



Pennsylvania Certification Toolkit

Election certification is mandatory, on purpose

- [Pennsylvania 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 |
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| State Statutes | <p>The county election boards receive returns from precinct boards and canvass, compute, and certify the results no later than the third Monday following the election. Then the boards send the results to the Secretary of the Commonwealth. 25 P.S. § 2642(k); 25 P.S. § 3154(f). In the 2024 general election, this deadline is Nov. 25.</p> <p>The Secretary of the Commonwealth receives the certified returns and then must “forthwith” tabulate, compute, and canvass the results statewide. 25 P.S. § 3159. For presidential races, the Governor then delivers certificates of election to presidential electors. 25 P.S. § 3166. Federal law requires that the governor issue a certificate of ascertainment no later than Dec. 11—six days before the electors convene. See 3 U.S.C. §§ 5, 7.</p> |
| Legal Background | <p>Certification as a ministerial and nondiscretionary duty is settled law in Pennsylvania dating back to the 19th century. A more recent ruling reaffirmed the requirement: “The duties of a board of elections under the Election Code are ministerial and allow for no exercise of discretion.” <i>In re Mun. Reapportionment of Twp. of Haverford</i>, 873 A.2d 821, 833 (Pa. Commw. Ct. 2005).</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 **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.
- **Allegations of fraud or error should not delay certification**, as the law requires the superintendent to certify and report any issues to the appropriate district attorney for action. 25 P.S. § 3154(d)(3).

| Opportunities to address fraud or error | |
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| Recount/Recanvass | The Secretary of the Commonwealth must order a recount for very close races that meet certain criteria (win margin within 0.5%), unless the recount is waived by the losing candidate. 25 P.S. § 3154(g)-(h). |
| | Before completion of the computation of all of the returns for the county, the county board may order a recount in a district if there is a discrepancy in the returns, three voters in a district submit a petition, verified by an affidavit, that there was an error, or the county board makes its own motion. Id. § 3154(e). |
| | Voters can petition to the Court of Common Pleas to conduct a recount and recanvass. In the petition, three qualified voters allege fraud or error and pay a bond. 25 P.S. §§ 3261(a); 3262(a). If there is no evidence of fraud, there must be a petition filed in every district that included ballots for that office. Id. § 3263. |
| Court Appeals | A person can also appeal any order or decision of a county board regarding the computation, canvass, recount, or recanvass of an election, within two days of the order or decision. 25 P.S. § 3157(a). |
| Election Contests | Voters can file an election contest with the court for alleged violations of election law within 20 days of the election. 25 P.S. § 3456. The specifics vary by type of office: for president of the United States, a petition of at least a hundred voters is required. Id. § 3351. |
| Other Court Orders | Courts may decertify the wrong winner in order to correct truly egregious circumstances of fraud and error, like in <i>Marks v. Stinson</i> , 19 F.3d 873, 880 (3d Cir. 1994), decertifying a Pennsylvania state senator who had engaged in major absentee ballot fraud. The writ of quo warranto (a legal proceeding to “try” the right to public office) may also apply. |

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

| | Legal Consequences |
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| Criminal Liability | Those who fail to perform mandatory duties may be subject to prosecution of misdemeanors and/or felonies under the election code (failure to perform duty, fraud by election officers, interfering with the duty of another, etc).. 25 P.S. §§ 3548, 3525, 3549. |
| Civil Liability | A refusal to certify may also expose an official to civil lawsuits under state and federal law. |
| Removal from Office | Officials who abuse the certification process may also be removed or impeached from office. Pa. Const. art. VI, § 7. |



Additional Resources

Election Certification

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

Pennsylvania Law

- Pennsylvania Election Code (Title 25)
- [Department of State Election Directives and Guidance](#)
- [Supreme Court of PA Order August 27, 2024, on expedited appeals](#)