

Understanding Federal Demands for Election Records in Tennessee

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 Tennessee 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), 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, *F.B.I. agents search Georgia Election Center*, N.Y. Times (Jan. 28, 2026), <https://www.nytimes.com/2026/01/28/us/politics/fbi-search-election-center-georgia.html>.

³ Harmeet K. Dhillon, *Demand for Wayne County 2024 Federal Election Ballots and Records*, U.S. Dep't of Just. (Apr. 14, 2026), <https://embed.documentcloud.org/documents/28055350-doj-letter-to-wayne-county>.

⁴ Grand Jury Subpoena (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. 20, 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/bernstein-seizure.pdf>; Justin Levitt & John Keller, *Election-Related Search Warrants*, 74 U.C.L.A. L. Rev. Discourse ____ (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7227158.

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 Legal experts have also explained that a warrant seeking federal custody of election materials while results are pending would generally be unreasonable under the Fourth Amendment, even if supported by probable cause, and that federal access should instead be limited to inspection and copying.¹²

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

⁸ *Watson v. Republican Nat'l Comm.*, 146 S. Ct. 2165, 2170 (2026) ("As Alexander Hamilton put it, the Constitution lodges power over congressional elections in state legislatures 'primarily' and in Congress 'ultimately.'" (quoting *The Federalist* No. 59, at 362 (Alexander Hamilton) (Clinton Rossiter ed., 1961))).

⁹ *Search Warrants for Election Materials*, U.C. Berkeley Edley Ctr. on L. & 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 Justin Levitt & John Keller, *Election-Related Search Warrants*, 74 U.C.L.A. L. Rev. Discourse ____ (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=7227158.

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

Importantly, even if election materials are seized pursuant to a warrant, election officials can seek emergency relief in court requesting that they be returned or requesting other safeguards to protect the materials (most typically, through a Rule 41(g) motion). In considering such a motion, courts may find it helpful to understand how the seizure violates or frustrates state election laws, whether the alleged crimes in the supporting affidavit were not supported by the evidence, or if the affidavit rested on unreliable information or allegations that have previously been investigated and remain unsubstantiated.¹⁴

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,¹⁵ 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.¹⁶ 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.¹⁷ 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 where an

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

¹⁴ See Richard Hasen & Shelby Wayment, *A Judicial Guide to Search Warrants Seeking Election Materials*, Safeguarding Democracy Project UCLA (Sep. 9, 2026), <https://tinyurl.com/SDPJudicialGuide>.

¹⁵ Fed. R. Crim. P. 17(c)(2).

¹⁶ *Fulton Cnty. Bd. of Registration & Elections v. United States*, 836 F. Supp. 3d 1305 (N.D. Ga. 2026).

¹⁷ 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”).

immediate response is justified and with prior approval of the United States Attorney.¹⁸ 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.¹⁹

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.²⁰ 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.²¹ Accepting service and engaging counsel before producing documents can help preserve objections and avoid inadvertent waiver of privilege or other protections.

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

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

¹⁸ 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).

¹⁹ See Charles Doyle, Cong. Rsch. Serv., 95-1135, *The Federal Grand Jury* (2025) (noting forthwith subpoenas have generally been upheld either because the recipient complied or consented, or because exigent circumstances existed); see also *United States v. Barr*, 605 F. Supp. 114 (S.D.N.Y. 1985).

²⁰ 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).

²¹ 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); 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").

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."²² 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,"²³ 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."²⁴ Federal regulation likewise directs that a search warrant "should not be used" for documentary materials where less intrusive means would suffice.²⁵ Any demand that departs from these long-established standards deserves careful scrutiny.

²² U.S. Dep't of Just., Federal Prosecution of Election Offenses 9 (8th ed. Dec. 2017).

²³ *Id.* at 11 (noting that this practice "avoids interfering with the governmental processes affected by the election").

²⁴ *Id.* at 83.

²⁵ 28 C.F.R. § 59.4(a)(1) (2026).

Tennessee Election Law

Tennessee 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 materials²⁶ and an official's willful or fraudulent violation of statutory duties protecting those materials.²⁷

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

Tennessee law sets out a series of custody requirements for election materials that together function as a chain of custody. At every stage of the federal election cycle, from the preparation of ballots through their 22-month retention, Tennessee law places election materials in the hands of identified officials and imposes strict requirements for their security, handling and transfer.²⁸ These duties are continuous and mandatory, and state law makes it a crime to both interfere with the custody of voted ballots²⁹ and possess election supplies without authorization.³⁰ Further, an official who willfully or fraudulently violates statutory duties protecting election supplies is also subject to criminal liability.³¹ A transfer of ballots to federal officials, absent a court order, does not fit in this framework, and risks compromising the legal integrity of the records' custody.

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

²⁶ Tenn. Code Ann. §§ 2-19-101, 2-19-108, 2-19-111 (2025).

²⁷ Tenn. Code Ann. § 2-19-113 (2025).

²⁸ Tenn. Code Ann. §§ 2-5-207(c), 2-7-107, 2-7-137-139, 2-8-108(b) (2025); 52 U.S.C. § 20701.

²⁹ Tenn. Code Ann. §§ 2-19-111, 2-19-101(3) (2025).

³⁰ Tenn. Code Ann. § 2-19-108 (2025).

³¹ Tenn. Code Ann. § 2-19-113 (2025).

• Before voting

Under Tennessee law, each county election commission must prepare a sample ballot and obtain the Coordinator of Elections³² approval before any ballots are printed. Paper ballots are then printed and tracked by serial number.³³ Specifically, unless the county uses an approved electronic ballot-marking system or ballot-on-demand technology, ballots must be bound in books with detachable, serially numbered stubs; no two ballots for the same precinct may share a number, and the commission must keep a record of the ballot numbers supplied to each polling place.³⁴ The serial numbers assigned to each precinct are randomized from one election to the next and may not be disclosed before Election Day, including to the officer of elections before the officer picks up election supplies.³⁵

Where a county uses an approved electronic ballot-marking system or ballot-on-demand technology, a ballot stub number is not required to be preprinted on the paper ballot.³⁶ When there's no preprinted stub number, the county election commission must reconcile the number of applications issued at the polling place with the number of ballots recorded by the optical scanner, and must complete a written report whenever the totals differ.³⁷

The county election commission must provide two sample ballots for each polling place.³⁸ At least five days before an election — and at least five days before early voting begins — the commission must publish or mail a sample ballot and post one online.³⁹ The commission must also furnish for each polling place, and for absentee voting at the commission office, locks and standard ballot boxes approved as safe, durable, and secure by the Coordinator of Elections and the State Election Commission.⁴⁰

Before Election Day, voting machines are prepared, tested, numbered and sealed. A voting-machine technician must test each voting lever and certify in writing that the machine is working properly.⁴¹ Political-party officials and independent candidates receive notice of where and when machines will be examined and may designate representatives to observe. After examination, a written certificate records the number of machines, whether all machines are set at zero, and each machine's protective-counter and seal numbers.⁴² The keys for each machine are placed in a sealed envelope identifying the polling location, machine number, protective-counter number, and seal number.⁴³ The election commission is responsible for

³² Tenn. Code Ann. § 2-11-201(a)-(d) (2025) (providing that the secretary of state appoints the coordinator of elections, who is the chief administrative election officer of the state, responsible for obtaining and maintaining uniformity in the application, operation, and interpretation of the election code, making the rules necessary to carry out the election code, and employing appropriate personnel and equipment); *see also* Tenn. Code Ann. § 2-11-202(a)-(b) (2025).

³³ Tenn. Code Ann. §§ 2-5-201-202, 2-5-207(c) (2025).

³⁴ Tenn. Code Ann. § 2-5-207(c) (2025).

³⁵ Tenn. Comp. R. & Regs. 1360-02-04-.05 (2025).

³⁶ Tenn. Code Ann. § 2-7-114(c)(2) (2025).

³⁷ *Id.*

³⁸ Tenn. Code Ann. § 2-5-211(a) (2025).

³⁹ Tenn. Code Ann. § 2-5-211(b)(1)-(2) (2025).

⁴⁰ Tenn. Code Ann. § 2-5-214(a) (2025).

⁴¹ Tenn. Code Ann. § 2-9-105(a) (2025).

⁴² Tenn. Code Ann. § 2-9-105(b)-(c) (2025).

⁴³ Tenn. Code Ann. § 2-9-105(d) (2025).

ensuring that the voting machines are delivered to the polling places in a timely manner and set up properly for use.⁴⁴ Local authorities must also provide ample police protection against tampering with or damage to the machines after they have been prepared for and during an election, and adequate storage at all other times.⁴⁵

Additional requirements govern the ongoing custody and maintenance of voting machines. The local authority responsible for the machines must maintain custody of them when they are not in use at an election and preserve and keep them in repair.⁴⁶ Between elections, the voting machine technician must keep the keys securely locked, although any public officer entitled to custody of a machine is also entitled to the keys necessary for its proper use.⁴⁷

● Absentee Ballots

Tennessee permits eligible voters to vote absentee by mail.⁴⁸ After completing the ballot and signing the required affidavit, the voter must return it by mail.⁴⁹ To be counted, the ballot must be received by the county election commission before the polls close on Election Day.⁵⁰

Upon receiving an absentee ballot by mail, the administrator of elections opens only the outer envelope, verifies the voter's signature and eligibility, records that the voter voted absentee, and immediately deposits the still-sealed absentee-ballot envelope into the appropriate absentee ballot box.⁵¹ The absentee ballot boxes are secured by two locks supplied by commissioners of different political parties, each of whom personally retains the corresponding key, and two numbered seals, one placed by a commissioner of each party.⁵² The seal numbers must be recorded and certified, and the boxes may not be unlocked or the seals broken until the ballots are counted.⁵³ If a seal is broken before then, the administrator must immediately replace it and certify in writing to the Coordinator of Elections the new seal numbers and the circumstances requiring replacement.⁵⁴

On Election Day, the county election commission delivers the locked and sealed absentee ballot boxes and their keys to the absentee ballot counting board at the commission office.⁵⁵ Any absentee ballot received after that transfer but before the polls close must, if entitled to be cast, be delivered immediately to the counting board.⁵⁶ Before unlocking and opening the ballot boxes, the counting board verifies that the seal numbers match those previously recorded and certified when the boxes were sealed.⁵⁷

⁴⁴ Tenn. Code Ann. § 2-9-106 (2025).

⁴⁵ Tenn. Code Ann. § 2-9-104(b) (2025).

⁴⁶ Tenn. Code Ann. § 2-9-104(a) (2025).

⁴⁷ Tenn. Code Ann. § 2-9-104(a) (2025).

⁴⁸ Tenn. Code Ann. § 2-6-201 (2025).

⁴⁹ Tenn. Code Ann. § 2-6-202(e) (2025).

⁵⁰ Tenn. Code Ann. §§ 2-6-303(b), 2-6-202 (2025).

⁵¹ Tenn. Code Ann. § 2-6-202(g) (2025).

⁵² Tenn. Code Ann. § 2-6-311(b)-(c) (2025).

⁵³ Tenn. Code Ann. § 2-6-311(c) (2025).

⁵⁴ *Id.*

⁵⁵ Tenn. Code Ann. § 2-6-303(a) (2025).

⁵⁶ Tenn. Code Ann. § 2-6-303(b) (2025).

⁵⁷ Tenn. Code Ann. § 2-6-304(a)(1) (2025).

Tennessee permits appointed poll watchers to observe the absentee ballot counting board, but regulates their conduct during the count.⁵⁸ Once counting begins, watchers may not leave the counting room and may not possess an electronic device capable of transmitting election results outside the room.⁵⁹ More generally, a watcher may not interfere with election officials in performing their duties.⁶⁰

Not later than 45 days after an election, the chair of the county election commission must certify the results of absentee balloting to the state election coordinator.⁶¹ Once counted, absentee ballots and related materials from federal elections must be preserved by the responsible election official for at least 22 months after the election.⁶²

● Early voting (October 14–October 29, 2026)

Tennessee provides for in-person early voting beginning no more than 20 days and ending no less than five days before Election Day.⁶³ A voter may vote at the county election commission office or another polling place designated by the commission.⁶⁴

Tennessee imposes detailed security requirements on voting equipment used during early voting. Before early voting begins, every machine must be inspected and its counter and seal numbers recorded.⁶⁵ Each day before voting begins, election officials representing both political parties verify the seal and counter numbers against the numbers previously certified.⁶⁶ If the numbers do not match, officials must prepare a written report identifying the discrepancy, the machine, and the persons present and forward it to the State Coordinator of Elections and the chair and secretary of the county election commission; the machine may not be used without authorization from the State Coordinator.⁶⁷

Between early-voting days, the machines must be stored in a locked, secure location, and the original daily inspection records must likewise be kept in a secure, locked location inside the election office.⁶⁸ After certification of the election, those inspection records are filed with the other election materials, and certified copies are provided to the State Coordinator of Elections.⁶⁹

⁵⁸ Tenn. Code Ann. § 2-7-104(a), (e) (2025).

⁵⁹ Tenn. Code Ann. § 2-7-104(e) (2025).

⁶⁰ Tenn. Code Ann. § 2-7-104(d) (2025).

⁶¹ Tenn. Code Ann. § 2-6-304(f) (2025).

⁶² 52 U.S.C. § 20701; Tenn. Code Ann. § 2-8-108(b) (2025).

⁶³ Tenn. Code Ann. § 2-6-102(a)(1) (2025).

⁶⁴ *Id.*

⁶⁵ Tenn. Comp. R. & Regs. 1360-02-13-.28 (2025).

⁶⁶ Tenn. Comp. R. & Regs. 1360-02-13-.29(1), (3) (2025).

⁶⁷ *Id.*

⁶⁸ Tenn. Comp. R. & Regs. 1360-02-13-.32(1) (2025).

⁶⁹ Tenn. Comp. R. & Regs. 1360-02-13-.32(2) (2025).

● Election Day

The officer of elections is responsible for the conduct of elections at the polling place, subject to the direction of the county election commission.⁷⁰ Among other duties, the officer must maintain order at the polling place, preserve ballot secrecy, and ensure that other election officials perform their assigned duties.⁷¹ Election judges assist the officer, including by distributing paper ballots.⁷²

On Election Day, election officials must arrive at the polling place at least 30 minutes before the polls open.⁷³ If an official fails to appear, the officer of elections — or, in the officer's absence, a majority of the election officials present — selects a replacement.⁷⁴ The officer of elections also delivers the paper ballots and other necessary election supplies to the polling place.⁷⁵ If ballots are lost, stolen, destroyed, not delivered, or insufficient in number, the officer must immediately notify the county election commission, which provides replacements from the reserved ballots or has additional ballots prepared.⁷⁶ No election supplies, ballots or equipment may be removed from a polling place from the opening of the polls until the tally sheets have been certified and the election materials locked in the ballot box.⁷⁷ The only exception is for items mistakenly delivered to the wrong polling place, which may be moved to the correct one.⁷⁸ Tennessee law, however, also authorizes certain paper ballots and ballot boxes to be transported to the county election commission office for central counting, notwithstanding the ordinary requirements for counting at the precinct.⁷⁹

Exactly three minutes before the polls open, the officer of elections must call those present to witness the ballot box being opened and demonstrated to be empty.⁸⁰ The box is then closed, locked, sealed, and its ballot slot is covered until ballots are deposited.⁸¹ During the entire voting period, the box must remain locked,⁸² and may not be left unattended by an election judge.⁸³

Once the polls open, paper ballots are subject to controls governing their issuance, use, and deposit. The judge in charge of paper ballots records the ballot number on the voter's application and gives the ballot to the voter.⁸⁴ After marking the ballot in private, the voter proceeds to the ballot box, where the receiving judge compares the ballot-stub number with

⁷⁰ Tenn. Code Ann. § 2-7-101(a) (2025).

⁷¹ Tenn. Code Ann. § 2-7-101(b) (2025).

⁷² Tenn. Code Ann. § 2-7-102 (2025).

⁷³ Tenn. Code Ann. § 2-7-105(a) (2025).

⁷⁴ Tenn. Code Ann. § 2-7-105(b)(1) (2025).

⁷⁵ Tenn. Code Ann. § 2-7-107 (2025).

⁷⁶ Tenn. Code Ann. § 2-7-108 (2025).

⁷⁷ Tenn. Code Ann. §§ 2-7-139, 2-7-137 (2025).

⁷⁸ Tenn. Code Ann. § 2-7-139 (2025).

⁷⁹ Tenn. Code Ann. § 2-7-131(e)–(f) (2025); *see infra* "Exception: central counting of paper ballots."

⁸⁰ Tenn. Comp. R. & Regs. 1360-02-06-.06(1) (2025).

⁸¹ *Id.*

⁸² Tenn. Code Ann. § 2-7-109 (2025).

⁸³ Tenn. Comp. R. & Regs. 1360-02-06-.06(2) (2025).

⁸⁴ Tenn. Code Ann. § 2-7-114(a) (2025).

the number recorded on the application, removes and attaches the stub to the application, and directs the voter to deposit the ballot.⁸⁵

For voting machines, the voter presents the ballot application to the machine operator and casts the vote on the machine.⁸⁶ During voting, the operator must inspect the machine after each voter for signs of injury or tampering.⁸⁷ The machine compartment may not be opened and its counters may not be exposed during the election except by a voting-machine technician or other authorized person.⁸⁸ Any such intervention must be documented and attached to the election returns.⁸⁹

Access to the polling place is restricted while any of these procedures are being carried out.⁹⁰ The only persons who may be admitted are election officials, voters, persons properly assisting voters, the press, persons bearing written authorization from the county election commission, and poll watchers properly appointed,⁹¹ who may not interfere with voters or election officials.⁹² Tennessee law expressly prohibits law enforcement officers from coming within ten feet of a polling place entrance or entering the polling place, except at the request of the officer of elections or the county election commission, to make an arrest, or to vote.⁹³

Finally, no person may take a ballot from the polling place before the polls close.⁹⁴ If a voter refuses to surrender a marked paper ballot for deposit, the officer of elections must recover it and place it in a sealed envelope marked “Rejected.”⁹⁵ Spoiled ballots and provisional ballots are likewise segregated and secured under separate procedures rather than returned to the ordinary stream of ballots.⁹⁶

● After voting ends

Under Tennessee law, as soon as the polls close,⁹⁷ the precinct registrars⁹⁸ must cross out any remaining space on incomplete poll-list sheets to prevent additional names from being added, serially number the sheets, and place them in the poll-book binders.⁹⁹ Then, before any ballot box or voting machine is opened for counting, the judges must tear all unused

⁸⁵ Tenn. Code Ann. § 2-7-114(b)(1), (c)(1) (2025).

⁸⁶ Tenn. Code Ann. § 2-7-113 (2025).

⁸⁷ Tenn. Code Ann. § 2-7-122(a) (2025).

⁸⁸ Tenn. Code Ann. § 2-7-122(b) (2025); see also Tenn. Code Ann. §§ 2-7-110(b), 2-9-103(a) (2025) (suggesting that “authorized person”, although undefined, likely means a voting-machine technician’s assistant(s)).

⁸⁹ *Id.*

⁹⁰ Tenn. Code Ann. § 2-7-103(a) (2025) (restricting access to Tennessee polling-place while election officials carry out statutorily prescribed procedures).

⁹¹ Tenn. Code Ann. § 2-7-103(a) (2025).

⁹² Tenn. Code Ann. § 2-7-104(d) (2025).

⁹³ Tenn. Code Ann. § 2-7-103(c) (2025).

⁹⁴ Tenn. Code Ann. § 2-7-121 (2025).

⁹⁵ *Id.*

⁹⁶ Tenn. Code Ann. §§ 2-7-112(a)(3)(A)(vii), (B), 2-7-120, 2-7-137(3) (2025).

⁹⁷ Tenn. Code Ann. § 2-7-127 (2025).

⁹⁸ Tenn. Code Ann. § 2-12-202(a)–(b) (2025) (providing that two precinct registrars are appointed to each polling place, one appointed by the majority-party members of the county election commission and one by the minority-party members); Tenn. Code Ann. §§ 2-7-112, 2-7-128, 2-7-130(a)(3), 2-7-131(b), 2-12-202(c) (2025) (indicating that precinct registrars are primarily responsible for checking voters in and determining their eligibility to vote, as well as performing certain recordkeeping and vote-tabulation duties).

⁹⁹ Tenn. Code Ann. § 2-7-128 (2025).

paper ballots in half without tearing off the numbered stubs; the portion without the stubs is discarded, and the portion with the stubs is preserved.¹⁰⁰

Machine count: The judges next lock and seal each voting machine against further voting and sign a certificate on the tally sheets stating that each machine has been locked and sealed, the number of voters shown on the public counters, the seal numbers, and the numbers registered on the protective counters.¹⁰¹ They then open the counter compartment in the presence of poll watchers and others present.¹⁰² One judge reads the results aloud while a judge from a different political party observes.¹⁰³ As the results are read, the precinct registrars record the results on duplicate tally sheets, which are then subject to bipartisan verification.¹⁰⁴

Paper ballot count: Once the machine count is complete—or immediately, in precincts using only paper ballots—the judges open the ballot box at the polling place in the presence of those assembled and publicly count the paper ballots.¹⁰⁵ As the ballots are counted, the precinct registrars record the votes on record sheets, which are then bound in the poll books.¹⁰⁶ Two judges of different political parties then compute the totals for each candidate and question and enter them on duplicate tally sheets, while a third judge verifies the computation and entry of the totals.¹⁰⁷ Any uncounted ballots must be bundled separately from those that are counted.¹⁰⁸ The totals are then announced publicly.¹⁰⁹ A limited set of paper ballots is counted centrally instead of at the polling place; those exceptions are covered in the central-counting section below.¹¹⁰

After both the machine and paper ballots have been counted, the precinct's final results are recorded and certified. The duplicate tally sheets must show the totals for each office, candidate, and question, and every judge and the officer of elections must sign and certify the tally sheets as correct, after which the sheets are placed in the poll books.¹¹¹

Following certification, the judges close and lock the voting machines and place each machine's keys in a separate sealed envelope identifying the machine, polling place, seal number, and public- and protective-counter number.¹¹² The machines must remain locked against voting for five days after certification of the election, or longer if necessary because of an election contest.¹¹³ If another election requiring the same machine is scheduled within thirty days, the machine may be opened after five days with the agreement of all candidates

¹⁰⁰ Tenn. Code Ann. § 2-7-129 (2025).

¹⁰¹ Tenn. Code Ann. § 2-7-130(a)(1) (2025).

¹⁰² Tenn. Code Ann. § 2-7-130(a)(2) (2025).

¹⁰³ *Id.*

¹⁰⁴ Tenn. Code Ann. § 2-7-130(a)(3) (2025).

¹⁰⁵ Tenn. Code Ann. § 2-7-131(a) (2025).

¹⁰⁶ *Id.*

¹⁰⁷ Tenn. Code Ann. § 2-7-131(b) (2025).

¹⁰⁸ Tenn. Code Ann. § 2-7-133(e) (2025).

¹⁰⁹ Tenn. Code Ann. § 2-7-131(d) (2025).

¹¹⁰ Tenn. Code Ann. § 2-7-131(e)-(f) (2025).

¹¹¹ Tenn. Code Ann. § 2-7-132 (2025).

¹¹² Tenn. Code Ann. § 2-7-134 (2025).

¹¹³ Tenn. Code Ann. § 2-9-108 (2025).

whose name appeared on the machine's ballot in the earlier election. A court may also order a machine opened and examined.

The officer of elections must then publicly announce the results and, upon demand of any candidate or watcher present, provide that person with a certified copy of the results.¹¹⁴ The officer must also prepare and certify to the county election commission a list of all election officials who served at the polling place and their official positions, signed by each official,¹¹⁵ as well as the names of any appointed officials who failed to appear.¹¹⁶

The officer of elections next secures the election materials for transport by placing specified materials—including bundled paper ballots, envelopes containing spoiled and rejected ballots, poll books, and ballot-box keys—back into the ballot box and locking it.¹¹⁷ Accompanied by a judge or precinct registrar of a different political party, the officer must then immediately deliver the locked ballot box and remaining election supplies and equipment, other than voting machines, to the county election commission.¹¹⁸

Exception: central counting of paper ballots. Limited exceptions permit paper ballots to be transported for central counting rather than counted at the polling place.¹¹⁹ In the following situations, the county election commission may direct that ballots be counted at the commission office by the central absentee ballot counting board.¹²⁰ First, when a voting machine cannot accommodate the entire ballot, the remaining portion may be provided on paper and transported to the commission office.¹²¹ Second, the commission may instruct the officer of elections and a judge of a different political party to transport locked ballot boxes of voted paper ballots, provided the boxes meet the statutory security requirements.¹²² Third, when the write-in feature of a direct-recording electronic machine was used, the commission may likewise instruct them to transport the locked box containing the machine's printer tape.¹²³

Ballots must be transported immediately after the last voter has voted and the polls have closed, and either a majority-party judge and minority-party judge¹²⁴ or the officer of elections and a judge of a different political party¹²⁵ must travel together in the same vehicle, with the ballot box inside the vehicle.¹²⁶ Upon arrival at the counting center, a bipartisan reception team—consisting of one member from the majority party and one from the minority party—must inspect the condition of the box, lock, seal, and sealed covering and issue

¹¹⁴ Tenn. Code Ann. § 2-7-136 (2025).

¹¹⁵ Tenn. Code Ann. § 2-7-135 (a) (2025).

¹¹⁶ Tenn. Code Ann. § 2-7-135 (b) (2025).

¹¹⁷ Tenn. Code Ann. § 2-7-137 (2025).

¹¹⁸ Tenn. Code Ann. §§ 2-7-137, 2-7-138 (2025).

¹¹⁹ Tenn. Code Ann. § 2-7-131(e)–(f) (2025).

¹²⁰ *Id.*; Tenn. Code Ann. § 2-6-302 (2025).

¹²¹ Tenn. Code Ann. §§ 2-5-206(e)(2), 2-7-131(e)(1) (2025).

¹²² Tenn. Code Ann. §§ 2-7-131(f)(1), 2-6-311 (2025).

¹²³ Tenn. Code Ann. § 2-7-131(f)(2) (2025).

¹²⁴ Tenn. Comp. R. & Regs. 1360-02-08-.01 (2025).

¹²⁵ Tenn. Code Ann. §§ 2-7-131(f)(1) (2025).

¹²⁶ *Id.*

receipts.¹²⁷ If the box, lock, or seal appears irregular, the reception team must summon the chair and secretary of the county election commission for an immediate investigation.¹²⁸ If the irregularity cannot satisfactorily be explained, the box must be set aside under lock and key, its ballots processed separately and segregated, and its results withheld pending a hearing. The Coordinator of Elections and State Election Commission must also be notified.¹²⁹

● Retention

Like federal law, Tennessee law mandates that election officials retain voted ballots and related election materials from federal elections for 22 months.¹³⁰ During the preservation period, the packages of ballots must be kept securely locked and may be opened and examined only pursuant to a court order or, in certain circumstances, in connection with a gubernatorial contest.¹³¹

In a contested gubernatorial election, Tennessee permits the legislative committee charged with resolving objections to “send for and examine” relevant papers and “issue compulsory process” for their production.¹³² The statute does not expressly authorize the committee to take custody of retained ballots from the county election commission, nor does it confer authority on federal agents to obtain them.¹³³

In sum, at every stage of the election cycle, from the preparation of ballots through their 22-month retention, Tennessee law places election materials in the hands of a designated custodian and imposes strict requirements for their security, handling and transfer.¹³⁴ There is no point in the process at which election materials may lawfully sit outside this chain of custody, and no provision for transferring them to federal officers absent a court order.¹³⁵

Criminal Provisions Protecting Election Materials

Tennessee law also criminalizes conduct threatening the security of election materials. The following constitute a misdemeanor: (1) intentionally opening and examining a voter’s marked ballot, removing a marked ballot from the ballot box, preventing a marked ballot from being placed in the ballot box, or destroying or altering a marked ballot, except as required or permitted by the Election Code;¹³⁶ (2) knowingly acting to prevent another person from performing a duty imposed by the Election Code,¹³⁷ such as handling, counting, or preserving ballots¹³⁸; and (3) willfully or fraudulently

¹²⁷ Tenn. Comp. R. & Regs. 1360-02-09-.02 (2025).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ 52 U.S.C. § 20701; Tenn. Code Ann. § 2-8-108(b) (2025).

¹³¹ Tenn. Code Ann. § 2-8-108(a) (2025).

¹³² Tenn. Code Ann. § 2-18-109(a),(c)(1)-(2) (2025).

¹³³ Tenn. Code Ann. § 2-18-109(a)-(d) (2025).

¹³⁴ Tenn. Code Ann. §§ 2-5-207(c), 2-7-107, 2-7-137-139, 2-8-108(b) (2025); 52 U.S.C. § 20701.

¹³⁵ *See, e.g.*, Tenn. Code Ann. §§ 2-7-137-139, 2-8-108(a)-(b) (2025).

¹³⁶ Tenn. Code Ann. § 2-19-111 (2025).

¹³⁷ Tenn. Code Ann. § 2-19-103 (2025).

¹³⁸ *See, e.g.*, Tenn. Code Ann. §§ 2-7-137-138, 2-8-108 (2025).

violating, as an election official or member of an election board or commission, an Election Code provision enacted to protect elections.¹³⁹

Tennessee also makes the following conduct a felony:

1. knowingly possessing official registration or election supplies, except as required or permitted by the Election Code;¹⁴⁰
2. as an election official or member of an election board or commission, intentionally committing an unlawful act or intentionally failing to perform a required act, that causes the votes in a precinct to be lost, deprives its electors of suffrage, or renders the election void;¹⁴¹
3. knowingly making or consenting to a false entry in a poll list, election tally sheet, or other official election document;¹⁴²
4. intentionally tampering with, interfering with, or damaging to prevent the use of, a voting machine, electronic poll book, voting device or system, vote-tabulating device, or ballot-tally software;¹⁴³
5. intentionally tampering with, interfering with, or obtaining unauthorized access to, the official voter registration database;¹⁴⁴
6. knowingly possessing, without authorization, a key to a voting machine, voting system, tabulator, or ballot box;¹⁴⁵
7. intentionally substituting or attempting to substitute forged or counterfeit election results;¹⁴⁶ or
8. offering or giving a bribe to an election official, administrator of elections, or member of an election board or commission in exchange for an act or omission contrary to the official's duties.¹⁴⁷

Confidentiality of Voted Ballots and Voter Registration Records

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

Voted ballots

The Tennessee Constitution provides that elections must be conducted "by ballot," a provision the Tennessee Supreme Court has interpreted as creating a constitutional right to a secret ballot.¹⁴⁸

¹³⁹ Tenn. Code Ann. § 2-19-113 (2025).

¹⁴⁰ Tenn. Code Ann. § 2-19-108 (2025).

¹⁴¹ Tenn. Code Ann. § 2-19-114 (2025).

¹⁴² Tenn. Code Ann. § 2-19-109 (2025).

¹⁴³ Tenn. Code Ann. § 2-19-118(a)(1) (2025).

¹⁴⁴ Tenn. Code Ann. § 2-19-118(a)(2),(b) (2025).

¹⁴⁵ Tenn. Code Ann. § 2-19-118(a)(3) (2025).

¹⁴⁶ Tenn. Code Ann. § 2-19-118(a)(4), (b) (2025).

¹⁴⁷ Tenn. Code Ann. §§ 2-19-125, 2-19-128 (2025).

¹⁴⁸ Tenn. Const. art. IV, § 4; *Mooney v. Phillips*, 118 S.W.2d 224, 226 (Tenn. 1938); Tenn. Op. Att'y Gen. No. 83-353 (July 20, 1983).

Voted ballots may not be opened during the post-election retention period, with just two exceptions¹⁴⁹:

- a valid court order; or
- certain proceedings before the state legislature to resolve a contested gubernatorial election.

Voter registration records

Similar protections extend to voter registration data. While portions of Tennessee's voter registration records are available for public inspection, those records generally may not be removed from the custody of the county election commission.¹⁵⁰ Tennessee law also makes unique identifiers used in the online voter registration system, including driver license and Social Security numbers, confidential and exempt from the open records law.¹⁵¹ More generally, Social Security numbers contained in voter registration records must be redacted before those records are disclosed to anyone other than the number's holder.¹⁵² Participants in Tennessee's Crime Victim Address Confidentiality Program receive heightened confidentiality protections as well.¹⁵³

These state-law protections are significant because, as of this writing, at least 26 federal courts have held that the U.S. Department of Justice lacks authority to make broad demands for state-held voter file data, which includes information that state law makes confidential.

¹⁴⁹ Tenn. Code Ann. §§ 2-8-108(a), 2-18-109(c)(1)–(2) (2025).

¹⁵⁰ Tenn. Code Ann. § 2-2-127(a) (2025).

¹⁵¹ Tenn. Code Ann. § 2-2-112(c) (2025).

¹⁵² Tenn. Code Ann. § 2-2-127(a) (2025).

¹⁵³ Tenn. Code Ann. § 40-38-607(a), (d) (2025) (removing participants' voter-registration records and identifying/contact information from publicly available registration lists).

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, voting site official → designated county election official (e.g. county administrator of elections¹⁵⁴) → county commission and its legal counsel¹⁵⁵ → State Coordinator of Elections¹⁵⁶ → Secretary of State.¹⁵⁷
- ☐ **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 into or out of the office.
- ☐ **Plan for continuity if materials are seized:** in consultation with counsel and consistent with State Board 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.

¹⁵⁴ Tenn. Code Ann. § 2-12-201 (2025).

¹⁵⁵ Tenn. Code Ann. § 2-12-116(4), (15) (2025).

¹⁵⁶ Tenn. Code Ann. § 2-11-201-202(a)(1), (3)-(5) (2025).

¹⁵⁷ Tenn. Code Ann. § 2-11-201(a)-(b) (2025).

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 to federal officials. 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 Secretary of State and Tennessee Attorney General if they haven't already 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 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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