

Understanding Federal Demands for Election Records in California

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 elections 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

State authorities have also interfered with the custody of election materials. In February 2026, Riverside County Sheriff Chad Bianco seized more than 650,000 ballots from the November 2025 special election on redistricting, citing an unverified fraud complaint that local elections officials had already deemed unfounded.⁶ In response to this episode, California Governor Gavin Newsom signed Senate Bill 73 into law on May 27, 2026, strengthening California's elections defenses against interference with ballot custody.⁷ And on September 24, 2026, the California Supreme Court ruled that Sheriff Bianco's seizure of the ballots violated the plain language of Cal. Elec. Code § 15551(d) which states that “[i]n no event” shall voted ballots “be taken from the custody of the elections official.”⁸ The Court concluded that this provision applies even when the ballots are sought pursuant to a search warrant signed by a magistrate or other judge.⁹

¹ Appl. & Aff. for Search Warrant, *In re the Search of the Premises Located at the Off. of the Clerk of the Court*, No. 1:26-MC-0177 (N.D. Ga. Jan. 28, 2026), ECF No. 22-2, https://storage.courtlistener.com/recap/gov.uscourts.gand.355087/gov.uscourts.gand.355087.22.2_3.pdf.

² Devlin Barrett, Richard Fausset, & Nick Corasaniti, *Move to Seize Ballots Thrusts F.B.I. Into Trump's Election Conspiracy Claim*, 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, Ass't Att'y Gen., to Cathy M. Garrett, Wayne Cnty. Clerk, *Demand for Wayne County 2024 Federal Election Ballots and Records* (Apr. 14, 2026), <https://embed.documentcloud.org/documents/28055350-dois-letter-to-wayne-county?embed=true&responsive=false&sidebar=false>.

⁴ Grand Jury Subpoena Issued to Warren Peterson, Ariz. Senate Pres. (D. Ariz., Mar. 5, 2026), <https://www.documentcloud.org/documents/27897134-fbi-subpoena/>.

⁵ Sasha Hupka, *Trump Administration Subpoenas 2020 Records from Maricopa County Amid Push to Investigate Election*, Votebeat (Mar. 9, 2026), <https://www.votebeat.org/arizona/2026/03/09/maricopa-county-2020-election-fbi-records-warren-petersen/>.

⁶ Rob McMillan, *Riverside County Sheriff Investigates 2025 Special Election, Citing Discrepancy in Number of Votes*, ABC7 (Ma. 21, 2026), <https://protdem.org/4e4WFfv>; Grace Toohey & Hailey Branson-Potts, *Court Releases Secret Warrants That Riverside Sheriff Used to Seize Over 650,000 Ballots*, L.A. Times (Apr. 8, 2026), <https://protdem.org/4xibLWj>; Olga R. Rodriguez, *California Supreme Court Hears Arguments Over Sheriff's Seizure of Ballots*, AP News (Aug. 24, 2026), <https://apnews.com/article/sheriff-seized-ballots-california-supreme-court>.

⁷ See Press Release, Off. of Governor Gavin Newsom, *Governor Newsom Signs Legislation to Further Protect California Elections from Interference and Intimidation*, (May 27, 2026), <https://www.gov.ca.gov/2026/05/27/>; Press Release, Off. of Sabrina Cervantes, *Governor Signs Landmark Cervantes' Bill to Protect California Elections from Interference* (May 27, 2026), <https://sd31.senate.ca.gov/>.

⁸ *Cervantes v. Bianco*, No. S295866, 2026 WL 2871925, at *2–3, 11(Cal. Sept. 24, 2026) (quoting Cal. Elec. Code. § 15551(d)); see also *id.* at *16–17, *23–24 (Liu, J., concurring).

⁹ *Id.* at *15–16, *16–18, *21–22 (Liu, J., concurring). In a separate but related case, *Bonta v. Bianco*, No. S295901, 2026 WL 2871944 (Cal. Sept. 24, 2026), the Court held that the authority vested in the Attorney General under the state constitution and the state government code includes the power to give binding directions to sheriffs regarding a particular investigation that are consistent with

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,¹⁰ federal law imposes strict limitations on whether and how federal law enforcement can obtain election-related materials from state or local elections 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 elections 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 California 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 elections officials and government attorneys think through how to prepare for, scrutinize, and respond to a demand for election materials.

the state attorney general's duty "to see that the laws of the State are uniformly and adequately enforced" pursuant to Article V, § 13 of the California Constitution. *Id.* at *4–9. Therefore, California Attorney General Bonta's order directing Sheriff Bianco to pause his investigation to give the Attorney General's office time to review the matter was lawful. *Id.* at *12. The Court also noted that an order from the attorney general requesting that the sheriff stop his investigation altogether was within the bounds of the attorney general's lawful authority under the same provision, though the Court did not otherwise address that conclusion in its opinion given that the attorney general had "directed only a pause in the investigation." *Id.* at *6.

¹⁰ See generally, e.g., Richard L. Hasen & Shelby Wayment, *A Judicial Guide to Search Warrants Seeking Election Materials*, UCLA Sch. of L., Safeguarding Democracy Proj. (Sept. 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 (Aug. 24, 2026), <https://electionlawblog.org/wp-content/uploads/bernstein-seizure.pdf>; Justin Levitt & John Keller, *Election-Related Search Warrants*, 7 U.C.L.A. L. Rev. Discourse (forthcoming 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, § 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 U.S. 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,¹¹ none of those statutory grants extends to elections.¹² 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 a finding of probable cause,¹³ and that any search or seizure be reasonable.¹⁴

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 elections 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.¹⁵ A warrant is executed without advance notice. 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.¹⁶

¹¹ 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>.

¹² See *Watson v. Republican Nat'l Comm.*, 609 U.S. 672 (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 (C. Rossiter ed. 1961))).

¹³ See, e.g., U.C. Berkeley Edley Ctr. on L. & Democracy, *Search Warrants for Election Materials*, at 2–5 (June 2026), <https://acrobat.adobe.com/id/urn:aaid:sc:US:4243044e-7cea-4f72-9ade-379f076eab59?viewer%21megaVerb=group-discover>.

¹⁴ U.S. Const. amend. IV; Fed. R. Crim. P. 41.

¹⁵ See *United States v. Grubbs*, 547 U.S. 90, 95 (2006).

¹⁶ Levitt & Keller, *supra* note 10, at 21, 25.

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.¹⁷ 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, elections 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.¹⁸

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,¹⁹ 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.²⁰ 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.²¹ 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 the United States DOJ’s own manual permits such subpoenas “only when an immediate response is justified and then only with prior approval of the United States Attorney.”²² A

¹⁷ See, e.g., *Kentucky v. King*, 563 U.S. 452, 461–62 (2011).

¹⁸ See Hasen & Wayment, *supra* note 10, at 10–13.

¹⁹ Fed. R. Crim. P. 17(c)(2).

²⁰ *Fulton Cnty. Bd. of Registration & Elections v. United States*, 836 F. Supp. 3d 1305, 1316–20 (N.D. Ga. 2026).

²¹ 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”).

²² 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).

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.²³

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.²⁴ 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.²⁵ 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. § 20701 requires custodians to retain for twenty-two months after a federal election.²⁶ 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.”²⁷ 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 that includes 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.

²³ See Charles Doyle, Cong. Rsch. Serv., No. 95-1135, *The Federal Grand Jury* at 19–20 (July 3, 2025) (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).

²⁴ See, e.g., 8 U.S.C. § 1225(d)(4)(A) (immigration enforcement); *id.* § 1324a(e)(2) (employment verification); 19 U.S.C. § 1509 (customs summonses); 18 U.S.C. § 1968 (civil investigative demand under RICO).

²⁵ Compare Fed. R. Crim. P. 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); see also 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 . . .”).

²⁶ 52 U.S.C. § 20703.

²⁷ *Id.* § 20701.

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."²⁸ 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,"²⁹ and that elections 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."³⁰ Federal regulation likewise directs that a search warrant "should not be used" for documentary materials where less intrusive means would suffice.³¹ Any demand that departs from these long-established standards deserves careful scrutiny.

²⁸ U.S. Dep't of Justice, *Federal Prosecution of Election Offenses* 9 (8th ed. 2017), <https://electionjudgments.org/api/files/15950091773541o6uhighakw.pdf>.

²⁹ *Id.* at 11 (noting that this practice "avoids interfering with the governmental processes affected by the election").

³⁰ *Id.* at 83 (footnote omitted).

³¹ 28 C.F.R. § 59.4(a)(1).

California Election Law

California 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 exempt voted ballots from public disclosure.
- 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

California law mandates an unbroken chain of custody for election materials. At every stage of the election cycle, a designated elections official is legally responsible for the security of ballots and voting equipment, and every transfer of voted ballots between custodians must be documented.³² These duties are continuous and mandatory, and state law makes it a crime both to interfere with an elections official's custody of voted ballots³³ and for an official to willfully fail to perform custody-related duties.³⁴ A transfer of ballots to federal officials violates these requirements, and risks compromising the legal integrity of the records' custody. California law explicitly requires that voted ballots, and any other election-related material or equipment necessary to conduct an election, remain in the custody of elections officials at all times.³⁵ Further, it prohibits any individual from granting law enforcement access to, or possession of, certified voting technology absent a court order,³⁶ or to voter lists or rosters absent a court order or investigation into a limited category of election-fraud violations.³⁷ Recently, in *Cervantes v. Bianco*,³⁸ the California Supreme Court reemphasized the strong prohibition on removing voted ballots from the custody of elections officials, stating that Cal. Elec. Code § 15551(d) "reflects a legislative intent that, even in those

³² Cal. Code Regs. tit. 2, §§ 20143, 20137; Cal. Elec. Code §§ 15201(a), 15202, 15204, 15205, 15207, 12321.

³³ Cal. Elec. Code §§ 15551(d), 18568(i), 18571.

³⁴ *Id.* § 18002.

³⁵ *Id.* § 15551(d) (as amended by S.B. 1418, 2025-2026 Reg. Sess. § 2 (Cal. 2026)).

³⁶ *Id.* § 19230(b).

³⁷ *Id.* §§ 15553(a), 18560.

³⁸ 2026 WL 2871925, at *8.

situations in which it is necessary to view or recount ballots as evidence, they remain in the physical custody of the responsible elections official.”³⁹

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

• Before voting

After printing, unfinished ballot cards must be kept in a secured area of the printing facility or in a warehouse, subject to specified exceptions, until they are finished or shipped.⁴⁰ Any warehouse used to store ballots must be secured so that each person who enters is identifiable, unauthorized access is detectable,⁴¹ and all entries and exits are logged.⁴² Before polls open, elections officials must deliver the ballots, or cause them to be delivered, to the precinct board in sealed packages.⁴³ Messengers may also be employed to ensure that ballots are delivered safely.⁴⁴ The elections official prepares a receipt for each polling place, and the precinct board member signs it confirming delivery.⁴⁵ At the polling place, the containers holding the ballots must provide adequate protection during storage and upon removal for use.⁴⁶

• Vote by mail ballots

Provided they are postmarked on or before Election Day, ballots *mailed* through the United States Postal Service or a “bona fide private mail-delivery company,” must be received by the elections official no later than seven days after Election Day (November 10, 2026) to be timely cast⁴⁷ and must be securely retained by the elections official from the time of receipt until at least twenty-two months after the election.⁴⁸

Ballots *hand-delivered* by voters to an elections official, precinct board member, polling place, vote center, or dropoff location must be received before the polls close at 8:00 p.m. on Election Day,⁴⁹ and must similarly be retained by the elections official for at least twenty-two months.⁵⁰ All drop boxes must be secured by a lock or sealable with a tamper-evident seal, and only an elections official and a designated ballot retriever may have access to the keys and/or combination of the lock.⁵¹

³⁹ Note that *Cervantes* was evaluating the lawfulness of a seizure of election materials by a state official, not a seizure pursuant to federal authority. See *id.* at *1.

⁴⁰ Cal. Code Regs. tit. 2, § 20250.

⁴¹ *Id.* § 20251.

⁴² *Id.* § 20253.

⁴³ Cal. Elec. Code § 14103.

⁴⁴ *Id.* § 14104.

⁴⁵ *Id.*

⁴⁶ *Id.* § 14113.

⁴⁷ *Id.* § 3020(b)(1).

⁴⁸ *Id.* § 17301(b).

⁴⁹ *Id.* §§ 3020(a), 3017(a); see also *id.* § 14212 (polls open until 8:00 p.m.).

⁵⁰ *Id.* § 17301(b).

⁵¹ Cal. Code Regs. tit. 2, § 20135(f).

The processing and counting of mail ballots — including ballots that arrive before Election Day — is open to public observation both before and after the election, though observers may not interfere with the process, including by touching or handling the ballots.⁵²

• Early voting (October 5–November 3, 2026)

California law protects the secrecy of voters' choices during early in-person voting, including by requiring voters to mark their ballots privately and conceal their marked ballots from observation.⁵³ The law further specifies that a voter's choice may not be observed when casting a vote-by-mail ballot in person at an elections office or satellite location.⁵⁴ The elections official is also responsible for establishing procedures to ensure the confidentiality and security of the vote-by-mail ballots returned in person during early voting, as well as any associated personal information.⁵⁵

• Election Day

Before voting begins on Election Day, the precinct board at each polling place opens the ballot container in front of those assembled at the polling place and displays the inside of the container to ensure there are no preexisting voted ballots in the box.⁵⁶ Thereafter, the ballot container cannot be removed from the polling place or out of bystanders' presence until ballots are counted, and cannot be opened until after polls close.⁵⁷

The one exception is when the county elections official directs at least two other elections officials to remove a sealed container of voted, untallied ballots before the polls close for delivery to a receiving center or central counting place.⁵⁸ In this case, the team of at least two designated ballot retrievers must retrieve the voted ballots and transport them to the office of the county elections official, a ballot receiving center, a central counting place, or a ballot processing location, while documenting chain of custody at each transfer.⁵⁹ Retrievers cannot make unscheduled stops while carrying ballots,⁶⁰ and the receiving elections official must inspect the secure container for evidence of tampering and document receipt.⁶¹

For elections using voting centers, voted ballots are removed and delivered to a central receiving center at the end of each day.⁶² Officials certify ballot totals⁶³ and securely seal and log any tabulating equipment to prevent additional ballots from being cast until the next voting day.⁶⁴

⁵² *Id.* § 15104(a), (e).

⁵³ Cal. Elec. Code §§ 14224(a), 14275, 14291–93; *see also* Cal. Code Regs. tit. 2, §§ 20874(a)(7), 20876(b).

⁵⁴ Cal. Elec. Code § 3016.3(a).

⁵⁵ *Id.* § 3017(b).

⁵⁶ *See id.* § 14215.

⁵⁷ *Id.*

⁵⁸ *Id.* § 14422(a)(2); Cal. Code Regs. tit. 2, 20143(a)(1)–(5).

⁵⁹ Cal. Code Regs. tit. 2, § 20143(a)(1–5), (b).

⁶⁰ *Id.* § 20143(a)(7).

⁶¹ *Id.* § 20143(a)(9).

⁶² Cal. Elec. Code § 14428(a).

⁶³ *Id.* § 14428(b).

⁶⁴ *Id.* § 14428(d).

Voters with disabilities may vote a regular ballot outside the polling place in an accessible location nearby, but the completed ballot must still be deposited in the ballot container inside.⁶⁵ In these cases, a precinct board member must bring a ballot marking device to the voter, qualify that person to vote, and return the voted ballot to the polling place to be deposited in the ballot container.⁶⁶ If the county cannot bring the device outside, the board member need only bring a regular ballot.⁶⁷

● After voting ends

Under California law, as soon as the polls are closed, the precinct board at each voting location must, in the presence of the public, seal the container used to transport voted ballots and ensure the precinct number or vote center number is designated on the ballot container.⁶⁸ They must also certify, sign, and seal the packages of envelopes containing other election materials such as unused ballots, spoiled ballots, ballot statements, and tally sheets.⁶⁹ Then, at least two members of the precinct board must deliver both the ballot container and packages to the elections official at the central counting place.⁷⁰

The ballot container and packages must remain in the exclusive possession of the precinct board members until delivered to the elections official.⁷¹ Once delivered, the ballots are removed from the ballot container — which requires breaking its seal — by a person the elections official or an authorized deputy has designated for that purpose.⁷² The ballots are then either fed into the tabulating equipment⁷³ or manually counted by members of the counting board.⁷⁴ No other person may touch any ballot container.⁷⁵ Additionally, access to the area where electronic data processing equipment is being operated may be restricted.⁷⁶

In the case of an emergency in which it becomes impossible to transport the ballots from the precinct to a central counting place, the elections official may direct that the ballots be counted at the precinct.⁷⁷

Once counted, ballots must be resealed in a strong envelope, and each member of the precinct board must write their signature across the seal.⁷⁸ California law prohibits the elections official from opening any sealed packages of ballots or permitting them to be

⁶⁵ *Id.* § 14282(d)(1).

⁶⁶ *Id.*

⁶⁷ *Id.* § 14282(d)(2).

⁶⁸ *Id.* § 15201(a)(1).

⁶⁹ *Id.* §§ 15201(a)(2), 14431–32.

⁷⁰ *Id.* § 15201(a)(3).

⁷¹ *Id.*

⁷² *Id.* §§ 15201(a), 15204, 15208(a).

⁷³ *Id.* § 15210.

⁷⁴ *Id.* §§ 15207, 15276, 15290 (explaining that persons employed to manually count ballots at a central counting place — segregated into counting boards, which are legally treated as precinct boards— tally the votes by having one precinct board member reading from the ballots while at least one other member watches each vote to check for errors or omissions).

⁷⁵ *Id.* § 15204.

⁷⁶ *Id.*

⁷⁷ *Id.* § 15213.

⁷⁸ *Id.* § 15279.

opened,⁷⁹ with limited exceptions, such as where returns are defective,⁸⁰ in the event of a recount,⁸¹ or an official election contest is filed or a criminal prosecution commenced.⁸² Even during a contest or prosecution, the packages cannot be taken from the custody of the state elections official.⁸³ Senate Bill 73, signed into law on May 27, 2026, expressly authorizes the California Attorney General, Secretary of State, or local county elections officials to sue any person or entity that takes a package containing ballots from an elections official's custody,⁸⁴ and also criminalizes such conduct.⁸⁵

Retention

Like federal law, California law likewise mandates that elections officials retain specific election materials from federal elections for twenty-two months, including voted ballots and related ballot materials, which must remain unopened and unaltered.⁸⁶ Only if an elections official determines that it is necessary for a shredding or recycling process may a sealed ballot container be opened.⁸⁷

California must also preserve packages from federal elections containing non-ballot procedural records, such as tally sheets and tracking logs for voter assistance and eligibility challenges, for twenty-two months.⁸⁸ Unlike the strict secrecy that state law requires for packages containing cast ballots, any voter may inspect the packages of non-ballot procedural records any time after the official vote canvass begins.⁸⁹

Remedies

When the chain of custody of certified voting technology⁹⁰ is compromised or a security breach occurs, the Elections Code imposes specific mandatory obligations: The chief elections official and the Secretary of State must be notified within twenty-four hours of discovery, the equipment must be removed from service immediately and replaced if possible, and the integrity and reliability of the system must be evaluated to determine whether it can be restored to its original state.⁹¹

⁷⁹ *Id.* § 15370.

⁸⁰ *Id.* §§ 15303–04.

⁸¹ *Id.* § 15370.

⁸² *Id.* § 15551.

⁸³ *Id.* § 15551(d). See *Cervantes*, 2026 WL 2871925, at *8 (holding that Section 15551's wording — prohibiting ballots from being “taken” from the custody of responsible elections officials — “unambiguously prohibits the removal of ballots from an elections official's custody, notwithstanding the existence of a search warrant authorizing their seizure”).

⁸⁴ Cal. Elec. Code § 18564.5(a)(7); see also S.B. 1418, 2025–2026 Reg. Sess. § 5 (Cal. 2026) (enacted) (extending the provision to any person who takes any document, record, certified voting technology, or electronic data, or any election-related material or equipment necessary to the conduct of an election).

⁸⁵ Cal. Elec. Code § 18568(i).

⁸⁶ *Id.* §§ 17301, 17305(b) (applying to any election in which candidates for federal office are voted upon).

⁸⁷ *Id.* § 17305.

⁸⁸ *Id.* § 17303(b).

⁸⁹ *Id.* § 17303(c).

⁹⁰ “Certified voting technology” means “any certified voting technologies certified by the Secretary of State, including voting systems, ballot on demand printing systems, electronic poll book systems, or adjudication systems, and the hardware, firmware, software, proprietary intellectual property they contain, any components, and any products they generate, including ballots, ballot images, reports, logs, cast vote records, or electronic data.” *Id.* § 17600(b).

⁹¹ *Id.* § 17603(b).

In sum, at every stage of the election cycle, from the preparation of ballots through their twenty-two month retention, California law places election materials in the hands of a designated custodian and requires that custody be maintained, secured, and documented at each transfer.⁹² There is no 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.⁹³ Rather, California mandates that voted ballots, and any other election-related material or equipment necessary for the conduct of an election, never leave the custody of elections officials,⁹⁴ and bars any person from granting law enforcement access to, or possession of,

The California Supreme Court emphasized this in its recent *Cervantes* decision, explaining that under California law, “[i]n no event . . . shall [election materials including voted ballots] . . . be taken from the custody of the elections official.”⁹⁵

Criminal Provisions Protecting Election Materials

California law also criminalizes conduct threatening the security of election materials. In 2026, California enacted new legislation establishing felonies specifically targeting unauthorized ballot seizures. Senate Bill 73 made it a felony for any person to knowingly take a package containing voted ballots or its contents from the custody of elections officials.⁹⁶ S.B. 1418 extends this to any person who takes any document, record, certified voting technology, or electronic data, or any election-related material or equipment necessary to the conduct of an election).⁹⁷

Likewise, Assembly Bill 282 established two new felonies: prohibiting any person from seizing, causing, or assisting in the seizure of ballots, election records, or certified voting technology before election results are certified, punishable by up to three years in prison; and prohibiting any person with authority from directing someone in their supervision to do the same, punishable by up to four years in prison.⁹⁸ Finally, Senate Bill 259 makes it a misdemeanor for a person entrusted with a vote-by-mail ballot to interfere with its delivery to the voter,⁹⁹ imposing felony liability — punishable by up to four years in prison — for directing a subordinate to interfere with the ballot’s delivery or return;¹⁰⁰ and broadening the definition of “interference” to include unauthorized access, breaking the chain of custody, tampering, and a designated ballot returner’s failure to return a ballot.¹⁰¹ All four of these bills were enacted as urgency statutes¹⁰² and took effect immediately upon signing.

Other election-related conduct rises to a felony under California Law: tampering or interfering with a voting system or device, including by knowingly providing unauthorized access to, or breaking the

⁹² Cal. Code Regs. tit. 2, § 20314; Cal. Elec. Code § 15551(d).

⁹³ Cal. Elec. Code §§ 15201(a), 15204, 15551(d), 17301, 17305.

⁹⁴ *Id.* § 15551(d) (as amended by S.B. 1418, 2025–2026 Reg. Sess. § 2 (Cal. 2026)).

⁹⁵ 2026 WL 2871925, at *6 (quoting Cal. Elec. Code. § 15551(d)).

⁹⁶ Cal. Elec. Code § 18568(i); S.B. 73, 2025–2026 Reg. Sess. § 12 (Cal. 2026) (enacted).

⁹⁷ 2026 Reg. Sess. § 5 (Cal. 2026) (enacted).

⁹⁸ A.B. 282, 2025–2026 Reg. Sess. § 2(Cal. 2026) (adding Cal. Elec. Code § 18579(a)–(b)).

⁹⁹ S.B. 259, 2025–2026 Reg. Sess. § 1 (Cal. 2026) (amending Cal. Elec. Code § 18577(b)–(c)).

¹⁰⁰ S.B. 259, 2025–2026 Reg. Sess. § 1 (Cal. 2026) (amending Cal. Elec. Code § 18577(b)–(c)).

¹⁰¹ *Id.* (amending Cal. Elec. Code § 18577(d)).

¹⁰² S.B. 73, 2025–2026 Reg. Sess. § 14 (Cal. 2026); A.B. 282, 2025–2026 Reg. Sess. § 5 (Cal. 2026), S.B. 259 Reg. Sess. § 3 (Cal.2026).

chain of custody to, certified voting technology or any finished or unfinished ballots;¹⁰³ forging,¹⁰⁴ counterfeiting,¹⁰⁵ or altering election returns;¹⁰⁶ tampering with or removing election materials;¹⁰⁷ and aiding and abetting any of the conduct described above.¹⁰⁸ It is a felony to act as an elections officer without first being appointed and qualified, including by handling, counting, or canvassing ballots without authority.¹⁰⁹ Any person charged with performing a duty under California election law who willfully neglects or refuses to perform it, or who knowingly violates any election laws, is also subject to felony punishment.¹¹⁰

Further, it is a felony to intimidate, threaten, or coerce anyone exercising election-administration duties, including counting, canvassing, and certifying votes.¹¹¹ Openly carrying a firearm or imitation firearm while interacting with or observing election administration activities is presumed to constitute intimidation;¹¹² law enforcement officers acting within the scope of their official duties are exempt from this presumption, though a court may still weigh an officer's possession of a firearm in determining whether they engaged in intimidation, threats, or coercion.¹¹³

Additional conduct threatening the security of election materials constitutes a misdemeanor under California law, including: refusing to obey a lawful order of the county elections official or their deputy while serving on a vote counting board, including orders concerning the handling, security, or custody of ballots during the count;¹¹⁴ attempting, as a precinct board member, to discover, examine, or mark a handed-in folded ballot before it enters the ballot box,¹¹⁵ or disclosing how a voter voted;¹¹⁶ and interfering with the return of a completed vote by mail ballot to the local elections official.¹¹⁷

Confidentiality of Voted Ballots and Voter Registration Records

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

¹⁰³ Cal. Elec. Code § 18564(a)(1)–(2).

¹⁰⁴ *Id.* § 18566.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* § 18567.

¹⁰⁷ *Id.* § 18568(a)–(h).

¹⁰⁸ *Id.* §§ 18565, 18569.

¹⁰⁹ *Id.* § 18575.

¹¹⁰ *Id.* § 18002(a).

¹¹¹ *Id.* § 18581(a)(3).

¹¹² *Id.* § 18581(b)(1).

¹¹³ *Id.* § 18581(b)(2).

¹¹⁴ *See id.* § 18571.

¹¹⁵ *Id.* § 18562.

¹¹⁶ *Id.* § 18563.

¹¹⁷ *Id.* § 18577.

Voted ballots

The California Constitution expressly protects voters' general right to privacy¹¹⁸ as well as their specific right to a secret ballot.¹¹⁹ Consistent with these protections, California's election code treats voted ballots and the information that could reveal how a person voted as confidential¹²⁰ — a status confirmed by the California Court of Appeals.¹²¹ The seizure of ballot materials by federal actors therefore risks exposing information that the state constitution treats as protected.

Given these overlapping protections, no person outside the chain of authorized custodians — the elections official, precinct board, or, in specific circumstances, a legislative committee or court — may access voted ballots or records revealing how an individual voted.¹²²

Voter registration records

Similar protections extend to voter registration data. While portions of California's voter registration file are available to certain requesters,¹²³ California law makes specific registration information confidential, including a voter's Social Security number, driver's license or state ID number, and signature, and requires that it be excluded from released files.¹²⁴ These state-law protections are significant because, as of this writing, at least twenty-six federal courts have held that the DOJ lacks authority to make broad demands for state-held voter file data, which includes information that state law makes confidential. The U.S. District Court for the Central District of California explicitly held that the DOJ could not rely on civil rights legislation, enacted for an entirely different purpose, to amass and retain confidential voter data protected by state privacy laws.¹²⁵

¹¹⁸ See Cal. Const. art. I, § 1.

¹¹⁹ See *Id.* art. II, § 7.

¹²⁰ Cal. Elec. Code §§ 14282(c), 14275, 14277, 14291–93, 18403, 18563–64.

¹²¹ *Citizens Oversight, Inc. v. Vu*, 247 Cal. Rptr. 3d 521, 525–26 (Cal. Ct. App. 2019) (holding that ballots and certain voter information were exempt from disclosure under the California Public Records Act).

¹²² Cal. Elec. Code § 15551(a)–(d).

¹²³ *Id.* §§ 2188 2194(a).

¹²⁴ *Id.* § 2194(b); see also *id.* § 2138.5 (protecting same information from disclosure on the registration affidavit itself).

¹²⁵ *United States v. Weber*, 816 F. Supp. 3d 1168, 1192 (C.D. Cal. 2026).

Preparedness and Response Considerations

The checklists below are designed to help both elections 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, voting site official → designated county elections official (e.g., Registrar of Voters or County Clerk) → county counsel → Secretary of State and the California Attorney General. California now mandates that a local agency, political subdivision, or elections official provides notice to the Secretary of State and the California Attorney General immediately, but no later than one calendar day, after becoming aware of any warrant, subpoena, or active law enforcement investigation pertaining to the search, seizure, or retention of any election records or certified voting technology. The Attorney General is required to publish guidance for elections officials, precinct boards, election workers, and volunteers on how to respond to law-enforcement access requests. As of October 6, 2026, this guidance is forthcoming.
- ☐ **Keep chain-of-custody documentation** (transfer forms, sealed containers, courier logs) complete and current, and keep key reference guides accessible at the elections office. Examine office inventory procedures and ensure there is an accurate and updated inventory of all election records and material coming into or out of the office.
- ☐ **Plan for continuity if materials are seized:** in consultation with counsel and consistent with 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.
- ☐ **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 California law prohibits 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.** 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 confirm that the Secretary of State and California Attorney General have been notified, and work with counsel on next steps and any public communications.

For Government Attorneys

Prepare before the election

- ☐ **Prepare emergency response papers in advance in consultation with criminal defense counsel.** 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 elections 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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