

Understanding Federal Demands for Election Records in Wisconsin

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 Wisconsin 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).

Wisconsin Election Law

Wisconsin's decentralized elections are administered by over 1,850 municipal clerks. Wisconsin 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 rules** that assign continuous, mandatory responsibility for election materials to specific officials at every stage of the election cycle.
- 2 Confidentiality protections** that make voted ballots accessible only by a qualifying elections board or as necessary in the course of a judicial proceeding.²⁴
- 3 Criminal provisions** that penalize both interference with a legal custodian's possession of election materials and an official's willful failure to perform custody-related 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 requirements.

Chain of Custody Through the Election Cycle

Wisconsin law mandates an unbroken chain of custody for election materials. At every stage of the election cycle, a specific official — chief inspector, inspector, municipal clerk, county clerk — is legally responsible for the security of ballots and equipment.²⁵ These duties are continuous and mandatory, and state law makes it a crime both to interfere with a legal custodian's possession of election materials and for an official to willfully fail to perform custody-related duties.²⁶ A transfer of ballots to federal officials without a court order or qualifying board order does not comply with this framework, and risks compromising the legal integrity of the records' custody.

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

²⁴ While voted ballots are government records subject to public inspection and copying per Wis. Stat. §§ 19.31–19.39, redactions are applied where necessary to prevent a ballot from being linked to an identifiable voter. Wis. Stat. § 19.36(6).

²⁵ Wis. Stat. §§ 7.10(1)–(3), 7.51.

²⁶ Wis. Stat. § 12.60 (1)(a)–(b).

Before voting

The county clerk prepares and prints ballots²⁷ before distributing them to municipal clerks in separately sealed packages no later than 48 days before a partisan primary, general election, and presidential preference primary, and no later than 22 days before other elections.²⁸ From there, municipal clerks are in charge and supervise elections.²⁹ They keep an official record of when and in what condition the ballot packages were received from the county clerk.³⁰ Municipal clerks must deliver these packages, still unopened, to the proper election inspectors the day before the election.³¹

Voting Equipment

Optical scan tabulators, which are the most common equipment used for in-person voting in Wisconsin, as well as direct-recording electronic (DRE) voting machines, specifically the ImageCast X (ICX), the only certified DRE system used in the state, are subject to rigorous security and chain-of-custody protocols.³² Throughout electronic voting systems' lifecycle, the county or municipal clerk must maintain strict control of all equipment keys and removable memory devices, logging every transfer of these uniquely serialized units in a written chain-of-custody record that documents the name, date, time, and reason for access.³³ On Election Day, before polls open, the Chief Inspector must verify that the physical, serialized, tamper-evident seals on the DRE units and memory compartments identically match the serial numbers pre-recorded by the clerk on the Inspectors' Statement, repeating these verification checks at regular intervals throughout the day.³⁴ Election inspectors must "zero" all optical scan tabulators by printing a results tape publicly demonstrating that zero votes have been cast for candidates or referenda.³⁵ For audit and recount purposes, Wisconsin law designates the DRE-generated voter-verifiable paper audit trail (VVPAT)—a permanent, voter-verified physical printout—as the official ballot.³⁶

Absentee ballots

The county clerk shall distribute an adequate supply of separately wrapped official ballots to each municipal clerk.³⁷ The municipal clerk shall supply ballots to absentee ballot applicants no later than 47 days before a partisan primary, general election, or presidential preference primary, and no later than 21 days before other elections, and within one business day for subsequent requests.³⁸ Voted absentee ballots returned to the municipal clerk before Election Day are sealed in carrier envelopes endorsed with the clerk's name and title, securely stored,

²⁷ Wis. Stat. § 7.10(1)(b).

²⁸ Wis. Stat. § 7.10(1), (3).

²⁹ Wis. Stat. § 7.15(1).

³⁰ Wis. Stat. § 7.15(5).

³¹ *Id.*; Wis. Stat. § 7.15(1)(c).

³² Wis. Elections Comm'n, *Election Law and Administration Manual* §§ 9.1.3, 9.5.1, 9.5.3 (2026); Wis. Stat. § 5.02(4m).

³³ Wis. Elections Comm'n, *Election Law and Administration Manual* § 9.5.3 (2026).

³⁴ Wis. Elections Comm'n, *Election Law and Administration Manual* §§ Appendix 7.16(A), 9.5.4 (2026).

³⁵ Wis. Elections Comm'n, *Election Law and Administration Manual* § 9.4.7 (2026); Wis. Stat. §§ 5.84(2), 7.25(6).

³⁶ Wis. Elections Comm'n, *Election Law and Administration Manual* §§ 9.1.3, 9.66, Elections Glossary 24-18 (2026).

³⁷ Wis. Stat. § 7.10(1).

³⁸ Wis. Stat. § 7.15(1)(cm).

and delivered to the polling place or central count location on Election Day in a secure package.³⁹ The municipal clerk must deliver all absentee ballots it receives to the polling place or central count location before the polls close at 8:00 p.m.⁴⁰

• Early voting (October 20–November 1, 2026)⁴¹

Early voting is in-person absentee voting (IPAV) and is led by municipal clerks at designated voting sites.⁴² A municipal governing body may designate one or more politically neutral, fully accessible alternate sites where voters can request, cast, and return in-person absentee ballots.⁴³ The alternate site designation must be officially established at least 14 days before absentee ballots become available, which then shifts all in-person absentee voting functions exclusively to the alternate site(s) instead of the clerk's office.⁴⁴ The location must be staffed by the clerk or their employees, and a prominent public notice of the designation must be displayed in the clerk's office and posted on the municipal website.⁴⁵ Voters must present photo ID, mark their ballot in secret, and seal it inside the certificate envelope in the presence of the clerk or election official, who verifies the ID, initials the certificate, and serves as witness.⁴⁶ Ballots cast are folded and placed into the certificate envelope and cannot be removed from the voting site.⁴⁷ Within 48 hours of receiving the completed certificate envelope (or the next business day if over a weekend), the municipal clerk must log its receipt in WisVote (the statewide voter registration database).⁴⁸ The unopened certificate envelope is placed into an endorsed carrier envelope, locked in a secure location in the clerk's office, and delivered to the polling place or central count location on Election Day by no later than 8:00 p.m.⁴⁹

• Election Day

Immediately before polls open at 7:00 a.m., ballot boxes are publicly opened, turned upside down to demonstrate that they are empty, then locked and are not reopened until the polls close.⁵⁰ At polling places using paper ballots or optical-scan ballots, two election inspectors must write their initials on the back of each ballot before issuing it to a voter.⁵¹ Voters mark their ballots in secret in an unoccupied booth and deposit them directly into the locked ballot box or tabulator.⁵²

³⁹ Wis. Stat. § 6.88(2).

⁴⁰ Wis. Stat. § 6.87(6).

⁴¹ Wis. Stat. § 6.86(1)(b) gives municipal clerks discretion to set specific dates and times for early voting within these dates.

⁴² Wis. Stat. §§ 6.855, 6.86(1)(b).

⁴³ Wis. Stat. § 6.855(1)–(2).

⁴⁴ *Id.*

⁴⁵ Wis. Stat. § 6.855(2)–(3).

⁴⁶ Wis. Stat. §§ 6.87(2), (4)(b)1, 6.88.

⁴⁷ Wis. Stat. § 6.87(3)(a).

⁴⁸ Wis. Stat. § 6.33(5)(a)(2).

⁴⁹ Wis. Stat. §§ 6.88(1)–(2), 7.52, 6.87(6).

⁵⁰ Wis. Stat. §§ 7.37(3), 6.78.

⁵¹ Wis. Stat. § 7.37(4).

⁵² Wis. Stat. § 6.80(1)–(2).

• After voting ends

Immediately after polls close, election inspectors (acting as the local board of canvassers⁵³) must publicly canvass all votes without adjournment, proceeding continuously until all returns are complete, either at the polling place or an authorized central count location.⁵⁴

Where voting machines or electronic tabulators are used, inspectors remove or print the record of votes cast to canvass, record, and announce the totals on the provided tally sheets, and tally any qualified write-in votes.⁵⁵ After completing the count, at least three inspectors—including the chief inspector and at least one inspector representing each political party—as well as any officials assisting with the tally, verify, sign, and certify the Inspectors' Statements and Tally Sheets.⁵⁶

This count by the acting local board of canvassers is integrated into the municipal canvass based on the municipality's size and the ballots' status.⁵⁷ In municipalities with only one polling place (and where no provisional ballots are outstanding and no central absentee canvassing is used), the election inspectors themselves act as the Municipal Board of Canvassers on Election Night, allowing them to complete, sign, and certify the municipal canvass statement and officially determine the winners of municipal contests.⁵⁸

In municipalities with multiple polling places (or those with unresolved provisional or central count absentee ballots), a separate Municipal Board of Canvassers—composed of the municipal clerk and two appointed qualified electors—must convene no earlier than the receipt of all local returns on Election Night and no later than 9:00 a.m. on the Monday following the election to reconcile the in-person and absentee poll lists, tabulate any eligible provisional ballots, combine returns, and officially certify the results.⁵⁹ Voted ballots are locked in tamper-evident containers with their seal serial numbers logged on the Ballot Container Certificate and the Inspectors' Statement, while tally sheets, statements, and poll lists are sealed in separate envelopes outside the ballot container.⁶⁰ Inspectors then immediately deliver all materials to the municipal clerk.⁶¹

This delivery includes any cast provisional ballots, which must never be placed inside the main ballot container but must instead be secured in a separate bag protected by its own tamper-evident seal.⁶² Because provisional voters have until 4:00 p.m. on the Friday following the election to provide required documentation, the municipal clerk retains exclusive custody of these ballots during the curing window rather than transmitting them to the county clerk on the day after the election.⁶³

⁵³ Wis. Stat. § 7.37(12).

⁵⁴ Wis. Stat. §§ 7.51(1), 7.52.

⁵⁵ Wis. Stat. § 7.51(2)(g)-(h).

⁵⁶ Wis. Stat. § 7.51(4)(a).

⁵⁷ Wis. Stat. §§ 7.52(9), 7.53(1), (2)(d).

⁵⁸ Wis. Stat. §§ 7.52(9), 7.53(1), Wis. Elections Comm'n, *Election Law and Administration Manual* §§ 14.24.11 (2026).

⁵⁹ Wis. Stat. §§ 7.52(9), 7.53(1), (2)(d).

⁶⁰ Wis. Stat. § 7.51(3)(a), (5)(a).

⁶¹ Wis. Stat. § 7.51(5)(a)4.

⁶² Wis. Stat. § 7.53(3); Wis. Elections Comm'n, *Election Law and Administration Manual* §§ 14.24.10 (2026).

⁶³ Wis. Stat. § 6.97(3)-(4).

Once the curing deadline passes and the Municipal Board of Canvassers tabulates any valid ballots, the municipal clerk delivers these provisional ballots and the corresponding amended returns to the county clerk no later than 4:00 p.m. on the Monday after the election.⁶⁴ The municipal clerk must report the returns to the county clerk no later than two hours after tabulation is complete,⁶⁵ and the county clerk must publicly post the returns online within two hours of receiving them.⁶⁶ The municipal clerk then delivers the secured ballot containers, carrier envelopes (for both rejected and accepted absentee ballots, see Forms EL-102 and EL-103, respectively), and certified copies of the Inspectors' Statements and tally sheets to the county clerk by 4:00 p.m. on the day after the election, or by 4:00 p.m. on the second day after the election for municipalities that canvass absentee ballots at central count locations.⁶⁷ The municipal clerk retains the original Inspectors' Statement.⁶⁸

Not later than 9:00 a.m. on the Tuesday following the election, the County Board of Canvassers convenes to publicly examine municipal returns, reconcile ward totals, and enter certified tallies into the statewide Canvass Reporting System (CRS).⁶⁹ All canvassers sign and certify the resulting Board of Canvassers Report, which the county clerk transmits to the Wisconsin Elections Commission (WEC) via email and certified hard copies within strict statutory deadlines—within 7 days for a presidential general election, 9 days for a spring primary, 10 days for a partisan primary, and 14 days for a non-presidential general election.⁷⁰ Upon receipt, WEC staff canvasses all 72 county returns for completeness and mathematical accuracy, working with clerks to resolve any reporting defects.⁷¹

Retention

Since federal, state, and county races appear on consolidated ballots delivered to the county clerk, the county clerk serves as the primary legal custodian of physical ballots and absentee return envelopes while the municipal clerk retains the original Inspectors' Statement and local records.⁷² For any election containing a federal contest, all ballots, applications, envelopes, tally sheets, and electronic tabulator backups must be securely retained for 22 months.⁷³ Tabulator memory devices may be cleared after 14 days (primary) or 21 days (any other election) once data is transferred to a 22-month backup medium.⁷⁴ All destruction schedules are automatically frozen while any recount, appeal, or related litigation remains pending, or upon a court preservation order.⁷⁵

⁶⁴ Wis. Stat. § 7.51(5)(b), Wis. Elections Comm'n, *Election Law and Administration Manual* §§ 14.27.2, 14.27.7 (2026).

⁶⁵ Wis. Stat. § 7.51(4)(c).

⁶⁶ Wis. Stat. § 7.60(1).

⁶⁷ Wis. Stat. § 7.51(5)(b).

⁶⁸ Wis. Stat. § 7.51(5)(a)(5).

⁶⁹ Wis. Stat. § 7.60(3).

⁷⁰ Wis. Stat. § 7.60(5)(a).

⁷¹ Wis. Stat. § 7.70(1)(b); WEC ELAW Manual §§ 15.7.3, 15.7.4.

⁷² Wis. Elections Comm'n, *Election Law and Administration Manual* §§ 15.1.3, 15.1.5 (2026), Wis. Stat. §§ 7.23(1), 7.51(3)(d), 7.51(5)(a)(4)–(5), 7.51(5)(b).

⁷³ Wis. Stat. § 7.23(1)(f)–(g); 52 U.S.C. § 20701.

⁷⁴ Wis. Stat. § 7.23(1)(g).

⁷⁵ Wis. Stat. § 7.23(2).

In sum, at every stage of the election cycle—from the initial preparation of ballots through their mandatory 22-month federal retention period—Wisconsin law places election materials in a continuous, documented chain of custody. The multiple tiers of statutory custodians who review, sign, seal, and deliver these records, coupled with mandatory bipartisan representation for critical verification and sealing steps, ensure an unbroken paper trail for all election materials.⁷⁶

Criminal Provisions Protecting Election Materials

Wisconsin law reinforces custodial duties by criminalizing unauthorized interference with election materials. It is a Class I felony to tamper with or disable voting machines, tabulating software, or ballot boxes; to break seals or locks; or to unlawfully withhold, conceal, or destroy deposited ballots during or after an election.⁷⁷ Election officials who willfully alter or destroy poll lists or registration lists face identical Class I felony liability.⁷⁸ Lower-tier offenses—such as failing to deliver ballots prior to an election after agreeing to do so,⁷⁹ concealing ballots,⁸⁰ or damaging booth supplies⁸¹—are prosecuted as misdemeanors.⁸² Conviction under these provisions also triggers mandatory disqualification from serving as an election official for five years.⁸³

Confidentiality of Voted Ballots and Voter Registration Records

In addition to strict chain-of-custody laws, any federal effort to obtain voted ballots or election materials must conform to the absolute voter privacy protections guaranteed by the Wisconsin Constitution and state law.⁸⁴

In Wisconsin, the right to a private vote is constitutionally mandated. This broad constitutional mandate strictly dictates that all votes must be cast by secret ballot, and every voting mechanism—from paper ballots to electronic tabulators—must conform to this standard of absolute voter secrecy.⁸⁵ Wisconsin has various state laws enforcing this mandate including requiring every voting method be designed to assure complete secrecy so that no one can identify how an elector voted and ensuring electors may privately verify, and correct their ballot choices before their vote is officially cast.⁸⁶

To safeguard this secrecy, election officials are criminally prohibited from observing how an elector marks a ballot (unless explicitly asked to assist), allowing unauthorized persons to watch a voter, or disclosing how a voter voted except as necessary in judicial proceedings.⁸⁷ It is also a crime to

⁷⁶ Wis. Stat. § 7.10(3), 7.51(3), 9.01(1)(b)(2)-(3).

⁷⁷ Wis. Stat. §§ 12.13, 12.60(1)(a).

⁷⁸ Wis. Stat. § 12.13(2)(b)(5).

⁷⁹ Wis. Stat. § 12.13(3)(c).

⁸⁰ *Id.*

⁸¹ Wis. Stat. § 12.13(3)(d).

⁸² Wis. Stat. § 12.60(1)(b), (bm).

⁸³ Wis. Stat. § 12.60(3).

⁸⁴ Wis. Const. Art. III, § 3; Wis. Stat. § 5.91(1).

⁸⁵ *Id.*; see also *Teigen v. Wis. Elections Comm'n*, 976 N.W.2d 809 (Wis. 2022); *State ex rel. Binner v. Buer*, 182 N.W. 855 (Wis. 1921); *Carlson v. Oconto Cnty. Bd. of Canvassers*, 623 N.W.2d 195 (Wis. Ct. App. 2001).

⁸⁶ Wis. Stat. §§ 5.37(1), 5.91(13)-(16).

⁸⁷ Wis. Stat. § 12.13(2)(b)(1).

solicit a voter to show how their ballot was cast⁸⁸ and for voters to intentionally display their marked ballots to make them identifiable.⁸⁹

Consequently, while voted ballots and ballot images are public records, they are protected by an impenetrable wall of anonymity even when subject to inspection.⁹⁰ Physical ballot containers remain sealed under strict chain of custody and may be unsealed to recount or alter official vote totals only by a board of canvassers in open session or by a court and in the presence of the ballots' custodian.⁹¹

⁸⁸ Wis. Stat. § 12.13(3)(q).

⁸⁹ Wis. Stat. § 12.13(1)(f).

⁹⁰ Wis. Stat. §§ 19.31–19.39.

⁹¹ Wis. Stat. §§ 5.05(5s), 7.54, 9.01.

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, chief election inspector → municipal clerk → county clerk → Wisconsin Elections Commission.
- ☐ **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 Wisconsin Election Commission 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** if expressly permitted, 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 Wisconsin law prohibits surrendering custody without a court order or qualifying board order. Engaging counsel and declining to immediately fulfill 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 Wisconsin Election Commission 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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