



North Carolina 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 North Carolina 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 [North Carolina](#) — 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 North Carolina 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, North Carolina 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 North Carolina

General Schedule

County Elections Board Canvasses

State law directs that North Carolina county election boards “shall meet at 11 a.m.” ten days after Election Day, **November 15, 2024**, to “complete the canvass of votes cast and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly.” N.C. Gen. Stat. § 163-182.5(b).¹

If the initial count of all the votes has not been completed by that time despite “due diligence,” the county board must hold the canvass meeting at a “reasonable time thereafter.” N.C. Gen. Stat. § 163-182.5(b).

For statewide elections, “[a]s soon as the county canvass” is complete, the county boards shall prepare abstracts authenticating the election results for all the ballot items. N.C. Gen. Stat. § 163-182.6(a); N.C. Gen. Stat. § 163-182(1) (defining abstract as “a document signed by the members of the board of elections showing the votes for each candidate and ballot proposal”).

State Board of Elections Canvass and Certification

The State Board of Elections must meet on the Tuesday three weeks after Election Day, **November 26, 2024**, to complete the canvass for statewide elections. N.C. Gen. Stat. § 163-182.5(c). If the state board has not received the county canvasses by November 26, it may adjourn for not more than 10 days (i.e., until **December 6, 2024**) to secure the missing abstracts. N.C. Gen. Stat. § 163-182.5(c).

Six days after the completion of the statewide canvass, if no election protest is pending, the state board must issue a certificate of nomination or election. N.C. Gen. Stat. § 163-182.15(b).

Secretary of State and Governor Issuance of Proclamation

Upon receiving the certification, the secretary of state must notify the governor of the names of the persons elected to the office of president and vice president. N.C. Gen. Stat. § 163-210. The governor must then “**immediately**” issue a proclamation setting forth the names of the presidential electors. N.C. Gen. Stat. § 163-210.²

¹ In 2023, the North Carolina General Assembly overrode the governor’s veto to pass Senate Bill 749. N.C. Session Law 2023-139. This new law would evenly split the partisan composition of county boards of elections and the State Board of Elections, increasing the risk that they will deadlock on decisions such as election certification. The law is currently enjoined by a court order. Order Granting Plaintiff’s Motion for Summary Judgment and Denying Defendants’ Motion to Dismiss and Motion for Judgment on the Pleadings, *Cooper v. Berger*, No. 23 CVS 29308-910 (N.C. Super. Ct. Mar. 11, 2024). But if reinstated and implemented before the general election is certified, it could heighten the risk of delay.

² Pursuant to a separate statutory provision that predates the ECRA’s passage, North Carolina’s General Assembly may appoint presidential electors if the governor has not done so by the December 11, 2024, federal deadline. N.C. Gen. Stat. § 163-213(a). However, this provision appears to be invalid to the extent that it conflicts with the ECRA. And, in any event, the state is unlikely to encounter such a scenario due to its strong certification enforcement mechanisms, detailed below.

Impact of Election Protests on the Canvassing and Certification Timeline

North Carolina allows for both county elections boards and the State Board of Elections to consider election protests.

Election Protests Before County Boards

At the county level, if a valid election protest is filed before the county canvass and concerns the counting and tabulating votes, state law requires the county board to resolve the protest before the canvass is complete. N.C. Gen. Stat. § 163-182.10(a)(2). Election protests cannot delay the county canvass if they do not concern the manner in which votes were counted or the results tabulated, or if they allege an election law violation “regarding an insufficient number of votes to change the outcome of a contest” within a county. 8 N.C. Admin. Code 2.0110(f)(2).

A county board may delay the canvass if it needs more time to resolve the protest, but it may not delay for more than **three days** unless approved by the State Board of Elections. N.C. Gen. Stat. § 163-182.10(a)(2). And resolving a protest “shall not delay the canvass of ballot items unaffected by the protest.” N.C. Gen. Stat. § 163-182.10(a)(2). In addition to the statutes governing protests, the state board has issued temporary amendments to rules governing postelection processes, including protests, to ensure that they do not delay certification in the general election. See, e.g., 8 N.C. Admin. Code 02.0110.

The appeal of a dismissal similarly cannot delay the canvass. N.C. Gen. Stat. § 163-182.10(a)(2). If there is an appeal to the State Board of Elections, the certificate should be issued on the **tenth day** after the board’s final decision unless the board orders a new election or the Superior Court of Wake County, which hears appeals of decisions by the state board on election protests, issues a stay of certification. N.C. Gen. Stat. § 163-182.15(a)(2). If the Superior Court of Wake County does issue a stay order, the certificate must generally be issued **five days** after the entry of a final order. N.C. Gen. Stat. § 163-182.15(a)(3).

Election Protests Before the State Board of Elections

The State Board of Elections may also hear election protests, including appeals from county boards and protests originating at the state board. N.C. Gen. Stat. §§ 182.11, 182.12. If there is an election protest, the certificate shall be issued **ten days** after the state board’s final decision on the election protest, unless the state board orders a new election or the Superior Court of Wake County orders a stay of the certification. N.C. Gen. Stat. § 163-182.15(b)(1). If the state board’s decision is appealed and the Superior Court of Wake County does issue a stay order, the certificate must generally be issued **five days** after the entry of a final order. N.C. Gen. Stat. § 163-182.15(b)(2).

Impact of Recounts on the Canvassing and Certification Timeline

The State Board of Elections may order a discretionary recount “when necessary to complete the canvass in an election.” N.C. Gen. Stat. § 163-182.7(a).

For statewide races, the state board must order a mandatory recount if a candidate requests it and the difference between the votes is not more than half a percent of the votes or 10,000 votes (whichever is less). N.C. Gen. Stat. § 163-182.7(c). A request for a mandatory state recount must be made by noon on the second business day after the county canvass. N.C. Gen. Stat. § 163-182.7(c).

Any discretionary or mandatory recounts must be complete before the date set for the county canvass. North Carolina State Board of Elections, “[Post-Election Procedures and Audits](#).”

Authority to Prevent and Respond to Certification Abuses

State Officials Can Issue Opinions and Guidance

The attorney general has authority to respond to requests for legal advice in the form of legal opinions. N.C. Gen. Stat. § 114-2(5).

The state board has authority to issue rules and regulations governing elections consistent with state law. N.C. Gen. Stat. § 163-22(a). The state board’s executive director also issues [numbered memos](#) to provide guidance and updates about elections administration to county boards of elections.

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 Have Broad Statutory Authority Over County Boards of Elections That Delay or Refuse to Complete Postelection Processes

If the State Board of Elections has not received all of the county canvass results by its scheduled canvass date, **November 26, 2024**, state law authorizes it “to secure the originals or copies [of the missing abstracts] from the appropriate clerks of superior court or county boards of elections” at the county’s expense. N.C. Gen. Stat. § 163-182.5(c).

State law also requires the state board to “compel observance of the requirements of the election laws by county boards of elections and other election officers.” N.C. Gen. Stat. § 163-22(c). In doing so, the state board “shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a county board of elections to comply with any part of the election laws imposing duties upon such a board.” N.C. Gen. Stat. § 163-22(c). This authority should provide a sufficient basis for the state board to issue an administrative order against a rogue county board.

State law also grants the state board “power to remove from office any member of a county board of elections for incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause.” N.C. Gen. Stat. § 163-22(c). Consistent with this authority, the state board [removed](#) two county board members who threatened to refuse to certify election results in 2022.

If a county board is facing a delay in the election protest process, the state board may decline to grant permission to extend the delay for more than three days, as noted above. The state board also maintains broad authority to intervene and seize jurisdiction over a protest pending before a county board. N.C. Gen. Stat. § 163-182.12.

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

If the State Board of Elections is unable or unwilling to intervene pursuant to its statutory authority, or if the board itself is the cause of an unlawful delay or certification refusal, a mandamus action provides alternative relief. State courts award the remedy when the party seeking relief has a clear legal right to the requested act; the defendant has a legal duty to perform the requested act; the act at issue is “ministerial in nature and does not involve the exercise of discretion”; the time for performing the act has expired; and no legally adequate remedy exists. *Morningstar Marinas/Eaton Ferry LLC v. Warren Cnty.*, 777 S.E.2d 733, 736 (N.C. 2015). It is well-established that the use of “shall” language in North Carolina’s certification statutes creates a ministerial (i.e., mandatory) duty. *Morningstar*, 777 S.E.2d at 737.³

Either an aggrieved candidate, an affected voter, or the state board represented by the attorney general (given the state board’s duty to certify statewide results by a statutory deadline) could establish a clear legal right to relief to bring the mandamus action. N.C. Gen. Stat. § 114-2(2) (requiring the attorney general to “represent all State departments, agencies, institutions, commissions, bureaus or other organized activities of the State which receive support in whole or in part from the State”). See also *Ponder v. Joslin*, 138 S.E.2d 143 (N.C. 1964) (candidates); and *Bd. of Educ. of Yancey Cnty. v. Bd. of Comm’rs of Yancey Cnty.*, 127 S.E. 692 (N.C. 1925) (voters).

Even if the timeline for certification has not technically expired under state law due to an ongoing recount or protest, mandamus should still provide effective relief whenever “it clearly appears” that a local or state official has abused their discretion in creating delays. *St. George v. Hanson*, 78 S.E.2d 885, 888 (1954).

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

Rule 70 of the North Carolina Rules of Civil Procedure provides a mechanism for a court to direct another individual to perform a court order if the ordered party refuses to comply. [N.C.G.S. § 1A-1, 70](#). See also, e.g., *Pachas by Pachas v. N.C. Dep’t of Health & Hum. Servs.*, 822 S.E.2d 847, 24 (N.C. 2019) (considering a Rule 70 motion against a government agency).

If a local or state official refuses to comply with a mandamus order, the party who obtained the order can also petition the court for criminal or civil contempt sanctions under state law. *Galyon v. Stutts*, 84 S.E.2d 822, 835 (N.C. 1954). See also N.C. Gen. Stat. §§ 5A-11(a)(3), 5A-21.

³ See also *Johnston v. Bd. of Elections of Wake Cnty.*, 172 N.C. 162 (1916) (issuing a writ of mandamus for the board to give effect to the results of a primary election); and *Britt v. Bd. of Canvassers of Buncombe Cnty.*, 173 N.C. 797 (1916) (explaining that mandamus would be appropriate to enforce the ministerial duty “to judicially pass upon all facts relative to the election and to judicially determine and declare the result of the same”).

State Officials Can Impose Penalties Against Rogue Certifying Officials

As noted above, the State Board of Elections has broad authority to remove rogue members of county boards of elections. N.C. Gen. Stat. § 163-22(c).

Refusing to certify an election or otherwise engaging in unlawful delays or refusals to complete other parts of the election process could violate several state criminal laws and result in charges. See, e.g., N.C. Gen. Stat. §§ 163-274(a)(1), 163-274(a)(11), 163-275(3), 14-230.

District attorneys generally have authority to prosecute criminal conduct that takes place within their jurisdictions. N.C. Gen. Stat. § 7A-61. The attorney general also has broad authority to intervene in criminal actions. N.C. Gen. Stat. § 114-2.

If North Carolina Misses the Federal Certification Deadline

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

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)