



Nevada Election Certification Processes and Guardrails

In Nevada, as elsewhere in the country, canvassing and certification have long been considered uncontroversial formalities in the postelection process. Under Nevada law, the canvass is the process of reviewing and declaring election results by a mandated deadline. Certification serves as the final step at the end of the canvass. State law makes clear that election officials have a mandatory, nondiscretionary duty to canvass and certify elections by the statutory deadlines.

Despite this well-settled law, states across the country — including [Nevada](#) — 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 Nevada 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, Nevada officials have several legal tools available to respond to any certification issues that arise — and to help prevent them in the first place. These guardrails are detailed below.

Timeline for Canvassing and Certifying Presidential Elections in Nevada

The board of county commissioners must convene “[a]s soon as the returns” from all precincts and districts have been received to complete the canvass, which must conclude by the 10th day following the election:

November 15, 2024. Nev. Rev. Stat. § 293.387(1). The county clerk then creates an abstract of results based on the canvass, and the board “shall cause the county clerk to certify the abstract,” and send this abstract along with a mechanized report to the secretary of state no later than the 10th day after the election: **November 15, 2024.** Nev. Rev. Stat. § 293.387(3).

State law directs the secretary of state to meet with at least a majority of the justices of the Nevada Supreme Court to canvass the statewide vote on the fourth Tuesday of November following the general election:

November 26, 2024. Nev. Rev. Stat. § 293.395(2). Following the completion of the statewide canvass, the governor “shall issue certificates of election” to all statewide offices, including a certificate of ascertainment for presidential electors pursuant to 3 U.S.C. § 5. Nev. Rev. Stat. §§ 293.395, 293.424.

For presidential elections, a defeated presidential candidate must file a written demand for a recount and deposit fees with the secretary of state on or before the 13th day following the election: **November 18, 2024.** Nev. Rev. Stat. § 293.424(1)(a). The recount must commence within one day after the demand is filed and must be completed within five days (i.e., no later than **November 24, 2024**). Nev. Rev. Stat. § 293.424(b).

Authority to Prevent and Respond to Certification Abuses

State Officials Can Issue Regulations, Guidance, and Opinions

The secretary of state has broad authority to “adopt regulations” consistent with Nevada law to “regulate the conduct” of elections, and may also “provide interpretations and take other actions necessary for the effective administration of the statutes and regulations governing the conduct” of elections in the state. Nev. Rev. Stat. § 293.247(1), (4). The attorney general also provides formal legal opinions to public officials who request them. Nev. Rev. Stat. § 228.150(1).

Prior to the election, state officials may choose to exercise this authority to emphasize the mandatory, nondiscretionary nature of election certification and the importance of timely completing postelection processes.

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

In Nevada, “a writ of mandamus is available to compel the performance” of an act required by law of a public official. Nev. Rev. Stat. § 34.160; *Canarelli v. Eighth Jud. Dist. Ct.*, 506 P.3d 334, 336 (Nev. 2022). The state’s statutory framework repeatedly uses “shall” language, which “imposes a duty on a party to act and prohibits judicial discretion and, consequently, mandates the result set forth by the statute.” *Goudge v. State*, 287 P.3d

301, 304 (Nev. 2012). See also *State v. Shaugnessy*, 47 Nev. 129 (1923) (“County commissioners are administrative agencies of the state. They are required by the organic law to perform such duties as may be prescribed by law.”)

Earlier this year, the secretary of state filed a mandamus petition against the Washoe County Board of County Commissioners after it refused to canvass the results of two recounts in the June 2024 primary election. [Petition for Writ of Mandamus](#), *Aguilar v. Washoe Cnty. Bd. of Comm’rs*, No. 88965 (Nev. July 11, 2024). Notably, the case was presumptively retained by the Supreme Court under [Nevada Rule of Appellate Procedure 17\(a\)\(2\)](#) because it involved a ballot or election issue.

After the petition was filed, the board certified the canvass in a 4–1 vote — an effective end result that serves as a useful guidepost for the November general election. The court dismissed the petition as moot in response. [Order](#) Dismissing Petition for Writ of Mandamus, *Aguilar v. Washoe Cnty. Bd. of County Comm’rs*, No. 88965 (Aug. 19, 2024).

In addition to the secretary of state, the attorney general, aggrieved candidates, and Nevada voters could seek mandamus relief. Nev. Rev. Stat. § 228.170 (allowing attorney general to commence an action necessary “to protect and secure the interest of the State”); *ACLU of Nev. v. Cnty. of Nye*, 519 P.3d 36, 36 n.3 (Nev. 2022) (rejecting the argument that the American Civil Liberties Union could not enforce election laws in a mandamus action); Nev. Rev. Stat. § 34.170 (directing a writ of mandamus to be issued “on the application of the party beneficially interested”).

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

Rule 70 of the Nevada Rules of Civil Procedure provides a mechanism for a court to direct another individual to carry out a court order if the ordered party refuses to comply. Nev. R. Civ. P. 70. Although this rule is often invoked in property-related cases, courts have considered Rule 70 motions against government agencies before. See, e.g., *Nevada Ready Mix Inc. v. Nev. Tax Comm’n*, 135 Nev. 694 (2019).

If a county board member refuses to comply with a mandamus order, they may be held in civil or criminal contempt. Nev. Rev. Stat. § 22.010(2), (3). Additional penalties exist for refusing or neglecting to obey a writ of mandamus. Nev. Rev. Stat. § 34.290. If a rogue official persists in refusing to obey the order, the court may issue “any orders necessary and proper for the complete enforcement” of the mandamus order. Nev. Rev. Stat. § 34.290(2).

State Officials Can Impose Penalties Against Rogue Certifying Officials

Refusing to certify an election could violate several state criminal laws and result in charges. See, e.g., Nev. Rev. Stat. § 293.800(2).

District attorneys generally have authority to indict and prosecute criminal conduct that takes place within their jurisdictions. Nev. Rev. Stat. § 252.110. And Nevada law empowers the attorney general to “investigate and prosecute any criminal offenses committed” by county officers or employees “in the course of [their] duties or arising out of circumstances related to [their] position[s]” if the district attorney does not act on the matter.

Nev. Rev. Stat. § 228.177. Additionally, the attorney general is empowered to investigate and prosecute offenses by state officers or employees. Nev. Rev. Stat. § 228.175.

In addition to these penalties, Nevada law has a process for removing officials “who refuse[] or neglect[] to perform any official act in the manner and form prescribed by law, or who is guilty of any malpractice or malfeasance in office.” Nev. Rev. Stat. § 283.440(1).

If Nevada Misses the Federal Certification Deadline

The legal tools described in this guide should ensure that all counties certify the election in time for Nevada to meet the ECRA deadline. In the rare instance that the 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 the issuance or transmission of the certificate of ascertainment 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 a correct and timely certificate of ascertainment is issued in each state, including Nevada.

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)