



Arizona Election Certification Processes and Guardrails

In Arizona, as elsewhere in the country, canvassing and certification have long been considered uncontroversial formalities in the postelection process. Under Arizona law, the canvass is the process of reviewing and declaring election results by a mandated deadline. Certification serves as the final step at the end of the canvass. State law makes clear that election officials have a mandatory, nondiscretionary duty to canvass and certify elections by the statutory deadlines.

Despite this well-settled law, states across the country — including [Arizona](#) — 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 Arizona 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, Arizona 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 Arizona

Arizona law sets forth deadlines for each step of the postelection process. Recent changes to Arizona law have expedited the state’s timeline for canvassing, recounts, and contests, while also raising the margin within which races are subject to automatic recounts, making recounts more likely to occur.

In February 2024, Arizona adopted H.B. 2785, which revised the deadlines for several postelection processes to ensure that the state can meet the **December 11, 2024**, certification deadline set by the ECRA, regardless of whether state law requires a recount. This newly revised timeline is detailed below:

- Once votes have been tabulated, county boards of supervisors must meet to formally conduct the canvass by no later than the third Thursday after the election: **November 21, 2024**. Ariz. Rev. Stat. § 16-642(A)(1)(b).
- When the county canvass is complete, each board of supervisors must “**immediately**” send a copy of the official canvass for all offices to the secretary of state, both electronically and via U.S. mail. Ariz. Rev. Stat. § 16-646.
- For federal elections, if the electoral margin is within the 0.5 percent automatic recount threshold, **within 24 hours** after the last county canvass is complete (or the deadline for the completion of county canvasses — whichever is earlier), the secretary of state “shall . . . certify the facts requiring the recount to the superior court in Maricopa county.” Ariz. Rev. Stat. § 16-662. The superior court must “**promptly**” order a recount. Ariz. Rev. Stat. § 16-663(A). Once the recount is complete, the court must enter an order determining the winner and send a copy of the order to the secretary of state. Ariz. Rev. Stat. § 16-665(B)(2).
- The recount process does not affect the statutory deadlines for the completion of the statewide canvass. The secretary of state must complete the statewide canvass for the presidential election by no later than the third Monday after the election (**November 25, 2024**) even if a recount is pending. Ariz. Rev. Stat. § 16-642(A)(2)(b).

Authority to Prevent and Respond to Certification Abuses

State Officials Can Remind Certifying Officials of Their Mandatory Duty to Canvass and Certify Elections

The law in Arizona is clear: state and local canvassers have a mandatory duty to canvass and certify elections based on election returns. Ariz. Rev. Stat. §§ 16-642(A), 16-645(A), 16-646(A), 16-648. Knowing refusal by a public officer to perform a statutory duty related to elections is a class 3 misdemeanor. Ariz. Rev. Stat. § 16-1009.

The secretary of state and the attorney general have already highlighted this mandatory duty in the [2023 Election Procedures Manual](#) (EPM).¹ Ongoing outreach to county boards of supervisors and county attorneys related to the relevant EPM provisions can continue to deter county officials from violating state law.

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

The most powerful legal remedy for certification refusals or delays is likely to be a writ of mandamus — a court order requiring government officials to perform their public duties mandated by law. In Arizona, mandamus is a “special action” governed by separate rules of procedure, under which an Arizona court can compel a government officer to perform a nondiscretionary duty required of them by law. See Ariz. Rev. Stat. § 12-2021; and Ariz. R. P. Spec. Act. 1, 3(a), 4(a).

State officials took this approach during the most recent federal election cycle. After the Cochise County Board of Supervisors refused to meet to canvass and certify the results of the 2022 general election, the secretary of state [filed a petition](#) for special action relief in the Cochise County Superior Court. The court granted the secretary’s petition and [ordered](#) the county to complete the canvass.

In Arizona, any “party beneficially interested” in an action may seek a writ of mandamus to “compel a public official to perform an act imposed by law.” *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 (2020) (citing Ariz. Rev. Stat. § 12-2021). Petitioners in a mandamus proceeding may therefore include:

- **The secretary of state:** As the state’s chief election officer, the secretary has a direct interest in ensuring that all counties perform their nondiscretionary election-related duties in a timely and lawful manner, so that they can meet their own legal obligation to conduct the statewide canvass by the statutory deadline. Ariz. Rev. Stat. § 16-662; H.B. 2785, 56th Leg., 2d Sess. (Ariz. 2024). The secretary is also charged with ensuring “the maximum degree of correctness, impartiality, uniformity and efficiency on the procedures for . . . counting, tabulating and storing ballots.” Ariz. Rev. Stat. § 16-452(A).

¹ The *2023 Election Procedures Manual* is the subject of ongoing litigation challenging certain of its provisions. *Ariz. Free Enter. Club v. Fontes*, No. CV2024-002760 (Maricopa Cnty. Super. Ct 2024.); *Petersen v. Fontes*, No. CV2024-001942 (Maricopa Cnty. Super. Ct. 2024).

- **The attorney general:** The attorney general is the state’s chief legal officer and is authorized to represent the state in any court proceeding in which the state or an officer of the state is a party or has an interest. Ariz. Rev. Stat. §§ 41-192, 41-193(A)(1)-(3). The attorney general is specifically authorized to enforce Arizona election law “through civil and criminal actions.” Ariz. Rev. Stat. § 16-1021. The attorney general is also authorized to seek mandamus under the Arizona Rules of Procedure for Special Actions. See Ariz. R. P. Spec. Act. 2(a)(1); and *State v. Bd. of Supervisors of Yavapai County*, 127 P. 727, 728 (Ariz. 1912).
- **Nongovernment parties:** The Arizona Supreme Court has held that “Arizona citizens and voters” have standing to seek to compel election officials to perform nondiscretionary duties under state law. *Ariz. Pub. Integrity All. v. Fontes*, 250 Ariz. 58, 62 (2020). This category includes candidates whose races have been impacted by a certification issue.

Notably, the secretary of state and Arizona voters successfully petitioned for a writ of mandamus against the Cochise County board in 2022, when it failed to canvass the 2022 midterm election results. [Verified Complaint for Special Action Relief](#), *Hobbs v. Crosby*, No. CV202200553, 2022 WL 17406170 (Ariz. Super. Ct. Dec. 1, 2022); [Verified Special Action Complaint](#), *Ariz. All. For Retired Ams. v. Crosby*, No. CV202200552 (Ariz. Super. Ct.). The board ultimately complied with the order, issued by the Cochise County Superior Court. [Minute Entry: Order Re: Special Action](#), *Arizona Alliance for Retired Americans v. Crosby*, No. CV202200552 (Ariz. Super. Ct. Dec. 1, 2022).

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

Under Arizona Rule of Civil Procedure 70(a), when a party defies a court order to perform a specific act, an Arizona court may appoint someone else to perform that action at the disobedient party’s expense. And if a county board or other official knowingly fails or refuses to obey a mandamus order from a court, the court “may make any orders necessary and proper for complete enforcement” of the order. Ariz. Rev. Stat. § 12-2029.

The attorney general and county attorneys also may seek enforcement orders from the court that issued the mandamus order, including by seeking civil or criminal contempt against the party refusing to comply. See *Stoddard v. Donahoe*, 228 P.3d 144, 149 (Ariz. Ct. App. 2010) (“Any sanction that is imposed for civil contempt must be designed to coerce the person to do or to refrain from doing some act.”) (citing *Korman v. Strick*, 652 P.2d 544, 547 (Ariz. 1982)); and Ariz. Rev. Stat. § 12-861.

State Officials Can Impose Penalties Against Rogue Certifying Officials

Refusing to canvass or certify election results could violate several state criminal laws and result in charges. In fact, the Arizona attorney general’s office has already [prosecuted](#) two county officials who voted against certifying the 2022 election results for two offenses: interference with an election officer and conspiracy.

Additionally, a county supervisor who “neglects or refuses to perform any duty imposed on him without just cause,” or who “wilfully [*sic*], fraudulently or corruptly attempts to perform an act as supervisor unauthorized by law,” is subject to a civil penalty of \$500 for every such act, in addition to other civil and criminal penalties imposed by law. Ariz. Rev. Stat. § 11-223. And, as noted above, the knowing refusal by a public officer to carry out a nondiscretionary duty related to elections is a class 3 misdemeanor; the attorney general and county

attorneys can bring appropriate charges against such officials who knowingly refuse to carry out their legal obligations.

County attorneys generally have authority to prosecute public offenses, including violations of the election code, as well as other criminal conduct that takes place within their jurisdictions. See Ariz. Rev. Stat. §§ 11-532(A), 16-1021.

In addition to their general law enforcement authority, the attorney general is also authorized to supervise and support county attorneys in the exercise of their duties. Ariz. Rev. Stat. § 41-193(A). The attorney general is specifically authorized to enforce Arizona election law through both civil and criminal actions. Ariz. Rev. Stat. § 16-1021.

If Arizona Misses the Federal Certification Deadline

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

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)