



# Georgia 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 in Georgia and 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 — including [Georgia](#) — 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 Georgia 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, Georgia 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 Georgia

Once precinct returns have been received and computed at the county level, “[s]uch returns shall be certified by the [county official(s) responsible for certification] not later than 5:00 P.M. on the Monday following the date on which such election was held and such returns shall be immediately transmitted to the Secretary of State.” In 2024, this date will be **November 12** due to [the federal holiday](#) on November 11. O.C.G.A. §§ 21-2-493(k), 21-2-497. Any recount or recanvass must take place prior to certification. O.C.G.A. § 21-2-495(a)-(b).

Upon receiving the certified returns from certifying officials in each county, the secretary of state “shall **immediately** proceed to tabulate, compute, and canvass the votes cast . . . and shall thereupon certify and file in his or her office the tabulation thereof.” O.C.G.A. § 21-2-499(a).

The secretary of state shall certify the votes cast for federal and statewide offices and ballot questions across multiple counties “[n]ot later than 5:00 P.M. on the seventeenth day following the date on which such election was conducted”: **November 22, 2024**. O.C.G.A. § 21-2-499(b).

For presidential electors, the secretary of state shall, “upon receiving the certified returns for presidential electors, proceed to tabulate, compute, and canvass the votes cast for each slate of presidential electors and shall immediately lay them before the Governor” by 5:00 P.M. on the seventeenth day following the election: **November 22, 2024**. O.C.G.A. § 21-2-499(b). The governor “shall certify” the slates by no later than 5:00 p.m. on the following day: **November 23, 2024**. O.C.G.A. § 21-2-499(b).

Although the Georgia State Election Board has recently adopted [new rules](#) related to certification, those rules do not affect the statutory deadlines for certification set forth above.

## Authority to Prevent and Respond to Certification Abuses

### State Officials Can Issue Legal Opinions

The attorney general provides official legal opinions when requested by the governor or a head of an executive department. O.C.G.A. § 45-15-3(1). The attorney general also provides [opinions](#) when requested by other state officers, such as legislators, judges, or district attorneys. Prior to the election, the attorney general may choose to exercise this authority to emphasize the mandatory, nondiscretionary nature of election certification and the importance of timely completing postelection processes. Indeed, the secretary of state has already [publicly](#) noted the importance of timely election certification.

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

The most powerful legal remedy for certification refusals or delays is likely to be a writ of mandamus. Under Georgia law, courts award mandamus remedies to “compel a due performance” when a “defect of legal justice would ensue from a failure to perform or improper performance” of a ministerial (i.e. mandatory) duty, and no other specific legal remedy is available. O.G.C.A. § 9-6-20.

Georgia has long acknowledged that writs of mandamus can compel officials to complete their ministerial, nondiscretionary duty to complete canvasses and recounts and certify elections by the statutory deadlines. See, e.g., *Tanner v. Deen*, 108 Ga. 95, 101 (1899) (explaining that local election officials “were not selected for their knowledge of law” and therefore had no authority to make legal determinations as to the validity of election returns). See also *Bacon v. Black*, 162 Ga. 222, 226 (1926) (explaining that “[t]he duties of the managers or superintendents of election who are required by law to assemble at the courthouse and consolidate the vote of the county are purely ministerial”); and *Thompson v. Talmadge*, 201 Ga. 867, 876 (same).

When a question of “public right” is at stake, and the object of litigation is to “procure . . . a public duty,” a mandamus action may be brought by any person “interested in having the laws executed and the duty in question enforced.” O.C.G.A. § 9-6-24. Accordingly, candidates affected by the refusal to certify, the secretary of state (if the dispute is at the county level and interferes with the state certification deadline), and Georgia voters could bring a mandamus claim. See also *Barrow v. Raffensperger*, 308 Ga. 660, 667 (2020) (allowing a voter to bring a mandamus claim “to enforce the Secretary’s duty to conduct an election that is legally required”).

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

If a county certifying official defies a court order to certify, Georgia’s state law equivalent to Federal Rule of Civil Procedure 70 would allow a state court to appoint someone else to perform that action at the disobedient party’s expense. O.C.G.A. § 9-11-70.

An election official who refuses to comply with a mandamus order could also be held in civil or criminal contempt. O.C.G.A. § 15-1-4(a)(3); *Collins v. State*, 871 S.E.2d 676, 678 (Ga. Ct. App. 2022).

## **State Officials Can Impose Penalties Against Rogue Certifying Officials**

A county official who intentionally refuses to certify election results may be subject to criminal sanctions under several Georgia laws. See, e.g., O.C.G.A. §§ 21-2-596, 21-2-597, 21-2-603.

District attorneys, in addition to their general authority within their jurisdiction, may be called upon by the attorney general to assist in a relevant prosecution. See O.C.G.A. §§ 15-18-6, 45-15-10.

The attorney general is also authorized to “[p]rosecute in the criminal courts of this state any official, person, firm, or corporation which violates any criminal statute while dealing with or for the state or any official, employee, department, agency, board, bureau, commission, institution, or appointee thereof.” See O.C.G.A. § 45-15-10.

# If Georgia Misses the Federal Certification Deadline

The legal tools described in this resource should ensure that all counties certify the election in time for Georgia 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 Georgia.

## 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)