

# ***Pitts v. United States***

## **Decision update and implications for future ballot seizures**

May 11, 2026

### **Update**

On May 6, 2026, the District Court for the Northern District of Georgia issued a [decision](#) in *Pitts v. United States*, denying a motion by Fulton County local election officials to return the ballots seized by the FBI.

While the District Court found some aspects of the underlying warrant application “troubling,” it ultimately determined that the federal government’s seizure of ballots did not constitute a “callous disregard” of constitutional rights.

### **Case background**

The FBI executed a search warrant and seized ballots from the Fulton County Election Hub on January 28, 2026.

On February 5, 2026, the Fulton County Clerk, on behalf of the Fulton County Board of Registration and Elections (“Fulton County”), filed an emergency motion for the return of property. The clerk also filed a motion to unseal the affidavit underlying the search warrant and return the records seized by the FBI.

On February 10, 2026, the federal government filed a redacted copy of the search warrant materials. The affidavits submitted to the magistrate judge to obtain the warrant alleged that there were irregularities in handling digital scans of paper ballots, discrepancies between the number of ballots that were hand-counted and the number of ballots in each batch tally, and absentee ballots that had never been creased or folded.<sup>1</sup>

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<sup>1</sup> A copy of the search warrant and supporting affidavit are available [here](#). The supporting allegations did not include new revelations, but instead were allegations that have been evaluated by multiple state investigations. Those reviews largely concluded that there were no violations of law or indications of intentional dishonesty or fraud. One of the several investigations determined that there might have been a violation of some State Board of Elections rules.

The magistrate judge believed that these allegations showed a departure from protocol and were sufficient to establish probable cause that federal laws had been broken by “unknown persons.”<sup>2</sup>

On February 17, 2026, Fulton County filed an amended motion for return of property, pursuant to Federal Rule of Criminal Procedure 41(g). In the amended motion, Fulton County asked the court to order the federal government to: (1) return all original seized ballots; (2) return any copies of the seized ballots; (3) and verify precisely what was taken and copied via detailed chain-of-custody documentation.

## The decision

The court analyzed the appropriateness of ordering the ballots returned using the *Richey v. Smith*<sup>3</sup> four-factor test, which requires that courts determine:

- (1) “whether the government displayed a ‘**callous disregard**’ for the plaintiff’s **constitutional rights**”;
- (2) “whether the plaintiff has an individual interest in and need for the material whose return [it] seeks”;
- (3) “whether the plaintiff would be irreparably injured by denial of the return of the property”; and
- (4) “whether the plaintiff has an adequate remedy at law for the redress of [its] grievance.”

The court focused its analysis on whether the seizure satisfied the “**callous disregard**” factor, based on the evidence presented by Fulton County regarding the search warrant and the manner in which the seizure was executed.

**The court agreed with Fulton County that there were some factual deficiencies and insufficiencies in the search warrant application, which the seizure was subject to, but determined that they were not enough to establish callous disregard.**

The court found that Fulton County did not ultimately demonstrate how the seizure of materials from an election that occurred five years ago infringed on the state’s sovereign interests in safeguarding election integrity, or show that voters are concerned that “their ballots will . . . be manipulated or misused[.]”

**The court also found that Fulton County did not persuasively show that the federal government created an “ongoing criminal investigation” to sidestep procedural hurdles in**

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<sup>2</sup> Josh Gerstein & Kyle Cheney, *Justification unsealed for FBI’s seizure of 2020 Fulton County ballots*, Politico (Feb. 10, 2026), <https://perma.cc/Q5SK-YEL6>.

<sup>3</sup> 515 F.2d 1239, 1245 (5th Cir. 1975)

the two prior state and federal court actions seeking access to the same records that preceded the search and ballot seizure.

The court did acknowledge that some constitutional limitations exist on the federal government's power to investigate, but ultimately found that the government's conduct in this case did not reach those limitations.<sup>4</sup>

## What it means for future ballot seizure attempts

- **This decision sets a high bar for getting ballots back once they are seized.** The court's ruling that Fulton County did not show that the seizure constituted a "callous disregard" for constitutional rights emphasizes the court's reluctance to exercise its power to order the return of seized property.
- **The court distinguished this case (with a completed and certified election) from one where the seizure would interfere with conducting or certifying an ongoing election.** The court specifically noted that Fulton County did not show that the seizure interfered with the state's ability to conduct the 2020 election or certify election results, nor that it would hinder the state's ability to conduct future elections. In addition, arguments against unfounded seizures could potentially be persuasive by highlighting the ways in which they disrupt the day-to-day duties of election administrators and their ability to conduct future elections.
- **Arguments regarding the secrecy of ballots may be persuasive under the right factual circumstances to show callous disregard for constitutional rights.** The district court specifically noted that Fulton County did not persuasively show that the secrecy of the ballot was compromised by the seizure.

## Get support

Our **Election Protection Hub** offers direct legal support, training, and technical assistance to local elections officials across the country. Please reach out to us: [elections@publicrightsproject.org](mailto:elections@publicrightsproject.org).

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<sup>4</sup> "While the Court agrees with Petitioners that the federal government's investigative ability is not unfettered from Constitutional considerations, it does not find that Respondent's conduct here rises to the level of callous disregard for Petitioners' constitutional rights." *Pitts v. United States*, Dkt. 108, No. 26-cv-00809 (N.D. Ga. May 6, 2026), slip. op. at 42 n.26.