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Search Warrants for Election Materials: Practical Guidance for Magistrate Judges

As federal investigators increasingly seek state election records, new resources aim to help magistrate judges evaluate probable cause, navigate unfamiliar election administration issues, and minimize disruption to ongoing elections.

By Paul W. Grimm & Jacob Humerick

In January of this year, federal law enforcement agents searched an elections warehouse in Fulton County, Georgia, and seized hundreds of boxes of state records from the 2020 election, including original physical ballots, ballot images, tabulator tapes, and voter-roll records. The search — and the warrant application that preceded it — were uncommon, if not unprecedented, for the U.S. Department of Justice.

Of course, federal magistrate judges and district court judges typically develop a deep expertise on Fourth Amendment issues and are generally able to draw on that expertise when reviewing search warrant applications. But federal judges do not routinely preside over matters requiring knowledge of the technical aspects of election administration; more rarely still are they asked to do so in an ex parte setting. Moreover, it appears from our research that until February 2026, the Justice Department had never in its more than 150-year history executed a search of a state polling place for state election materials over the objection of state election officials.

However, the January Fulton County search may presage what is to come in the 2026 midterm elections. Agents from the Federal Bureau of Investigation reportedly continue to seek multiple states' election records from 2020 and 2024 and have conducted interviews with election officials in Wisconsin as recently as May 2026. It is thus prudent to prepare for the possibility that federal prosecutors may ask magistrate judges to authorize searches for election materials during an imminent or ongoing election.

Courts still have time to get ready for these new and consequential requests. And — just as when other novel and complex developments in the law, legal practice, and technology ▸

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arise — the ability to access training and informational resources will aid in these efforts. To that end, legal and election administration experts with States United Democracy Center and Protect Democracy — nonpartisan, nonprofit organizations — have created resources for magistrate judges to turn to when confronted with a search warrant for election-related materials. (Those materials are referenced herein and may be found in their entirety on the Edley Center on Law & Democracy website.)

Preparation is key because a search warrant application seeking election materials while early or mail-in voting is ongoing, on election day, or immediately following an election, is likely to present magistrate judges with time-sensitive, difficult questions regarding probable cause.

If a magistrate judge feels more information is required to make a probable cause determination, they may require the affiant law enforcement officer to appear personally and may examine under oath the affiant and any witnesses produced in support of the affidavit. A magistrate judge may also inquire whether the affiant has the requisite training and experience to draw conclusions about the crimes alleged or the evidence sought in the warrant.

If probable cause is found, a magistrate judge may be able to modify the search warrant to minimize interference with election administration, for example by permitting a party to seek copies of ballots (instead of originals) or electronic images of voting machine records copied onsite (rather than allowing the party to seize the machines).

A search warrant application for election materials may also present magistrate judges with novel legal questions. If faced with a legal question of first impression, a magistrate judge can hold the warrant under seal and request briefing from a court-appointed amicus solely to address relevant legal issues so as not to reveal information identifying the search target, or request briefing from the government subject to a sealing order.

Without a firm understanding of technical aspects of election administration and state-specific election laws, judges may not fully appreciate the impact that authorizing such a warrant may have on an election. The potential consequences may include significant delays in certifying election results, a state's ultimate inability to process all cast ballots, or, more broadly, the erosion of the public's trust in the election process and the credibility of election results.

Familiarity with the tools for assessing and, where needed, modifying or denying search warrants for election materials is critical as judges are increasingly on the front lines of elections and electoral disputes. The American public — regardless of political affiliation — will be looking to courts to swiftly handle any election-related cases with the utmost care, impartiality, and transparency. By doing so, judges will uphold confidence in case outcomes and in our election system.

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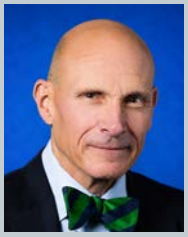

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1 Kate Brumback, *Search warrant FBI served at elections office near Atlanta seeks records tied to the 2020 elections,* AP News (Jan. 28, 2026), https://duke.is/Jan2026-FBI-elections-warrant.

2 *See* John Keller & Chelsea Rice, *The Last Check: Magistrate Judges and Federal Seizures of Election Records*, Just Security (June 16, 2026), https://duke.is/magistrate-judges-federal-election-records (describing the warrant application and ensuing search as "highly unusual by DOJ standards").

3 The affidavit supporting the search warrant application in Fulton County alleged, among other things, that evidence of misconduct included missing "ballot images," a batch of data downloaded online suggesting the existence of duplicate ballots, absentee ballots returned by mail that did not appear to be folded to fit into a ballot envelope, and unsigned tabulator tapes. *Pitts v. United States*, No. 1:26-cv-00809-JPB, Doc. No. 22-2, Gov't Aff., at 4–16 (N.D. Ga. Feb. 10, 2026), https://duke.is/2020election-search-warrant-affidavit; Doc. No. 30, Pets.' Amended Mot. for Return of Prop., at 11–19 (N.D. Ga. Feb. 17, 2026), https://duke.is/2020election-petitioners-motion.

4 See *Pitts*, Pets.' Amended Mot. for Return of Prop., *supra* note 3, at 1 ("On January 28, 2026, the U.S. Department of Justice obtained a search warrant unprecedented in American history to seize the original — and only — copy of Fulton County's 2020 election records."); *see also* Doug Bock Clark & Jen Fifield, *FBI's Search of Georgia Election Center Is "Dangerous," Experts Warn,* ProPublica (Jan. 29, 2026), https://duke.is/FBI-fulton-county-voting-records-search-warrant (quoting election law expert and UCLA law professor Richard L. Hasen as stating that he is "not aware of something like this happening ever before").

5 Patrick Marley, *FBI interviews election workers in a swing state amid Trump's false 2020 claims*, Wash. Post (May 29, 2026), https://duke.is/FBI-interviews-election-workers-Wisconsin; *see also* Patrick Marley, *DOJ demands Detroit-area 2024 ballots, escalating election scrutiny*, Wash. Post (Apr. 19, 2026), https://duke.is/Michigan-2024-ballots.

6 See UC Berkeley Edley Ctr. on Law & Democracy, *Election Law Information Resources* (last visited June 23, 2026), https://duke.is/Edley-Center-election-law-information-resources. These materials were produced by nonpartisan legal and election administration experts. Contributors include individuals from States United Democracy Center — among them, co-author Jacob Humerick — and individuals from Protect Democracy. The resources include a sample Attachment B for search warrant applications, a primer on assessing search warrants and scoping searches in the election context, and information on requesting amicus briefing regarding novel legal issues involving search warrants and elections.

7 Fed. R. Crim. P. 41(D)(2). *See also* Fed. R. Crim. P. 41, Notes of Advisory Committee on Rules — 1972 Amendment ("The provision in subdivision [(d)] that the magistrate may examine the affiant or witnesses under oath is intended to assure him an opportunity to make a careful decision as to whether there is probable cause. It seems desirable to do this as an incident to the issuance of the warrant rather than having the issue raised only later on a motion to suppress the evidence. *See* L. Tiffany, D. McIntyre & D. Rotenberg, Detection of Crime 118 (1967). If testimony is taken it must be recorded, transcribed, and made part of the affidavit or affidavits. This is to ensure an adequate basis for determining the sufficiency of the evidentiary grounds for the issuance of the search warrant if that question should later arise.").

8 *See* UC Berkeley Edley Ctr. on Law & Democracy, Search Warrants for Election Materials 3 n.9 (June 2026),https://duke.is/Search-Warrants-for-Election-Materials (citing *In re Search of Subject Phone*, 808 F. Supp. 3d 891, 896 (N.D. Ill. 2025) ("A magistrate judge may want to know more, for example, about the nature of an agent's training and experience cited as a basis for various opinions rooted in that training.") (*United States v. Chrobak*, 289 F.3d 1043, 1046 (8th Cir. 2002) (quoting *United States v. Humphrey*, 140 F.3d 762, 764 (8th Cir. 1998)) ("[t]he source and credibility of evidence in support of a warrant request is considered in the totality of the circumstances analysis")).

9 *See, e.g.*, *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1168 (9th Cir. 2010) (overruled on other grounds) ("The magistrate judge, however, wisely made such broad seizure subject to certain procedural safeguards. . . . [T]he government was first required to examine the computer equipment and storage devices at CDT to determine whether information pertaining to the ten identified players could be searched on-site in a reasonable amount of time and without jeopardizing the ability to preserve the data.") (citation modified); *see also* UC Berkeley Edley Ctr. on Law & Democracy, *supra* note 8, at 4 n. 14 (quoting *Comprehensive Drug Testing, Inc.*, 621 F.3d at 1168).

10 See UC Berkeley Edley Ctr. on Law & Democracy, Novel Legal Issues and Search Warrants for Election Materials: Requesting Amicus 1 n. 1 (June 2026), https://duke.is/Requesting-Amicus-Briefing (quoting *In re Search Warrant No. 5165*, 470 F. Supp. 3d 715 (E.D. Ky. 2020) ("To address the nascent question concerning the constitutionality of compelled biometrics, the Court appointed attorney Jarrod Beck as amicus curiae. Both parties briefed the matter, and the Court heard oral arguments . . . "); *see also id.* at 1 n.2 (citing *In Matter of United States*, 40 F. Supp. 3d 89, 91 (D.D.C. 2014) (requesting briefing from amicus curiae on novel legal issue bearing on the warrant application while holding the application "under seal during the pendency of this matter to protect the integrity of the underlying investigation")).