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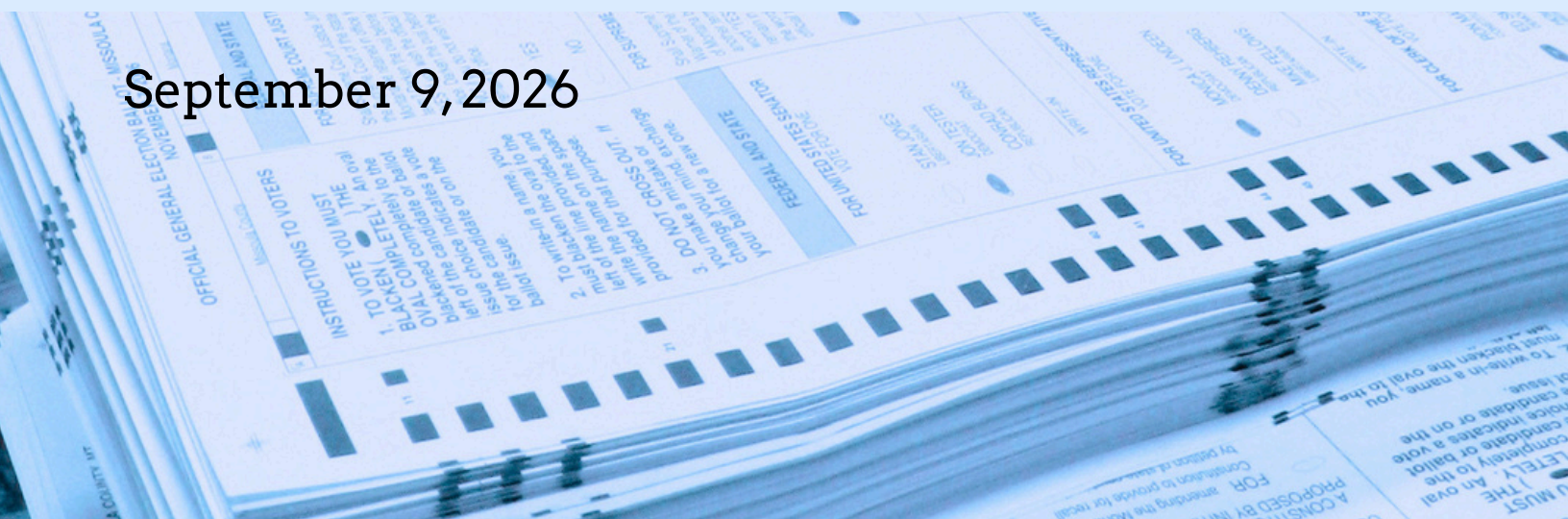
A Judicial Guide to Search Warrants Seeking Election Materials:

How Alternatives to Election Material and Ballot Seizures
Can Avoid Irreparable Harm, Promote Election Integrity,
and Further the Public Interest

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Executive Summary^{*}

One manifestation of U.S. political polarization is the volume and ferocity of election-related litigation. Recent events raise the possibility that federal, state, or local law enforcement may seek a search warrant to seize ballots or other election related materials during an ongoing, live election for ostensible purposes of conducting a criminal investigation. Such an unusual and (in modern times) unprecedented request raises grave, competing concerns: On the one hand, allowing anyone other than duly-authorized local election officials to gain control over election materials before all election-related activity is final may cause **irreparable harm** by breaking the chain of custody and tainting election results; no one can be sure that ballots outside the chain of custody have not been added to, removed, or altered. On the other hand, law enforcement possessing probable cause of a crime have a legitimate interest in assuring that relevant evidence is **not destroyed or altered**.

This white paper assists judges should such a conflict arise. It first describes chain of custody procedures in elections and how breaking that chain may cause irreparable harm to voters, candidates, and the public, who have the right to an untainted election. It then explains special concerns arising if law enforcement seize election materials and break the chain of custody. It concludes by laying out alternatives to judicially-authorized ballot seizures that avoid irreparable harm and protect election integrity and confidence in the judiciary. In particular, courts should (1) closely scrutinize whether there is a legal basis and probable cause to issue a warrant; (2) consider timing modifications; (3) when feasible, provide state and local election administrators with notice and an opportunity to be heard about the risks of seizures and acceptable alternatives; (4) consider modification of a warrant's terms to protect the chain of custody, such as **providing law enforcement with copies, rather than originals, of ballot materials**; (5) consider other appropriate modifications; and (6) if a warrant is issued, examine post-warrant procedures. These alternatives minimize the risk of irreparable harm; protect the rights of voters, candidates, and the public; and bolster public confidence in the fairness and integrity of elections and the judiciary.

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Introduction

Election litigation is hitting record levels in the United States.¹ Controversy and accompanying litigation have surrounded recent law enforcement efforts to obtain warrants seizing ballots and other election-related materials and equipment used *in past elections*,² though crucially *not* in ongoing, live elections. This white paper considers

¹ See Derek T. Muller, *Reducing Election Litigation*, 90 FORDHAM L. REV. 561, 563 (2021); Richard L. Hasen, *Research Note: Record Election Litigation Rates in the 2020 Election: An Aberration or a Sign of Things to Come?*, 21 ELECTION L.J. 150, 150-54 (2022).

² These election material seizure examples all involve *past elections*:

- In Barry County, Michigan, a sheriff sought warrants to seize voting machines related to the 2020 election, but the prosecuting attorney declined to endorse the warrants due to insufficient evidence. The sheriff seeking the warrant was already under a state investigation for his alleged involvement in helping a private investigator access a vote tabulator. Peter Eisler & Nathan Layne, *Michigan Sheriff Sought to Seize Multiple Voting Machines, Records Show*, REUTERS (Aug. 30, 2022, 1:41 PM), <https://tinyurl.com/55hkd8em>.
- In Riverside County, California, a local sheriff seized more than 650,000 ballots from the 2025 California election. Ryan Sabalow, Cayla Mihalovich, & Wendy Fry, *We Went to Court to Unseal the Warrants Behind Sheriff Chad Bianco's Ballot Seizures. What They Reveal*, CALMATTERS (April 16, 2026), <https://tinyurl.com/electionwarrant>. On April 8, 2026, the California Supreme Court ordered the sheriff to halt any seizure or handling of ballots to protect the integrity of the seized items while litigation over the seizure remains ongoing. Pet. Granting Review, *Attorney General of the State of California v. Bianco et al.*, No. S295901 (2026) ("Petitioner and real parties are directed to meet and confer regarding additional measures to protect the integrity of the seized items during the pendency of this matter, including but not limited to the appointment of a special master to take temporary possession of them.").
- In Fulton County, Georgia, the Federal Bureau of Investigation seized original 2020 voting records pursuant to a search warrant. Luke Barr, Olivia Rubin, & Pierre Thomas, *FBI Seizes 2020 Ballots in Georgia in Apparently Unprecedented Action, Alarming Local Officials*, ABC NEWS (Jan. 28, 2026, 8:39 PM), <https://tinyurl.com/4bnwh6bx>. The recently publicized warrant application demonstrates that the warrant's basis was previously debunked and unsubstantiated claims about the 2020 presidential election. Stephen Fowler, *The FBI Seizure of Georgia 2020 Election Ballots Relies on Debunked Claims*, NPR (Feb. 11, 2026, 2:39 PM), <https://tinyurl.com/fultonaffidavit>; see also *Pitts v. United States*, No. 1:26-CV-00809-JPB, 2026 LEXIS 153673 at *44 (N.D. Ga. May 6, 2026) ("Petitioners say the Affidavit left out the fact that [a witness] had been sanctioned by numerous courts for making unsubstantiated claims about elections and had been disciplined by the State Bar of Arizona regarding the same conduct."); Appl. & Aff. for Search Warrant, Jan. 28, 2026, No. 1:26-MC-0177.
- The United States Department of Justice is demanding the 2024 federal election ballots and records from Wayne County, Michigan, but it has not yet obtained these records or obtained a warrant to search and seize these materials. U.S. DEP'T. OF JUST., *Demand for Wayne County 2024 Federal Election Ballots and Records* (April 14, 2026); Luke Barr, *Justice Department Demands 2024 Election Ballots from Wayne County, Michigan*, ABC NEWS (Apr. 20, 2026, 12:21 PM), <https://tinyurl.com/wayneco-ballots>.

The ballot seizures in Fulton County appear to be the first time the federal government has seized past election records when state election officials objected to the seizure. See John Keller & Chelsea Rice, *The Last Check: Magistrate Judges and Federal Seizures of Election Records*, JUST SECURITY (2026) available at <https://tinyurl.com/yd6cbc8u>. Historically, in the few instances where actual ballots or other voting records were necessary in a criminal investigation, the federal government cooperatively worked with state officials or issued a "friendly subpoena" to temporarily obtain custody of the records after all election results were certified and any recounts complete. *Id.*

how an unusual and (in modern times) unprecedented ballot or election material seizure in an ongoing election is likely to cause irreparable harm to the public and to the integrity of an election. It proposes alternatives to such seizures that also satisfy legitimate law enforcement objectives.

At every election administration step, local and state officials ensure an uncompromised chain of custody over election materials and equipment, providing a verifiable and auditable record guaranteeing accurate and trustworthy election results. Disrupting the chain of custody through a search warrant to seize election materials or equipment risks causing irreparable harm to state and local officials' ability to count, recount, and certify election results; to judges and other bodies who may have to adjudicate disputes over election outcomes; and to voters, candidates, and the public who depend upon election integrity and confidence in the judiciary.³ After a seizure, any future examination of those materials, including ballots that have already been cast, could be inherently suspect. When chain of custody procedures are not followed, no one can be sure that the materials have not been tampered with—by adding, deleting, or altering ballots.

A search warrant to seize election materials and equipment in an ongoing election risks compromising election officials' ability to certify results and conduct future recounts or contests. An election materials seizure is a departure from democratic norms, historical practices, and internal law enforcement policies. Seizures also risk amplifying harmful conspiracy theories that can erode voter confidence and trust in elections.

Law enforcement may have legitimate reasons for seeking a search warrant over election materials and equipment.⁴ But there are ways to assure the preservation of evidence potentially relevant in a criminal investigation without breaking the chain of custody. Courts can consider timing modifications, notice and an opportunity for state and local election administrators to be heard, and most importantly, modifications of a warrant's terms to protect the chain of custody, such as ***providing law enforcement with copies, rather than originals, of ballots or other election materials***.⁵ These alternatives are more likely to avoid irreparable harm; protect the rights of voters, candidates, and the public; and bolster public confidence in the fairness and integrity of elections and the judiciary.

³ See Derek Clinger, *How State Laws May Constrain Law Enforcement Seizures of Election Materials*, STATE DEMOCRACY RESEARCH INITIATIVE (2026), available at <https://tinyurl.com/4vez6abx>.

⁴ See Justin Levitt & John Keller, *Election-Related Search Warrants* (2026), available at <http://dx.doi.org/10.2139/ssrn.7227158> ("If there is probable cause to believe that election officials will imminently destroy election records in violation of the Civil Rights Act of 1960, federal officials must be allowed to pursue expedited civil or criminal process to preserve such records—including a federal warrant for the seizure of such materials.").

⁵ See *id.* at 21 ("[T]he execution of nearly any search warrant for election materials while election results are still pending should be limited to inspection and/or copying while the original materials remain in the shared custody of a state or local election official.").

This report provides an overview of chain of custody procedures, explains the risks to an election from a broken chain of custody, considers the additional risks specific to ballot and election material seizures, and offers alternatives to ballot seizures to best protect the electoral process and public confidence.

Chain of Custody Procedures and Irreparable Harm

All states and local jurisdictions have a rigorous set of procedures to manage, handle, and transport all election materials and equipment.⁶ While specific requirements vary by state, these procedures ensure that the chain of custody for all election materials and equipment is secure and provides a verifiable record that election officials properly followed all procedures.⁷ Chain of custody procedures provide evidence that may later be used to authenticate election results, corroborate post-election audits, and demonstrate the trustworthiness of election outcomes.⁸

Chain of custody rules apply to each step of administering an election, from printing blank ballots to certifying the final results to potential recounts and administrative, legislative, or judicial election contests. States and local jurisdictions typically require the use of tamper-proof seals for boxes containing ballots, signature logs that document each time a box is opened and by whom, or the use of a bipartisan multi-person team to oversee handling of ballots.⁹ A secure chain of custody is essential for electoral integrity.

Unintentional, and typically minor, disruptions to the chain of custody occasionally occur. For example, a power failure may temporarily disrupt a security system where ballots are stored. Or there could be human error, such as an election worker forgetting to lock a door where officials store election materials.¹⁰ Election administrators who have been trained on chain of custody requirements and how to handle election materials and equipment have a set of best practices to promptly discover, document, publicly disclose, and timely address any disruption pursuant to state law. Small chain of custody disruptions do not necessarily taint the outcome of an election.

Even unintentional and relatively small disruptions to the chain of custody may lead to serious consequences including the decommission and replacement of election

⁶ See U.S. ELECTION ASSISTANCE COMM'N, BEST PRACTICES: CHAIN OF CUSTODY (2021).

⁷ See *generally* BIPARTISAN POL'Y CTR., UNITED IN SECURITY: HOW EVERY STATE PROTECTS YOUR VOTE IN 2026 (2026).

⁸ See U.S. ELECTION ASSISTANCE COMM'N, GUIDE TO THE CANVASS (2022).

⁹ For a full list of best chain of custody practices and recommendations see U.S. ELECTION ASSISTANCE COMM'N, BEST PRACTICES: CHAIN OF CUSTODY (2021); see *also* Appendix: State Chain of Custody 50-State Survey available at <https://tinyurl.com/SDPAppendix>.

¹⁰ THE ELECTIONS GROUP, CHAIN OF CUSTODY (2024), available at <https://tinyurl.com/electionsgroup> (“[S]imple human oversights, accidents, or internal threats can lead to a potential security breach. Doors might be left unlocked. Ballot containers could be misplaced. Power failures or weather emergencies might disrupt security systems.”).

equipment and the setting aside of affected ballots that officials may no longer count. In turn, the exclusion of otherwise valid ballots from a final count affects the rights of innocent voters, candidates, and the public, potentially calling into question the outcome of an election.¹¹

For example, in a 2025 election in Hamtramck, Michigan, 37 absentee ballots were unaccounted for on election night, but later discovered in a clerk's office, where the ballots had been opened but not yet counted.¹² Citing chain of custody concerns, the County Board of Canvassers did not count those 37 ballots.¹³ The mayoral election was decided by only 11 votes.¹⁴ Litigation over those uncounted ballots remains ongoing and in June 2026, officials discovered an additional uncounted ballot in a storage area.¹⁵ The unintentional breaks in the chain of custody led to at least the temporary disenfranchisement of these 38 voters, uncertainty in the election results, and further potential complications in certifying the election results once those ballots are reviewed under court order.¹⁶

More serious interference with the chain of custody renders future examination of election materials and ballots suspect and calls the integrity of the election results into question. Interference with the chain of custody could disenfranchise voters, *including voters from all political parties and backgrounds*. Audits cannot typically undo a serious break in the chain of custody¹⁷ because someone could have added to, removed, or altered ballots outside the presence and control of election officials.¹⁸

¹¹ See Hayley Harding, *All About the 'Chain of Custody,' the Process That Keeps Elections Secure*, VOTEBEAT (Jan. 16, 2026, 7:48 AM), <https://tinyurl.com/26vn9wc5>; Clinger, *supra* note 3.

¹² Hayley Harding, *Ballot Custody Questions Complicate Aftermath of Hamtramck Election*, VOTEBEAT (Nov. 13, 2025, 4:46 PM), <https://tinyurl.com/432fd8xh>.

¹³ Hayley Harding, *Hamtramck Batch of Absentee Ballots Won't Be Counted, Disenfranchising 37 Voters*, VOTEBEAT (Nov. 14, 2025, 1:15 PM), <https://tinyurl.com/2966a5m6>.

¹⁴ See Paula Wethington, *Court Orders Wayne County to Review 37 Uncounted Absentee Ballots in Hamtramck Mayoral Race Decided by 11 Votes*, CBS NEWS (Mar. 27, 2026, 4:45 PM), <https://tinyurl.com/4sxwhpf5> ("An official certification of the votes two weeks after election day indicated Alharbi had six votes over Mahmood. A later hand recount by the Wayne County Board of Canvassers determined that Alharbi won by 11 votes.").

¹⁵ Brandon Carr, *Hamtramck Mayor Adam Alharbi Calls for Election Reform After Another Uncounted Ballot is Discovered*, CLICKON DETROIT (June 26, 2026, 9:45 PM), <https://tinyurl.com/bdfccjyf>.

¹⁶ See *Mahmood v. City of Hamtramck*, No. 378814, 2026 WL 880593 (Mich. Ct. App., 2026); see also Hayley Harding, *37 Hamtramck Ballots Could Flip Mayoral Race After Michigan Supreme Court Declines Appeal*, VOTEBEAT (Aug. 14, 2026, 2:20 PM), <https://tinyurl.com/442f3fbn>.

¹⁷ See Richard L. Hasen, *Identifying and Minimizing the Risk of Election Subversion and Stolen Elections in the Contemporary United States*, 135 HARV. L. REV. 265, 296-97 (2022); see also AD HOC COMM. FOR 2020 ELECTION FAIRNESS & LEGITIMACY, *FAIR ELECTIONS DURING A CRISIS* 17-19 (2020), <https://perma.cc/MP6B-KDSS> ("[M]aintaining control over the chain of custody of ballots is critical not only to ensure that the initial count is accurate, but to ensure that any disputes that arise are resolved based on the votes cast.").

¹⁸ See U.S. DEP'T OF JUST., *FEDERAL LAW CONSTRAINTS ON POST-ELECTION "AUDITS"* (2024) ("Where election records leave the control of elections officials, the systems for maintaining the security, integrity

Election officials must maintain election records' security even after the election has concluded through the chain of custody documentation, ensuring a reliable, uncompromised, and complete record.¹⁹ If election officials turn over federal records to other authorized officials, those officials are also responsible for retaining and preserving records according to federal law.²⁰ The United States Department of Justice has interpreted the law to require election officials to maintain "ultimate management authority" over records, "including the right to physically access" records, even if another authorized official has physical possession of the records.²¹ Removing records from the control of state and local election officials, even after results are certified and all recounts are conducted, still threatens the ability to maintain an uncompromised chain of custody to meet state and federal election retention policies.

Breaking the chain of custody for a small number of ballots is less likely to have outcome-determinative effects on federal or statewide races that are typically determined by a relatively wide margin. However, a chain of custody problem with ballots will affect *all races* that are included on those ballots, including local elections.²² Local elections are frequently decided by a relatively small number of votes, as in the Hamtramck mayoral election, and a custody break could affect the ability of state officials to properly tabulate, certify, and finalize local election results.²³

Resolution of chain of custody issues may delay tabulating, certifying, and finalizing election results. Disputes can delay the finality of election outcomes, potentially leaving voters and states without representation. Delays in finalizing winners may negatively affect voter confidence in the election and create unnecessary confusion for candidates and voters.

and chain of custody of those records can easily be breached.") [hereinafter U.S. Dep't of Just. Federal Law Constraints].

¹⁹ Federal law requires a local election official or a state-designated custodian to retain federal election records for 22 months. See 52 U.S.C. § 20701-20706; U.S. DEP'T OF JUST., FEDERAL LAW CONSTRAINTS ON POST-ELECTION "AUDITS" (2021). States may impose their own election record retention policies for state elections. See also U.S. ELECTION ASSISTANCE COMM'N, ELECTION AUDITS ACROSS THE UNITED STATES (2021) ("Ensuring chain of custody procedures throughout the post-election audit process is paramount... A break in the chain of custody increases the risk that the integrity or reliability of the asset cannot be restored.").

²⁰ 52 U.S.C. § 20701.

²¹ See U.S. DEP'T OF JUST. FEDERAL LAW CONSTRAINTS, *supra* note 18.

²² Arizona is the only state that has a system in which some voters may be registered for federal elections only, further complicating any warrants to seize ballots. See Ariz. Sec'y of State, Registering to Vote, <https://tinyurl.com/mr34ej6r> (last visited Aug. 14, 2026).

²³ See Zoltan L. Hajnal, Vladimir Kogan, & G. Agustin Markarian, *Who Votes: City Election Timing and Voter Composition*, 116 AM. POL. SCI. REV. 374, 374 (2022).

Additional Potential Irreparable Harm Associated with Election Material and Ballot Seizures

A court-approved election material or ballot seizure in an ongoing election that breaks the chain of custody raises all the concerns already described in this white paper: a seizure can interfere with election certification or recounts; cause election equipment decommission; affect the rights of candidates, voters, and the public; and even alter an election's ultimate outcome. But election material seizures raise further additional risks.

First, seizure of ballots or other election materials *risks interfering with the transparent tabulation process and endangering sensitive voter data*. State and federal law enforcement are not trained to handle, recount, tabulate, or otherwise ensure that the chain of custody for election materials remains intact. Law enforcement chain of custody procedures do not satisfy election integrity requirements because they interrupt a necessarily transparent process observable by candidates, parties, and the public.²⁴ Indeed, the necessary confidentiality and secrecy required for conducting criminal investigations is at odds with the transparency measures necessary to protect the electoral chain of custody and election integrity. Election officials also work with sensitive private data including voters' signatures and identification numbers, such as drivers' licenses and social security numbers. Election officials must both handle sensitive election materials and provide a transparent public process that ensures voter information is not compromised. Mail ballots seized pursuant to a warrant before election officials process them and before signature verification could compromise voter privacy and a voter's right to a secret ballot.²⁵

The consequences of breaking the electoral chain of custody and interfering with ballot transparency cannot be cured by the exclusion of evidence or a limiting instruction as courts do in the case of a law enforcement break in the chain.²⁶

Second, election officials frequently work with law enforcement and other state agencies to ensure that elections are run securely, fairly, and that all procedures are followed. *Seizures of election materials disrupt this collaboration*.²⁷ A warrant to seize election

²⁴ See Clinger, *supra* note 3 at 12 ("A law enforcement seizure would break this framework, replacing carefully designed procedures with the improvised, closed-door handling of ballots by officers who lack the training or legal authority that election officials have.").

²⁵ Campaign Legal Center Amicus Letter in Support of Petition, *Cervantes v. Bianco*, No. S295866 (2026), available at <https://tinyurl.com/bdhetpbc> [hereinafter Campaign Legal Center Amicus Letter]. See also Hon. Maureen O'Connor & Hayne Yoon, *Judges' Critical Role in Evaluating Election-Related Search Warrants*, STATE COURT REPORT (Aug. 26, 2026), <https://tinyurl.com/fu9dj3f4>.

²⁶ See e.g. *Speers v. State*, 999 N.E.2d 850, 855 (Ind. 2013) ("the State need not establish a perfect chain of custody, and any gaps go to the weight of the evidence and not its admissibility." (quoting *Kennedy v. State*, 578 N.E. 2d 633, 639 (Ind. 1991))).

²⁷ See BRENNAN CTR. FOR JUST., SURVEY FINDS ELECTION OFFICIALS REMAIN CONCERNED ABOUT SAFETY, LACK OF GOVERNMENT SUPPORT (2026) ("89% of officials plan to coordinate with at least one other local or

materials interferes with certification and tabulation processes by interjecting a law enforcement investigation into an election. For this reason, internal Department of Justice policies state that the Department should not engage in overt criminal investigative measures in matters involving alleged ballot fraud until the election is concluded, certified, and all the recounts and election contests have concluded.²⁸ The Federal Bureau of Investigation's internal policies similarly state that agents should use the least intrusive means to gather evidence, while balancing operational needs against the potential impact to privacy and civil liberties.²⁹

Third, issuing a warrant to seize election materials and equipment *may undermine public trust and the very goals that the warrant is presumably issued to accomplish*. Once the chain of custody for live ballots has been interrupted, the election results might be suspect due to the resulting gap in the chain of custody; some members of the public may believe, fairly or not, that a seizure is politically motivated and designed precisely to interfere with certifying a legitimate electoral outcome. And ballots taken out of public view will inevitably raise public perceptions of impropriety even if there is no ballot tampering.³⁰ The breach in the chain of custody creates the possibility that election results cannot be properly tabulated, certified, recounted, and audited. The investigation and seizure of ballots itself creates a security breach.

Particularly if ballots are seized during an ongoing election, public trust in our elections, which has already significantly decreased in recent years, risks further serious erosion.³¹ Ballot seizures could amplify unfounded voter fraud claims, misinformation, and election-related conspiracy theories.³² Recent ballot and election material seizures (and attempted seizures) from past—not live—elections may have already contributed to this atmosphere of distrust.³³

Finally, seizures of election materials and equipment *violate democratic norms*, including international norms.³⁴ Government election materials and equipment seizures

state agency or department to prepare for a safe and secure election in 2026, with 80 percent planning to coordinate with law enforcement.”).

²⁸ See Justice Manual 9-85.300, Non-Interference in Elections When Conducting Federal Criminal Investigations Involving Ballot Fraud (“[T]he Department should not engage in overt criminal investigative measures in matters involving alleged ballot fraud until the election in question has been concluded, its results certified, and all recounts and election contests concluded. Doing otherwise runs the risk of chilling legitimate voting and campaign activities and of interjecting the investigation itself into ongoing campaigns and the adjudication of any ensuing election contest.”).

²⁹ See FED. BUREAU OF INVESTIGATION, DOMESTIC INVESTIGATIONS AND OPERATIONS GUIDE (2024).

³⁰ See Campaign Legal Center Amicus Letter, *supra* note 25.

³¹ Thad Kousser, et al., *Trust in American Elections Has Declined Since 2024, Broad Concerns about ICE at Polling Places in 2026*, <https://tinyurl.com/YankelovichCenter>.

³² See Campaign Legal Center Amicus Letter, *supra* note 25.

³³ On those recent seizures, see *supra* note 2.

³⁴ See Levitt & Keller, *supra* note 4 (“[I]n the modern era, the authors of this piece. . . are unaware of any federal application for a search warrant for election-related data or materials while voting, tabulating,

are exceedingly rare throughout other established democracies. Seizing ballots is an unprecedented departure from established democratic norms and historical practices. A court reviewing a warrant often serves as the last meaningful check to avoid irreparable harm to an election. By undermining democratic norms, a judicially-approved seizure can undermine public confidence in the judiciary as well as the electoral process.³⁵

Alternatives to Election Material and Ballot Seizures to Satisfy Legitimate Law Enforcement Objectives While Avoiding Irreparable Harm

Issuing a warrant to seize election materials, including ballots, risks irreparable harm to election integrity. Existing law may bar ballot and election equipment seizures.³⁶ Courts should carefully scrutinize any warrant request seeking election materials, as damage to an election or the chain of custody likely cannot be fixed after the fact. If a court receives a warrant application for election-related materials, specific election-specific considerations and potential modifications for election-related warrants could minimize any harm or disruption to an election and ensure that the chain of custody for all election materials to be searched or seized remains intact.³⁷

Courts should consider the following steps:

(1) *Examine the warrant to assure legality of the request and probable cause.*

Election records are subject to special rules that may bar court orders to seize ballots. Before a court issues a warrant, it must be satisfied that the seizure is legal; seizures of election ballots and materials may violate state³⁸ and federal³⁹ law. Even if the law in

certification, or the resolution of disputes concerning election results was still underway.”). There is scant evidence of ballot seizures in other democratic countries in the modern era, unsurprising given how such seizures may violate democratic norms. For a discussion of democratic norms see U.N. High Commissioner for Human Rights (OHCHR), *Human Rights and Elections: A Handbook on International Human Rights Standards on Elections* No. 2 (2021) (“Effective law enforcement during an election period requires a balance between the need for electoral security and maintenance of order and non-interference with fundamental freedoms and participation rights...”).

³⁵ See Keller & Rice, *supra* note 2.

³⁶ See Richard D. Bernstein, *Congress Has Precluded Seizure of Ballots or Voting Machines During the Counting and Certifying Processes* (2026), <https://tinyurl.com/3at2uzrf> (arguing that Rule 41(a)(1) precludes a seizure of federal ballots and election equipment); see also Clinger, *supra* note 3.

³⁷ See generally UC BERKELEY EDLEY CENTER ON LAW & DEMOCRACY, SEARCH WARRANTS FOR ELECTION MATERIALS (2026) [hereinafter UC Berkeley Edley Center Election Resources] available at: <https://tinyurl.com/EdleyCenter>.

³⁸ See generally Clinger, *supra* note 3.

³⁹ See Bernstein, *supra* note 36 (“[T]he DOJ can pursue one or more of multiple other remedies—including under Title III, a grand jury subpoena, and an adversarial court action for injunctive relief—but none of these could result in a DOJ seizure that improperly stops or delays a state’s counting, recounting or certifying processes.”). The Civil Rights Act of 1960, codified at 52 U.S.C. § 20703 gives the Attorney General the power to investigate voting rights violations and requires that election records be available for

theory allows a seizure, the situation’s gravity suggests a court should carefully examine whether probable cause supports the warrant. Determining probable cause in this context requires specialized knowledge of election administration procedures, including the safeguards that chain of custody procedures provide.⁴⁰ A court should consider whether the affidavit shows specific, credible evidence of “willful” violations, which is required for many election-related crimes, and whether there is sufficient information to make an independent probable cause determination, rather than ratifying law enforcement conclusions.⁴¹ If an examination reveals the lack of probable cause, a court should reject the search warrant application. If the examination reveals probable cause as to specific activity, a court may consider a more pinpointed warrant.

(2) Consider timing issues. A warrant’s timing in an election cycle should be of particular concern, as warrants for election materials during an active election or before officials finalize results and resolve election disputes will cause greater disruption and harm. Given election cycle deadlines for certification and contests, courts should resist external pressure and rigorously apply the law, declining to issue legally deficient or politically motivated warrant applications. Courts should not rush into the issuance of a warrant.⁴² Delaying warrant execution until election certification and election dispute resolution better ensures that any search or seizure does not affect a jurisdiction’s ability to determine an election winner or otherwise deprive voters of representation.

(3) Provide notice to state and local election administrators and an opportunity to hear from them when feasible.⁴³ Before issuing a warrant, courts should consider giving state and local election administrators notice and an opportunity to be heard. Neither judges nor law enforcement personnel are experts in election administration. An election administrator may be able to resolve concerns that led to the request for a warrant and offer alternatives to ballot seizures to satisfy legitimate law enforcement concerns. An election administrator may have previously investigated the alleged activities in the affidavit or can offer evidence of the safeguards, including chain of

“inspection, reproduction, and copying.” The Act does not create a right to seize original records. See Levitt & Keller, *supra* note 4 at 19-20 n.58 (“When even short-term exclusive custody for copying purposes would itself amount to a public harm, as in the case of a warrant involving election materials, the flexibility embraced by the Rule would seem to similarly countenance an order precluding exclusive custody but permitting copying in the first instance.”); BRENNAN CTR. FOR JUST., PREPARING FOR LAW ENFORCEMENT DEMANDS FOR ELECTION MATERIALS (2026).

⁴⁰ See UC Berkeley Edley Center Election Resources, *supra* note 37.

⁴¹ *Id.*; *Illinois v. Gates*, 462 U.S. 213, 239 (1983).

⁴² See PROTECT DEMOCRACY, EXECUTIVE OVERRIDE (2026), <https://tinyurl.com/3nmxvku5>.

⁴³ Depending on the circumstances surrounding the warrant application, advance notice may not always be possible or feasible. See Levitt & Keller, *supra* note 4 (explaining situations in which a warrant may be necessary due to election official misconduct).

custody procedures, that were in place to prevent fraud, misconduct, or error. Election administrators also may assist judges in appropriately tailoring any warrant.⁴⁴

(4) Modify any warrant’s terms to protect the chain of custody. To minimize the potential for harm, a court may modify search warrant terms to minimize election harm. Most importantly, **a court should consider whether allowing law enforcement to make copies or reproductions of election materials can satisfy legitimate objectives while maintaining election officials’ chain of custody.**⁴⁵ In *Allen v. State of Georgia*—a case involving two subpoenas (and not a warrant)—the court did just that, requiring the government agency seeking the ballots to pay reproduction costs.⁴⁶

(5) Consider other modifications. A court may modify a search warrant’s term by reducing the search’s geographic scope, narrowing the categories of items to be seized, or imposing sequential or staged search protocols.⁴⁷ A court may also allow law enforcement to act as observers of the tabulation or recount processes.⁴⁸

⁴⁴ A court may also consider requesting amicus briefing to address the novel legal issues that a seizure for election materials during a live election presents. See UC BERKELEY EDLEY CENTER ON LAW & DEMOCRACY, NOVEL LEGAL ISSUES AND SEARCH WARRANTS FOR ELECTION MATERIALS REQUESTING AMICUS BRIEFING (2026) available at <https://tinyurl.com/52ab4dz6>. See also *In Re Warrant Application for Use of a Canvassing Cell-Site Simulator*, 654 F. Supp. 3d 694, 696 (N.D. Ill., 2023) (“to enable the Federal Defender Program to submit an amicus brief without revealing any sensitive details of the underlying criminal investigation, the Court instructed the government to submit to the Court a redacted version of the warrant and the application and affidavit in support of the search warrant.”); *In Re Search Of*, 317 F. Supp. 3d 523, 527 (D.D.C., 2018) (because of the novel issues presented, the Court appointed amicus curiae to submit briefing on the lawfulness of the government’s application).

⁴⁵ See O’Connor & Yoon, *supra* note 25; UC BERKELEY EDLEY CENTER ON LAW & DEMOCRACY, SAMPLE ATTACHMENT B TO A WARRANT APPLICATION (2026) available at <https://tinyurl.com/yekmt4fz>; Levitt & Keller, *supra* note 4. To promote transparency, a court may order that all copying of ballots be videotaped, if state law permits video recordings of ballots. For example, Texas requires video surveillance for counties with a population larger than 100,000 and that the recorded video be retained as an election record. TEX. ELEC. CODE ANN. § 127.1232 (West 2025).

⁴⁶ Order Denying Quashal, *Allen v. State of Georgia*, No. 24CV014632 (2025) (“Pursuant to its broad discretion governing discovery matters...the Court intends to require Petitioners to comply with the subpoenas but also intends to require the SEB to pay for what it wants”). The court stayed the Order after the FBI ballot seizure in Fulton County. *Pitts v. United States*, No. 1:26-CV-00809-JPB, 2026 LEXIS 153673 at *18 (N.D. Ga. May 6, 2026). *Allen* did not involve a warrant, but rather two subpoenas issued by the State Election Board (SEB) for election records in 2020, several years after results were certified in that election. Ordinarily the party subject to a subpoena has the right to notice and a hearing before complying. See *City of Los Angeles v. Patel*, 576, U.S. 409, 420 (2015) (“subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker.”).

⁴⁷ The UC Berkeley Edley Center on Law & Democracy worked with a team of nonpartisan election administration experts to create a guide for magistrate judges to reference when faced with a search warrant application for election materials and equipment. The full guide can be found at <https://tinyurl.com/3tnb7ffn>.

⁴⁸ See Bernstein, *supra* note 36 (“DOJ may also seek federal court authorization for observers. These observers may observe tabulation, but not unilaterally stop it.”). States may have specific laws regulating the conduct of observers during different election administration steps. See, e.g., CAL. ELEC. CODE § 15104 (regulating mail-in voting public observation), MICH. ADMIN. CODE r.168.927 (public observation of recounts), WIS. STAT. § 7.41 (regulating public observation during tabulation).

(6) Examine post-warrant procedures. Once a court issues a warrant, it will be difficult, if not impossible, to counteract the irreparable harm and disruption that any search and seizure of election-related materials will have done to the election. However, after warrant execution, judges should expedite hearings and prioritize election officials' requests for the materials' return.⁴⁹ A court should consider publicly releasing the warrant and evidence relied upon as the basis of the warrant to satisfy public concern about the warrant's legitimacy and the continued integrity of elections.⁵⁰

Conclusion

Courts play a crucial role in protecting election integrity and public confidence in both democratic processes and the judiciary. When faced with an unprecedented law enforcement application to seize ballots or other election materials in a live, ongoing election, courts should understand the likely irreparable harm from issuing a warrant: a seizure could break election administrators' chain of custody and taint election results. Such a seizure risks harming all voters regardless of party, candidates, political parties, election administrators, and the judiciary. Courts can and should consider alternatives to seizures that preserve both election materials' chain of custody and evidence relevant to bona fide law enforcement investigations.

⁴⁹ See O'Connor & Yoon, *supra* note 25.

⁵⁰ BRENNAN CTR. FOR JUST., LEGAL GUARDRAILS AGAINST RUBBER-STAMPING SEARCH WARRANTS IN THE ELECTIONS CONTEXT (2026).