States United DEMOCRACY CENTER

Fact Sheet: Protecting Election Materials

Oct. 16, 2026

In January 2026, federal law enforcement seized hundreds of boxes of materials related to the 2020 election from the main elections facility in Fulton County, Georgia, including physical ballots, ballot images, tabulator tapes, and voter-roll records. This seizure raises the specter that such seizures could occur around the 2026 mid-term or future elections. This resource provides a brief overview of the methods the federal government may use to seize election materials and recommendations for how state and local government officials can prepare to protect election materials and to ensure they can continue to administer free and fair elections while minimizing potential disruptions. It does not constitute legal advice nor create an attorney-client relationship.

Overview of ways the federal government can seek election materials

The federal government has six primary methods to seek to obtain election materials:

- A search warrant in furtherance of a criminal investigation. Search warrants are authorized by a court, and there is no clear procedural method to pause their execution. Election officials may ask to see the warrant and review the scope of the search and seizures it authorizes, but they must comply with its terms.
- Warrantless searches and seizures. Warrantless seizures are presumptively unreasonable unless an exception applies such as consent or exigency.
- Administrative or grand jury subpoenas. Subpoenas can demand that certain information be produced by a certain date. After being served with a subpoena, election officials may consult with counsel about their options for responding, which may include producing the information, negotiating over the subpoena's terms, and moving to quash. Subpoenas list a date by which the information must be produced and typically do not require immediate production.
- Inspection and copy of election records under the Civil Rights Act. Under the Civil Rights Act, the Attorney General is authorized to inspect and copy certain election records at the place they are kept but is not authorized to remove election records from state custody. 52 U.S.C. § 20703.
- Requests under the Help America Vote Act (HAVA) and National Voter Registration Act (NVRA). The federal government can request election-related information under HAVA and the NVRA. Compliance with a request under HAVA is not required, and compliance with a request under the NVRA is only required if the information must also be publicly disclosed.
- Voluntary requests for information. The federal government can make a voluntary request for information or equipment. Compliance with a voluntary request is not mandatory, although it is important that any information provided be truthful, as intentionally making materially false statements to federal agents is a crime. 18 U.S.C. § 1001.

How local election officials can prepare for a possible request, search, or seizure

Advance preparation is critical. **Local officials can:**

- **Conduct an assessment of election preparations**. This should include identifying all locations where election materials are or will be stored; creating an accurate and comprehensive inventory of all election materials well in advance of the election and then placing a person in charge of maintaining the inventory throughout the election cycle; and ensuring, to the extent practicable, that there are backups of all election materials, including at off-site locations, so officials can complete their election obligations.
- **Create a training program** for all election officials that includes the officials' rights, duties, and options if they receive a request, subpoena, or warrant from a federal government official. The training should cover, for example:
    - The official's right to decline consent to a request or a warrantless search.

    - The official's duty to comply with a search warrant and the limits of those duties.
    - How officials can perform their duties without engaging in behavior that could be misconstrued as obstruction (such as ordering a subordinate not to answer a question) while maintaining their rights and protecting the rights of their employees (such as informing a subordinate that they are not required to answer a question).
    - What facts officials should gather if they are served with a search warrant or subpoena (such as the agency and contact information for the lead agent and assigned prosecutor) and how to do so.
- **Develop an internal and external communications plan**. The plan should cover internal notifications of State and local officials responsible for elections or protection of election materials, such as the State Attorney General and Secretary of State, as well as legal counsel responsible for assisting election officials in the event of a federal inquiry. It should also cover plans for educating the public about the events and the steps being taken by state and local officials to ensure that the election process will be protected.

How state officials can support local efforts

- **Creating model versions** of an election preparation assessment, training program, and communications plan that can serve as roadmaps for local efforts.
- **Convening local election officials statewide** to discuss and coordinate appropriate strategies for protecting election materials.
- **Conducting a series of tabletop exercises** with state and local election officials that address various scenarios to increase officials' ability to prepare and respond appropriately.

Recourse if election materials are seized

If the execution of a search warrant is still ongoing, legal counsel for the election officials should be prepared to contact the magistrate judge who authorized the warrant and the assigned Assistant U.S. Attorney, if:

- The seizure would violate state law due to chain-of-custody or privacy requirements;
- The seizure would disrupt ongoing election processes or the completion of an ongoing election; or
- There is evidence that agents intend to seize materials beyond the scope of the warrant.

If the execution of the search warrant is complete, the principal vehicle counsel can use to seek return of the election materials is a motion under Federal Rule of Criminal Procedure 41(g). If a criminal case is pending, a Rule 41(g) motion is treated as part of the case; if a criminal case is not pending, the Rule 41(g) motion is treated as an independent equitable legal action. Counsel can seek return of the materials in either case, although the legal standard may be more favorable in a civil action than a criminal action. In a criminal case, courts look to the government's legitimate evidentiary needs and the orderly administration of the prosecution, while in a civil case, courts look to four factors to determine whether to return property under Rule 41(g), including: (1) whether law enforcement displayed a callous disregard for the constitutional rights of the movant; (2) whether the movant has an individual interest in and need for the property; (3) whether the movant would be irreparably injured by denying return of the property; and (4) whether the movant has no adequate remedy at law for the redress of their grievance. *Trump v. United States*, 54 F.4th 689, 697 (11th Cir. 2022) (citing *Richey v. Smith*, 515 F.2d 1239, 1243-44 (5th Cir. 1975)).

To bring a Rule 41(g) motion, local and state election officials must also demonstrate that they have standing. The strength of each official's standing arguments may depend on their constitutional and statutory responsibilities for the seized material and election administration and processes that depend on access to that material.