



Wisconsin 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 Wisconsin 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 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. Importantly, Wisconsin has not seen any recent attempts to disrupt the certification process. And attempts in other states have not succeeded, often because state courts and state officials have intervened to protect the certification process. Still, the threat remains that rogue officials in Wisconsin 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 laying certification by even a few days could place a state’s ability to certify by the ECRA deadline at risk.

Fortunately, Wisconsin 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 Wisconsin

General Schedule

Municipal clerks must report election returns to the county clerk no later than two hours after the votes are tabulated. They must then deliver the tally sheets, ballots, and other election materials to the county clerk by 4 p.m. on the day after the election, **November 6, 2024** — or by 4 p.m. the following day, **November 7**, if the municipality uses a municipal board of absentee ballot canvassers to canvass absentee ballots. Finally, municipal clerks must deliver any provisional ballots canvassed, along with amended returns and tally sheets, to the county clerk by 4 p.m. on the Monday after the election (**November 11, 2024**). Wis. Stat. § 7.51(4), (5).

The county boards of canvassers must convene by 9 a.m. on the Tuesday after the election (**November 12, 2024**) to conduct the county canvass. Wis. Stat. § 7.60(3). The county boards must deliver certified vote statements to the Wisconsin Elections Commission (WEC) by **November 19, 2024** (i.e., 14 days after the election). Wis. Stat. § 7.60(5).

The WEC chairperson “shall publicly canvass the returns and make his or her certifications and determinations on or before” **December 1, 2024**. Wis. Stat. § 7.70(3)(a).

Recount Schedule

In Wisconsin, recounts take place prior to the final certification of election results. A candidate, including a presidential candidate, may seek a recount if the margin separating the winning and losing candidates is 1 percent or less. Wis. Stat. § 9.01(1)(5)b. In a presidential race, any recount petition must be filed no later than 5 p.m. on the **first business day** after the WEC receives the last county canvassing statement for the election. Wis. Stat. § 9.01(1)(a). Accordingly, a presidential recount petition can be filed no later than **November 20, 2024**. Wis. Stat. § 7.60(5).

Upon receipt of a valid recount petition, the WEC must “promptly” issue a recount order to the relevant county boards. Wis. Stat. § 9.01(1)(ar)3. County boards must complete all recounts no later than 13 days from the date of the WEC’s recount order. Wis. Stat. § 9.01(1)(ar)3. The WEC chairperson must canvass the returns and declare the results no later than 9 a.m. on the third business day after receiving the recount results (or by **December 1, 2024**, whichever is later). Wis. Stat. § 9.01(5)(c).

Authority to Prevent and Respond to Certification Abuses

State Officials Can Issue Opinions and Guidance

The WEC has statutory authority to issue guidance documents and advisory opinions. Wis. Stat. §§ 5.05(6a), 227.112. Prior to the election, the WEC may choose to exercise this authority to emphasize the mandatory, nondiscretionary nature of election certification and the potential consequences of refusing to certify. Michigan’s director of elections, for example, issued a similar message in a [letter](#) to a county board of canvassers after two members indicated that they might not certify election results.

The attorney general is required to issue a written opinion “upon all questions of law submitted to him or her by the legislature, either house thereof or the senate or assembly committee on organization, or by the head of any department of state government.” Wis. Stat. § 165.015(1). The attorney general also has an obligation to advise district attorneys and corporation counsel upon request. Wis. Stat. §§ 59.42(1)(c), 165.25(3). Finally, the WEC may request opinions from the attorney general under some circumstances. Wis. Stat. § 5.05(6a)(a)4. If any such official requests an opinion on the consequences of refusing to certify election results, the attorney general could explain the potential for both criminal and civil liability, detailed below. The attorney general could also provide this information to election officials through informal means, such as a letter or news release. 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 under state law.

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

Wisconsin law gives the WEC clear statutory authority to take action if a county clerk fails to send a certified statement of the county’s election results: “If any county clerk fails or neglects to forward any statements, the commission may require the clerk to do so immediately and if not received . . . by the 11th day after any other election [aside from the primary], the commission may dispatch a special messenger to obtain them.” Wis. Stat. § 7.70(1)(b). This “special messenger” provision gives the WEC the authority to demand that counties certify their results.

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

If relief under the special messenger provision is not available for any reason, a mandamus action can compel an official to perform a ministerial duty required by law. The Wisconsin Supreme Court has long acknowledged that officials have a ministerial, nondiscretionary duty to canvass and certify elections by the statutory deadlines. *State ex rel. Husting v. State Bd. of Canvassers*, 150 N.W. 542, 547, 551–52 (Wis. 1915); *Att’y Gen. ex rel. Bashford v. Barstow*, 4 Wis. 567, 794–800 (1855). State officials, district attorneys, aggrieved candidates, and affected voters likely have standing to seek such relief.

At the state level, both the WEC and the attorney general have statutory authority to sue in the event of a refusal to certify. The WEC can sue for mandamus relief “to enforce any law regulating the conduct of elections or election campaigns, other than laws regulating campaign financing, or ensure its proper administration.”

Wis. Stat. § 5.05(1)(d). The statute requires the WEC to bring any such actions in the “circuit court for the county where a violation occurs or may occur.” Wis. Stat. § 5.05(1)(d).

Wisconsin law also authorizes either the attorney general or the relevant district attorney to sue for mandamus relief “to compel compliance with the law” whenever “a violation of the laws regulating the conduct of elections or election campaigns, other than a violation of the laws regulating campaign financing, occurs or is proposed to occur.” Wis. Stat. § 5.07. This section does not require the attorney general or district attorneys to sue in the circuit court; an original proceeding in the Wisconsin Supreme Court may provide a more efficient path for relief.

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 party who obtained the order may seek contempt sanctions. Wis. Stat. §§ 785.01(1), 785.02. Only the district attorney or the attorney general can seek punitive sanctions. Wis. Stat. § 785.03(1)(b).

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., Wis. Stat. §§ 12.13(2)(a), 12.13(2)(b)(4).

An election official who is convicted of violating Wisconsin’s election code is also statutorily “disqualified to act as an election official” for five years after the time of conviction. Wis. Stat. § 12.60(3).

District attorneys generally have authority to prosecute violations of the election code, as well as other criminal conduct that takes place within their jurisdictions. Wis. Stat. §§ 11.1401(2), 12.60(4). The attorney general has the authority to investigate crimes that are “statewide in nature, importance or influence,” which should include violations of the election code and misconduct in public office statute arising from certification abuses. Wis. Stat. § 165.70(1)(a).

Finally, the WEC has the authority to investigate complaints alleging violations of the election code. It can prosecute alleged civil violations and refer alleged criminal violations to the appropriate prosecutors. Wis. Stat. § 5.05(2m).

If Wisconsin Misses the Federal Certification Deadline

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

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)