

North Carolina Certification Toolkit

Election certification is mandatory, on purpose

- [North Carolina 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 historic 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>For federal elections and races that span more than one county, the county boards canvass the votes and prepare an abstract of the results for the State Board, but do not formally certify the results. N.C. Gen. Stat. § 163-33.</p> <p>For the 2024 general election, the county boards must canvass by Nov. 15. N.C. Gen. Stat. § 163-182.5(b).</p> <p>The State Board of Elections must, after receiving the county canvasses, canvass the vote on the Tuesday three weeks after Election Day (Nov. 26 for the 2024 general election). N.C. Gen. Stat. § 163-182.5(c). The Board may adjourn for not more than 10 days to "secure the missing abstracts" if they have not received all the canvasses. N.C. Gen. Stat. § 163-182.5(c).</p> <p>The State Board must then certify the results of the election, if no election protest is pending, six days after the completion of the canvass (Dec. 2 if the canvass is completed on Nov. 26th). N.C. Gen. Stat. § 163-182.15(b).</p>
Legal Precedent	<p>There is strong legal precedent in North Carolina on the nondiscretionary nature of certification, meaning it is a mandatory duty. The statute delegating this duty to the State Board of Elections uses the verb "shall," and "[i]t is well established that the word 'shall' is generally imperative or mandatory." <i>Multiple Claimants v. N. Carolina Dep't of Health & Hum. Servs., Div. of Facility Servs., Jails & Det. Servs.</i>, 361 N.C. 372, 378 (2007).</p>

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

- The post-election process leading up to the final certification includes many steps to ensure that **only valid, legal ballots are counted**.
- There are **several legitimate ways** to address concerns about election irregularities or potential errors in election results in North Carolina, including recounts, election protests and other legal appeals. Delaying the canvass or certification is not one of them.

Opportunities to address fraud or error	
Recounts	The State Board may order a discretionary recount “when necessary to complete the canvass in an election.” A candidate can request a mandatory recount from the Board for statewide races if the difference between the votes is 0.5% or 10,000 votes, whichever is less, and if requested by noon on the second business day after the canvass. N.C. Gen. Stat. § 163-182.7(a)-(c).
Election Protest	<p>A precertification process, an election protest is “a complaint concerning the conduct of an election which, if supported by sufficient evidence, may require remedy” through a correction in the returns, a discretionary recount, or a new election. N.C. Gen. Stat. § 163-182(4). A voter or candidate can file an election protest at the county level, and the State Board of Elections may also hear election protests, including appeals from county boards and election protests initiated on its own motion. N.C. Gen. Stat. § 163-182.12.</p> <p>If there is an election protest, the certification of the results “shall be issued 10 days after the final decision of the State Board on the election protest.” N.C. Gen. Stat. § 163-182.15(b)(1)</p>
Guidance from State Board of Elections	The State Board of Elections has issued strong guidance seeking to prevent arbitrary delays by county boards due to generalized concerns over irregularities: “The county board is required by law to authenticate the election results at the conclusion of canvass... This event may only be delayed when there is an election protest pending and that protest concerns the manner in which votes were counted or results tabulated. There is no other legal basis for a county board member to withhold authentication of the election results in the form of an official abstract. Moreover, federal law does not permit election officials to decline to count or report eligible voters’ ballots. ” Numbered Memo 2023-04 at 26.

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**.
- North Carolina 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 may be subject to criminal prosecution for misdemeanors and/or felonies under the election code (failure to perform a duty, fraudulently acting or failing to act, swearing falsely, and certifying false returns). N.C. Gen. Stat. §§ 163-274, 163-275.
Civil Liability	A refusal to certify may also expose an official to civil lawsuits under state and federal law.
Removal from Office	<p>An official who abuses the certification process could also face removal from office. The SBE has the power to remove members of a county board of elections through a process under the Election Code for violations including “incompetency, neglect or failure to perform duties, fraud, or for any other satisfactory cause.” N.C. Gen. Stat. § 163-22(c). Voters may file complaints for county board members with the SBE. 8 N.C. Admin. Code 3.0101-3.0102.</p> <p>In 2023, the bipartisan State Board voted unanimously to remove two members of the Surry County Board of Elections under this statute for refusing to certify local elections despite stating that they believed the election was lawful.</p>

Additional Resources

Election Certification

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

North Carolina Law

- North Carolina Election Code (Chapter 163)
- North Carolina Regulations (Title 8 of the Admin Code)
- State Board of Elections Memo Regarding Limited Role of County Boards in Delaying Certification Due to Generalized Concerns with Election Results: [Numbered Memo 202304, North Carolina State Board of Elections](#)