



Pennsylvania 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 Pennsylvania 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 [Pennsylvania](#) — 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. 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 Pennsylvania 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 this year 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, Pennsylvania 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 Pennsylvania

If a Pennsylvania county board has accepted state legislative funding under the state’s Election Integrity Grant Program (as most counties have), state law directs them to begin pre-canvassing mail-in and absentee ballots already received at **7 a.m. on Election Day**, and to begin canvassing the remainder of mail-in ballots and absentee ballots at **8 p.m. on Election Day**. 25 P.S. § 3260.2-A(j)(1)-(2). For public computation of all the returns, county boards shall meet at 9 a.m. on the third day following Election Day (**November 8, 2024**) and must “continue the same from day to day until completed.” 25 P.S. § 3154(a).

County boards must deliver unofficial returns for all statewide public offices to the secretary of the commonwealth by 5 p.m. on the Tuesday following the election: **November 12, 2024**. 25 P.S. § 3154(f). See also *McCormick for U.S. Senate v. Chapman*, No. 286 M.D. 2022, 2022 WL 2900112, at *2 n.7 (Pa. Commw. Ct. June 2, 2022).

After sending the unofficial returns, the county boards continue their canvass. The returns are considered unofficial for five days, during which time petitions for recounts or recanvasses may be filed. 25 P.S. § 3154(f). At the end of that five-day period, if no revisions are necessary, the county board must certify the returns to the commonwealth secretary. 25 P.S. § 3154(f).

If a recount uncovers revisions that need to be made, or if a court of common pleas orders any revisions, the county board must make them and then certify the results. 25 P.S. § 3154(f). But under no circumstance can county boards certify their results to the commonwealth secretary “later than the third Monday following the primary or election”: **November 25, 2024**. 25 P.S. § 2642(k). State law further directs county boards to certify the votes “regardless of any fraudulent or erroneous returns presented to it,” and to refer any concerns to the proper district attorney. 25 P.S. § 3154(d)(3).

Upon receiving the certified returns, the secretary of the commonwealth must “forthwith proceed to tabulate, compute and canvass the votes cast.” 25 P.S. § 3159. For presidential elections, the secretary must compute and present the returns to the governor, “who shall enumerate and ascertain the number of votes given for each person so voted for, and shall cause a certificate of election to be delivered to each person so chosen.” 25 P.S. § 3166. As noted above, federal law requires that the governor issue a certificate of ascertainment no later than **December 11, 2024**—six days before the electors convene. See 3 U.S.C. §§ 5(a)(1), 7.

The commonwealth secretary must order all county election boards in the state to conduct a recount and recanvass if the unofficial election returns due by **Tuesday, November 12** indicate that a statewide race was decided by 0.5 percent or less between the winning and losing candidates. 25 P.S. § 3154(g)(1)(i). Any such recount must be completed by noon on the first Tuesday after the third Wednesday following the election: **November 26, 2024**. 25 P.S. § 3154(g)(2)-(7).

A Note on Appellate Timelines

The Supreme Court of Pennsylvania recently issued an order that temporarily reduced the appeal period from 10 days to 3 days for any matter arising under Pennsylvania’s election code, and temporarily reduced the period for filing a petition for allowance of appeal from an order in any matter under the election code from 10 days to 3 days. [Order](#), *In Re Temporary Modification and Suspension of the Rules of Appellate Procedure and Judicial Administration for Appeals Arising Under the Pennsylvania Election Docket*, No. 622 (Pa. Aug. 27, 2024). The order also set an expedited briefing schedule for appellate briefs and temporarily suspended rules that exclude weekends and holidays in calculating the three-day period.

Authority to Prevent and Respond to Certification Abuses

State Officials Can Issue Opinions, Guidance, and Directives

The attorney general has authority to respond to requests for legal advice in the form of [advisory opinions](#). 71 P.S. § 732-204(a)(1).

The secretary of state has authority to issue [guidance and directives](#) on election topics. See generally 25 P.S. § 2621.

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. The [2023 Directive and Procedures for Statewide Returns and Recounts Under Section 1404\(E\)](#) is currently in effect.

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

A writ of mandamus will provide an enforcement mechanism to compel certification if a county board or the secretary of state refuses to certify or delays certification. State courts award the remedy to “compel official performance of a ministerial act or mandatory duty where there is a clear legal right in the plaintiff, a corresponding duty in the defendant, and want of any other appropriate or adequate remedy.” *Jackson v. Vaughn*, 777 A.2d 436, 438 (Pa. 2001).

Several cases have confirmed that the use of “shall” language in Pennsylvania’s certification statutes creates a ministerial (i.e., mandatory) duty to certify elections. See, e.g., *In re Mun. Reapportionment of Twp. of Haverford*, 873 A.2d 821, 833, n.17 (Pa. Commw. Ct. 2005) (“The duties of a board of elections under the Election Code are ministerial and allow for no exercise of discretion.”); and *Shroyer v. Thomas*, 81 A.2d 435, 437 (Pa. 1951) (“The duties of the County Board of Elections are purely ministerial. They are prescribed by the Election Code. They are given no discretion.”). See also *Fagan v. Smith*, 41 A.3d 816, 819, 821 (Pa. 2012) (per curiam) (explaining, in relation to a “non-discretionary ministerial” duty to issue a writ of election, that “use of the words ‘whenever’ and ‘shall’ convey that alacrity is required”).

An aggrieved candidate, voter, or the secretary of the commonwealth himself (if the dispute is at the county level and interferes with the state certification deadline) can bring a mandamus action in state court. See, e.g., [Complaint](#), *Cartwright v. Luzerne Cnty. Bd. of Elections*, No. 202210782 (Pa. Ct. Com. Pl. Nov. 29, 2022) (action filed by a candidate); and *Fagan*, 41 A.3d at 818 (voters); and *Commw. ex rel. Woodwide v. Borough of Bridgeport, Montgomery Cnty.*, 106 A.2d 615 (Pa. 1954) (attorney general on behalf of commonwealth).

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

If a certifying official refuses to comply with a mandamus order, the court that issued the original mandamus order may penalize that official under contempt of court. See, e.g., *Cnty. of Fulton v. Sec’y of Commonwealth*, 292 A.3d 974, 1004 (Pa. 2023) (setting forth the standard for holding an actor in civil contempt: that the individual had notice of the order they disobeyed, the act constituting the violation was volitional, and the individual acted with wrongful intent). The court did, in fact, hold Fulton County officials in civil contempt for violating a court order by allowing a third party to inspect voting equipment. *Cnty. of Fulton*, 292 A.3d at 1004-10.

Petitioners May Request That the Supreme Court Assume Its King’s Bench Authority or Extraordinary Jurisdiction If Pending Appeals or Petitions for Recount Cause Delay

Although judicial processes may serve as the basis for undue certification delays, Pennsylvania’s Supreme Court has several tools to quickly resolve any such delays.

First, appeals regarding computation, canvass, recount, or recanvass may create delays. Appeals on statewide recounts are filed with the commonwealth court, and all other appeals are made to the court of common pleas of the proper county. 25 P.S. § 3157(a). “Pending such appeal, the county board shall suspend any official certification of the votes cast in such election district.” 25 P.S. § 3157(b). The judge must set a hearing within three days after receiving the filing fee for the appeal, 25 P.S. § 3157(a), and court precedent suggests that courts hearing appeals must do so expeditiously. *In re 2003 Election for Jackson Twp. Sup’r*, 840 A.2d 1044, 1046 (Pa. Commw. Ct. 2003) (“The integrity of the election process requires immediate resolution of disputes that prevent certification.”). As noted above, the supreme court’s recent order reducing timelines for appeals under the election code significantly reduces the risk of delay.

Second, petitions for recount to the court of common pleas, 25 P.S. § 3263, may also delay certification. After the 2022 general election, petitions for recount were the main source of certification delays. In a Bucks County case, for example, even though the county board of elections challenged a petition for recount, it was not able to certify the results until the court of common pleas entered an order allowing it to do so on December 14, 2022, after the statutory certification deadline. See *In re Petitions to Open Ballot Box Pursuant to 25 P.S. § 3261(A) and for a Correct Count of the Gen. Election*, 295 A.3d 325, 334 (Pa. Commw. Ct. May 9, 2023). In the appeal of that case, however, the commonwealth court provided important clarifications as to how petitioners must file petitions to open ballot boxes for recounts, and what evidence they must provide to do so—both of which should help prevent undue recount delays this year. *In re Petitions to Open Ballot Box*, 295 A.3d at 334.

If a pending appeal or petition for recount creates delay, parties may invoke the common law power of King’s Bench authority, codified as Pa. Const. art. V, § 2; 42 Pa.C.S. § 502. The Pennsylvania Supreme Court generally

invokes the authority “to review an issue of public importance that requires timely intervention by the court of last resort to avoid the deleterious effects arising from delays incident to the ordinary process of law,” including in cases where there is no matter pending in a lower court. *Commw. v. Williams*, 129 A.3d 1199, 1206 (Pa. 2015). The court has exercised such authority in the elections context before. See, e.g., *Ball v. Chapman*, 289 A.3d 1, 18 (Pa. 2023); and *In re Nov. 3, 2020 Gen. Election*, 240 A.3d 591, 601 (Pa. 2020).

Alternatively, the Pennsylvania Supreme Court also possesses “extraordinary jurisdiction,” which allows it to “on its own motion or upon petition of any party, in any matter pending before any court or magisterial district judge of this Commonwealth involving an issue of immediate public importance, assume plenary jurisdiction of such matter at any stage thereof and enter a final order or otherwise cause right and justice to be done.” 42 Pa. C.S. § 726. It has exercised this jurisdiction in election cases before. See *Carter v. Chapman*, 273 A.3d 1 (Pa. 2022); *Kelly v. Commw.*, 240 A.3d 1255 (Pa. 2020).

In the event that state court proceedings are unduly delaying certification, interested parties could petition the supreme court to exercise King’s Bench authority or extraordinary jurisdiction to resolve the case given the urgency of the federal ECRA deadline and the importance of resolving elections in a timely manner. It is worth noting, however, that the supreme court has discretionary authority to exercise either authority.

State Officials Can Impose Penalties Against Rogue Certifying Officials

Refusing to certify an election could violate several state criminal laws and result in charges. For example, Pennsylvania’s election code makes it a misdemeanor for the secretary of the commonwealth, a member of a county board of elections, or an election official on the district election board to “wilfully [*sic*] neglect or refuse to perform his duty.” 25 P.S. § 3548.

The election code grants the attorney general and county district attorneys concurrent authority to enforce violations committed under the election code. 25 P.S. § 3555.

If Pennsylvania Misses the Federal Certification Deadline

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

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)