



Michigan 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 Michigan 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 [Michigan](#) — 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 Michigan 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, Michigan 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 Michigan

General Schedule

County boards of canvassers must meet no later than 9 a.m. on the Thursday after the election: **November 7, 2024**. Mich. Comp. Laws § 168.821(1). State law requires county boards to “proceed without delay” to conduct the canvass and directs them to complete the process “at the earliest possible time” but no later than 14 days after the election: **November 19, 2024**. Mich. Comp. Laws § 168.822(1).

Within **24 hours** after completing the canvass, clerks of the boards of county canvassers must send a certified copy of the statement of results for all nonlocal races, along with a certificate of authenticity signed by the clerk and the board chair, to the secretary of state. Mich. Comp. Laws § 168.828.

Once the county boards of canvassers complete their duties, the Board of State Canvassers is responsible for certifying statewide and federal races. Mich. Comp. Laws § 168.841(1). The state board must meet, canvass, and announce its determination no later than 20 days after the election: **November 25, 2024**. Mich. Comp. Laws § 168.842(1).

Upon making its determination, the state board must “immediately” prepare a certificate of determination and deliver the certified certificate to the secretary of state. Mich. Comp. Laws §§ 168.841(1), 168.845.

For presidential elections, Michigan’s governor “shall issue a certificate of ascertainment” as required by the ECRA “[a]s soon as practicable” after the state board has ascertained the results of the canvass. The governor must issue this certificate no later than six days before the electors convene: **December 11, 2024**. Mich. Comp. Laws § 168.46(1).

Expedited Schedule

If the unofficial returns show a margin of less than 25,000 votes between the first- and second-place candidates in the presidential race, the secretary of state shall direct county boards to certify on an expedited schedule, as soon as **7 days** after the election or by a date **before the 14th day** after the election. Mich. Comp. Laws § 168.842(2).

If operating on the expedited schedule, the secretary of the Board of State Canvassers may appoint a day for the state board to conduct the expedited canvass of the presidential returns. Mich. Comp. Laws § 168.842(3). That day must be “as soon as practicable” after receiving the returns from the county boards, but the state board must complete the expedited canvass and announce its determination no later than 20 days after the election: **November 25, 2024**. Mich. Comp. Laws § 168.842(3).

Recounts

Recounts must generally be completed no later than **30 days** “immediately following the last day for filing counter petitions or the first day that recounts may lawfully begin.” Mich. Comp. Laws § 168.875(1).

The state board also must automatically conduct a recount of all precincts in the state if it certifies a statewide election that is decided by fewer than 2,000 votes. Mich. Comp. Laws § 168.880a(1).

State law makes clear that a pending recount or recount petition “has no effect on the governor’s authority or responsibility to issue a certificate of ascertainment” by the statutory deadline. Mich. Comp. Laws § 168.46(3). But if a mandatory recount is triggered by a close statewide election, the governor must not issue the certificate of ascertainment until the completion and certification of the recount, or until 3 p.m. six days before the electors meet (**December 11, 2024**) – whichever comes first. Mich. Comp. Laws § 168.46(3). If the recount is not completed by 3 p.m. on December 11, the certificate of ascertainment must reflect the original certification of the election results. Mich. Comp. Laws § 168.46(3). If the recount is completed by 11:59 two days before the electors meet (**December 15, 2024**), and the results of that recount alter the presidential election results, state law provides several options for judicial relief. Mich. Comp. Laws § 168.46(4).

Authority to Prevent and Respond to Certification Abuses

Michigan’s Constitution and Election Law Establish a Mandatory Duty to Certify Elections

The Michigan Constitution makes clear that certification is a mandatory duty:

It shall be the ministerial, clerical, nondiscretionary duty of a board of canvassers, and of each individual member thereof, to certify election results based solely on: (1) certified statements of votes from counties; or (2) in the case of boards of county canvassers, statements of returns from the precincts and absent voter counting boards in the county and any corrected returns. Mich. Const. art. II, § 7(3).

Michigan law reiterates the same requirement for county boards of canvassers in particular:

It is the ministerial, clerical, and nondiscretionary duty of each board of county canvassers, and each of the members of the board of county canvassers, to certify election results based solely on the statements of returns from the election day precincts, early voting sites, and absent voter counting boards in the county and any corrected returns. Mich. Comp. Laws § 168.822(3).

See also Mich. Comp. Laws § 168.842(4) (“It is the ministerial, clerical, and nondiscretionary duty of the board of state canvassers . . . to certify election results based solely on the certified statements of votes from counties.”); and Michigan Bureau of Elections, [Procedures and Duties of the Boards of County Canvassers](#) (July 2024, p. 21) (reiterating that “under Michigan Election law, boards of county canvassers have no canvass-

or certification-related duties or powers beyond those explicitly assigned by statute” and the state’s election manual).

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

Before a county canvass meeting even takes place, state officials may remind county board members of their mandatory duty to certify elections if it appears that they may refuse to do so. In May 2024, for example, the Michigan secretary of state sent such a [letter](#) to Delta County Board of Canvassers members after two members stated that they might not certify the county’s primary results.

If a board of county canvassers does fail to certify the results of an election by the 14th day after the election, state law requires them to immediately deliver “all records and other information pertaining to the election” to the secretary of the Board of State Canvassers. Mich. Comp. Laws § 168.822(2). The state board must then “meet immediately and make the necessary determinations and certify the results not later than the twentieth day after the election”: **November 25, 2024**. Mich. Comp. Laws § 168.822(2).

All costs associated with the state canvass, including costs needed for transportation, lodging, meals, and all costs incurred by state agencies, must be borne by the county that failed to certify. And the entire county board, along with all other “necessary” county staff, must be present at all times while the state board completes the canvass. Mich. Comp. Laws § 168.822(2).

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

If relief under Michigan’s certification statute is not available for any reason to certify county results, or if action is needed against the state board to compel certification, an action seeking a writ of mandamus in state court can compel certification. *Citizens Protecting Michigan’s Const. v. Sec’y of State*, 280 Mich. App. 273, 283 (2008) (“mandamus is the appropriate remedy for a party seeking to compel action by election officials”); *McQuade v. Furgason*, 91 Mich. 438, 440 (1892) (compelling local officials to canvass the returns in a writ of mandamus because “it is the settled law of this state” that “their duties are purely ministerial and clerical”); *McLeod v. Kelly*, 304 Mich. 120, 126 (1942) (“it is a ministerial duty of the board of State canvassers to canvass the returns and issue a certificate of election”) (citing *Dingeman v. Bd. of State Canvassers*, 198 Mich. 135 (1917)).

The attorney general on behalf of the secretary of state or an aggrieved candidate can establish a legal right to relief to bring a mandamus action. Mich. Comp. Laws §§ 14.28, 14.29. A voter affected by the certification dispute may have grounds to bring a mandamus action based on the state constitution’s guarantee of the “fundamental right to vote.” Mich. Const. art. II, § 4(1)(a). The same constitutional provision also gives Michigan citizens “standing to bring an action for declaratory, injunctive, and/or monetary relief to enforce the rights” it creates.

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 can petition the court for contempt sanctions under state law. Mich. Comp. Laws §§ 600.1701(g), 600.1715; *Citizens for Higgins Lake Legal Levels v. Roscommon Cnty. Bd. of Comm’rs*, 341 Mich. App. 161 (2022) (case brought by private litigants). State law also creates a penalty against “any public officer, body or board” who refuses or neglects to perform a duty ordered in a mandamus proceeding. Mich. Comp. Laws § 600.4411.

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., Mich. Comp. Laws §§ 168.931(1)(g), 168.932(c). Prosecuting attorneys, i.e., district attorneys, generally have authority to prosecute election code violations that take place within their jurisdictions. Mich. Comp. Laws §§ 168.940, 49.11. The attorney general also has broad authority to intervene in criminal actions. Mich. Comp. Laws § 14.28.

In addition to these penalties, the governor has broad authority to remove certifying officials who violate their clear legal duty to certify an election. Mich. Const. art. V, § 10. See also [Chief Deputy Attorney General Christina M. Grossi to Sen. Jeremy Moss](#) (October 18, 2022) (noting that a state officer “who intentionally takes action other than the action required by a clear legal duty” may face “potential suspension or removal from office”).

If Michigan Misses the Federal Certification Deadline

The legal tools described in this guide should ensure that all counties certify the election in time for Michigan to meet the ECRA deadline. Indeed, Michigan has a statutory plan in place, described above, in the event that a recount extends beyond the deadline. Mich. Comp. Laws § 168.46. In the rare instance that the governor 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 Michigan.

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)