State Democracy Research Initiative
UNIVERSITY OF WISCONSIN LAW SCHOOL

# Can State Prohibitions on Election Interference Constrain Federal Actors?

Danielle Friedman, Legal Director
Bryna Godar, Staff Attorney
Emily Lau, Staff Attorney
Published: July 17, 2026

Recent federal efforts to exert control over state election administration have been generating friction, and state-federal conflicts seem likely to intensify as the 2026 midterms approach. The federal government has already been pressing states to turn over confidential voter information, investigating discredited claims of wrongdoing stemming from the 2020 presidential election by seizing ballots and issuing subpoenas to election officials, and attempting to preempt state voting laws through Executive Orders and federal legislation. The Department of Justice has also recently sent letters to state election officials in all 50 states threatening criminal prosecution for aiding and abetting noncitizen voting. Election experts anticipate that, in the months ahead, federal actors could further insert themselves into state and local processes. Such federal overreach may take several forms, including (i) sending troops or ICE to polling locations, early voting locations, or vote counting locations; (ii) using the postal service to delay the delivery of mail ballots; and (iii) seizing ballots or voting machines before the results of the election have been counted and certified.

While federal law itself prohibits much of this anticipated federal activity, state law–including state criminal law–also provides a potential pathway for reining in federal electoral overreach. As explained in a prior report, states can prosecute federal officials for state-law crimes, and federal officials can only secure immunity when they are reasonably carrying out lawful federal duties. Precisely because much of the conduct experts are concerned about violates federal law, federal actors may have difficulty asserting immunity defenses in state criminal prosecutions for such conduct.

These state criminal laws are not new and many have existed in state election codes for years, though states have not previously had occasion to apply them to federal officials in the ways contemplated here.[1] The reason for that is obvious: The potential federal actions discussed here would themselves be

[1] To the extent that a state does not already have criminal laws prohibiting these activities, it may consider adopting state laws duplicating federal laws that prohibit them. Patrick Berry & Derek Tisler, *Model Bill: State Accountability for Federal Interference at Polling Places*, Brennan Ctr. for Just. (May 12, 2026), https://www.brennancenter.org/our-work/policy-solutions/model-bill-state-accountability-federal-interference-polling-places.

unprecedented and could upend the way that states administer their own elections. State criminal laws are only one pathway to combatting federal overreach and safeguarding the electoral process, but they may offer an additional measure of deterrence and accountability. They also provide a counterweight to the attempts by the Department of Justice to use its criminal enforcement powers to gain leverage over state election officials, as state officials have their own criminal laws that can be used to counter improper federal meddling in elections.

This explainer aims to shed light on existing state laws criminalizing election-related misconduct and their potential application to curb improper actions by federal government officials.[2] Part I describes the role of the federal government in elections, including the federal laws that prohibit certain behaviors by federal officials. Part II then explores the parallel provisions in state law, specifically noting the different types of state laws that may apply to anticipated federal activities. Part III then considers what states can do to educate officials about these laws and deter potential interference by federal actors. Finally, Part IV addresses enforcement-related issues and likely legal responses from the federal government.

# I. The Role of the Federal Government in Elections

## *A. Constitutional Framework*

Any conversation about the federal government's involvement in elections must begin with a clear understanding of the governing constitutional framework. As many have pointed out in commentary[3] and court filings,[4] the U.S. Constitution assigns authority over federal election administration to the states, subject to regulations prescribed by Congress.[5] The Executive Branch, including the President, has no unilateral authority with respect to election administration or voting. From a practical standpoint, this means that states have the authority to administer elections, unless Congress makes a decision to preempt state legislative choices. To date, Congress has chosen to preempt a fairly limited subset of state legislative choices, mostly involving voter registration rules and procedures.[6] Meanwhile, states and localities have developed intricate electoral processes and procedures, including voter registration, ballot casting, vote counting, and election certification. Those processes and procedures vary significantly

---

[2] This explainer focuses on those provisions of state election codes that criminalize behavior that experts anticipate the federal government may engage in during the November elections in 2026. It does not attempt to survey other election-related criminal prohibitions.

[3] *E.g.*, Ali Swenson & Gary Fields, *Trump Signed an Order to Reshape How Elections in the US Are Run. Is It Constitutional?*, AP (Mar. 26, 2025, at 16:49 CT), https://apnews.com/article/trump-executive-order-elections-voting-constitution-8908477167fd65dc9cd485e1fde5b804; Michael T. Morley & Franita Tolson, *Elections Clause*, Nat'l Const. Ctr., https://constitutioncenter.org/the-constitution/articles/article-i/clauses/750#elections-clause-morley-tolson (last visited July 2, 2026).

[4] *E.g.*, Complaint for Declaratory & Injunctive Relief at 2, California v. Trump, 2026 WL 915813 (D. Mass. Apr. 3, 2026) (No. 1:26-cv-11581).

[5] U.S. Const. art. I, § 4, cl. 1. The Fourteenth and Fifteenth Amendments are also significant sources of authority for Congress to regulate elections. Under that authority, Congress has acted more frequently and aggressively, prohibiting discrimination and intimidation in the voting context. *See infra* Part I(A); Jimmy Balser, Cong. Rsch. Serv., IF12742, Federal Criminal Laws Prohibiting Unlawful Voting (2024).

[6] *E.g.*, National Voter Registration Act of 1993, 52 U.S.C. §§ 20501–20511; Help America Vote Act of 2002, 52 U.S.C. §§ 20901–21145; Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301–20311.

between the states, though some commonalities can be found, particularly regarding the conduct that states generally prohibit.[7]

## *B. Federal Election Crimes*

Within this framework, federal criminal laws proscribe various forms of election interference. Some of these statutes specifically apply to federal actors, while others more generally prohibit efforts to interfere with the right to vote and can apply to federal actors and non-federal actors alike. This section provides a brief overview of the federal criminal election laws that are most relevant to the anticipated federal actions outlined above, as well as federal prosecutors' historical approach to enforcing these laws.

First, several federal laws prohibit the deployment of federal troops or armed officers to the polls and bar military disruption of elections. Under 18 U.S.C. § 592, federal officers may not send "troops or armed men" to "any place where a general or special election is held, unless such force be necessary to repel armed enemies of the United States."[8] Under 18 U.S.C. § 593, officers or members "of the Armed Forces of the United States" may not, among other things, interfere with election officials' duties or "prevent[] or attempt[] to prevent by force, threat, intimidation, advice or otherwise any qualified voter of any State from fully exercising the right of suffrage." Those who violate either law can face fines, imprisonment, and disqualification from office.[9] Some federal laws, including 18 U.S.C. § 594, also broadly proscribe intimidation of voters by anyone—a provision that could extend to federal officers at the polls or elsewhere.[10]

Second, several federal laws apply to a wide range of efforts to undermine elections, and therefore could potentially reach conduct involving troops or ICE at the polls, postal service interference with delivery of ballots, or the seizure of ballots or voting machines. For example, 18 U.S.C. § 595 prohibits any federal (or state) administrative employee from "us[ing] his official authority for the purpose of interfering with, or affecting, the nomination or the election of any candidate" for federal office. And two broad civil rights statutes bar anyone from conspiring or acting under color of law to deprive anyone of their constitutional rights, including voting rights.[11] These laws have been applied to a wide range of election interference

---

[7] *See infra* Part II.

[8] Notably, this does not only apply to members of the military. The Department of Justice, for example, has long taken the position that the law "prohibit[s] FBI Special Agents from conducting investigations within the polls on election day, and Deputy U.S. Marshals from being stationed at open polls, as both are required to carry their weapons while on duty." U.S. Dep't of Just., Federal Prosecution of Election Offenses 73 (Richard C. Pilger, 8th ed. 2017) (discussing application of these laws to intimidation of voters).

[9] 18 U.S.C. §§ 592, 593.

[10] *See also* 18 U.S.C. §§ 241, 242; 18 U.S.C. § 245(b)(1)(A); U.S. Dep't of Just., *supra* note 8, at 54–55 (discussing application of these laws to intimidation of voters). DOJ's Criminal Division has taken the position that 18 U.S.C. §§ 241 and 242 "may be used to prosecute schemes to intimidate voters in federal elections through threats of physical or economic duress, or to prevent otherwise lawfully qualified voters from getting to the polls in elections when a federal candidate is on the ballot." U.S. Dep't of Just., *supra* note 8, at 54.

[11] 18 U.S.C. §§ 241, 242.

efforts, including the destruction of ballots,[12] altering ballots,[13] destroying valid voter registrations,[14] intimidating voters,[15] and more.[16] They could similarly come into play with federal efforts to suppress voting or interfere with ballots and canvassing.

Third, several federal laws prohibit the delay or destruction of mail. Any postal worker who "unlawfully secretes, destroys, detains, delays, or opens" mail[17] and anyone who "knowingly and willfully obstructs or retards the passage of the mail"[18] can face fines and/or imprisonment. While these provisions are not specifically related to mail ballots or other election-related mail, their broad application would apply to both. Thus, if postal workers delay ballots without a lawful justification for doing so, they could face federal prosecution.[19]

In enforcing federal criminal election laws like the ones described above as well as others, like those related to voter fraud, federal prosecutors have long taken a non-intervention approach to ongoing elections, typically investigating election crimes after the fact rather than inserting themselves into the election in real time.[20] While prosecutions of federal officials under these laws have been rare, the prohibitions themselves have long provided an important guardrail on permissible federal actions surrounding an election.

In recent months, however, some federal officials have suggested that they may not abide by these prohibitions, and there are concerns that federal prosecutors will look the other way. In congressional testimony in late April, for example, Defense Secretary Pete Hegseth did not concretely answer a question about whether he would deploy troops to polls if President Donald Trump ordered him to.[21] Hegseth instead falsely claimed that troops had been deployed to polls under the Biden Administration.[22] Acting U.S. Attorney General Todd Blanche has meanwhile questioned why anyone objects to sending ICE to the

---

[12] United States v. Townsley, 843 F.2d 1070, 1073–76 (8th Cir. 1988).
[13] United States v. Classic, 313 U.S. 299, 307–09 (1941); Ryan v. United States, 99 F.2d 864, 866–67 (8th Cir. 1938); Walker v. United States, 93 F.2d 383, 385–86 (8th Cir. 1937); Fields v. United States, 228 F.2d 544, 545–48 (4th Cir. 1955).
[14] United States v. Haynes, Nos. 91-5979, 91-6076, 1992 WL 296782, at *1 (6th Cir. Oct. 15, 1992).
[15] Wilkins v. United States, 376 F.2d 552, 559–61 (5th Cir. 1967); *see also* U.S. Dep't of Just., *supra* note 8, at 54 ("It is the Criminal Division's position that Sections 241 and 242 may be used to prosecute schemes to intimidate voters in federal elections through threats of physical or economic duress, or to prevent otherwise lawfully qualified voters from getting to the polls in elections when a federal candidate is on the ballot.").
[16] *See* U.S. Dep't of Just., *supra* note 8, at 34–38.
[17] 18 U.S.C. § 1703(a).
[18] 18 U.S.C. § 1701.
[19] *See, e.g.*, United States v. Martinez-Garriga, No. CR 24-090 (FAB), 2025 WL 381522 (D.P.R. Feb. 4, 2025) (discussing trial of postal worker charged with delaying delivery of ballots and voter registration cards).
[20] U.S. Dep't of Just., *supra* note 8, at 8–9.
[21] Daniel Dale, *Fact Check: Hegseth Twice Made a False Claim to Congress About Troops Being Sent to Voting Places Under Biden*, CNN Pol. (May 6, 2026), https://edition.cnn.com/2026/05/04/politics/hegseth-biden-2024-troops-voting-locations-fact-check.
[22] *Id.* (explaining that all 15 "National Guard activations connected to the 2024 election were ordered by state governors, not by Biden" and that "all 13 of the states that responded to CNN's requests for information said that none of their troops were deployed to polling locations").

polls, sidestepping questions about the illegality of such a move.[23] Meanwhile, the President's latest election-related Executive Order directed the U.S. Postal Service to draft a rule that would allow it to refuse to deliver a mail ballot to any voter who does not appear on a newly created federal list of voters eligible to receive such a ballot.[24] Less overtly, but perhaps significantly, the DOJ has removed from its website the most recent version of the guide on prosecution of election offenses. While nothing has been announced formally, some have speculated that the removal could signal a departure from the Department's longstanding policies regarding restraint in terms of investigations happening during, as opposed to after the conclusion of, an election.[25] This could take the form of, in particular, seizure of ballots or voting machines prior to certification by state officials. If federal officials decline to enforce federal law, depart from longstanding policy to refrain from interfering in an ongoing election, and overtly order violations of the relevant laws to take place, then state criminal laws could provide a necessary backstop for holding them accountable.

## II. State Election Crimes

State election codes throughout the country criminalize conduct related to intimidating voters, interfering with the delivery of ballots, and inappropriately possessing ballots or accessing voting equipment. States may wish to assess these laws and develop guidance about their application to federal actors in advance of the November elections. This section provides a high level overview of state laws that may apply to the most commonly anticipated federal actions.

### *A. State Laws Prohibiting Federal Troops or ICE at Polling Locations*

While state laws regarding behavior at or near polling locations vary, states uniformly have some regulations that are intended to protect the sanctity of the voting process and ensure that voters may cast a ballot free from any intimidating presence. Similar to federal law, some states have enacted criminal statutes explicitly addressing federal military or law enforcement presence at the polls, while others have more general statutes prohibiting intimidating behavior that could extend to a disruptive federal presence.

A limited number of states have enacted criminal statutes that explicitly address the presence of federal officials at a place where an election is being conducted. For example, in Pennsylvania, the law provides that no "body of troops in the Army of the United States or of this Commonwealth shall be present, either armed or unarmed, at any place of election within this Commonwealth during the time of any primary or election."[26] In California, "[a]ny person who hires or arranges for any . . . uniformed law enforcement

---

[23] Rebecca Beitsch, *Blanche: 'Why Is There Objection to Sending ICE Officers to Polling Places?'*, The Hill (Mar. 27, 2026, at 08:30 ET), https://thehill.com/homenews/administration/5803874-todd-blanche-immigration-enforcement-polling-places-2026-election/; NewsNation, *Will ICE Be at Election Polling Locations?*, YouTube (May 6, 2026), https://www.youtube.com/shorts/NL-pU5sQYvk.

[24] Exec. Order No. 14,399, 91 Fed. Reg. 17125 (Apr. 3, 2026). This provision of the Executive Order was recently struck down as unconstitutional by the district court in Massachusetts, but a motion for a stay pending appeal remains under advisement. *See, e.g.*, Michael Casey et al., *Federal Judge Halts Trump's Election Executive Order Seeking to Create a Federal Voter List*, AP (June 25, 2026, at 12:17 CT), https://apnews.com/article/trump-executive-order-elections-mail-voting-b28c3425c1dc968cd0f57c61fb7a684e.

[25] Bob Bauer, *Yet Another Sign that the Trump Administration is Laying the Groundwork for Election Intervention?*, Exec. Functions (Feb. 5, 2026), https://www.execfunctions.org/p/yet-another-sign-that-the-trump-administration.

[26] 25 Pa. Cons. Stat. § 3047.

officer . . . to be stationed in the immediate vicinity of, or posted at, a polling place or a county elections office," may be convicted of a crime, punishable by a fine and/or imprisonment.[27] For these purposes, "law enforcement officer" is explicitly defined to include "an officer or agent of a federal law enforcement agency or any person acting on behalf of a federal law enforcement agency."[28]

Other states, while not specifically referring to federal actors, similarly prohibit the deployment of the military or other law enforcement officers to an area where voters are casting their ballots. For example, Mississippi makes it a crime for "any military officer or other persons to order, bring, or keep any troops of armed men at any place within a mile of the place where an election is held."[29] Similarly, Delaware prohibits sending or bringing into the state "any armed soldier to be present at any voting place . . . or within 5 miles thereof" on Election Day.[30] While neither statute defines "armed men" or "armed soldier," the intent of both statutes is clear from the plain text—voters in each state should be able to cast their ballots free from any military presence.

Again in parallel to federal law, state laws that broadly apply to all persons may also cover the deployment of federal troops at the polls. Every state has a prohibition on voter intimidation.[31] In some states, this is a blanket prohibition,[32] while in others it only applies to certain areas close to or inside a polling location.[33] Many states also prohibit any person from possessing a firearm at or near a polling location.[34] Exceptions to these laws do exist in some states for law enforcement, though the exact parameters of those exceptions vary significantly.[35] At least one state state explicitly exempts federal officials carrying

---

[27] Cal. Elec. Code § 18545(a).
[28] Cal. Elec. Code § 18545(c)(2).
[29] Miss. Code Ann. § 97-13-29.
[30] Del. Code Ann. tit. 15, § 5301.
[31] Sean Morales-Doyle, *Federal and State Election Laws Ban Federal Forces from Polling Places*, Brennan Ctr. for Just. (Feb. 10, 2026), https://www.brennancenter.org/our-work/research-reports/federal-and-state-election-laws-ban-federal-forces-polling-places. States typically also have restrictions on "electioneering" within a certain distance of a polling location, which are designed to prevent partisan campaign messages from intimidating voters when they are preparing to or casting a ballot. *See, e.g.*, Fla. Stat. § 102.031(4)(a) ("No person, political committee, or other group or organization may solicit voters inside the polling place or within 150 feet of a secure ballot intake station or the entrance to any polling place."); Ariz. Rev. Stat. Ann. § 16-515(A) ("[A] person shall not be allowed to remain inside the seventy-five foot limit while the polls are open, except for the purpose of voting . . . and no electioneering may occur within the seventy-five foot limit."). As that is not behavior that is currently anticipated from federal officials, those statutes are not discussed in depth here. However, if a state's electioneering law is written broadly enough to cover generally intimidating behavior, it may be applied to the presence of federal troops at the polls.
[32] *See, e.g.*, N.Y. Elec. Law § 17- 212(1)(a) ("No person, whether acting under color of law or otherwise, may engage in acts of intimidation, deception, or obstruction that affects the right of voters to access the elective franchise."); 10 Ill. Comp. Stat. 5/29-4 ("Any person who, by force, intimidation, threat, deception or forgery, knowingly prevents any other person from (a) registering to vote, or (b) lawfully voting . . . shall be guilty of a Class 4 felony.").
[33] *See, e.g.*, Colo. Rev. Stat. § 1-13-711 (providing that "[a]ny person who interferes with any voter who is inside the immediate voting area or is marking a ballot or operating a voting device or electronic voting device" is guilty of a crime).
[34] *E.g.*, Fla. Stat. § 790.06(12)(a) (providing that a license to openly carry a handgun or carry a concealed weapon or firearm does not apply inside any polling place).
[35] *See, e.g.*, Del. Code Ann. tit. 11, § 1457B (providing an exception to the prohibition against knowingly possessing a firearm at a polling place on election day for law-enforcement officers); Miss. Code Ann. § 45-9-101 ("No license issued pursuant to this section shall authorize any person, except a law enforcement officer as defined in Section

firearms,[36] but others only make such exceptions when a local election official has specifically requested the presence of law enforcement.[37] Despite the significant variation in the contours of these statutes, in all states the underlying goal is to prohibit any conduct that could be viewed as intimidating to voters. If that conduct is coming from federal officials, the statutes may be applied to them in the same way that they apply to non-federal actors.

### *B. State Laws Prohibiting Delay of Delivery of Ballots*

The Executive Order that seeks to restrict delivery of certain mail ballots raises questions about what would happen if the Postal Service intentionally withheld or delayed ballot delivery, either to voters in the first instance or to election officials once the ballots have been cast by voters.[38] The latter is particularly important since many states require that mail ballots be *received by* the time polls close on Election Day.[39] While the relevant criminal provisions in federal law apply broadly to all types of mail, some states have more specific laws that make it a crime to knowingly or intentionally delay the delivery of a ballot.[40]

In contrast to the voter intimidation statutes described above, these laws are relatively similar across states. They aim to prohibit any intentional delay in the delivery of a ballot by any person. For example, in Arizona, a "person who . . . knowingly delays the delivery of a ballot is guilty of a class 3 misdemeanor."[41] Similarly, in Florida, a "person may not knowingly . . . delay the delivery of a voter registration form or election ballot."[42] A person who does so commits a felony.[43] The language of these statutes on their face is very broad—these provisions apply to *any* person and to *any* delivery of the ballot. This suggests that they could apply to federal officials, including postal service employees, who intentionally delay the delivery of a ballot, whether to a voter in the first instance or back to an election official after it has been cast by the voter. While there is limited guidance or precedent regarding this potential applicability, the

---

45-6-3 with a distinct license authorized by the Department of Public Safety, to carry a stun gun, concealed pistol or revolver into . . . any polling place.").

[36] *See, e.g.* Wash. Rev. Code § 9.41.284(3)(a) (exempting "[a]ny law enforcement officer of a federal, state, or local government agency" from its prohibition on possession of a firearm or dangerous weapon at a voting facility).

[37] *See, e.g.*, Va. Code Ann. § 24.2-606 ("The officers of election, with the consent of the chief law-enforcement officer for the county or city, may designate a law-enforcement officer who shall attend at the polling place and preserve order inside and outside the polling place.").

[38] This provision of the Executive Order has since been struck down as unconstitutional by the district court in Massachusetts. Casey, *supra* note 24.

[39] While the Supreme Court recently held that a state may choose to accept absentee/mail ballots that are received by a certain number of days after Election Day, if they are postmarked by Election Day, allies of the Trump Administration have made clear that they will continue to advocate for only ballots received by Election Day to be counted. Bill Barrow, *Trump's Fixation on Voting Has Had Mixed Results. He Still Has Ways to Affect November's Elections*, AP (June 29, 2026, at 23:03 CT), https://apnews.com/article/donald-trump-election-rules-supreme-court-96e152293a8a0698b01bae19c8e8810 (quoting the Chairman of the RNC as saying "[w]e are not going to be deterred by this decision, and the RNC will keep fighting to have elections end on Election Day.").

[40] *See, e.g.*, Ga. Code Ann. § 21-2-576 ("Any person who. . . willfully delays the delivery of any ballots shall be guilty of a misdemeanor."); Wis. Stat. § 12.13(3)(c) ("No person may . . . [w]illfully or negligently fail to deliver, after having undertaken to do so, official ballots prepared for an election to the proper person, or prevent their delivery within the required time, or destroy or conceal the ballots.").

[41] Ariz. Rev. Stat. Ann. § 16-1003.

[42] Fla. Stat. § 104.0615(4).

[43] *Id.* at 104.0615(5).

broad statutory language provides an opportunity for the relevant state officials to issue pre-election guidance about how these laws may apply in the current environment.

### *C. State Laws Prohibiting the Seizure of Ballots and Voting Machines*

In early 2026, the FBI took the unprecedented step of seizing all ballots cast in Fulton County, Georgia in the 2020 election.[44] The following month, a sheriff in California seized hundreds of thousands of ballots that were cast in California's November 2025 election.[45] And a month after that, Arizona Senate President Warren Petersen voluntarily complied with a federal grand jury subpoena for records[46] related to the Arizona Senate's review of Maricopa County's 2020 election results.[47] The results of each of the elections in which ballots or records were seized had already been certified, but these incidents raise the specter of ballot and voting machine seizures prior to election certification.[48] Any such "real time" seizure of election materials could result in delays in the certification of an election or worse. For example, a break in the chain of custody of ballots may cast doubt on whether those ballots should be counted at all.[49]

While broadly applicable federal criminal laws prohibiting interference in the election may apply to these issues, states have more specific laws prohibiting the removal of ballots and voting machines from polling places and the possession of the election official with the authority to handle ballots and election equipment. These laws are in place to prevent fraud, preserve the chain of custody, ensure the validity

---

[44] Aleena Fayaz & Tierney Sneed, *FBI Seizure of Fulton County Election Ballots Happened Quickly After Criminal Probe Opened, New Timeline Shows*, CNN (May 2, 2026 at 22:27 ET), https://www.cnn.com/2026/05/02/politics/timeline-fbi-criminal-probe-seizure-fulton-county-ballots.

[45] Jeanne Kuang, *California Sheriff Says His Seizure of More than 600,000 Ballots Is 'Normal Law Enforcement'*, CalMatters (Mar. 26, 2026), https://calmatters.org/politics/2026/03/chad-bianco-ballots-seized-riverside/.

[46] By law, in Arizona, physical ballots are destroyed after the canvass after two years for federal office or six months for all other elections. Ariz. Rev. Stat. Ann. § 16-624(A). However, the records turned over by Senator Peterson included digital copies of ballots cast in the 2020 election created during the 2021 Cyber Ninja audit of the election. Jen Fifield, *Election Records Handed Over to the FBI in Maricopa County, Arizona, Could Be Fatally Flawed, Experts Say*, ProPublica (Mar. 12, 2026, at 13:30 CT), https://www.propublica.org/article/maricopa-county-arizona-election-records-fbi. Unlike the paper ballots securely stored (and then destroyed) by the county treasurer, the validity and completeness of those records cannot be guaranteed. *Id.*

[47] Sasha Hupka, *Trump Administration Subpoenas 2020 Records from Maricopa County Amid Push to Investigate Election*, Votebeat (Mar. 20, 2026, at 18:50 CT), https://www.votebeat.org/arizona/2026/03/09/maricopa-county-2020-election-fbi-records-warren-petersen/.

[48] *See, e.g.*, Theresa Opeka, *Election Board Rejects Motion to Prepare for Federal Ballot Seizures*, The Carolina J. (Apr. 23, 2026), https://www.carolinajournal.com/election-board-rejects-motion-to-prepare-for-federal-ballot-seizures/ (covering concerns from a North Carolina State Election Board member making a motion for the board to have "the board's staff prepare guidance for counties to help them handle troops at the polls, ballot seizure requests, and other threats to the good order of the polls"; the motion was rejected, with another member reasoning that such acts are already prohibited by state and federal law).

[49] In Hamtramck, Michigan, 37 absentee ballots were excluded from the final result in a mayoral election after several non-election officials entered the office where the ballots were, unbeknownst to those officials, located and broke the chain of custody. The Michigan Court of Appeals held that, "because the City Clerk could not confirm the integrity of the 37 ballots, [statute] afforded the Board of Canvassers with the discretion to decline to tabulate the ballots, which was fatal to the claim for a writ of mandamus." Mahmood v. City of Hamtramck, No. 378814, 2026 WL 880593, at *2 (Mich. Ct. App. Mar. 27, 2026). The mayoral election was decided by just 11 votes. Hayley Harding, *Hamtramck's 37 Mishandled Ballots Shouldn't Be Counted, Judge Rules,* Votebeat (Dec. 23, 2025, at 17:14 CT), https://www.votebeat.org/michigan/2025/12/23/hamtramck-mayoral-election-court-ruling-uncounted-ballots-adam-alharbi/.

and legitimacy of elections, and protect voters' rights to a secret ballot.[50] Likewise, ballot security and the prevention of unauthorized access to ballots, even after a ballot has been counted, enables states and localities to engage in other legal processes such as recounts or audits. While the underlying purpose of these existing laws is universal, they differ on several axes that may affect their applicability to federal actors who seize ballots, voting machines, or other election materials and equipment.

First, these laws differ in terms of the time period that they cover. Some laws are focused on the removal of ballots and election equipment only before polls close. For example, Mississippi criminalizes "tak[ing] or remov[ing] any ballot from a voting place before the close of the polls,"[51] and Wisconsin prohibits "remov[ing] a ballot from a polling place before the polls are closed."[52] Other states have statutes that apply more generally to when elections are occurring, such as Delaware, where the statute specifies that it applies "during the general election."[53] Then there are states that prohibit the removal of or unauthorized access to ballots or election equipment from the custody of election officials at any time[54] or more explicitly "before, during, or after any election."[55]

Second, many states criminalize the mere act of removal of or unauthorized access to ballots and voting equipment,[56] broadly prohibiting the possession of such materials by anyone other than state election officials. Other state statutes are primarily concerned with the alteration or destruction of ballots by any individual, rather than simply possession by an unauthorized person. For example, Hawaii prohibits "wilfully tampering or attempting to tamper with, disarrange, deface, or impair in any manner whatsoever, or destroy, any voting machine while the same is in use at any election" and penalizes anyone who "after the machine is locked in order to preserve the registration or record of any election made by

---

[50] *E.g.*, Haley Harding, *All About the 'Chain of Custody,' the Process that Keeps Elections Secure*, Votebeat (Jan. 16, 2026, at 09:48 CT), https://www.votebeat.org/2026/01/16/chain-of-custody-ballot-voting-machines-verification-election-security/; Karen L. Shanton & Tyler L. Wolanin, Cong. Rsch. Serv., IN12389, Election Policy Fundamentals: The Secret Ballot (2024); *Testimony in Favor of L.D. 1779 "An Act To Protect Election Integrity by Regulating Possession of Ballots and Voting Machines and Devices" Before the Joint Standing Committee on Veterans and Legal Affairs*, 130th Legis. (Me. 2022) (statement of Shenna Bellows, Me. Sec'y State) ("Chain of custody of ballots is critical for ballot secrecy and integrity.").

[51] Miss. Code Ann. § 97-13-13(1).

[52] Wis. Stat. § 12.13(3)(r). However, a separate subsection criminalizes tampering with or otherwise compromising ballots and voting machines before, during, and after an election. *Id.* at 12.13(3)(f), (y).

[53] Del. Code Ann. tit. 15, § 5121.

[54] *E.g.*, Ariz. Rev. Stat. Ann. § 16-1016(9) ("A person is guilty of a class 5 felony who: . . . [k]nowingly and unlawfully carries away, conceals or removes a poll list, ballot or ballot box from the polling place, or from possession of the person authorized by law to have custody thereof.").

[55] *E.g.*, Colo. Rev. Stat. § 1-13-708(1).

[56] *E.g.*, Ariz. Rev. Stat. Ann. § 16-1016(9) ("A person is guilty of a class 5 felony who: . . . [k]nowingly and unlawfully carries away, conceals or removes a poll list, ballot or ballot box from the polling place, or from possession of the person authorized by law to have custody thereof."); Colo. Rev. Stat. § 1-13-716 ("No person shall willfully . . . take, carry away, conceal, or remove any ballot, ballot box, or election records from the polling location or drop-off location or from the possession of a person authorized by law to have the custody thereof . . . ."); Mont. Code Ann. § 13-35-206 ("A person is guilty of criminal mischief or tampering with public records and information . . . whenever the person . . . (3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election; (4) carries away or destroys any poll lists, checklists, ballots, ballot boxes, or other equipment for the purpose of disrupting or invalidating an election . . . .").

the same, tampers or attempts to tamper with any voting machine."[57] And in Arkansas, "[n]o person shall fraudulently change, alter, or obliterate the poll books or books of any election or break any seals upon any ballot box, voting machine, or stub box, except as authorized by law."[58] How this latter category of laws may apply to seizure of materials by federal officials will depend on the exact facts presented.

Third, existing laws sometimes impose an additional intent requirement for the removal or destruction of ballots or election equipment. In some states, the perpetrator must intend to commit or facilitate fraud or invalidate the election,[59] while other states impose a lower burden by requiring only the intent to "hinder"[60] the reporting of returns. Meanwhile, some states impose no such intent requirement and simply prohibit actions that disrupt the ordinary and lawful control over ballots and election equipment.[61]

Crucially, statutes in all of the categories described above do not include exceptions and thus apply to all persons, regardless of their status as law enforcement, federal officers, or otherwise. State laws make clear that ballots and voting equipment are to remain in the polling place or in the custody of the election officials authorized by law to handle, transport, and store them at all times, and that anyone violating these laws may be subject to criminal prosecution.

## III. What Can States Do Now: Education and Deterrence

While there is always an option for a state to pass a new law directly addressing the anticipated behavior of federal officials related to elections—and some states have pursued that path[62]—most states already have laws that criminalize this anticipated behavior. The key intervention states can engage in now thus involves increasing education and awareness about these laws. Many state and local election officials or

---

[57] Haw. Rev. Stat. §19-3(a)(9).

[58] Ark. Code Ann. § 7-1-104(a)(16).

[59] *E.g.*, Idaho Code § 18-2306A(2) ("Every person who carries away or destroys, or attempts to carry away or destroy, any poll list, ballots, or ballot box, for the purpose of breaking up or invalidating such election, or who willfully detains, mutilates, or destroys any election returns, or in any manner so interferes with the officers holding such election or conducting such canvass or with the voters lawfully exercising their rights of voting at such election, as to prevent such election or canvass from being fairly held and lawfully conducted shall be guilty of a felony."); Mont. Code Ann. § 13-35-206(3), (4) ("A person is guilty of criminal mischief or tampering with public records and information . . . whenever the person: removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election . . . [or] carries away or destroys any poll lists, checklists, ballots, ballot boxes, or other equipment for the purpose of disrupting or invalidating an election.").

[60] *E.g.*, Ark. Code Ann. § 7-1-104(17) ("No person shall contrive, alter, forge, counterfeit, detain, mutilate, steal, secrete, or destroy any election returns or election materials for the purpose of hindering or preventing or falsely reporting a tabulation or check of the returns.").

[61] *E.g.*, Ariz. Rev. Stat. Ann. § 16-1018(2) ("A person who commits any of the following acts is guilty of a class 2 misdemeanor: . . . [i]ntentionally disables or removes from the polling place, on-site early voting location or custody of an election official a voting machine or a voting record."); Colo. Rev. Stat. § 1-13-708(1) ("Any person who . . . accesses without authorization, tampers with, or facilitates the unauthorized access to or tampering with any electronic or electromechanical voting equipment or an election-night reporting system before, during, or after any election provided by law is guilty of a class 5 felony."); Del. Code Ann. tit. 15, § 5141 ("Whoever, not being an election officer . . . [w]ilfully . . . conceals, secretes or removes any ballot box from the custody of the election officers . . . shall, for each such offense, be fined not more than $200 or imprisoned not more than 2 years, or both.").

[62] *See, e.g.*, S.B. 264, 57th Leg., 2d Reg. Sess. (N.M. 2026); Jonathan Shorman, *Blue States Push to Ban ICE at the Polls Amid Federal Voter Intimidation Fears*, Stateline (Mar. 5, 2026, at 05:00 CT), https://stateline.org/2026/03/05/blue-states-push-to-ban-ice-at-the-polls-amid-federal-voter-intimidation-fears/.

law enforcement personnel are likely unaware of these laws or their potential application to federal actions, as they have never had to confront these anticipated behaviors before.

First, states should consider providing clear guidance about what these laws mean for how state and local election officials should respond to any disruptive federal interventions. Depending on the state, this guidance may be an Attorney General opinion interpreting the relevant state laws, a memo from the state election board to local administrators, or an update to an election manual published by the Secretary of State or chief election administrator in a state. It may also include specific directions on whom a local election official should inform about federal actions in real time, requiring, for example, immediate notice to the chief election administrator and the county attorney or state Attorney General. This will help to ensure appropriate awareness of federal activity and enable the relevant state level officials to prepare for and effectively respond to similar activity in other locations.

In the absence of such education and guidance, election officials and poll workers may accede to federal demands that violate state (and federal) law and threaten the integrity of the election. Offering tailored guidance and training to state and local law enforcement may likewise be valuable: There is likely a predisposition to cooperate with federal officials, so giving state and local law enforcement a clear understanding of when *not* to do so based on specific state laws is essential.

Second, state guidance to election officials and law enforcement may also include instructions for documenting and recording federal activities in order to facilitate investigations and potential prosecutions. County attorneys or other relevant prosecutors may be helpful in developing specific recommendations about what information should be gathered and how it should be maintained and shared.

Beyond helping to educate election officials and law enforcement, such guidance may also help to deter problematic federal conduct. For example, a postal worker in Arizona may not have been aware that it is a crime to knowingly delay the delivery of a ballot. Public education about the existence of that law and guidance about how the state will prosecute anyone who violates that law may impact that postal worker's willingness to participate in schemes to slow election mail.

## IV. Enforcement Process and Anticipated Hurdles

While the federal and state laws discussed above contain overlapping prohibitions, state laws differ in one significant way: They are enforced by state actors rather than the U.S. Department of Justice. While prosecution is often a last resort, it is still an important tool for reining in electoral misconduct, including by federal actors. This Part summarizes the relevant state enforcement authority and discusses the likely hurdles that state enforcement authorities may encounter.

Each state has its own unique enforcement mechanisms for criminal laws related to elections. In many states, the district attorney in the relevant county has prosecutorial jurisdiction.[63] In others, the Attorney General has prosecutorial jurisdiction or concurrent jurisdiction with the district or county attorney.[64] Regardless of who has prosecutorial jurisdiction in the state, federal officers charged with state-law crimes for on-the-job actions will likely seek to move their cases to federal court and argue that they are immune

[63] *E.g.*, 25 Pa. Cons. Stat. § 1802(b); Wis. Stat. §§ 12.60(4), 11.1401(2).
[64] *E.g.*, Ariz. Rev. Stat Ann. § 16-1021; Ky. Rev. Stat. Ann. § 15.242.

from state prosecution.[65] However, because many of the actions discussed in this report are also unlawful under *federal* law, state prosecutions for such actions have a reasonable chance of surviving this hurdle.

As detailed in a prior report, Supremacy Clause immunity insulates federal officers from state criminal prosecutions when the officer's actions were "necessary and proper" in carrying out authorized federal duties.[66] The rationale behind this type of immunity is that states should not have the power to undermine the implementation of valid federal laws by prosecuting federal officers who are reasonably performing lawful federal activities.[67] Although the exact test for Supremacy Clause immunity remains contested, courts typically consider whether the officer was doing something authorized by federal law and whether the officer's actions were objectively reasonable.[68] Given that federal criminal laws proscribe many of the election interference scenarios outlined in this report, Supremacy Clause immunity claims will likely falter at the first step. When an officer's actions are directly prohibited by federal law, the officer cannot reasonably claim that the actions were carried out "in the performance of a duty imposed by the Federal law."[69] That said, where an officer is following direct orders from other officials, the immunity analysis may be more contested—for example, the federal statute prohibiting troops or armed men at the polls applies to a federal actor who "orders, brings, keeps, or has under his authority or control any troops or armed men," not necessarily to those following orders.[70]

Relatedly, federal officers may also seek to assert intergovernmental immunity to short-circuit state prosecutions. Although federal officers are not wholly immune from state law, intergovernmental immunity doctrine bars states from discriminating against or directly regulating the federal government. The state laws discussed above are generally nondiscriminatory because they do not single out federal actors for disfavored treatment. The direct regulation question is somewhat more complicated and likely to be contested. In a foundational intergovernmental immunity case, for example, the Supreme Court overturned a state conviction of a federal postal worker for driving without a state license, concluding that the state could not prohibit the officer from carrying out federal duties without first getting the state's approval.[71] But especially where federal officials are acting outside the bounds of their federal authority, an intergovernmental immunity defense is likely to falter. Moreover, as explained in prior reports, some courts have concluded that intergovernmental immunity issues do not arise or are less pronounced when states and localities are seeking to regulate their own property[72] or to protect sensitive locations.[73] State

---

[65] A federal statute allows federal officers to "remove" (i.e., shift) their cases from state court to federal court if the case relates to the officer's work and if the officer has a "colorable" federal defense. 28 U.S.C. § 1442.

[66] Bryna Godar, *Can States Prosecute Federal Officials?*, State Democracy Rsch. Initiative 9 (July 17, 2025), https://statedemocracy.law.wisc.edu/assets/files/report-can-states-prosecute-federal-officials.pdf.

[67] *See id.*

[68] *See id.*

[69] United States *ex rel.* Drury v. Lewis, 200 U.S. 1, 8 (1906).

[70] *See* 18 U.S.C. § 592; U.S. Dep't of Just., *supra* note 8, at 73 ("Section 592 prohibits the use of official authority to order armed personnel to the polls; it does not reach the personnel who respond to those orders.").

[71] Johnson v. Maryland, 254 U.S. 51 (1920).

[72] Bryna Godar, *State and Local Property Law Responses to Federal Actions*, State Democracy Rsch. Initiative 2 (Apr. 20, 2026), https://statedemocracy.law.wisc.edu/assets/files/Report-State-and-Local-Property-Law-Responses-to-Federal-Actions.pdf.

[73] Harrison Stark, *Can States Protect "Sensitive Locations" Like Courthouses, Hospitals, or Schools from Federal Immigration Enforcement?*, State Democracy Rsch. Initiative 1 (May 11, 2026), https://statedemocracy.law.wisc.edu/assets/files/Report_Sensitive-Locations-Explainer.pdf.

efforts to safeguard polling places and election processes, which are central to the state's sovereignty, may therefore be insulated from at least some assertions of intergovernmental immunity.

Procedurally, some of these issues will likely be resolved in federal rather than state court given the ability of federal officers to remove cases from state court to federal court as discussed above. An assertion of Supremacy Clause immunity or intergovernmental immunity may be sufficient to remove a state prosecution from state court to federal court. However, the federal defense must be plausible. Where the state prosecution is based on actions that clearly violate federal law, a federal court may conclude the officer lacks a plausible federal defense and remand the case to state court. If the case remains in federal court, the state or local prosecutor would still prosecute the case, and the prosecution would still be for a state-law crime. Notably, this means that the President would not have the power to pardon defendants since presidential pardons extend only to federal, not state, crimes.[74]

In sum, although federal officers charged with state-law crimes will likely seek to claim immunity from state prosecutions, they will face an uphill battle in doing so if their actions also violate federal law.

* * *

The potential for federal overreach in connection with the November midterm elections calls for a multifaceted response. State criminal laws related to elections are one important tool for deterring misconduct and ensuring accountability. In the months ahead, states can educate election officials and law enforcement about the existence of these laws and about how to respond to federal conduct that oversteps legal bounds.

[74] Bryna Godar, *Minnesota Could Prosecute the ICE Shooter. Trump Can't Pardon Him.*, Slate (Jan. 7, 2026, at 17:46 CT), https://slate.com/news-and-politics/2026/01/is-minneapolis-ice-shooter-immune-state-prosecution-supreme-court.html.