Memorandum

To: Pillars of the Community

Re: **Preparing for Federal Intervention in Election Administration**

Table of Contents

Introduction 2

I. Federal Demands for Election Materials or Data 2

A. The Likely Forms of Federal Intervention 2

1. Informal Request 2

2. Written Demand Under 52 U.S.C. § 20703 3

3. Subpoena 5

4. Search Warrant 6

B. Materials Potentially Affected 8

C. State Law Requirements 9

D. Principal Risks 9

II. Federal Investigations 11

A. The Investigative Process 11

1. How a Federal Investigation Is Likely to Begin 11

2. Voluntary vs. Custodial Questioning 12

3. Target, Subject, Witness, or Grand Jury Subpoena? 12

B. Principal Risks 13

III. Federal Personnel at the Polls 14

A. Legal Framework 14

1. Federal law enforcement authority. 15

2. Federal law enforcement agencies and personnel. 15

3. Military and National Guard authority. 16

B. Potential Attempts to Assert Federal Power at the Polls 17

1. Deployment Scenarios 17

2. A Case Study From the 2026 Primaries 18

C. Principal Risks 20

Introduction

This memorandum is designed to provide election officials and frontline workers with an overview of the law that governs potential federal intervention in federal elections. It addresses three possible forms of federal intervention: **Part I** discusses demands for, tampering with, or seizure of election materials or data; **Part II** covers federal investigations; and **Part III** addresses deployments of federal officials to election facilities.

This is a general guide to the law and best practices standards for election officials to follow to ensure that they operate in compliance with the law while performing their lawful election administrative responsibilities. It does not constitute the provision of legal advice. Election officials called on to address these issues will do so in specific circumstances and in consultation with their own counsel on how to proceed. What follows explains as a general matter best practices standards that officials would follow in particular scenarios. What officials should do in any actual case depends on the guidance they receive from their counsel.

I. Federal Demands for Election Materials or Data

Contact from federal officials seeking election materials is likely to proceed in four primary forms: (1) an **informal request** seeking voluntary access to election materials, data, equipment, or systems; (2) a **written demand** from the Department of Justice ("DOJ") for federal-election records; (3) a **subpoena or court order** requiring testimony or production of specified materials; or (4) a **warrant** authorizing an immediate search for and seizure of election materials. Each of those mechanisms imposes different obligations and poses different types of risk. Accordingly, the key questions are ***which form of process*** those federal officials are using; what they are ***requesting***; and ***what authority*** they are invoking or citing to justify their demand or request. This section provides an overview of each procedure or tool.

A. The Likely Forms of Federal Intervention

1. Informal Request

Federal officials may ask election personnel to provide records or permit access to election materials without presenting any compulsory legal process—that is, without presenting a document with implications under the law. Critically, the fact that a request comes from a federal official does **not**, standing alone, require compliance. Nor does a failure to cooperate with such a request—even if it is styled as a "demand"—create legal risk for those who choose not to cooperate. Declining to honor the request is not a criminal offense.

Similarly, federal officials may ask if they may search, observe, or merely "have a look around." Because the agents' right to be inside or to explore non-public areas under such circumstances is deemed to be a "***voluntary***" search,[1] the consent is valid only if the local election official who receives the request has the ***authority*** to consent on behalf of the

[1] *See Schneckloth v. Bustamonte*, 412 U.S. 218, 222-27 (1973). Mere acquiescence to an assertion of lawful authority does not constitute voluntary consent. *Bumper v. North Carolina*, 391 U.S. 543, 548-50 (1968).

jurisdiction.[2] Any such request would come in the context of any state or local laws restricting access to certain areas only to authorized persons. Law enforcement personnel acting only on a request may well be unauthorized for that access; letting them in could therefore violate state or local law.

Accordingly, the key questions presented by a demand are:

- ***Is compliance voluntary?*** In other words, is the federal official claiming to rely on any particular legal authority? If so, what is it? Do they have a document or piece of paper describing why they are there and their right to seek information?

- ***Who has the authority to consent?*** Which supervisors have permission to grant the agents' or officials' request? If the employees themselves do not have such authority, a best practice would have them immediately make that clear to the federal officials who are seeking access.

- ***Which attorneys would be consulted?*** Employees receiving such requests—regardless of their rank or authority—would quickly and politely explain to the federal officials that they will be contacting counsel to advise on and handle the request.

Bottom line: If compliance is voluntary or an election official is unsure of his or her authority to respond, a best practice would have that official decline to provide access or information at that time and refer the federal personnel to a designated supervisor or counsel. The election official would **not** answer substantive questions, volunteer information, or attempt to explain away any alleged wrongdoing or disagreement about the federal personnel's authority.

2. Written Demand Under 52 U.S.C. § 20703

The Attorney General of the United States—or those to whom he delegates his authority—has the power to issue a written demand for certain federal-election records.[3] Specifically, federal law requires an "officer of election" to retain "for a period of twenty-two months from the date of any general, special, or primary" presidential or congressional election "all records and papers which come into his possession relating to any application, registration, . . . or other act requisite to voting in such election."[4] The statute then authorizes the Attorney General to demand access to those records.[5] Such a demand must (1) be in writing; (2) come from the Attorney General or his representative; (3) be directed to the person having custody,

[2] Generally, consent may be given by a person with "common authority over or other sufficient relationship to the premises or effects" to be searched. *United States v. Matlock*, 415 U.S. 164, 171 (1974). But a search may also be valid when officers reasonably, though mistakenly, believe that the person granting access possesses such authority. *Illinois v. Rodriguez*, 497 U.S. 177, 185-89 (1990). State law and election offices' own allocation of authority may impose additional restrictions on who may disclose election records or authorize access to election materials or systems. The best practice is for election personnel to be aware of who possesses authority to authorize access in advance of any contact from federal officials.

[3] 52 U.S.C. § 20703.

[4] 52 U.S.C. § 20701.

[5] Unless otherwise ordered by a federal court, the AG may not divulge voting records produced "except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury." 52 U.S.C. § 20704.

possession, or control of the requested records; and (4) state both the "basis" and "purpose" of the demand.[6] If the custodian refuses to comply, the law authorizes the AG to seek a federal court order compelling production.[7]

The person with legal responsibility for preserving election records is not necessarily the only person who can receive a § 20703 demand. Section 20703 permits DOJ to direct a demand to any person having "custody, possession, or control" of covered records. Section 20701, meanwhile, places preservation duties on election officers, but permits a State to designate another custodian to assume that duty. Another official, contractor, or other party may also physically possess or control the records without assuming the legal preservation duty under § 20701. A demand may therefore be directed to the election officer responsible for preserving election records, a designated custodian, or another person or entity possessing or controlling them. It is best practice for each election office to identify each person or entity that falls within those categories and establish procedures for promptly notifying the responsible election officials and counsel if any of them receives a demand. Notably, under DOJ's interpretation of § 20701, when election officials transfer physical possession of election records without transferring the statutory custodial role, they must retain direct administrative supervision and ultimate management authority over the records, including a right of physical access to the records.[8]

Importantly, § 20703 is subject to two meaningful limitations. First, the statute reaches only the records that § 20701 requires election authorities to retain and preserve. In *United States v. Benson*, for example, the Sixth Circuit held that Michigan's statewide voter-registration database was not covered because it was an internally created database rather than a record that had "come into" the election official's possession within the meaning of § 20701.[9] Nor is it obvious that ballots themselves are "records and papers . . . relating to any . . . act ***requisite*** *to* voting."[10] Election officials do not have to assume that every election-related record requested under § 20703 falls within the statute. Second, for records that are covered, federal law requires the custodian to make them available for "inspection, reproduction, and copying" at their "principal office."[11] However, the statute does **not** expressly authorize ***removal*** of original election records from the custodian's office.[12]

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[6] *See, e.g.*, *United States v. Benson*, 179 F.4th 470, 482-83 (6th Cir. 2026) ("Because the government did not comply with its mandatory statutory obligation to submit a demand to [Michigan Secretary of State Jocelyn Benson] containing a statement of both the basis and purpose of its request, Benson did not violate Title III by refusing to produce the unredacted qualified voter file.").

[7] 52 U.S.C. § 20705.

[8] *See* U.S. Dep't of Just., *Federal Law Constraints on Post-Election "Audits"* 2-3 (2024), https://www.justice.gov/crt/media/1348586/dl.

[9] 179 F.4th at 478-82. Other courts considering DOJ demands for statewide voter-registration lists have reached similar conclusions. *See, e.g.*, *United States v. Fontes*, 832 F. Supp. 3d 944, 949 (D. Ariz. 2026); *United States v. Wis. Elections Comm'n*, 833 F. Supp. 3d 949, 953-55 (W.D. Wis. 2026); *United States v. Bellows*, 834 F. Supp. 3d 113, 122-23 (D. Me. 2026).

[10] 52 U.S.C. § 20701 (emphasis added).

[11] 52 U.S.C. § 20703.

[12] *See generally* Richard D. Bernstein, *Congress Has Precluded Seizure of Ballots or Voting Machines During the Counting and Certification Process*, Election L. Blog (Aug. 24, 2026), https://electionlawblog.org/wp-content/uploads/berstein-seizure.pdf; *see also* Richard L. Hasen & Shelby Wayment, *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*, UCLA Sch. L.: Safeguarding Democracy Project 1, 8-11 (Sept. 9, 2026),

Bottom line: With these parameters in mind, the best practice for an election official who receives a § 20703 demand would be to immediately notify and provide the demand to counsel, document when and how it was received, and work with counsel to preserve potentially responsive records. Before producing records or permitting access, counsel can assess whether the demand satisfies § 20703, whether the requested materials are covered by § 20701, and what confidentiality, ballot-secrecy, chain-of-custody, or other restrictions may affect their manner of compliance. A § 20703 demand is a demand to *inspect*—it is **not** authority for federal officials to *conduct a search* or *remove* original materials.[13]

3. Subpoena

Federal officials could issue and serve grand jury subpoenas to compel an election official or other personnel to testify, produce documents such as election materials, or both. Although the law permits such subpoenas only when law enforcement officials have a good faith reason to conduct a criminal investigation, it is conceivable that the federal government will push the boundaries of that requirement. It is best practice for election offices to be prepared for agents to serve election officials or others with subpoenas either at an election site or elsewhere. There are several important considerations for election offices preparing for federal officials to employ this tool.

First, a subpoena is compulsory legal process that would not be ignored; failure to comply without an adequate excuse may result in contempt.[14]

Second, a subpoena is **not** a search warrant: it directs the recipient to testify or produce specified materials in the ***future***, rather than authorizing federal agents to conduct an immediate search and seizure themselves. Accordingly, state election personnel do not have to consent to an immediate search merely because a subpoena has been served. Rather, best practice would call for personnel to immediately consult with counsel to assess the scope and legality of the subpoena.

Third, only in very rare circumstances do grand jury subpoenas even purport to require immediate compliance. Rather, the timing for the production of responsive records or testimony is almost always the subject of discussion and negotiation between counsel for the recipient and the lawyers from DOJ.

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https://law.ucla.edu/sites/default/files/PDFs/Safeguarding_Democracy/Judicial_Guide_to_Search_Warrants.pdf; Richard D. Bernstein, *Bernstein: "The California Supreme Court's Logic Also Precludes DOJ Ballot Seizure"*, Election L. Blog (Sept. 28, 2026), https://electionlawblog.org/2026/bernstein-the-california-supreme-courts-logic-also-precludes-doj-ballot-seizure/.

[13] *See United States v. Ponder*, 238 F.2d 825, 829 (4th Cir. 1956) (reversing the district court's order upholding the defendant's motion for suppression of election materials where "the custodians voluntarily produced the materials").

[14] Fed. R. Crim. P. 17(g).

Bottom line: A subpoena for election materials may implicate ballot secrecy, voter confidentiality, chain of custody, equipment security, and the jurisdiction's ability to continue voting, tabulation, or certification. The best practice for a person receiving such a subpoena would be to preserve the subpoena and all attachments and ***promptly contact counsel***. Among other things, counsel would identify the type of subpoena, the named recipient, the issuing court or authority, the materials or testimony required, the place and deadline for compliance, and any confidentiality requirements. Receipt of a subpoena triggers an obligation to preserve potentially responsive materials. In some circumstances, a subpoena may also require an unusually prompt response. DOJ policy, for example, permits a "forthwith" grand-jury subpoena when an immediate response is justified, but a forthwith subpoena requires prior approval from the United States Attorney in charge.[15] Counsel would assess the subpoena's scope, the recipient's possession, custody, or control of the requested materials, applicable privileges or confidentiality requirements, and any grounds to seek modification or other relief.

4. Search Warrant

A search warrant presents a materially different situation from an informal request, § 20703 demand, or grand jury subpoena. A federal search warrant is actually a court order, signed by a judge, that authorizes federal agents to search the place identified in the warrant and seize the property or information it describes.[16] It may authorize agents to proceed immediately, without the election office's consent. Accordingly, election personnel are barred from obstructing or physically interfering with execution of a warrant.

Federal law requires the agents who are executing a warrant to leave a copy of the warrant at the premises.[17] If federal officials present a warrant, a best practice would call for personnel to immediately request a copy and quickly contact designated counsel. Without delaying or interfering with the search, the designated official or counsel would identify the place agents are authorized to search, the property or information they are authorized to seize, and any limits on the warrant's execution.[18] A warrant does not give agents *unlimited* authority to search an election office: the Fourth Amendment requires a warrant to "particularly describ[e] the place to be searched, and the persons or things to be seized."[19] Election personnel would not affirmatively consent to a search beyond what a warrant authorizes.

During a warrant's execution, where agents permit it, the election office would designate a liaison to observe and document the search without interfering. The liaison would record, to the

[15] Justice Manual § 9-11.140 ("'Forthwith' subpoenas should be used only when an immediate response is justified and then only with the prior approval of the United States Attorney.").
[16] *See* Fed. R. Crim. P. 41(e)(2).
[17] Fed. R. Crim. P. 41(f)(1)(C).
[18] *See* Fed. R. Crim. P. 41(e)(2), (f)(1).
[19] U.S. Const. amend. IV; *see Maryland v. Garrison*, 480 U.S. 79, 84 (1987) ("By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.").

extent practicable, the areas and systems accessed and the materials or equipment removed; preserve relevant surveillance, access-control, and system logs; and identify any effects on ongoing election operations. At the conclusion of the search, the officers executing the warrant generally must provide a receipt for the property taken and must prepare and verify an inventory.[20] Election officials would retain those materials and compare the federal inventory against the office's own records. Although precedent for immediately filing a legal challenge to the ongoing execution of a search warrant is scarce, it is not inconceivable that an election office would wish to do so. An office anticipating such action would prepare anticipated moving papers in advance of the search, and would likely file the challenge on the docket created in connection with the warrant.

- ***Fourth Amendment.*** Federal searches and seizures are subject to the Fourth Amendment. A warrant generally must be supported by an affidavit from a law enforcement officer establishing probable cause that a crime has been committed and probable cause that evidence of that crime will be found in the location to be searched. The warrant must also identify and describe specifically the place to be searched and the things to be seized.[21] The manner in which officers execute a warrant must also be reasonable.[22] These requirements may be important if federal agents search locations or seize materials beyond the warrant's scope or execute a warrant in a manner that unnecessarily interferes with ongoing election operations.

- ***Federal Rules of Criminal Procedure.*** Federal Rule of Criminal Procedure 17 governs subpoenas compelling testimony or production; Rule 41 governs federal search warrants. Failure to comply with these rules can affect the validity, scope, or enforceability of the government's process. For example, a court may quash or modify a subpoena that is "unreasonable or oppressive,"[23] and defects in a warrant or its execution may support a challenge to the search or seizure or other judicial relief.[24]

[20] Fed. R. Crim. P. 41(f)(1)(B)-(D).
[21] U.S. Const. amend. IV.
[22] *See id.* ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . .").
[23] Fed. R. Crim. P. 17(c)(2).
[24] *See, e.g.*, *United States v. Simons*, 206 F.3d 392, 403 (4th Cir. 2000) ("Nonconstitutional violations of Rule 41 warrant suppression only when the defendant is prejudiced by the violation or when there is evidence of intentional and deliberate disregard of a provision in the Rule." (internal quotation marks and citations omitted)).

Bottom line: A warrant for ballots, voting equipment, voter information, or other sensitive election materials may implicate ballot secrecy, voter confidentiality, chain of custody, equipment security, and the jurisdiction's ability to continue tabulation, canvassing, recounts, or certification.[25] If a warrant reaches such materials, best practice would be for election officials to promptly identify the election-specific consequences for counsel and the agents executing the warrant. They may request measures that reduce disruption—such as copying records rather than removing originals or maintaining access to materials needed for ongoing election functions.[26]

B. Materials Potentially Affected

Federal requests or legal process may attempt to cover virtually any category of election material, including voter-registration databases and voter files; registration applications and citizenship-related documentation; voter histories; absentee-ballot applications and envelopes; cast and provisional ballots; tabulators, voting machines, and audit records; and materials maintained by vendors, contractors, or cloud providers.[27] Recent examples include:

- In Riverside County, California, a local sheriff seized more than 650,000 ballots from the 2025 California election.[28] On September 24, 2026, the California Supreme Court held that the sheriff's seizure of the ballots violated California law because voted ballots must remain in the custody of election officials even during a criminal investigation, and ordered him to return the ballots to the county registrar.[29]

- In Fulton County, Georgia, the Federal Bureau of Investigation ("FBI") seized original 2020 voting records pursuant to a search warrant, supported by an affidavit that relied in part on previously rebutted and unsubstantiated claims about the presidential election.[30] Fulton County sought the records' return, but a federal district court denied its motion, finding that the County had not met the high threshold for judicial intervention in an ongoing investigation despite deficiencies in the affidavit.[31]

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[25] *See* Hasen & Wayment, *supra* note 12, at 3-8.

[26] Rule 41 permits warrants to seek, among other things, "evidence of a crime"; "contraband, fruits of crime, or other items illegally possessed"; or "property designed for use, intended for use, or used in committing a crime." Fed. R. Crim. P. 41(c). Warrants may also authorize the seizure or copying of electronically stored information, and officers generally may seize or copy storage media and review the information later, consistent with the warrant. Fed. R. Crim. P. 41(e)(2)(B). The distinction between seizure and copying may be particularly important where a warrant reaches election materials or data.

[27] *See* U.S. Election Assistance Comm'n, *Best Practices: Chain of Custody* 3-6 (2021), https://www.eac.gov/sites/default/files/bestpractices/Chain_of_Custody_Best_Practices.pdf [hereinafter EAC Best Practices: Chain of Custody]; Hasen & Wayment, *supra* note 12, at 3-7.

[28] 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 (Apr. 16, 2026), https://calmatters.org/politics/2026/04/chad-bianco-election-warrants/.

[29] *Cervantes v. Bianco*, No. S295866, slip op. at 5-6, 29 (Cal. Sept. 24, 2026), https://www4.courts.ca.gov/opinions/documents/S295866.PDF.

[30] 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://www-cdn.abcnews.com/Politics/fbi-conducting-court-ordered-activity-georgia-election-site/story?id=129644345; Stephen Fowler, *The FBI Seizure of Georgia 2020 Election Ballots Relies on Debunked Claims*, NPR (Feb. 11, 2026, 2:39 PM), https://www.npr.org/2026/02/10/nx-s1-5710649/fulton-county-2020-election-affidavit-fbi.

[31] *Pitts v. United States*, No. 1:26-CV-00809-JPB, 2026 WL 1970785, at *12-14, *24 (N.D. Ga. May 6, 2026).

- DOJ is currently demanding the 2024 federal election ballots and records from Wayne County, Michigan, but has not yet obtained them.[32]

- The Office of the Director of National Intelligence obtained voting machines and copies of machine data from Puerto Rico to examine potential security vulnerabilities in May 2025. According to the Office, the U.S. Attorney in Puerto Rico, Homeland Security Investigations agents, and an FBI supervisory special agent facilitated the voluntary transfer of the equipment and software for analysis.[33]

Bottom line: Election offices commonly use chain-of-custody procedures—including access controls, documentation, and tamper-evident seals—to protect physical election materials and voting systems and to document their handling and transfer.[34] But different materials may be subject to different preservation, confidentiality, and chain-of-custody requirements under federal and state laws.[35] These differences can affect whether and how election officials may provide access to requested materials.

C. State Law Requirements

Federal process may also implicate state laws governing custody and retention of ballots and election records, ballot secrecy, voter confidentiality, access to voting equipment, chain of custody, and certification or recount procedures. Those requirements vary by jurisdiction, and a comprehensive analysis of state-law requirements is beyond the scope of this memorandum. Where a federal directive conflicts with state law, counsel would assess whether federal law validly preempts the state requirement or whether other principles governing state and federal authority apply.

D. Principal Risks

Federal access to or removal of election materials can create legal and operational problems even when federal officials are acting pursuant to valid legal process. Election administrators would act to protect sensitive information, preserve election records and chain of custody, and maintain election operations while responding to federal action in light of the following risks:

- ***Unauthorized access, disclosure, or removal.*** As a best practice, election personnel would **not** voluntarily authorize a search for, or the copying or removal of, nonpublic

[32] Luke Barr, *Justice Department Demands 2024 Election Ballots from Wayne County, Michigan*, ABC NEWS (Apr. 20, 2026, 12:21 PM), https://www-cdn.abcnews.com/US/justice-department-demands-2024-election-ballots-wayne-county/story?id=132204358.
[33] Sean Lyngaas, *Intelligence director Tulsi Gabbard's office obtained and tested voting machines in Puerto Rico*, CNN (Feb. 5, 2026), https://www.cnn.com/2026/02/04/politics/gabbard-office-obtained-voting-machines-puerto-rico.
[34] *See* U.S. Election Assistance Comm'n, *supra* note 28, at 3-13; Hasen & Wayment, *supra* note 12, at 3-7.
[35] *See, e.g.*, U.S. Election Assistance Comm'n, *supra* note 28; U.S. DEP'T OF JUST., FEDERAL LAW CONSTRAINTS ON POST-ELECTION "AUDITS" 1-3 (2024), https://www.justice.gov/crt/media/1348586/dl [hereinafter POST-ELECTION AUDITS].

election materials without confirming with counsel that they have authority to do so under applicable law and office procedures.

- ***Failure to preserve election materials.*** Election personnel are prohibited from destroying, altering, or otherwise changing potentially responsive materials after learning of a federal request or investigation.[36]

- ***Disclosure of protected or sensitive information.*** Before voluntarily producing or disclosing records, election officials would identify sensitive information and flag it for counsel so that appropriate protections—such as redaction, limited production, a protective order, or another handling protocol—could be considered and implemented.

- ***Loss of chain of custody or system integrity.*** Access to or removal of ballots, voting equipment, or other election materials can disrupt established chain-of-custody procedures. Those procedures ordinarily document who possessed or accessed election materials when custody changed, and whether required seals and other security measures remained intact.[37] DOJ has emphasized that the federal election-record preservation requirement protects the "security, integrity and chain of custody" of covered records and has cautioned that removing records from election officials' control can compromise those safeguards.[38] Depending on state law and the election systems involved, election officials may need to document a custody break, isolate affected equipment, determine whether testing or recertification is required, or address whether affected ballots can be tabulated, audited, or recounted.[39]

- ***Disruption of ongoing election operations.*** Federal access or seizure may also interfere with voting, tabulation, canvassing, recounts, audits, or certification. That risk is particularly acute when original ballots, voting equipment, or records needed to complete those functions are removed during an ongoing or recently completed election.[40]

- ***Incomplete or inaccurate documentation.*** Election officials would prevent incomplete or inaccurate documentation by creating a contemporaneous record of federal access to election materials—including who requested or obtained access, the authority presented, the areas or systems accessed, the materials copied or removed, and any effects on election operations. Accurate documentation allows the jurisdiction to reconstruct custody, assess whether equipment or records were compromised, respond to ongoing or subsequent legal proceedings, and communicate accurately with the public and the courts about what occurred. [41]

[36] POST-ELECTION AUDITS, *supra* note 35, at 2-4 ("[T]he state or local election authority's obligation to retain and preserve election records remains intact regardless of who has physical possession of those records.").
[37] *See* EAC Best Practices: Chain of Custody, *supra* note 27, at 3-13.
[38] POST-ELECTION AUDITS, *supra* note 35, at 4.
[39] *See* Hasen & Wayment, *supra* note 12, at 3-8.
[40] *See id.*
[41] *See* EAC Best Practices: Chain of Custody, *supra* note 27, at 3-13.

Bottom line: Overall, the central operational objective in the event of federal law enforcement contact is to ensure compliance *and* continuity. In other words, the best practice is for election officials to comply with lawful federal process without unnecessarily surrendering custody, compromising protected information, or disrupting unaffected election functions.

II. Federal Investigations

Recent federal actions have also raised the prospect of investigations of election personnel ahead of the November 2026 elections.[42] Federal investigations of election personnel raise distinct questions about election integrity and individual criminal exposure, legal representation, and how workers would respond to questioning.

If federal agents request or demand information, best practices would call for election officials to politely insist that counsel be present. It is too easy for agents to misunderstand or mishear the information they are receiving during interviews or questioning, and they may deem an answer or the information they receive to be materially false or misleading, even when there is no underlying violation of election or other laws.

This section describes best practices on these issues.

A. The Investigative Process

1. How a Federal Investigation Is Likely to Begin

A federal investigation may begin without the election worker or election office knowing about it. The first indication may be an unexpected request for an interview at the office or at home, a call or email from agents, or a request for a declaration, affidavit, or other written statement. An election worker may learn of the investigation through a letter identifying them as a subject or target, a grand-jury subpoena for testimony or records, or a visit by law enforcement to an election facility or other government office. Investigators may also seek access to an office, device, or record through the mechanisms discussed in Section I above. These examples are by no means exhaustive; other forms of contact or legal process may likewise be the first indication of an investigation.

Regardless of how election officials or personnel learn of an actual or potential investigation or law enforcement involvement, the best practice would be to contact counsel immediately.

[42] Executive Order 14399, *Ensuring Citizenship Verification and Integrity in Federal Elections*. Section 2(b). Section 2(b) identifies eight statutory provisions as potential bases for federal enforcement: 18 U.S.C. §§ 2(a), 241, 371, 611(a), 1001, and 1015, and 52 U.S.C. §§ 10307 and 20511; *see also* Letter from Harmeet K. Dhillon, Ass't Att'y Gen., C.R. Div., U.S. Dep't of Just., to Hon. Kris Warner, W. Va. Sec'y of State 1-3 (July 7, 2026), https://wvpublic.org/wp-content/uploads/2026/07/070726-DOJ-West-Virginia-Letter-and-Memo.pdf [hereinafter July 7 Letter].

2. Voluntary vs. Custodial Questioning

Whether questioning is, in legal parlance, "voluntary" or "custodial" affects an election worker's rights. To determine whether questioning is voluntary, an official or worker would begin by asking: ***"Am I free to leave or end this conversation?"***

- ***If the answer is yes***, the person being questioned would decline the interview or stop answering questions. Agents need not give *Miranda* warnings[43] before a voluntary, noncustodial interview.[44] Note, however, that any answers a person being interviewed *does* give *may* be used as evidence,[45] even if the conversation is voluntary or seems informal. If agents respond that they want only a few minutes of time, or have only a few questions, a person being questioned would politely respond that they would prefer the presence of counsel. If agents nonetheless insist or even suggest that participation is required, a person being questioned would ask what legal process or authority the agents are relying on and, again, contact counsel before responding.

- ***If agents say the person being questioned cannot leave***, prevent the person from leaving, or do not give a clear answer, the person would ask whether they are under arrest. They would **not** attempt to leave or physically resist.[46]

- ***Either way***, a person being questioned would **not** answer any questions without counsel present.

Bottom line: When responding to a request for voluntary questioning, the person being questioned would be cooperative but would request counsel: "I'm certainly willing to cooperate and help you out. But I'd really prefer that I have a lawyer here first." If applicable: "My jurisdiction has instructed me to answer questions only with a lawyer present." In either situation, the person may expressly invoke their right to remain silent and request counsel: "I am invoking my right to remain silent. I want a lawyer present before answering any questions."[47]

3. Target, Subject, Witness, or Grand Jury Subpoena?

The terms used in an investigative letter or subpoena can help explain how prosecutors view the election worker's role. There are three distinct roles used in DOJ grand-jury practice, each with has different legal significance and all of which can change as an investigation develops:

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[43] The standard *Miranda* warning includes some version of the following, but specific language used in the warning varies by jurisdiction: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to an attorney. If you cannot afford an attorney, one will be provided for you."

[44] *See Oregon v. Mathiason*, 429 U.S. 492, 495 (1977) (per curiam).

[45] *See Miranda v. Arizona*, 384 U.S. 436, 478 (1966).

[46] For *Miranda* purposes, the individual is generally in custody when they are under arrest or their freedom is restricted to a comparable degree; a brief detention does not necessarily qualify as "in custody." *See Berkemer v. McCarty*, 468 U.S. 420, 439-42 (1984). When an individual is in custody, agents generally must give *Miranda* warnings before conducting questioning and must stop the interrogation if counsel is clearly requested. *See Miranda*, 384 U.S. at 444-45, 473-74; *see also Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981).

[47] *See Davis v. United States*, 512 U.S. 452, 459 (1994) (requiring an unambiguous request for counsel). This recommendation concerns investigative questioning and does not excuse compliance with applicable lawful identification requirements. *See Hiibel v. Sixth Jud. Dist. Ct.*, 542 U.S. 177, 187-91 (2004).

- A ***target*** is someone for whom the prosecutor or grand jury has substantial evidence linking that person to a crime and whom the prosecutor regards as a potential defendant.
- A ***subject*** is someone whose conduct falls within the scope of the investigation.[48]
- A ***witness*** is someone who may have relevant information, but about whom the investigators currently have no evidence of criminal involvement.[49]

A **grand jury subpoena** has a separate legal significance: it is a compulsory demand for testimony, records, or both, and disobeying it without an adequate excuse can result in contempt. But the issuance of grand jury subpoenas does not mean that a crime has been committed or that a prosecution will result. It is merely the most common formal investigative tool that federal agents and prosecutors have at their disposal.[50] For a more detailed discussion of subpoenas and how to navigate them, see Section I.A.3 above.

B. Principal Risks

In addition to the risks to election records and operations discussed above in Section I, federal investigations present risks for individual election workers, particularly in how they respond:

- ***False, Incomplete, or Speculative Statements.*** 18 U.S.C. § 1001 prohibits a knowing and willful materially false statement. Honest mistakes are not enough to create criminal liability. But guessing or otherwise improvising can create inaccuracies and disputes over what someone actually knew and whether their answers were misleading. As a result, it is best practice for election workers **not** to answer questions without counsel present. If frontline workers do answer questions and realize after the fact that an answer provided was inaccurate, they would promptly inform counsel of the necessary correction.

- ***Disclosure of Confidential Voter Information.*** Showing an agent an entry on a screen or reading it aloud is a disclosure of voter information, and unauthorized disclosure can expose election workers to liability. As a best practice, frontline personnel would **not** attempt to resolve an unfamiliar disclosure request on the spot. Each election office would document federal investigative requests, including oral requests, and promptly route them to the designated records official and counsel.

- ***Record Preservation.*** Destroying or altering election records can create criminal liability.[51] Further, 18 U.S.C. § 1519—which is not limited to election records—prohibits altering records or documents with "intent to impede, obstruct, or influence the investigation or proper administration" of a federal matter. Election workers would preserve potentially relevant records, avoid unauthorized destruction or alteration, and promptly route preservation questions to counsel.

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[48] Justice Manual, *supra* note 15, § 9-11.151 (defining "target" and "subject" and describing notification of target status).
[49] *See id.* (recognizing that a grand-jury witness may be a target or subject).
[50] *See* Fed. R. Crim. P. 17(a), (c)(1), (g) (governing subpoenas for testimony and production of evidence and authorizing contempt for disobedience without adequate excuse).
[51] *See* 52 U.S.C. §§ 20701-20703.

- ***Waiver of Institutional Privileges.*** Confidential communications for legal advice with an election office's lawyers may be privileged, but not every conversation with a lawyer is protected. Further, when the lawyer represents a governmental entity—*e.g.*, the election office—any institutional privilege belongs to that entity, not individual election workers. Regardless, disclosure can jeopardize privilege. As a best practice, election workers would not recount legal advice to investigators or federal agents without first consulting counsel. If disclosure occurs, best practice would be to notify counsel immediately.

III. Federal Personnel at the Polls

Executive Branch officials have discussed the possibility of federal personnel appearing at election sites during the 2026 midterm general election.[52] This section explains the legal framework governing federal personnel at election sites, describes potential deployment scenarios that election officials may encounter, discusses a case study from DOJ's monitoring of Wyoming's 2026 primary, and identifies the principal risks that federal personnel at the polls present to voters and election operations.

A. Legal Framework

Whether federal personnel may take a particular action related to state election administration depends on the specific authority the official invokes, and whether that authority extends to the personnel, place, and conduct at issue. The relevant legal framework flows directly from the U.S. Constitution. The Constitution generally assigns congressional election administration to the States, subject to Congress's authority to "make or alter" election rules.[53] Within this constitutional structure, state law identifies the officials responsible for administering each stage of an election and defines their respective powers. Although the allocation varies by jurisdiction, state and local election officials generally establish polling places, manage election-day operations, and oversee counting and reporting.[54] Frontline workers typically discharge polling-place operations, while decisions that set or alter those operations are generally reserved to a supervisor, election board, or other designated official. Federal personnel, meanwhile, have only targeted and congressionally prescribed authority that applies in specified circumstances. These limited authorities are summarized in the following sections.

1. Federal law enforcement authority.

Federal law enforcement authority is extended on an agency-specific and conduct-specific basis. FBI agents, for example, may investigate federal crimes, execute federal

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[52] *Patel Suggests F.B.I. Agents May Be Sent to the Polls*, N.Y. Times (Sept. 15, 2026), https://www.nytimes.com/2026/09/15/us/politics/patel-fbi-agents-election.html; *Trump DOJ readies 1,000 election monitors for midterms*, Democracy Docket (Aug. 17, 2026), https://www.democracydocket.com/news-alerts/trump-doj-readies-1000-election-monitors-for-midterm-elections/; *States prep for ICE agents to be at polls*, just in case, Axios (Sept. 17, 2026), https://www.axios.com/2026/09/17/states-ice-polls-2026-election; *Trump Regrets Not Seizing Voting Machines After 2020 Election*, N.Y. Times (Jan. 11, 2026), https://www.nytimes.com/2026/01/11/us/trump-voting-machines-2020-election.html.

[53] U.S. Const. art. I, § 4, cl. 1; *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 8-9 (2013).

[54] *See* U.S. Election Assistance Commission, *State-by-State Compendium: Election Worker Laws and Statutes*, https://bit.ly/4hyBR1u.

warrants, and make arrests under specified circumstances.[55] U.S. Marshals, Postal Inspectors, and Department of Homeland Security ("DHS") officers possess similar enforcement powers to investigate particular types of offenses.[56] Regardless of which agency they work for, the agents have the authority to engage in legitimate law enforcement activity connected to an election. But they do not have general authority to enter restricted election areas, access ballots or equipment, or interrupt voting or counting.

2. Federal law enforcement agencies and personnel.

Federal personnel from numerous agencies may enforce federal law. In the circumstances addressed here, election officials are most likely to encounter DOJ or DHS personnel, though other federal officials may appear in specialized roles.

Department of Justice. DOJ has express authority to enforce federal voting rights laws, and has also traditionally dispatched election monitors to observe voting in certain jurisdictions. There are two categories of DOJ monitors.

First, federal courts may authorize federal observers under Section 3(a) of the Voting Rights Act to enter polling and tabulation locations to observe whether qualified voters are permitted to vote and whether their ballots are properly tabulated. There are only a handful of jurisdictions currently subject to such court orders.[57] This is the rarest form of election monitoring and would not affect jurisdictions not already designated during the midterm elections.

Second, DOJ has often assigned attorneys and staff to monitor elections and maintain contact with state and local officials. This is the more common form of election monitoring. Unlike court-authorized federal observers, these personnel have no specific federal right to enter polling or tabulation locations. Their access instead generally depends on applicable state law or consent from an authorized state or local official, though recent statements from federal officials suggest that election officials might also encounter DOJ asserting a novel source of authority or that these monitors might purport to be assisting with the investigation of alleged criminal or civil rights violations within the Department's jurisdiction.[58]

Department of Homeland Security. DHS has authority to enforce federal immigration and customs laws through its component agencies. Authorized ICE officers may question persons believed to be noncitizens concerning their right to enter or remain in the United States, execute federal warrants and other process, and make specified warrantless arrests for immigration violations and, while performing immigration-enforcement duties, certain other

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[55] *See* 18 U.S.C. § 3052; 28 U.S.C. § 533.
[56] *See* 18 U.S.C. §§ 3053, 3061; 19 U.S.C. § 1589a.
[57] 52 U.S.C. §§ 10302(a), 10305(d)-(e); *About Federal Observers And Election Monitoring*, DOJ, https://www.justice.gov/crt/about-federal-observers-and-election-monitoring.
[58] *See* Sarah N. Lynch, *Justice Department to send a record 1,000 monitors to polling places in midterm elections*, CBS (Aug. 18, 2026), https://www.cbsnews.com/news/justice-department-election-monitors-midterms/; Ravi Hari, US midterm elections: What election officials fear Trump could do before and after Election Day , MINT (Oct. 15, 2026), https://www.livemint.com/news/us-news/us-midterm-elections-what-election-officials-fear-trump-could-do-before-and-after-election-day-11792002069728.html.

federal offenses.[59] These authorities may support a targeted and otherwise lawful enforcement action involving a particular person at or near a polling location, such as executing a valid warrant or making a statutorily authorized arrest. They do **not** authorize ICE to station officers at polling locations for election-security purposes, screen voters' citizenship as a condition of voting, or determine voter eligibility. Nor do DHS agents have authority to access election materials without valid legal process, consent from an authorized official, or another specific source of authority.

3. Military and National Guard authority.

Under the Posse Comitatus Act, the Department of Defense is generally prohibited from using military forces, including federalized members of the National Guard, to perform general law-enforcement functions, and military personnel generally may not participate directly in searches, seizures, arrests, or similar activities.[60] Congress has instead authorized direct domestic military action only in exceptional circumstances.

The Insurrection Act permits the President to use the Armed Forces to suppress an insurrection at a State's request, overcome obstructions that make federal law impracticable to enforce through ordinary judicial proceedings, or address specified domestic violence or interference with federal or constitutional rights.[61] A separate statute permits the President to call National Guard units into federal service in response to an invasion or rebellion, or when the President is unable to execute federal law with regular military forces.[62] When direct military enforcement is not authorized, Congress permits the Department of Defense to support federal, state, and local civilian law-enforcement agencies with specified forms of assistance, including information obtained during military operations; equipment and facilities; and personnel to maintain or operate certain equipment.[63]

Federal election laws impose additional limits on military (and civilian) federal activity in connection with an election. Federal law imposes criminal penalties on a person in the federal civil, military, or naval service who "orders, brings, keeps, or has under his authority or control any troops or armed men at any place where a general or special election is held," unless the force is necessary to repel armed enemies of the United States.[64] Federal law likewise prohibits officers and members of the Armed Forces from prescribing voter qualifications; preventing or attempting to prevent a qualified voter from voting by force, threat, intimidation, advice, or otherwise; compelling an election official to accept an unlawful vote; imposing election procedures different from those prescribed by law; or interfering in any manner with an election official's duties.[65] Federal law further prohibits officers of the Army, Navy, and Air Force from interfering "with the freedom of any election" or the "free right of suffrage."[66]

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[59] 8 U.S.C. § 1357(a).
[60] 18 U.S.C. § 1385; 10 U.S.C. § 275.
[61] 10 U.S.C. §§ 251-254.
[62] *Id.* § 12406; *see Trump v. Illinois*, 146 S. Ct. 432 (2025).
[63] 10 U.S.C. §§ 271-274.
[64] 18 U.S.C. § 592.
[65] *Id.* § 593.
[66] 52 U.S.C. § 10102.

These provisions differ in their coverage: § 592 expressly reaches persons in federal civil as well as military service, while § 593 addresses officers and members of the Armed Forces. The provisions are also subject to legal uncertainty. Notably, § 592 does not define what a "place where" an election takes place is (*e.g.*, whether a ballot drop-box qualifies), how far from an election site the covered area extends (*e.g.*, what portions of a building are covered and how far beyond a building any buffer zone might extend), or how long an election remains "held" after voting ends (*e.g.*, whether the tabulation period is covered). Those questions require careful legal review.

Bottom line: A federal badge alone does not establish authority to enter restricted election areas, access election materials, or direct election operations. Best practice is for election workers to ask what the federal personnel seek to do and what authority they assert, obtain any supporting documents, and promptly refer requests for access or cooperation to the designated election official and counsel. Workers would engage counsel and would **not** consent to actions beyond their delegated authority.

B. Potential Attempts to Assert Federal Power at the Polls

1. Deployment Scenarios

If federal personnel appear at or near an election facility, a best practice would be for election officials to focus on answering three related questions: ***Who are the personnel and in what legal capacity are they acting? What precisely are they seeking to do? Why do they assert they may take that action?*** These questions would be considered together. The affiliation of law enforcement officials with a particular agency does not, by itself, establish that they have the authority to be on site or to exercise the authority they claim to have. Nor does their authority to perform one function necessarily authorize another. The following table illustrates potential encounters and the information officials would identify for supervisory and legal review.

Who	What	Why
A federal observer appointed pursuant to the Voting Rights Act	The observer may enter polling and tabulation locations identified in a court order for specified observational purposes.	The observer's authority derives from the applicable court order and 52 U.S.C. §§ 10302(a), 10305(a), (d). Officials would identify the order and the observation it authorizes.
A DOJ attorney or staff member who has been assigned to monitor an election.	The monitor may seek to observe proceedings inside a facility, and may also propose additional activities, including questioning poll workers and voters or inspecting election equipment.	While the monitor may attempt to invoke DOJ's general election monitoring program, the monitor's access generally depends on state law or consent from an authorized state official, not an independent source of federal law.

Who	What	Why
Federal law enforcement personnel, such as FBI agents, U.S. Marshals, Postal Inspectors, and officers participating in federal task forces.	An officer may claim to be investigating an offense, serving process, executing a warrant, making an arrest, or assisting another agency.	The officer may invoke an agency-specific enforcement power or legal process. *See* 18 U.S.C. §§ 3052–3053, 3061.
DHS immigration and customs-enforcement personnel may include ICE officers, HSI agents, and CBP officers.	Personnel may appear near an election facility and seek to question or arrest a person, serve legal process, or assist another agency.	Personnel may claim to be conducting immigration or customs enforcement, investigating another federal offense, or acting under legal process. Officials would identify the particular component and the authority asserted. *See* 8 U.S.C. § 1357(a); 19 U.S.C. § 1589a.
Active-duty military or National Guard personnel may appear at or near an election site. Guard personnel may serve in state active duty, Title 32, or Title 10 status.	Personnel may seek to station themselves nearby, provide security, or direct some aspect of election operations.	Personnel may invoke a military order, executive directive, or emergency mission. Officials would identify who activated and commands the personnel, what mission they have been assigned, and the order or other authority on which they rely.

Bottom line: Frontline election officials facing these deployment scenarios would not assume that federal officials are authorized to act. Rather, the best practice would be to determine the proposed action; the location, persons, or materials involved; the expected duration; and the likely effect on voters and election operations. Officials would also clarify whether personnel are requesting voluntary cooperation or asserting that compliance is required. Most importantly, they would continue election operations where safely possible and promptly elevate disputed authority to the designated officials and counsel.

2. A Case Study From the 2026 Primaries

The Justice Department's monitoring of Wyoming's August 18, 2026, primary illustrates how the framework described above may operate in practice. After polls opened in Laramie County, two attorneys from DOJ's Civil Rights Division appeared at polling locations to monitor the election. The Department described the attorneys' mission as ensuring "transparency, ballot security, and compliance with federal law," and identified several federal voting laws enforced

by the Civil Rights Division.[67] These events provide valuable background guidance for election administrators preparing for the general election.

The event has been publicly discussed by Laramie County Clerk Debra Lee. According to Ms. Lee, the monitors questioned election workers about poll-worker training; requested training guides; inquired about the acquisition of new election equipment; and sought to examine ballot tabulators. They also proposed interviewing voters inside polling places. Ms. Lee denied the monitors' requests to question voters, citing state law that limits the role of poll watchers at local election sites. Ms. Lee also reported that her office received no advance notice of the deployment, although a DOJ official told her that an email had been sent to her and may have gone to the wrong address, and the Wyoming Secretary of State's office reported that it had received an email from DOJ about the monitors.[68]

This case study presents useful considerations for election officials as they prepare for possible encounters of this nature:

- ***Placing decision-making authority with designated officials.*** Laramie County's response benefited from the fact that Ms. Lee assumed responsibility for managing the situation, including communicating with DOJ and determining how the county would respond. The decision remained in the hands of a centralized and prepared official, who had familiarity with the governing state law, rather than with individual poll workers. Other jurisdictions would similarly identify in advance the officials authorized to make decisions about entry, observation, and engagement. Frontline workers would know how to reach those officials immediately without interrupting ordinary election operations.

- ***Identify the personnel and request.*** Ms. Lee reported that the attorneys provided credentials only after she requested them and that she contacted a DOJ official in Washington to clarify their assignment. Those steps illustrate the practical application of the "who," "what," and "why" inquiries, which permitted Ms. Lee to identify the federal personnel and the scope of their authority to undertake their proposed activities. The encounter also underscores the importance of evaluating each requested activity separately under this framework. Ms. Lee did not treat DOJ's asserted monitoring mission as resolving whether every proposed activity was permissible. She instead distinguished between observation (which she permitted) and further activities like interviews (which she did not).

- ***Establish two-way lines of communication***. The Wyoming Secretary of State's office reportedly received an email concerning the federal presence, but the notice apparently did not reach the Laramie County Clerk before the monitors appeared. Election officials would mitigate the potential for this kind of communication gap by establishing in advance a two-way communications protocol under which state officials promptly

[67] Department of Justice, *Justice Department to Conduct Election Monitoring in Florida and Wyoming Primary Elections* (Aug. 18, 2026), https://www.justice.gov/opa/pr/justice-department-conduct-election-monitoring-florida-and-wyoming-primary-elections (last visited Sept. 28, 2026).

[68] *See Gordon "Shocked" at Federal Agents Monitoring Wyoming Election, Sends Concern to AG*, Cowboy State Daily (Aug. 27, 2026), https://bit.ly/4AkZbXP.

transmit information about anticipated federal activity to affected local jurisdictions, and local officials promptly report unexpected federal activity to the state. The protocol would designate points of contact at each level, direct confirmation that time-sensitive communications have been received, and provide for coordinated decisions concerning access, authority, election operations, and public communications.

Bottom line: Ms. Lee's response illustrates the value of preparing a plan that officials can put into effect as soon as federal personnel appear. Each election office would designate who will make decisions, establish procedures for identifying personnel and assessing each request, and maintain two-way communications between state and local officials.

C. Principal Risks

The risks posed by federal personnel at an election site depend on where they are positioned, what they do, and how their presence affects voters and election operations:

- ***Deterrence or obstruction of voters.*** Personnel stationed near an entrance may impede access, question or surveil voters, or create a checkpoint. Federal law prohibits voter intimidation and coercion.[69] But whether the presence of armed personnel alone constitutes unlawful intimidation is unsettled. In such a situation, best practice is for election officials to document the personnel's location and conduct, as well as observable effects such as blocked access, voter departures, or delays.

- ***Interference with election officials' duties.*** A request to observe election activities may extend to questioning voters, inspecting equipment, entering restricted areas, or directing how election workers conduct voting or counting. Officials would evaluate each proposed activity under the authority asserted and applicable access rules. Federal law expressly prohibits members of the Armed Forces from imposing election procedures different from those prescribed by law or interfering with an election officer's duties.[70]

- ***Disruption of election operations.*** If federal personnel attempt to block access to a facility, remove a worker performing an essential task, or seek records or equipment needed for voting or counting, these actions can affect staffing, ballot custody, and the ability to continue election functions. Frontline workers would immediately contact counsel for assistance in preventing such disruptions.

[69] 52 U.S.C. §§ 10101(b), 10307(b); 18 U.S.C. § 594; *see also Council on American-Islamic Relations-Minnesota v. Atlas Aegis, LLC*, 497 F. Supp. 3d 371, 379 (D. Minn. 2020) ("Voters have a strong interest in remaining free from intimidation and in the fair and impartial administration of elections.").
[70] 18 U.S.C. § 593.