday, or holiday) if it is 1) placed for delivery before polls closed on election day and 2) includes a cancellation mark showing it entered the mail system before polls closed on election day.³⁰

A ballot that misses its deadline may not be counted; the clerk instead logs its time of receipt and retains it, unopened, in a locked container for the standard retention period before it may be destroyed.³¹

A ballot that arrives on time is enclosed by the clerk in a jacket envelope, along with supporting materials.³² The envelopes containing the ballots are then delivered to the early voting ballot board.³³

• Early voting (October 19–30, 2026)

Early voting site officials, acting under the early voting clerk's authority, must maintain the security of ballots and voting equipment throughout the voting period — keeping the ballot box locked with duplicate keys held separately and securing voting machines each night — and must deliver the sealed box, once voting ends, to whichever body has legal authority to open and count it.³⁴

²⁶ 1 Tex. Admin. Code § 81.46 (2012).

²⁷ Tex. Elec. Code § 51.009.

²⁸ Tex. Elec. Code § 51.006.

²⁹ Tex. Elec. Code § 86.007(a)(2).

³⁰ Tex. Elec. Code § 86.007(d), (d-1), (e)–(f).

³¹ Tex. Elec. Code §§ 86.007(c), 86.011(c).

³² Tex. Elec. Code § 86.011(b).

³³ Tex. Elec. Code § 87.021.

³⁴ Tex. Elec. Code §§ 83.001, 83.031, 85.032, 85.033, 87.021–87.022; Texas Secretary of State, Early Voting Ballot Board Handbook (rev. July 10, 2026), at 13, <https://www.sos.state.tx.us/elections/forms/ballot-board-handbook.pdf>.

• Election Day

The presiding judge is responsible for the security of ballots and equipment at the polling place: from the time ballots are received until precinct returns are certified, the judge must prevent unauthorized access, and once polls open, ballots must stay in the plain view of an election officer.³⁵

• After voting ends

Materials are transported from the polling place by election officers to the appropriate election authority, which differs between the various types of materials.³⁶ Poll watchers are entitled to accompany the delivery, following in a separate vehicle if necessary so long as they can keep it in sight.³⁷ An election officer who fails to deliver, fails to deliver on time, or fails to prevent unauthorized handling of the materials while in the officer's custody commits a Class B misdemeanor.³⁸

• Retention

The election authority that receives election materials after voting ends must preserve them for at least 22 months after election day unless a pending election contest or criminal investigation extends the period.³⁹

In sum, from the distribution of election supplies through the close of the retention period, Texas law places election materials in the hands of a designated custodian. There is no point in the process at which election materials may lawfully sit outside this chain of custody.

Criminal Provisions Protecting Election Materials

Texas law also criminalizes conduct threatening the security of election materials — including conduct by the official who has custody of them. Misdemeanor offenses include:

- Intentionally obstructing the distribution of election supplies;⁴⁰
- Failing to deliver precinct returns or ballots on time or allowing their unauthorized handling while in custody;⁴¹
- Unauthorized entry into a ballot box during the retention period, or failing to prevent it;⁴²
- Improperly relinquishing custody of a ballot-box key;⁴³ and

³⁵ Tex. Elec. Code §§ 61.005(a)–(b).

³⁶ Tex. Elec. Code § 66.051.

³⁷ Tex. Elec. Code § 33.060.

³⁸ Tex. Elec. Code § 66.054.

³⁹ Tex. Elec. Code §§ 66.058(a), 1.013.

⁴⁰ Tex. Elec. Code § 51.011.

⁴¹ Tex. Elec. Code § 66.054.

⁴² Tex. Elec. Code § 66.058 (c)–(d).

⁴³ Tex. Elec. Code § 66.060(d).

- A presiding judge's failure to prevent unauthorized handling of ballots or provisional ballot envelopes.⁴⁴

Texas also makes the following conduct a felony:

- Unauthorized possession of another person's ballot or carrier envelope, escalating from a Class A misdemeanor to a third-degree felony if possessed without the voter's request;⁴⁵
- Unlawful removal of voted ballots from a ballot box;⁴⁶
- Discarding or destroying a ballot without consent — a felony of the second degree, rising to the first degree if committed by a person acting in their capacity as an elected official;⁴⁷
- Intentionally destroying, concealing, removing, or otherwise impairing the availability of a ballot or other election record — a Class A misdemeanor, escalating to a state jail felony if the person has intent to defraud or harm another;⁴⁸ and
- Creating, altering, modifying, waiving, or suspending any legally mandated election standard, practice, or procedure without express authorization by the Election Code, which on its face could reach an official who departs from the custody and retention requirements described in Texas law.⁴⁹

Confidentiality of Voted Ballots and Voter Registration Records

In addition to chain-of-custody protections, a federal effort to obtain election materials might also run into state confidentiality, redaction, and public-records requirements. In particular, Texas courts have interpreted Article VI, section 4 of the State Constitution as providing a right to a secret ballot that belongs to the individual voter.⁵⁰ This right protects personally identifiable information contained in election records that could tie a voter's identity to how they voted in an election.⁵¹

Voted ballots

In Texas, images of voted ballots (if a county maintains such images) and cast vote records are only available for public inspection starting the day after the final canvass is completed.⁵² Original voted ballots do not become available for public inspection until the 61st day after election day.⁵³ Before making a ballot available for public inspection, the county must redact any personally identifiable information to protect the secrecy of the ballot.⁵⁴

⁴⁴ Tex. Elec. Code § 61.005(c).

⁴⁵ Tex. Elec. Code §§ 86.006(f)–(g-1).

⁴⁶ Tex. Elec. Code § 276.003.

⁴⁷ Tex. Elec. Code §§ 276.013(a)(9), 276.013(b).

⁴⁸ Tex. Penal. Code §§ 37.01(2)(E), 37.10(a)(3), 37.01(c).

⁴⁹ Tex. Elec. Code § 276.019.

⁵⁰ See *Wood v. State ex rel. Lee*, 126 S.W.2d 4 (Tex. 1939); *Oliphint v. Christy*, 299 S.W.2d 933, 939 (Tex. 1957); *In re Talco-Bogata Consol. Indep. Sch. Dist. Bond Election*, 994 S.W.2d 343 (Tex. App.—Texarkana 1999, no pet.).

⁵¹ See generally *Wood*, 126 S.W.2d at 9 (confirming that the Texas Constitution guarantees each voter a secret ballot and protects voters from being compelled to reveal how they voted); *Carroll v. State*, 61 S.W.2d 1005, 1008 (Tex. Crim. App. 1933) (emphasizing that constitutional secret ballot protections allow voters to keep the identity of their chosen candidate secret and free from post-election questioning); see also Tex. Gov't Code § 552.007 (providing that a governmental body has no discretion to release information deemed confidential by law).

⁵² Tex. Elec. Code § 1.012(f).

⁵³ Tex. Elec. Code § 1.012(g).

⁵⁴ Tex. Elec. Code § 1.012(h).

Voter registration records

Texas law makes certain registration information confidential, including a voter's Social Security number and Texas driver's license or DPS identification number, and, for specified protected categories, residence address and telephone number — all of which must be redacted before release.⁵⁵ These state-law protections are significant because, unlike the limited inspection authority for post-election records under 52 U.S.C. § 20703, there is no federal statute that broadly authorizes federal officials to demand confidential voter registration data held by a state or county.⁵⁶ As of this writing, at least 23 federal district courts and one circuit court of appeals 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.

⁵⁵ Tex. Elec. Code §§ 13.004(c)-(c-1).

⁵⁶ 52 U.S.C. § 20703.

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.
- ☐ **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, 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. 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.** Alter, move, or destroy nothing, 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 County 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).
- ☐ **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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