



Election Certification Processes and Guardrails

Certification, the statutory process by which officials sign off on the completion of election results, has historically been an uncontroversial postelection formality across the country. State law has long established that officials have a mandatory, nondiscretionary duty to certify elections.

Despite this well-settled law, states across the country are facing a new phenomenon. Since the 2020 election, more than 30 local [officials](#) nationwide have refused or threatened to refuse to certify election results. These officials often justify their misconduct with claims rooted in election denialism — the false idea that the 2020 election was stolen and that widespread fraud pervades our election system. Their efforts have not succeeded, often because state courts and state officials have intervened to protect the certification process. But the threat remains that rogue officials in several states may attempt to interfere with the timely certification of this year’s presidential election results.

In a presidential election year, efforts to disrupt certification pose a particularly acute threat. Under the Electoral Count Reform Act (ECRA), passed by Congress in 2022, state executives must certify their state’s slate of presidential electors by December 11, 2024. 3 U.S.C. §§ 5(a)(1), 7. Delaying certification by even a few days could place a state’s ability to certify by the ECRA deadline at risk.

Fortunately, state officials have several legal tools available to respond to any certification issues that arise — and to help prevent them in the first place. This guide provides an overview of those guardrails. It accompanies seven other guides in this series that address the specific certification safeguards in Arizona, Georgia, Michigan, Nevada, North Carolina, Pennsylvania, and Wisconsin.

Timeline for Canvassing and Certifying Presidential Elections

Each state’s election code sets forth a detailed timeline by which local and state officials must canvass and certify all elections, including presidential elections.

Generally, in the weeks after Election Day, local election officials from each county or municipality meet to conduct the canvass — the process by which they “[account](#) for every ballot cast and ensure that the official results include each valid vote.” Local election officials must complete this process by a specific deadline set by statute. The canvass may also overlap with other postelection processes such as mandatory audits and recounts, which have their own strict statutory deadlines.

After completing the canvass, local election officials must then formally approve and certify the final results by a specific date. For local races, the process ends there. But statewide elections, including presidential elections, entail additional steps. Local officials must deliver the canvassed returns to a designated state official (or group of state officials) who will complete their own canvass to aggregate the certified results from each local jurisdiction and formally certify the winner of each race, again by a specific date set by statute. For presidential elections, the ECRA mandates that each state’s executive must then issue a certificate of ascertainment at least six days before the electors meet. 3 U.S.C. §§ 5(a)(1), 7. For this year’s presidential election, that deadline is **December 11, 2024**.

Notably, state certification statutes use “shall” language when directing local and state officials to certify the results by the statutory deadline. See, e.g., 25 P.S. § 3154(f) (“[T]he county board shall certify the returns so computed in said county”); and O.C.G.A. § 21-2-493(k) (“[R]eturns shall be certified by the” local election official). State courts generally interpret such “shall” language to create a mandatory duty to certify. See, e.g., *State v. Henderson*, 263 Ga. 508, 510 (1993); and *Fagan v. Smith*, 41 A.3d 816, 819 (Pa. 2012) (per curiam).

Authority to Prevent and Respond to Certification Abuses

State Officials Can Issue Opinions, Guidance, and Directives

For more than a century, state laws across the country have [established](#) that certification is a “ministerial” (i.e., mandatory) duty that leaves certifying officials with no option to refuse to certify election results. State officials can play a critical role in educating certifying officials about the mandatory nature of certification and the importance of timely completing postelection processes.

Secretaries of state and **state election agencies** are well-positioned to issue guidance and statements regarding the duty to canvass and certify election results. For example, the Michigan Bureau of Elections’ county canvassers [manual](#) explains that certification is nondiscretionary and that willfully failing to perform a duty imposed by the election code carries criminal penalties. The director of elections reiterated these points in a May 2024 [letter](#) to a county board of canvassers after two members indicated that they might not certify election results. The Arizona secretary of state’s office also makes clear in its [Elections Procedures Manual](#) that county boards have a “non-discretionary duty to canvass” election returns and have “no authority to change vote totals, reject the election results, or delay certifying the results without express statutory authority or a court order.”

State attorneys general, too, can provide direction in the form of formal and informal advisory opinions on the civil and criminal penalties at stake if officials refuse to certify election results. On the criminal side, the attorney general can assess the applicability of various state criminal provisions, including election-related offenses and prohibitions on official misconduct. On the civil side, the attorney general can opine on whether failure to certify the election could lead to an official’s removal from office or potential liability for constitutional rights violations. The Michigan attorney general’s office, for example, has [responded](#) to questions concerning potential civil litigation against officials who fail to perform a clear legal duty.

In addition to state officials, **district attorneys** can also offer guidance regarding the potential consequences of voting against certification, including criminal liability and removal from office. A letter from the district attorney in Washoe County, Nevada, recently helped [persuade](#) a county commissioner who had initially voted against certification to switch their vote.

State Officials Can Exercise Their Statutory Authority to Enforce the Mandatory Duty to Certify

In some states, statutes give state officials explicit authority to intervene and complete the certification process in the event that a local official refuses to certify an election. For example, both Michigan and Colorado permit state officials to certify a county’s election results if the county refuses to do so. Mich. Comp. Laws § 168.822; Colo. Rev. Stat. § 1-10-104(3). Likewise, North Carolina law authorizes the state board of elections “to secure the originals or copies [of the missing abstracts] from the appropriate clerks of superior court or county boards of elections” if it has not received all the county canvass results by the scheduled date. N.C. Gen. Stat. § 163-182.5(c).

State Officials and Other Affected Parties Can Obtain a Writ of Mandamus

In most states, writs of [mandamus](#) will provide the most powerful legal remedy for certification refusals or delays. Mandamus can be used to compel an official to perform a ministerial duty required by law. Courts across the country have long acknowledged that officials have a mandatory, nondiscretionary duty to certify elections by the statutory deadlines. And in recent years, courts in both [Arizona](#) and [New Mexico](#) have granted writs of mandamus against county boards of elections that voted against certification.

A party seeking mandamus relief must generally establish a clear legal right to the requested relief. Accordingly, several different types of parties may be able to obtain mandamus relief in a given state.

For one, the **state election officials** responsible for certifying statewide election results can generally seek mandamus relief if a county refuses to certify, as a locality's refusal directly interferes with their statutory duty to timely certify the election. For example, secretaries of state filed successful petitions in [Arizona](#) and [New Mexico](#) in 2022. And earlier this year, the Nevada secretary of state filed a mandamus [petition](#) against the Washoe County Board of Commissioners after the board initially refused to canvass the results of two recount elections. (The Nevada Supreme Court dismissed the petition as moot after the suit prompted the officials in question to [change](#) their votes.) In many states, attorneys general will represent secretaries in these actions.

Candidates whose races are affected by a refusal to certify can generally also bring a mandamus action, as one [Pennsylvania congressional candidate](#) did in 2022, and some states allow **voters** themselves to bring an action. See, e.g., N.M. Stat. Ann. § 1-13-1(C) (“The district court, upon petition of any voter, may issue a writ of mandamus to the county canvassing board to compel it to approve the report of the county canvass and certify the election returns.”).

The appropriate venue for a mandamus proceeding will depend on state law. Officials in some states may be required to proceed in [trial court](#), while in others, the [state supreme court](#) may be able to exercise original jurisdiction.

Courts Have Tools to Enforce Court Orders If an Official Still Refuses to Certify

To date, certifying officials have [promptly](#) followed orders compelling them to certify elections. However, in the event that a certifying official refuses to comply with a mandamus order, several types of remedies can ensure that elections are certified in a timely manner.

First, the parties that originally sought the mandamus order can seek civil or criminal contempt sanctions, consistent with state law, from the court that issued the order.

Second, many states have an equivalent to Federal Rule of Civil Procedure 70, which provides that if a person fails to comply with an order to perform a specific act, the court “may order the act to be done — at the disobedient party’s expense — by another person appointed by the court.” See, e.g., Ariz. R. Civ. P. 70(a); Colo. R. Civ. P. 70; O.C.G.A. § 9-11-70; Nev. R. Civ. P. 70; and N.C.G.S. § 1A-1, Rule 70. Even in states without an equivalent rule, courts may have inherent equitable authority to direct other officials to certify results.

State Officials Can Impose Penalties Against Rogue Certifying Officials

To deter future certification abuses, law enforcement authorities can ensure that individuals who refuse to certify election results are held accountable for their conduct by removing them from their positions or bringing criminal charges where appropriate. For example, the North Carolina State Board of Elections has statutory “power to remove from office any member of a county board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause.” N.C.G.S. § 163-22(c). It exercised that authority in 2023, when it unanimously voted to [remove](#) two members of the Surry County elections board after they protested certification in the 2022 general election. Likewise, the Arizona attorney general is currently [prosecuting](#) two county officials who voted against certifying the 2022 election for two offenses: interfering with an election officer and conspiring to do so.

Other state laws that could be relevant for a refusal to certify include provisions that make it a crime for public officials or election officers to fail to perform a duty as required by state law; prohibitions on misconduct in office; prohibitions on hindering or delaying other officials’ performance of their duties; and statutes regarding oath of office violations. In addition to the authority of state attorneys general to investigate and prosecute violations of this nature, many states allow local prosecutors to prosecute election violations that take place within their jurisdictions.

If a State Misses the Federal Certification Deadline

The legal tools described in this guide should ensure that all states certify this year’s presidential election in time to meet the ECRA deadline. In the rare instance that a state executive does not issue a certificate of ascertainment by the December 11 deadline, the ECRA provides a process for courts to order certificates to be issued by December 16, the day before the electors meet in their respective states. 3 U.S.C. § 5(c)(1)(B). As described above, state courts should provide fast, effective relief for parties seeking to resolve certification disputes. The ECRA also creates a procedure by which claims brought by presidential candidates with respect to certificate of ascertainment issuance or transmission can be heard on an expedited basis by a three-judge federal court. 3 U.S.C. § 5(d). These judicial processes should ensure that each state issues a correct and timely certificate of ascertainment.

Additional Resources

- Brennan Center, [“The Roadmap to the Official Count”](#) (October 26, 2020)
- Campaign Legal Center, [“FAQs on State Implementation of the Electoral Count Reform Act \(ECRA\)”](#) (September 2024)
- Citizens for Responsibility and Ethics in Washington, [Election Certification Under Threat](#) (August 15, 2024)
- Lauren Miller Karalunas and Will Wilder, [“Certification and Non-Discretion: A Guide to Protecting the 2024 Election”](#) (35 *Stanford Law & Policy Review* 1, 2024)
- Protect Democracy, [“Election Certification, Explained”](#) (July 24, 2024)
- Protect Democracy, [Election Certification Is Not Optional](#) (March 2024)