States United DEMOCRACY CENTER

A Primer on Federal Obstruction of Justice

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In the 2026 midterm elections, state and local election officials and poll workers ("election workers") may encounter federal law enforcement agents at or near polling places. Federal agents may be investigating a federal criminal or civil matter, seeking to arrest one or more individuals, or searching the premises of a precinct or tabulation center.

If federal agents do show up at or near polling places, election workers should take care to avoid engaging in conduct that could be considered obstructive. The obstruction of justice is a federal crime and encompasses a range of conduct. Whether specific conduct is unlawfully obstructive is highly fact- and context-dependent, and if election workers have questions about complying with federal agents' requests or demands, they should consult with counsel for their state or locality.

This resource is designed to provide a high-level primer on federal obstruction of justice, and the various types of conduct that may constitute obstruction of justice at or near a polling place. It does not constitute legal advice, nor create an attorney-client relationship.

What is obstruction of justice?

Obstruction of justice generally refers to a category of crimes that involve unlawfully impeding federal governmental activities.[1] There are a number of federal criminal laws that prohibit obstruction of justice, which may involve (1) physically interfering with federal law enforcement activities; (2) providing false or misleading information or discouraging or intimidating people from sharing information or materials with federal law enforcement or encouraging them to provide misleading or false information; or (3) falsifying, altering, concealing, moving, or destroying documents or records that are the subject of a federal investigation, or a judicial, agency, or administrative proceeding.

Below are general descriptions of the types of conduct these laws prohibit, followed by examples of these types of conduct at election sites that federal law enforcement could potentially interpret or misinterpret as unlawful obstruction of justice. The primer also includes a list of conduct that is generally permissible under federal law, and a list of conduct that is generally prohibited by federal obstruction statutes.

Physical obstruction

Perhaps the clearest way in which an individual's conduct can be considered an obstruction of justice is where the individual uses physical force, threatens to use physical force, physically intimidates, or physically injures a member of federal law enforcement. 18 U.S.C. § 111 makes it a crime to forcibly assault, resist or impede a federal officer, and 18 U.S.C. § 372 makes it a crime to conspire to forcibly impede or injure a federal officer discharging their duties.

***At or near a polling place*,** physically blocking federal agents from entering a space, physically preventing federal agents from accessing materials, locking federal agents in or out of a space, or threatening such conduct may be considered obstruction of justice. Crucially, these actions may be considered obstruction of justice even if the federal agent's own actions are later found unlawful. So long as the agent is acting within the scope of their federal employment, impeding their activity may be considered obstruction of justice.

As an example, should federal agents make arrests at or near a polling place, election workers generally will not be in a position to determine, at the scene and in real time, the lawfulness of that arrest. Interfering with an arrest may

[1] Charles Doyle, Cong. Rsch. Serv., RL34303, *Obstruction of Justice: An Overview of Some of the Federal Statutes That Prohibit Interference with Judicial, Executive, or Legislative Activities* (2014), https://www.congress.gov/crs-product/RL34303.

expose workers to liability for forcibly assaulting, impeding, or interfering with an agent performing their official duties even if the arrest is later found unlawful.[2]

Election workers may consider contacting local law enforcement to ask, or themselves asking agents:

- to identify themselves and their agency;
- whether the person is under arrest and on what basis; and
- to conduct the arrest away from the polling location or to move away from the polling location as quickly as possible.

Election workers or local law enforcement may also document information about the incident (including by activating body-worn cameras where applicable and permitted by the jurisdiction's laws) and report the incident through state and/or county channels.

Election workers should avoid the following:

- physically intervening in the arrest, including by standing between agents and the person being arrested, holding onto the person, or blocking an exit;
- telling the person to run, refuse, or resist; or
- making any statements to federal law enforcement about the lawfulness of the arrest, or the person's citizenship or voter registration status.

Verbal obstruction

Certain kinds of statements may also constitute federal obstruction of justice, including (a) knowingly making materially false statements to federal agents, (b) making threatening or misleading statements that hinder, delay, or otherwise prevent communication to a federal agent about a federal crime, and (c) coordinating with one or more other persons to make the above types of statements.

Materially False Statements: First, it is a crime for an individual to "knowingly and willfully" make any "materially false statement" in a federal matter. 18 U.S.C. § 1001. A "material" statement is one that has "a natural tendency to influence, or [be] capable of influencing" a federal agency.[3] This statute has been interpreted broadly, and at least one court has considered a simple false denial (e.g., saying "no") to federal agents to be a material statement.[4] However, some sort of statement is required to violate Section 1001; silence alone does not violate the statute and declining to answer a question is not a false statement.[5]

Hindering Communication with Law Enforcement: It is illegal to use intimidation or threats, engage in "misleading conduct" toward another person, or "corruptly persuade" someone not to speak with federal agents, with intent to hinder, delay, or prevent information about a federal offense from reaching a federal officer. 18 U.S.C. § 1512(b)(3). Instructing another individual not to speak to or cooperate with federal agents may be considered obstruction of justice under this statute. However, simply informing someone that they are not *obligated* to speak with federal agents is likely not obstruction of justice. [6]

Conspiracy: Individuals also may not conspire with one or more other persons to make a materially false statement or hinder communications with a law enforcement officer. *See* 18 U.S.C. § 371.

For election workers, this means that if a federal agent is at or near a polling place and asks a question related to a federal investigation or the agent's work, knowingly giving the agent a false answer or coordinating with someone else to knowingly make false statements may constitute obstruction of justice. Election workers should also avoid

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[2] 18 U.S.C. § 111; *United States v. Lopez*, 710 F.2d 1071, 1077 (5th Cir. 1983); *accord United States v. Brown*, 76 F.4th 1073 (8th Cir. 2023) ("'Engaged in the performance of official duties' means 'acting within the scope of what the agent is employed to do' as opposed to 'engaging in a personal frolic of his own'"; the inquiry does not turn on whether the officer was "abiding by laws and regulations in effect at the time of the incident") (quoting *United States v. Street*, 66 F. 3d 969, 978 (8th Cir. 1995)).

[3] *United States v. Gaudin*, 515 U.S. 506, 509 (1995) (quoting *Kungys v. United States*, 485 U.S. 759, 770 (1988)).

[4] *Brogan v. United States*, 522 U.S. 398, 400–01, 408 (1998).

[5] *See id.* at 404–05 (the Fifth Amendment "allows a witness to remain silent, but not to swear falsely") (quoting *United States v. Apfelbaum*, 445 U.S. 115, 117 (1980)).

[6] *Compare United States v. Shotts*, 145 F.3d 1289, 1300–01 (11th Cir. 1998) (allowing jury to find corrupt persuasion where a target's secretary testified that the target "said just not say anything [to the FBI] and I wasn't going to be bothered."); *with United States v. Farrell*, 126 F.3d 484, 488–90 (3d Cir. 1997) (holding that a noncoercive attempt to persuade someone with a privilege not to volunteer information is not corrupt persuasion).

instructing staff not to speak with agents, especially if those instructions are accompanied by pressure not to speak with agents.

Falsifying, altering, concealing, moving, or destroying documents or records

Finally, falsifying, altering, concealing, moving, or destroying documents, records, or other property related to a federal investigation may violate obstruction of justice laws. Several federal statutes criminalize this type of conduct.

Some of these statutes require that an individual engage in such conduct "knowingly" and/or "willfully." This means they must both know they are engaging in, or intend to engage in, the prohibited conduct *and*, depending on the statute, either know their conduct will or intend for their conduct to impede a federal investigation, law enforcement operation, or other proceeding.[7] Note, however, that an ongoing investigation or pending federal proceeding is not required for this conduct to violate the law.[8] Under 18 U.S.C. § 1519, an individual falsifying, altering, concealing, moving, or destroying documents can be found to have obstructed justice even before the formal initiation of a federal investigation or proceeding, so long as the individual acted with the understanding that an investigation "might begin" at some point in the future.[9]

Some election-specific examples of prohibited conduct under federal obstruction statutes include:

- Tampering with election records to "impair" their availability for an official federal proceeding;[10]
- Knowingly destroying, altering, or concealing election records with the intent to impede, obstruct, or influence the investigation or administration of a federal matter;[11]
- Knowingly destroying or removing election materials, voting machines, or other property to prevent seizure by federal agents;[12] and
- Willfully failing to retain and preserve federal election records.[13]

Conduct that federal law generally permits

- *Declining consent.* Election workers may withhold consent to a search for or the removal of election materials, and can say so politely, clearly, and promptly. Searches conducted pursuant to a search warrant do not require consent, but it is not obstruction for election workers to make their lack of consent clear.
- *Declining to answer questions.* Absent legal process, such as a subpoena, election workers may generally decline to answer agents' questions (although some states require subjects of a lawful investigative stop to provide their names). Subpoenas do not require election workers to answer questions immediately; they may require an election worker to provide testimony on a future date.
- *Asking for paperwork and identification.* Election workers may ask agents to identify themselves, name their agency and supervisor, and provide any warrant, subpoena, or written demand for review. A warrant must be signed by a judge and must describe the place to be searched and the things to be seized.[14]
- *Calling counsel and the designated official.* Before Election Day, election workers may designate someone to accept legal process and may want to identify counsel to contact.
- *Documenting everything.* Election workers may document agents' names and badge numbers; what agents said, requested, and took; and the condition of seals, containers, and equipment before and after federal handling.
- *Going to court.* Election workers, through their counsel, may seek to quash or modify a subpoena, recover seized property, or obtain a judicial ruling on a demand.

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[7] *See United States v. Starnes*, 583 F.3d 196, 210 (3d Cir. 2009) ("when 'willfully' is used in a criminal statute, and particularly where the term is used in conjunction with 'knowingly,' as it is in [18 U.S.C.] § 1001(a), it usually requires the government to prove that the defendant acted not merely 'voluntarily,' but with a 'bad purpose,' that is, with knowledge that his conduct was, in some general sense, 'unlawful.'") (internal quotations omitted).
[8] 18 U.S.C. § 1519.
[9] *United States v. Kernell*, 667 F.3d 746, 752–55 (6th Cir. 2012).
[10] 18 U.S.C. § 1512(c).
[11] 18 U.S.C. § 1519.
[12] 18 U.S.C. § 2232(a).
[13] 52 U.S.C. §§ 20701–20702.
[14] U.S. Const. amend. IV; Fed. R. Crim. P. 41(e)(1)–(2).

Conduct obstruction statutes generally prohibit

- *Physical resistance of any kind.* Federal law prohibits forcible interference with federal officers, including threats of immediate harm.[15] If agents insist on entering or seizing materials, election workers should step aside, state their objection, and document what happens. They should not physically resist.
- *Hiding, moving, altering, or destroying materials to keep them from federal agents.* After receiving a subpoena or demand, election workers should suspend routine destruction and equipment resets that could affect responsive materials. They should not conceal, alter, or destroy any relevant materials or communications.
- *Saying anything false.* A knowingly false answer to an agent, even a simple "no," can be prosecuted as a criminal offense.[16] Silence is lawful; a lie may not be. If election workers do not know an answer, they should say so. If they do not want to answer, they should decline to answer.
- *Telling others not to speak with federal agents.* Election workers may advise colleagues of their rights to decline interviews and request counsel. They should not direct colleagues to refuse an interview, remain silent, or give a particular answer. They should not pressure colleagues or imply consequences for speaking.[17]

In general, election workers unsure how to respond to a demand should document it and contact counsel rather than guess. Because many federal obstruction statutes require a particular intent, a documented request for legal advice can help show the election worker's purpose.

[15] *See* 18 U.S.C. § 111.
[16] 18 U.S.C. § 1001; *Brogan*, 522 U.S. at 400–01, 408.
[17] *See, e.g.*, 18 U.S.C. § 1512(b)(3); *supra* note 5.