



# Michigan Certification Toolkit

## Election certification is mandatory, on purpose

- Michigan state law says certification is a mandatory, ministerial duty – meaning that officials have no discretion to refuse to certify election results.
- It’s not an accident that certification is mandatory. It’s in direct response to past partisan attempts to sabotage certification to change election outcomes – attempts which both lawmakers and the courts recognized as a threat to democracy.
- Officials who have refused to complete certification of an election – or threatened to do so – fundamentally misunderstand or willfully disregard both their legal obligations and the actual purpose of certification.

Certification as mandatory, ministerial	
State Statutes	<p>Election inspectors in each precinct count the votes and then send the returns to the county boards, who must complete the canvass no later than <b>14 days</b> after the election. MCL 168.822(1). If a county board fails to complete the canvass by that date, the State Board must take over the process at the county’s expense.</p> <p>The State Board receives a statement of votes from each of the county boards. It must certify the results of federal and statewide elections no later than <b>20 days</b> after the election. This certification is final absent a post-certification recount or court order. Mich. Const., art. II, § 7(5).</p> <p>In 2024, the county canvassing deadlines are Aug. 20 for the primary and Nov. 19 for the general. The state canvassing deadlines are Aug. 26 for the primary and Nov. 25 for the general.</p>
Legal Background	<p>In 2022, Michigan voters approved a ballot proposal that made the <b>non-discretionary, ministerial nature of certification an explicit provision of the state constitution</b>. Article 2, section 7 of the Michigan constitution now states that the boards of canvassers have a “ministerial, clerical nondiscretionary duty” to certify election results. The Michigan legislature also amended the election law to reiterate that certification is a “ministerial, clerical, and nondiscretionary duty.” MCL 168.822(3). These provisions are consistent with Michigan Supreme Court decisions dating back to the 1890s.</p>



## Opportunities to address alleged fraud or errors exist *outside* the certification process

- The post-election process leading up to the final canvass includes many steps to ensure that **only valid, legal ballots are counted**.
- There are **legitimate ways to address potential fraud or error**. Delaying the canvass or certification is not one of them.
- **There are two principal ways** to address concerns about election irregularities or potential errors in election results: recounts or legal challenges. These can take place only **after** the county canvass is complete.

	Opportunities to address fraud or error
Recounts	A candidate can petition for a recount based on alleged errors in the canvass, so long as the candidate can allege a good-faith belief that they would have had a <b>reasonable chance of winning the election if not for the errors</b> . MCL 168.862.
	An <b>automatic statewide recount</b> must be conducted whenever the State Board certifies that a statewide race has been determined by a margin of 0.1% or less of the total votes cast. MCL 168.880a(1).
	A recount is <b>not</b> an investigation into alleged fraud; canvassing boards must refer any potential violations to the appropriate prosecutor. MCL 168.861, 168.872.
	Recounts must generally be completed no later than <b>30 days</b> after the last day for filing recount petitions ( <b>20 days</b> for primary elections). MCL 168.8751. For presidential elections, any recounts “must be completed and certified before 3 p.m. on the sixth day before the date” the Electoral College convenes — <b>December 11, 2024</b> . MCL 168.8752.
Legal Challenges	In presidential elections, an aggrieved candidate may challenge certified results only through a legal proceeding called a <b>mandamus action</b> in the Michigan Supreme Court. MCL 168.845a. This proceeding must not delay state certification and must be decided no later than the day before presidential electors convene ( <b>i.e. December 16, 2024</b> ). MCL 168.845a(2-3).
	For other offices, the typical way to challenge certified election results is a <b>quo warranto</b> legal proceeding for “usurpation of office.” MCL 600.4505. These can be brought by the Attorney General or, in some circumstances, by private parties.

## Officials may face legal consequences if they refuse to certify

- Any attempt to interfere with the certification process should be met with [an immediate response](#), as failure to certify [is illegal and disruptive](#).
- Michigan law and federal law have many safeguards in place to ensure that certification happens, [including civil accountability and criminal penalties](#).

	Legal Consequences
Criminal Liability	Those who fail to perform mandatory duties <b>may be subject to prosecution of misdemeanors and/or felonies under the election code</b> (failure of duty, failure to certify, misconduct, falsification, intimidation of or interference with officials) as well as potential civil liability for violations of constitutional rights.
	Because certification is a <b>duty imposed by the Michigan Election Law</b> , a member of a canvassing board who refuses to certify has likely violated MCL 168.931(1)(g).
Civil Liability	A refusal to certify may also expose an official to being sued by a voter for violation of their state constitutional rights, and the Attorney General's office has <a href="#">indicated</a> that a board member in this situation may potentially <b>lose immunity from liability</b> in that circumstance.
Removal from Office	Officials may also be <b>suspended or removed from office</b> using the Governor's broad removal authority under Art. V, § 10 of the Michigan Constitution. In 2022, the Michigan Attorney General stated in a <a href="#">letter</a> that state canvassers who violated a clear legal duty (in that case, the duty to certify proposed constitutional amendments) could face removal from office.



## Additional Resources

### Election Certification

- [Certification is Not Optional](#)
- [Election certification, explained](#)

### Michigan Law

- [Letter](#) from Michigan Director of Elections to Delta County Board of Canvassers
- Michigan Election Law (Chapter 168 of Michigan Statutes)
- Recently passed legislation amending recount statute: [SB 603](#)
- Mich. Bureau of Elections, [Procedures and Duties of the Boards of County Canvassers](#) (July 2022)