



Wisconsin Certification Toolkit

Election certification is mandatory, on purpose

- Wisconsin 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>The county board of canvassers must convene to conduct the canvass by 9 a.m. on the Tuesday after election day. Upon convening, the county board “shall open and publicly examine the returns” and “shall make” statements showing the number of votes cast for each office, which the members of the board must certify. Wis. Stat. § 7.60(3).</p> <p>The county board “shall deliver or transmit” the canvassing statements to the Wisconsin Election Commission (WEC) immediately after the canvass. The statements must be delivered no later than 10 days after the partisan primary election (i.e., August 23) and no later than 14 days after the general election (i.e., November 19). Wis. Stat. § 7.60(5).</p> <p>At the state level, the WEC chairperson (or a designee) “shall publicly canvass the returns and make his or her certifications and determinations” on or before the dates specified in the statute: August 28 for the partisan primary and December 1 for the general election. Wis. Stat. § 7.70(3)(a). The WEC chairperson must also prepare a statement certifying the results of the primary or general election. Wis. Stat. § 7.70(3)(g).</p>
Legal Precedent	<p>As early as 1855, the Wisconsin Supreme Court made clear that canvassing votes and reporting the results are ministerial duties. <i>See Attorney General ex rel. Bashford v. Barstow</i>, 4 Wis. 567, 675 (1855). This well-settled precedent has been reaffirmed many times.</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.
- **Recounts** are the exclusive way to contest election results in Wisconsin. They can take place **only after the county canvass is complete**.

Opportunities to address fraud or error	
Opportunity to Verify and Correct Returns	The county board must dispatch a messenger requiring local officials to make corrections to any defective returns. Wis. Stat. § 7.60(3). The WEC chairperson can also dispatch a messenger to the county clerk if the county board appears to have made a material mistake or failed to count certain votes. Wis. Stat. § 7.70(3)(b).
Recounts	<p>An aggrieved candidate (<i>i.e.</i>, a candidate trailing by 1% or less) can file a recount petition with the WEC alleging mistake, fraud, or some other irregularity. A recount petition can only be filed after the county canvasses are complete. For a presidential election, the petition must be filed by 5 p.m. on the first business day after the WEC receives the last county canvassing statement. Wis. Stat. § 9.01(1)(a). For other state and federal elections, the petition must be filed by 5 p.m. on the third business day after the WEC receives the last statement.</p> <p>For state and federal offices, recount petitions must be filed with the WEC. The WEC must “promptly” issue a recount order, and the relevant boards must complete the recounts and transmit returns to the WEC no later than 13 days after the recount order. Wis. Stat. § 9.01(1)(ar)(3).</p>

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](#).
- Wisconsin law and federal law have many safeguards in place to ensure that certification happens, [including civil accountability and criminal penalties](#).

	Legal Consequences
Criminal Liability	<p>Those who fail to perform mandatory duties may be subject to criminal prosecution for misdemeanors and/or felonies under the election code. For example, Wisconsin law makes it unlawful for an election official to engage in “willful neglect or refusal . . . to perform any of the duties prescribed by the Election Code.” Wis. Stat. § 12.13(2)(a).</p> <p>Criminal charges could also be brought under Wisconsin’s misconduct in public office statute. Among other things, the statute makes it a felony to “intentionally fail[] or refuse[] to perform a known mandatory, nondiscretionary, ministerial duty . . . within the time or in the manner required by law.” Wis. Stat. § 946.12(1).</p> <p>Other potential charges could arise from the making of false statements during the canvassing process, the failure to deliver ballots as required by law, interruptions or efforts to disturb the canvassing proceedings, and acts that exceed local officials’ lawful authority.</p>
Civil Liability	<p>Another potential form of accountability is a civil lawsuit filed for violations of voters’ constitutional rights. The Wisconsin constitution protects the right to vote. Wis. Const. art. III, § 1. And the Wisconsin Supreme Court has made clear that the electorate has a right to “have the winning candidate hold office” as a corollary to the right to vote. <i>State ex rel Shroble v. Prusener</i>, 185 Wis. 2d 102, 114 (1994).</p>
Removal from Office	<p>An official who abuses the certification process could also face removal from office. Removal procedures vary by office, but in general, both appointed and elected state and local officials can be removed either by a majority vote of the relevant legislative body or by the governor. Wis. Stat. § 17.06-17.16.</p>



Additional Resources

Election Certification

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

Wisconsin Law

- Chapters 7 and 9 of the Wisconsin Statutes detail election law and procedures