Virginia Election Certification Processes and Guardrails

Certification, the process by which officials sign off on the completion of election results, has historically been an uncontroversial postelection formality in Virginia and across the country. State law has long established that officials have a mandatory, nondiscretionary duty to certify elections.

Despite this well-settled law, states across the country — including Virginia — faced a new phenomenon following the 2020 presidential election. Dozens of local officials nationwide refused or threatened to refuse to certify election results, often based on claims rooted in election denialism — the false idea that the 2020 election was stolen and that widespread fraud pervades our election system. Attempts to interfere with certification persisted in Virginia and elsewhere throughout the election cycle, evolving into a vehicle to express disagreement or doubt as to any aspect of an election, including the outcomes of downballot races.

Those efforts did not succeed, often because state courts and state officials intervened to protect the certification process. But the threat remains that rogue officials in Virginia may attempt to interfere with the timely certification of this year's midterm election results. Fortunately, Virginia 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 the 2026 General Election in Virginia

General Schedule

Following the **November 3, 2026** election, Virginia law directs electoral boards to ascertain the election results and certify and sign the abstract of votes by no later than **10** calendar days after the election: **November 13, 2026**. Va. Code Ann. §§ 24.2-532, 24.2-671(A), 24.2-675(B). See also Va. Code Ann. 24.2-675(A) (defining "abstracts" to contain "the names of all persons receiving any vote for each office and the total number of votes received by each person"). The secretary of the board must then "**immediately**" send certified copies of the abstract of votes to the State Board of Elections. Va. Code Ann. § 24.2-532.

No later than the first Monday in December — **December 7, 2026** — state law requires the State Board of Elections to meet to ascertain and certify the results of the election for nonlocal races, including races for U.S. senators and representatives in Congress. Va. Code Ann. § 24.2-679(A). If a majority of the Board is not present, or if the Board is unable to ascertain the results for any other reason, it may adjourn from day to day, but no more than **three days**, to **December 10, 2026**. Va. Code Ann. § 24.2-679(A).

Following certification, the State Board must proceed "**without delay**" to complete and transmit a certificate of election to each winner. Va. Code Ann. § 24.2-680. For winners of congressional races, the Board must also forward a certificate to the clerk of the U.S. Senate or House of Representatives, as appropriate. Va. Code Ann. § 24.2-680.

Recounts

Virginia law does not allow for automatic recounts. See generally Va. Code Ann. § 24.2-800; Virginia Department of Elections, *General Registrar and Electoral Board Handbook*: *Ch. 15 Recounts and Contests* (Oct. 2026). For non-presidential races — including congressional races — losing candidates may request a recount if the difference between the winning and defeated candidate is not more than one percent of the total vote cast for the two candidates. Va. Code Ann. § 24.2-800B. Petitions for such recounts must be filed no later than **10 days** *after* the State Board certifies the results: **December 17, 2026**. Va. Code Ann. § 24.2-801(A). State law requires petitions for statewide races to be filed in the Circuit Court of the City of Richmond, and petitions for all other races to be filed in the circuit court of the county in which the challenged candidate resides. Va. Code Ann. § 24.2-801(A). Following the recount proceedings, the court certifies the results to the State Board and relevant electoral board, and the Department of Elections shall post on its website any and all changes to the results. Va. Code Ann. § 24.2-802.2(F). Under Virginia law, recount proceedings are final and not subject to appeal. Va. Code Ann. § 24.2-802.2(G).

Risk Limiting Audits

For certain non-local races, Virginia law requires electoral boards and general registrars (appointed by electoral boards to maintain voter registration records and conduct elections) to conduct risk-limiting audits after the election takes place and before the State Board certifies the results. Va. Code Ann. § 24.2-671.2. These audits are conducted under the supervision of the Department of Elections (ELECT) and pursuant to procedures set forth by the State Board. Va. Code Ann. § 24.2-671.2(B).

State law requires ELECT to conduct a risk-limiting audit for at least one randomly selected race each year and prescribes which races are eligible for that audit depending on the election cycle; in 2026, the randomly selected race must be a contest for the U.S. House of Representatives. Va. Code Ann. § 24.2-671.2(C)(1); Virginia Department of Elections, *Risk Limiting Audit Manual*, 5–6 (2026). Any such audit must be completed before races are certified at the state level. Va. Code Ann. § 24.2-671.2(A); Virginia Department of Elections, *Risk Limiting Audit Manual*, 5, 10 (2026). No race shall be selected for an audit if the tabulation of the unofficial election results shows a "difference of not more than one percent of the total vote cast for the top two candidates." Va. Code Ann. § 24.2-671.2(E).

Electoral boards may also request that the State Board approve a risk-limiting audit for a local race within the electoral board's jurisdiction. Va. Code Ann. § 24.2-671.2(D). In such circumstances, the State Board will grant an extension of the electoral board's certification deadline as necessary to accommodate the audit. Va. Code Ann. §§ 24.2-671(A), 24.2-671.2(D).

Authority to Prevent and Respond to Certification Abuses

State Officials Can Issue Opinions, Regulations, and Instructions

Virginia law authorizes the attorney general to provide their written opinion on questions of law when requested by state and local officials, including the governor, commonwealth attorneys, and the chairman or secretary of an electoral board. Va. Code Ann. § 2.2-505. Likewise, the State Board of Elections is charged with making rules and regulations, issuing instructions, and providing information about election laws to electoral boards and registrars. Va. Code Ann. § 24.2-103(A).

Prior to the election, state officials may choose to exercise these authorities to emphasize the mandatory, nondiscretionary nature of election certification and the importance of timely completing postelection processes.

State Officials Can Exercise Their Statutory Authority to Enforce the Mandatory Duty to Certify

In Virginia, state law is clear: electoral boards have a "clear ministerial" — i.e., mandatory — and "nondiscretionary" duty to certify election results. Va. Code Ann. § 24.2-109(D). If an electoral board fails to do so, Virginia law authorizes the State Board "to intervene and carry out such duties in accordance with law." Va. Code Ann. § 24.2-671(F).

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

If intervention by the State Board is not available for any reason to certify electoral board results, or if action is needed at the state level to compel certification, an action seeking a writ of mandamus in state court can compel certification. Va. Code Ann. § 8.01-644.

Virginia courts grant mandamus orders "to compel a public official to perform a purely ministerial duty imposed upon him by law." *City of Hampton v. Williamson*, 887 S.E.2d 555, 557 (Va. 2023) (quoting *Richlands Med. Ass'n v. Commonwealth*, 337 S.E.2d 737, 739 (Va. 1985)). Parties can seek writs of mandamus in the appropriate circuit court. Va. Code Ann. §§ 8.01-645, 24.2-103(F). Alternatively, the Virginia Supreme Court has original jurisdiction over mandamus actions. See, e.g., *Howell v. McAuliffe*, 788 S.E.2d 706, 710 (Va. 2016). See also Va. Const. art. VI, § 1; Va. Code Ann. §§ 8.01-649, 24.2-103(F).

As recently as 2024, a Virginia circuit court confirmed that "the duty of the [electoral board] to certify the election results is a ministerial duty" such that it granted a writ of mandamus requiring two recalcitrant members of the Waynesboro electoral board to certify election results consistent with state law. *Lewis v. Lilly*, No. CL24000440-00, 2024 WL 5709710, at *6 (Va. Cir. Ct. Nov. 4, 2024). The board members had preemptively announced their plan to refuse to certify the general election results, arguing that a hand count was the only way to guarantee that voting machines were not secretly programmed to rig the election outcome. Complaint, *Lewis*, No. CL24000417-00 (Va. Cir. Ct. Oct. 4, 2024). See also Laura Vozzella, "Waynesboro, Va., Election Officials Sue to Require Hand Count of Ballots," *The Washington Post*, October 15, 2024.

The trial court emphatically rejected their reasoning, explaining that "[t]he personal beliefs of members of a local board of elections cannot derail the electoral process for the entire Commonwealth." *Lewis*, 2024 WL 5709710, at *9 (Va. Cir. Ct. Nov. 4, 2024). The court further explained that any "[q]uestions of illegal voting, and fraudulent practices, are to be passed upon by another tribunal," rather than the electoral board. *Lewis*, 2024 WL 5709710, at *5 (Va. Cir. Ct. Nov. 4, 2024) (quoting *Hall v. Stuart*, 198 Va. 315, 323 (1956) (citations omitted)).

In Virginia, several types of parties can bring mandamus actions. The State Board may petition a circuit court or the state supreme court for a writ of mandamus, or other available legal relief, to ensure that elections are certified consistent with state law. Va. Code Ann. § 24.2-103(F). Similarly, "[w]henever the Attorney General has reasonable cause to believe that a violation of an election law has occurred and that the rights of any voter or group of voters have been affected by such violation, the Attorney General may commence a civil action in the appropriate circuit court for appropriate relief." Va. Code Ann. § 24.2-104.1(A).

In addition to state officials, aggrieved candidates or voters affected by a certification dispute also have grounds to bring a mandamus action. *Hall*, 198 Va. at 316 (mandamus action brought by candidates; denied on unrelated grounds); *Lewis*, 2024 WL 5709710, at *5 (action brought by group of voters). Actions brought by voters may be particularly impactful when officials announce their intention to refuse to certify before an election has taken place, as was the case in *Lewis v. Lilly*. 2024 WL 5709710. Whereas candidates may not choose to expend limited campaign resources on a lawsuit so close to the election (particularly before they know the outcome), voters always have a strong incentive to ensure that their votes are counted and certified on time.

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

If a certifying official refuses to comply with a mandamus order, the court may enforce the order through sanctions for contempt of court. Va. Code Ann. §§ 8.01-652, 18.2-456(A)(5).

State Officials Can Impose Penalties Against Rogue Certifying Officials

Virginia law explicitly states that "any member of an electoral board who fails or refuses to certify the results of an election is subject to a civil penalty." Va. Code Ann. § 24.2-1001.1. Additionally, refusing to certify an election could violate several state criminal laws and result in charges. See, e.g., Va. Code Ann. § 24.2-1001(A).

Commonwealth attorneys generally have authority to prosecute criminal conduct that takes place within their jurisdictions. Va. Code Ann. § 15.2-1627(B). The attorney general also has broad authority to intervene in criminal actions related to elections. Va. Code Ann. § 2.2-511(A). Specifically, Virginia law gives the attorney general "full authority to do whatever is necessary or appropriate to enforce the election laws or prosecute violations thereof." Va. Code Ann. § 24.2-104(A). And when the State Board is unanimously "of the opinion that the public interest will be served, it may request the Attorney General, or other attorney designated by the Governor for such purpose, to assist the attorney for the Commonwealth of any jurisdiction in which election laws have been violated." Va. Code Ann. § 24.2-104(B).

In addition to these penalties, Virginia law is clear that if an electoral board refuses to certify an election, that refusal "shall be grounds for removal" from their position. Va. Code Ann. § 24.2-109(D). State law also allows for removal if an electoral member announces their refusal to certify *before* an election takes place. Va. Code Ann. § 24.2-103(E) (authorizing removal for "an unambiguous indication of a future refusal or failure to carry out the duties of the office where such refusal or failure would likely have a material adverse effect upon the conduct of the office.").

Electoral board members may be removed by the circuit court in their jurisdiction upon a petition signed by a majority of the members of the State Board; the petition must follow a two-thirds majority vote of all members of the State Board after a public hearing on the matter. Va. Code Ann. §§ 24.2-103(E), 24.2-234.1(A). Following litigation in *Lewis v. Lilly*, for example, the State Board voted 5-0 to petition the Waynesboro Circuit Court to remove one of the defendants from the electoral board (the member resigned before the court could act on the petition, and the other refusing board member's term expired). Virginia Department of Elections, "January 15, 2025 — State Board of Elections Meeting," YouTube, 2:14:31, January 15, 2025; Virginia State Board of Elections, "Meeting Agenda," board meeting, 95, January 29, 2025.

Additional Resources

- Brennan Center, "Election Certification: How to Strengthen State Frameworks" (June 17, 2025)
- Brennan Center, "The Roadmap to the Official Count" (October 26, 2020)
- Campaign Legal Center, "What is Election Certification?" (October 8, 2024)
- Citizens for Responsibility and Ethics in Washington, *Election Certification Under Threat* (August 15, 2024)
- Lauren Miller Karalunas, "How State and Local Election Certification Works" (July 30, 2024)
- Protect Democracy, "Election Certification, Explained" (May 19, 2025)
- Protect Democracy, *Election Certification Is Not Optional* (March 2024)