

# Election Certification

How to Strengthen State Frameworks

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## Highlights

- >> Since the 2020 election, the election denial movement has led rogue local officials to refuse to fulfill their mandatory duty to certify election results.
- >> Efforts to interfere with certification persisted throughout the 2024 election cycle, becoming untethered from the presidential election outcome and focused instead on local disagreements over downballot races.
- >> States should strengthen their statutory frameworks ahead of the 2026 midterms to prevent and more efficiently resolve future certification disputes.

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# Introduction

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**W**hen the commissioners of Washoe County, Nevada, met in July 2024 to certify the results of several primary election recounts, their sign-off should have been perfunctory. Instead, a volatile mix of election denialism, confusion, and faulty legal advice led the commission to vote 3–2 against certifying the results — an unprecedented scenario in the state’s 160-year history, even in Nevada’s “swingiest” county. In a bizarre turn of events, one of the refusing commissioners even voted against certifying her own victory.<sup>1</sup>

Certification — the statutory step that marks the end of the vote-counting process — has historically served as a mandatory and uneventful formality after the excitement of an election winds down. In the weeks after Election Day, local officials (typically a local election board or canvassing board) complete a series of checks to make sure that all votes are counted, resolve any discrepancies in the vote totals, and verify that the results are accurate — a process known as the canvass. Once the canvass has concluded, they must formally “certify,” or sign off on, the completion of that process by a specific date set by state law. They then deliver the results to state officials, who conduct their own canvass and certify the results for statewide elections.<sup>2</sup> Certification is thus procedurally important but substantively narrow: It confirms that all the necessary steps in the postelection process have taken place.

For more than a century, state courts around the country have affirmed that once vote totals are final, certification is not optional.<sup>3</sup> It is not the time to investigate the results or weigh in on legal issues. Instead, state laws create clear processes to ensure that any challenges to an election are resolved impartially and with procedural safeguards in place to protect the vote.<sup>4</sup> But in Washoe County, a multiyear movement to upend that status quo created a perfect storm.

In 2020, Washoe County’s longest-serving commissioner, Jeanne Herman, became one of the first officials in the election denial movement to vote against certification, rejecting the results of President Joe Biden’s win because, she claimed, “the election was improper.”<sup>5</sup> At the time, the four other commissioners outvoted Herman. Undeterred, she later voted against certifying both the 2022 primary and general elections.<sup>6</sup>

In 2022, a second member who had expressed doubts about the 2020 presidential election, Mark Clark, was elected to the commission.<sup>7</sup> Clark’s candidacy was financed by a growing movement of election deniers, including local millionaire Robert Beadles.<sup>8</sup> Together, Herman and Clark voted against certifying the county’s 2024 primary results on the basis of ballot printing errors — even though the county and court system properly addressed them outside the certification process.<sup>9</sup> Once again, the other three commissioners outvoted them.<sup>10</sup>

The commission’s 2–3 split flipped, however, after Beadles financed recounts of several local primary races (none of which were affected by the ballot printing errors). Those recounts forced a second certification of the 2024 primary results, including for the primary race of County Commissioner Clara Andriola.<sup>11</sup> Andriola won her primary by nearly 19 points, and the recount confirmed the initial result.<sup>12</sup> But at the public hearing to certify the recounts, an angry crowd spent several hours raising allegations about the primaries that ranged from small administrative errors to outlandish claims about Serbian efforts to manipulate voting machines.<sup>13</sup> At one point, Beadles himself offered an unsubstantiated data analysis that he claimed proved election interference.<sup>14</sup>

Andriola, who was new to her role (the governor had appointed her to the commission in 2023 to fill a Republican vacancy) grew concerned.<sup>15</sup> Did she and the other commissioners have the discretion to reject the election’s outcome in light of the crowd’s complaints, or did they have a mandatory duty to certify the results?<sup>16</sup> Her position was further complicated by sustained harassment from election skeptics.<sup>17</sup> Beadles, for example, disparaged her as “Clara the Clown” on his blog.<sup>18</sup>

The commissioners turned to the county’s assistant district attorney, Nate Edwards, for an answer. As legal counsel for the commission, Edwards should have provided them with a simple, clear instruction: Certifying the final vote totals is a mandatory duty, and refusing to do so could result in criminal charges under state law.<sup>19</sup> Edwards, however, did the opposite. “You don’t have to vote yes on that, you don’t have to vote no,” he said. “You vote your conscience.”<sup>20</sup>

By her own account, Andriola genuinely wanted to provide a platform for her constituents, and the state’s certification deadline meant that she had limited time to confirm whether Edwards’s advice was correct. Acting on his instructions, she cast the decisive vote with Clark and Herman against certification.<sup>21</sup>

That evening, however, after doing additional research, Andriola realized the error in Edwards’s advice.<sup>22</sup> It would take another full week — and a lawsuit filed by Nevada’s secretary of state — before the county commission could meet to reverse its mistake.<sup>23</sup> And when it did, the vote

remained contested. Andriola and Clark changed their votes, although Clark acknowledged that he did so “with a heavy heart” and only after the district attorney, Edwards’s boss, sent him a letter explaining that refusing to certify could result in criminal charges. Herman persisted in her no vote, reasoning that “there are hills to climb and there are hills to die on and this might be one of those.”<sup>24</sup>

Washoe County was hardly alone in its certification dispute. Since 2020, more than 30 rogue local officials in Arizona, Colorado, Georgia, Michigan, New Mexico, North Carolina, Pennsylvania, Utah, and Virginia have refused to certify election results.<sup>25</sup> In many of these cases, the refusing officials cited claims rooted in election denialism — the false idea that the 2020 presidential election was stolen and that widespread fraud persists in U.S. election systems. In other cases, officials such as Andriola appeared to act in response to pressure or incorrect legal advice.

Fortunately, courts and state officials intervened in each of these instances to compel certification.<sup>26</sup> But as Washoe County illustrates, that intervention came at the cost of significant time, effort, and scarce government resources during an already busy election season. Local certification delays threatened to disrupt important state and federal certification deadlines. And with each day that they went unresolved, the disputes stoked misinformation and conspiracy theories, fueling distrust in elections and the people who run them.<sup>27</sup>

Over the last several years, many of the states affected by certification disputes have been forced into an untenable position, grappling with the sudden and unexpected spike in refusals to certify while also trying to plan for a contentious presidential election. Now that the 2024 cycle has concluded, state legislatures have an opportunity to streamline, clarify, and shore up their statutory frameworks to both prevent and more efficiently resolve future certification disputes.

To be sure, some of the loudest voices against certifying elections have fallen silent since President Donald Trump’s 2024 victory.<sup>28</sup> But many have not.<sup>29</sup> The volume of certification disputes between 2020 and 2024 demonstrates that they are likely to arise whenever a contentious race emerges — that is, in every election cycle. Indeed, many certification disputes have become untethered from the presidential election outcome altogether, instead serving as a mechanism for expressing disagreement or doubt as to any aspect of an election, including for local and state races.<sup>30</sup>

This report lays out the steps that state legislatures can take to protect against certification refusals. It begins by walking through several certification disputes that took place during the 2024 election cycle. While it discusses some disputes from prior election cycles, it focuses principally on recent disputes that provide a clearer picture of how future attacks on certification will take shape. It then uses those disputes to identify principles for reform that will provide the strongest safeguards against future attempts to thwart certification.

Although each state’s certification framework differs in its details, these principles fall into four generally applicable categories. First, state legislatures should add to their existing certification statutes language that explicitly clarifies officials’ mandatory duty to certify elections. Second, bodies charged with amending court rules should update those rules to create expedited paths for litigants seeking court orders to compel certification. Third, state legislatures should amend their election laws to grant state officials explicit authority to intervene and complete the certification process if a county refuses to do so. Further, the refusing county should bear any costs associated with that intervention. Finally, state legislatures should create an explicit private right of action for voters to bring legal actions to compel certification.

These simple but effective reforms would protect against the chaos caused by certification refusals, benefiting voters, candidates, and election officials alike.

# I. State Certification Disputes

## During the 2024 Election Cycle

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Disputes from the 2024 election cycle demonstrate that attacks on certification are evolving. What started as a vehicle to protest the 2020 presidential election has shifted to a mechanism for expressing disagreement or doubt over any aspect of an election, regardless of the outcome — including for local and state races.

### Georgia

In many ways, Fulton County, Georgia, was the epicenter of certification disputes during the 2024 election cycle. The saga in Georgia’s most populous county — home to most of Atlanta — began in March 2024, when two Republican appointees on the Fulton County Board of Registration and Elections voted against certifying the county’s presidential primary.<sup>31</sup>

Julie Adams and Michael Heekin both argued that they could not certify without reviewing numerous “administrative and operational documents” necessary to show the “chain of custody” of election materials.<sup>32</sup> But in Georgia, as elsewhere, certification takes place after poll workers and local election officials have already carried out a rigorous, multistep canvass to tally the votes, check for discrepancies in the vote totals, and ensure that the final results are accurate.<sup>33</sup>

The county’s director of registration and elections confirmed that the election went off with no disruptions and even invited Adams to observe part of the postelection process.<sup>34</sup> And, in any event, Georgia’s certification statute provides a process to address any truly unresolved issues with the results: Rather than use certification to air their concerns, county board members must certify the results and report any issues to the appropriate district attorney for investigation.<sup>35</sup> The three other Fulton County board members followed the law and outvoted Adams and Heekin to certify the presidential primary results.<sup>36</sup> But Adams and Heekin were undeterred.

Adams, who at the time served as the regional coordinator for a national election denial activist group, abstained from the vote to certify the county’s downballot (i.e., nonpresidential) May 2024 primary results.<sup>37</sup> She then took the remarkable step of filing a lawsuit against the board and the county election director in Fulton County Superior Court, arguing that she could refuse to certify the county’s results until the defendants provided her with troves of data to investigate the election.<sup>38</sup> In short, her complaint asked the court to rewrite more than a century of Georgia law to give her unfettered discretion to reject any election results with which she disagreed.<sup>39</sup>

The court rejected Adams’s request, reasoning that if certifying officials “were, as Plaintiff urges, free to play investigator, prosecutor, jury, and judge and so — because of a unilateral determination of error or fraud — refuse to certify election results, Georgia voters would be silenced.” As the court explained, Georgia’s constitution and election code “do not allow for that to happen.”<sup>40</sup> Still, Adams’s litigation efforts — three unsuccessful cases in all — forced Fulton County officials to spend valuable time and resources in a busy election year.<sup>41</sup>

The intensity with which Adams and the broader election denial movement targeted Fulton County warrants an extra layer of analysis. Although certification itself is a formality, its effect is significant: It serves as the final step in the postelection process, ensuring that every lawfully cast ballot counts in the final vote tally. Adams’s request would have turned this process on its head, risking a situation in which a handful of officials could, by refusing to certify an election, disenfranchise Fulton County’s hundreds of thousands of voters — more than 60 percent of whom are voters of color.<sup>42</sup> For example, a refusal to certify Fulton County’s May 2024 primary results could have disenfranchised 52,899 Black voters, or nearly 15 percent of all Black voters who turned out to vote in that election statewide.<sup>43</sup> Adams’s lawsuits were just the latest attack in an ongoing effort to undermine election processes in the county. Over the last several years, election workers in Fulton County have faced racially charged threats and unfounded accusations of fraud from candidates and activists alike.<sup>44</sup>

As Adams pursued her claims in court, Michael Heekin took aim at certification through the state’s rulemaking process. In March 2024, he proposed a change to Georgia’s election rules that, if successful, would have achieved the same goal as Adams’s lawsuits: rewriting state law to make certification discretionary.<sup>45</sup> Specifically, Heekin’s proposal would have redefined the act of certifying an election to mean to “attest, after *reasonable inquiry*, that the tabulation and canvassing of the election are complete and accurate and that the election results are a true and accurate accounting of all votes cast in that election.”<sup>46</sup>

Georgia law, however, already creates a clear certification process that does not involve any “reasonable inquiry.” Instead, it creates a rigorous process for examining and verifying the results *before* certification takes place.<sup>47</sup> Heekin’s proposed rule also failed to define “reasonable inquiry” or set any limits on what that inquiry would have entailed. In a worst-case scenario, a rogue election board might have interpreted the rule’s vague language to let them refuse to certify if they did not like the results of any ambiguous “inquiry” into the election.

On August 3, 2024, several months after Heekin proposed the rule, Trump publicly praised three of the five members of Georgia’s State Election Board as “pit bulls fighting for honesty, transparency and victory.” All three members had previously questioned the 2020 election results.<sup>48</sup> Days later, those same three members voted to pass Heekin’s proposal.<sup>49</sup>

The rule, however, quickly faced two legal challenges.<sup>50</sup> And, just like in Adams’s case, the Fulton County Superior Court recognized that the proposed rule posed a threat to the state’s existing certification framework. The court struck down the “reasonable inquiry” provision, finding that it added “an additional and undefined” step into the certification process and was therefore “inconsistent with” Georgia’s certification statute.<sup>51</sup> The Georgia Supreme Court agreed, upholding the finding in a 2025 ruling.<sup>52</sup>

Although unsuccessful, both Adams and Heekin continued their efforts to make certification discretionary. Adams appealed the rulings in one of her lawsuits.<sup>53</sup> And even as she certified the 2024 general election results, Adams stated that “it’s absolutely ridiculous to have a court order saying I have to vote yes.” In response, the Fulton County Board of Commissioners rejected Adams’s reappointment to the Board of Registration and Elections in May 2025.<sup>54</sup> Heekin has since called on the state legislature to give local election boards the discretion to vote against certifying results in future elections.<sup>55</sup>

Adams and Heekin were not alone in their attempts to undermine Georgia certification law. According to *The Atlanta Journal-Constitution*, at least 19 local election board members in counties including Cobb, DeKalb, Gwinnett, and Spalding refused to certify results between 2020 and 2024.<sup>56</sup> Those board members did not muster enough votes to succeed, but the fact remains that an alarming number of local officials in the state have attempted to abuse the certification process at voters’ expense.

## Colorado

In November 2023, the Colorado Republican Party made headlines when the chair of its Ballot and Election Security Committee, Ron Hanks, circulated a letter urging counties to refuse to certify that month’s local election results. The statement cited unsupported allegations of

a “rigged system” and framed the 2023 elections as a practice round for the “epic battle” that would come during the 2024 cycle.<sup>57</sup> Although attempts to refuse certification were not new in Colorado, the letter undoubtedly influenced county canvass board members.<sup>58</sup> In the November 2023 election alone, board members in five Colorado counties voted against certifying local city council and school board races.<sup>59</sup>

Several of those attempts involved repeat refusers who doubled down on their efforts in 2024. In Boulder County, for example, county canvass board member Theresa Watson voted against certification in 2023, citing “vulnerabilities in the Boulder County Elections, drop boxes and the signature verification process” and “a lack of proficient training for signature verification judges.”<sup>60</sup> Notably, a 2021 *Colorado Times Recorder* report detailed Watson’s contributions to an online chat room affiliated with the so-called U.S. Election Integrity Plan, a “QAnon-linked election fraud conspiracy group.” According to the report, Watson posted about weapons that could be “carr[ie]d in a crowd” ahead of the January 6 attack on the U.S. Capitol.<sup>61</sup>

Watson subsequently refused to certify the March 2024 presidential primary results, noting her personal objection to mail-in ballots and a desire for increased drop box surveillance. A Boulder County press release explained that Watson’s concerns were “completely outside the scope of the duty of the Canvass Board.”<sup>62</sup> In the June 2024 downballot primary, Watson’s successor, John Barrett, also voted against certification, alleging “vulnerabilities” in the election system.<sup>63</sup>

In El Paso County, Republican canvass board member Candice Stutzriem not only refused to certify the 2023 general election, but also released a “minority report” replete with unsupported theories about fraudulent ballots “created in the wild” and “stuffed into obscure drop boxes.”<sup>64</sup> Stutzriem subsequently refused to certify both the 2024 presidential and downballot primaries, reasoning that “there’s no way to prove there is a single, verified, legal voter behind each ballot cast.”<sup>65</sup>

In Jefferson County, home to a portion of the Denver metro area, board member Nancy Pallozzi refused to certify the 2023 general election, also releasing a “minority report” that detailed changes she hoped to see in the county’s election administration process.<sup>66</sup> Like Stutzriem, Pallozzi subsequently refused to certify both 2024 primary elections, telling *USA Today* that she had questions about the chain of custody of ballots and “paper ballot encryption,” among other things. A spokesperson for the Jefferson County Clerk and Recorder’s Office responded, “We’ve worked with Nancy many times and every election she sends us a letter with some sort of reason for not certifying the election, and none of it is ever coherent.”<sup>67</sup>

While many certification objectors in other states fell silent after Trump’s victory in the 2024 general election,

refusals persisted in Colorado. Canvass board members in seven counties — Archuleta, Boulder, Eagle, El Paso, Gilpin, Jefferson, and Larimer — refused to certify the November 5 election results, citing a password security breach in the secretary of state’s office. Stutzriem and Pallozzi were among those who refused.<sup>68</sup> State officials repeatedly clarified that the breach did not expose voting systems, nor was any voting equipment compromised.<sup>69</sup> Fortunately, each refusing board member was outvoted.<sup>70</sup>

If a Colorado board had voted against certification, legislation passed in 2022 ensures that the secretary of state could have intervened to certify it.<sup>71</sup> But the sheer volume of refusals in Colorado sends a dangerous message to the public. As the Boulder County clerk and recorder noted earlier this year, “the real risk is when you have folks that are responsible for helping conduct the election or certify the election who clearly aren’t following their responsibilities. What does that say to the voter?”<sup>72</sup>

## Virginia

On October 4, 2024, Waynesboro, Virginia, Board of Elections Chair Curtis Lilly and Vice Chair Scott Mares filed a lawsuit preemptively announcing their plan to refuse to certify the rural city’s general election results. According to their complaint, Lilly and Mares would certify only if the court permitted them to count ballots by hand.<sup>73</sup> In support of their unorthodox request, they argued that a hand count was the only way to guarantee that voting machines were not secretly programmed to rig the election outcome.<sup>74</sup>

In Virginia, election officials ensure that voting machine results are accurate by following tried-and-true processes, including running test ballots through each machine to confirm that they are working correctly before voting takes place.<sup>75</sup> Hand counts, by contrast, are slow and error-prone — the very reasons why states such as Virginia prohibit the practice and use vote-tabulation machines instead. Across the country, only a few jurisdictions with more than 1,000 voters count ballots by hand.<sup>76</sup> Nevertheless, Lilly and Mares sought to revive the practice in Waynesboro, which has approximately 16,000 registered voters.<sup>77</sup>

On October 21, 2024, five Waynesboro voters responded by filing a lawsuit of their own against Lilly and Mares. The voters, seeking to prevent the board from discounting their future votes, requested a writ of mandamus — a court order compelling an official to perform a ministerial (i.e., mandatory and nondiscretionary) duty required by law.<sup>78</sup> Courts have long acknowledged that certification qualifies as a ministerial duty for mandamus purposes.<sup>79</sup> In recent years, for example, courts in both Arizona and New Mexico have granted writs of mandamus against county boards of election that voted against certification.<sup>80</sup>

The Waynesboro Circuit Court issued an order in the voters’ lawsuit on November 4, finding that the board members have a ministerial duty to certify the election and granting the voters’ request for a writ of mandamus. The order did not mince words, explaining, “The personal beliefs of members of a local board of elections cannot derail the electoral process for the entire Commonwealth.”<sup>81</sup> The decision, however, came at the expense of extensive time and judicial resources. The court held a full evidentiary hearing before resolving the case, leaving the fate of Waynesboro’s votes uncertain until just one day before the general election. Ultimately, Lilly and Mares both complied. But as a final protest, they noted their disagreement by writing “certified but objected to” and “certified but with objections,” respectively, beside their names.<sup>82</sup>

In January 2025, the Virginia Board of Elections voted 5–0 to petition the Waynesboro Circuit Court to remove Lilly from the board.<sup>83</sup> The recommendation cited various derelictions of duty under state law, including Lilly’s objection to the final certification.<sup>84</sup> Lilly subsequently resigned before the court could act on the petition,<sup>85</sup> while Mares’s term on the board has since expired, making proceedings against him moot.<sup>86</sup>

In a statement supporting the petition to remove Lilly, Waynesboro’s registrar and director of elections discussed the toll that Lilly and Mares’s lawsuit took on herself and the county: “Once the public learned of the lawsuit, I began to receive hate emails about the lawsuit.” She explained that “the public thought it was me, the Director of Elections, that was suing the state. It took time to reassure the voters that their vote was safe, secure and would be certified.”<sup>87</sup>

## Utah

While many counties have faced certification disputes rooted in false claims of fraud or conspiracy theories, a 2024 incident in Iron County, Utah, stemmed from a less sensational source: a postal service delay. Mail from Iron County travels more than 170 miles southwest to a processing center in Las Vegas before it is postmarked.<sup>88</sup> That time-intensive journey meant that approximately 400 mail ballots from the primary election were mailed from Iron County on or before the state’s mail ballot deadline of June 24 but postmarked in Las Vegas after midnight on the 25th.<sup>89</sup> According to Utah law, all ballots with a postmark of June 25 had missed the deadline and could not be counted.

As one member of Iron County’s commission summed up the situation: “This sucks.”<sup>90</sup> The commissioners postponed certification to speak with state election officials, hoping to find a way to include the ballots.<sup>91</sup> But state officials were unanimous: Although the postal delay was unacceptable, there was no way to include those ballots under state law.<sup>92</sup>



The commissioners turned to the Iron County attorney, Chad Dotson, for legal advice. Fortunately, Dotson had done his homework. He advised that “the law is clear. . . . The commission has no choice but to certify this election.”<sup>93</sup> If the commissioners refused to certify, he said, “the likely outcome is that the Attorney General’s Office sues to enforce and compel the board of canvassers to follow the [state] statute and certify the election.”<sup>94</sup> Regardless of what the commissioners thought of Utah’s mail ballot deadline, they had no choice but to certify the election and leave any challenges up to the courts.

Ultimately, the commissioners voted 2–1 to certify the primary results.<sup>95</sup> Commissioner Paul Cozzens voted no, reasoning that “in matters like these, what is legal isn’t always right.”<sup>96</sup> Commissioner Mike Bleak, who voted to certify, countered that “at the end of the day, we’re a nation of rules that is governed by the rule of law, and in this particular case, the rule of law is very clear and there is no wiggle room.”<sup>97</sup> Bleak, who had encountered statutory language in previous public service positions, pointed to the language of Utah’s certification statute: “A board of canvassers *shall* . . . certify the vote totals.”<sup>98</sup> He correctly reasoned that the “shall” language meant that the commissioners could not “pick and choose” whether to certify the results. Bleak also recommended that the commission, rather than refuse to certify the results, instead focus on implementing drop boxes before the general election to avoid future mail delays, which the county did.<sup>99</sup>

Iron County’s certification dispute serves as a cautionary tale. In some instances, an unfair outcome may tempt officials to refuse to certify an election. But throughout the late 19th and early 20th centuries, state courts and legislatures faced with similar considerations rejected the idea that such discretion should rest with certifying officials. Recognizing that leaving room for discretion in certification would create opportunities for rogue officials to manipulate or interfere with election outcomes, they instead vested the authority to investigate elections and decide legal issues in specifically designated court processes, such as election contests — a process by which a candidate can challenge the outcome of their race on legal grounds.<sup>100</sup> In the prescient words of the 1909 Oklahoma Supreme Court, allowing local certifying officials “who are generally without training in the law” to look beyond the final vote totals and investigate an election itself “would afford temptation and great opportunity for the commission of fraud.”<sup>101</sup>

## Michigan

Michigan faced two certification disputes during the 2024 election cycle: one in Delta County in the Upper Peninsula and one in Kalamazoo County in western Michigan. The disputes, however, are notable not for the chaos they

caused but for the ease with which they were resolved, thanks to the state’s prior certification reform efforts.

In the days after the November 2020 presidential election, Michigan saw the nation’s first instance of officials refusing to certify results on the basis of claims rooted in election denialism. The controversy began in Wayne County, the state’s largest county and home to Detroit. In a confusing back-and-forth, two Republican members of the Wayne County Board of Canvassers, Monica Palmer and William Hartmann, voted against certifying the county’s general election results but then voted to approve certification later in the same meeting.<sup>102</sup> Phone recordings have revealed that following the vote to certify, Trump personally pressured Palmer and Hartmann to refuse to sign the official statement of votes for Wayne County. Palmer and Hartmann subsequently left the meeting without signing the official statement and attempted to rescind their votes to certify the following day, but state law prevented them from doing so.<sup>103</sup>

When the Board of State Canvassers later met to certify the 2020 results, their vote, for the first time in Michigan history, was not unanimous.<sup>104</sup> Republican board member Norm Shinkle abstained from the vote, citing unfounded claims of election fraud.<sup>105</sup>

In response to the 2020 dispute, Michigan voters and legislators took action. Voters amended the state constitution to expressly clarify state and local officials’ legal obligations:

It shall be the ministerial, clerical, nondiscretionary duty of a board of canvassers, and of each individual member thereof, to certify election results based solely on: (1) certified statements of votes from counties; or (2) in the case of boards of county canvassers, statements of returns from the precincts and absent voter counting boards in the county and any corrected returns.<sup>106</sup>

Michigan’s legislature, in turn, created a new mechanism for enforcing certification. If a board of county canvassers fails to certify the results of an election, state law now requires the board to immediately deliver “all records and other information pertaining to the election” to the secretary of the Board of State Canvassers.<sup>107</sup> The state board must then “meet immediately and make the necessary determinations and certify the results.”<sup>108</sup> Importantly, the new law requires all costs associated with the state canvass, including those for transportation, lodging, and meals, and all those incurred by state agencies, to be borne by the county that failed to certify.<sup>109</sup> As an added disincentive, the entire county board, along with all other “necessary” county staff, must be present at all times while the state board completes the canvass.<sup>110</sup> Finally, the legislature reaffirmed the language of the state constitutional amendment, expressly clarifying that county boards of canvassers,



the state board of canvassers, and individual board members have a “ministerial, clerical, and nondiscretionary duty” to certify election results.<sup>111</sup>

These provisions proved prescient. On May 14, 2024, two Republican members of the Delta County Board of Canvassers, Bonnie Hakkola and LeeAnne Oman, refused to certify the results of a recall election in a 2–2 vote.<sup>112</sup> In the election, voters recalled three of Delta County’s five commissioners by overwhelming margins: 72, 72, and 73 percent, respectively.<sup>113</sup> Both Hakkola and Oman argued that the similar margins pointed to voting machine irregularities that justified a hand count of all 4,500 ballots cast.<sup>114</sup> In response, the county clerk confirmed that she and her staff had tested the machines several times to ensure that they worked correctly.<sup>115</sup> Rather, the similar margins likely stemmed from the circumstances motivating the recall: Residents organized the election after the three commissioners voted to fire a former county administrator.<sup>116</sup>

The deadlock generated significant press coverage as a potential harbinger for the general election, but state officials stepped in quickly to resolve the impasse. Within two days, the Michigan Department of State sent the Delta County board members a letter detailing their duties under the newly amended Michigan Constitution and Michigan election law, advising them of the consequences of failing to certify and explaining the processes in place to confirm the accuracy of the results.<sup>117</sup> The letter

proved effective: Just one day after receiving it, the Delta County board met to certify the results in a 4–0 vote.<sup>118</sup> Michigan’s attorney general and secretary of state circulated the letter in a press release, further ensuring that canvassing board members across the state — more than 50 percent of whom had not served as canvassers in the previous presidential election — knew of their duty to certify and the repercussions of a refusal.<sup>119</sup>

Several months after the Delta County deadlock, a member of the Kalamazoo County Board of Canvassers, Robert Froman, sparked concerns of another certification refusal during the general election. In an August 2024 interview with a local reporter, Froman said he believed that the 2020 election had “most definitely” been stolen from Trump. When asked whether he would vote to certify the 2024 election if it unfolded the same way, he responded, “No. And that’s why I’m there [on the Kalamazoo County Board].”<sup>120</sup>

In response to Froman’s statements, the ACLU of Michigan and two Kalamazoo voters filed an action for declaratory judgment, asking a state court to clarify that county canvassers may not refuse to certify election results on the basis of extrinsic information, including any allegations of fraud.<sup>121</sup> The court did not have an opportunity to weigh in; one week later, the plaintiffs agreed to dismiss the suit after Froman signed a sworn affidavit stating that he would certify the November election results consistent with Michigan law.<sup>122</sup>

## II. Principles for Reform

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As the 2026 midterm elections approach, state actors have an important opportunity to strengthen and streamline their certification frameworks to contend with future refusals. While each state’s framework differs in its precise language,<sup>123</sup> the principles for reform detailed below are generally applicable across all states.

### **>> Legislatures should add language to state certification statutes that explicitly clarifies officials’ ministerial, nondiscretionary duty to certify elections.**

State certification statutes are consistent. They generally state that local and state officials “shall” certify the returns. *Shall* serves an important legal purpose: It signals to courts that legislatures intend certification to be a mandatory duty.<sup>124</sup> Once the canvass is complete and vote totals are final, that duty becomes “ministerial” — that is, an obligation that “is absolute, certain and imperative, involving merely the execution of a set task” and for which “the law . . . prescribes and defines the time, mode [and] occasion for its performance with such certainty that nothing remains for judgment or discretion.”<sup>125</sup> In other words, there is nothing for officials to do but certify the results. And because certification is a ministerial duty, courts can issue writs of mandamus compelling officials to certify the results.<sup>126</sup>

But as Clara Andriola’s experience in Washoe County, Nevada, demonstrates, certifying officials may struggle to interpret statutory language, particularly when they are new to their roles or unfamiliar with the certification process. And when that struggle (whether genuine or in bad faith) leads to certification refusals, courts must spend valuable time and resources hearing and resolving cases within an election cycle’s tight deadlines.

For these reasons, state legislatures should amend state certification statutes to add language that is unmistakably clear: Once the vote totals are final, “it is the ministerial and nondiscretionary duty of each election board, and each of the members of the election board, to certify” the results. For one, such language would leave little cover for certifying officials to claim that they did not know certification is nondiscretionary — an important factor in the many states that allow for removing or imposing penalties against officials who knowingly fail to perform their duty or interfere with election processes.<sup>127</sup> It would also foreclose future efforts to use the courts and rulemaking processes to insert discretionary decision-making into certification, as Julie Adams and Michael Heekin attempted to do in Fulton County, Georgia.

Similarly, this added language may benefit state courts confronted with certification disputes. In Virginia, for

example, the Waynesboro Circuit Court conducted a full evidentiary hearing before concluding that the Waynesboro Board of Elections members had a ministerial duty to certify elections, issuing a writ of mandamus just one day before the general election.<sup>128</sup> While state certification statutes, as written, already allow courts to issue writs of mandamus,<sup>129</sup> the additional clarification that certification is a “ministerial” duty may eliminate any confusion or ambiguity such that courts can issue orders quickly and without conducting lengthy hearings.

Further, statutory language should emphasize that election boards must “proceed without delay” to certify by the deadline provided under state law. Delaying certification by even a few days, as officials did in Washoe, Iron, and Delta Counties, can interfere with state and federal certification deadlines, particularly in a presidential election year. Under the Electoral Count Reform Act, state executives must certify their state’s slate of presidential electors by a set date in December; delaying certification by even a few days could place a state’s presidential electors at risk.<sup>130</sup>

### **>> Judicial bodies should create expedited paths and timelines for certification cases.**

Litigation takes time. But in the condensed postelection period, parties litigating mandamus actions may have just weeks, or even days, to meet statutory certification deadlines. That timeline may be even further compressed if a party appeals an order compelling certification.

For that reason, the bodies charged with updating court rules — typically state supreme courts, court administrators, or commissions — should amend court rules to create expedited paths for litigants seeking orders to compel certification and necessary precursors, such as ballot reconciliation or other elements of the canvass. They might, for example, allow state supreme courts to hear certification-related cases in the first instance. In Nevada, Rule of Appellate Procedure 17(a)(2) allows the state supreme court to presumptively retain cases involving ballot or election questions rather than requiring litigants to go through the lower courts.<sup>131</sup>

Alternatively, courts could amend their appellate and briefing timelines in certification-related cases. In Pennsylvania, which has seen several certification disputes since 2020, the supreme court issued an order temporar-

ily reducing the appellate timeline and briefing schedule for any matter arising under the state’s election code ahead of the 2024 presidential election.<sup>132</sup> Both types of rule changes achieve the same, important goal: ensuring that votes are counted and certified on time.

**>> Legislatures should grant state officials explicit authority to intervene and complete the certification process if a county refuses to certify an election.**

Writs of mandamus, though effective, often come at a cost. They drain valuable judicial resources at a time when courts may be barraged with postelection proceedings and force state officials to divert limited state resources away from administering elections.<sup>133</sup> As the Waynesboro County dispute illustrates, they can also take considerable time to resolve — time that both increases the chance that counties will miss state and federal certification deadlines and creates opportunities for bad actors to intimidate election officials and spread false claims of election fraud.<sup>134</sup>

For these reasons, legislators should follow the example of states such as Michigan and Colorado by amending their election laws to grant the officials who certify at the state level (most often the secretary of state or a state board of canvassers) explicit authority to intervene and complete the certification process if a county refuses to certify final vote totals by the statutory deadline.<sup>135</sup> State intervention provides two critical benefits: First, it creates an efficient, streamlined process for certification without the need to wait for litigation to resolve a dispute. Second, it acts as a disincentive against refusing to certify in the first place. If a county official knows that refusing to certify will be met with immediate certification by the state, it renders baseless objections all the more meaningless.

Importantly, any state intervention provision should follow Michigan’s example by including a cost-bearing clause.<sup>136</sup> Specifically, statutory language should clarify that “all costs associated with” state intervention — everything from transportation and lodging to any overtime incurred by state employees — “must be borne by the county that failed to certify.” In states that have seen significant numbers of votes against certification, the concerns of frustrated taxpayers will force refusing officials to think twice about their votes. As an added disincentive, states can also require county boards and staff to be present while the state board completes the certification process.<sup>137</sup>

Certainly, situations may arise wherein delays caused by courts or other actors prevent a board from certifying on time through no fault of its own; intervention should be reserved for those instances in which a county board has the means to certify by the statutory deadline but refuses to do so. Further, state law should clarify that those state officials authorized to intervene, like county

officials, have a “ministerial and nondiscretionary” duty to certify the final vote totals.<sup>138</sup> If any challenges to the results themselves arise, the same remedies, including election contests and other court proceedings, will remain available to affected parties.

**>> Legislatures should create a private right of action for voters to bring certification cases.**

A party seeking mandamus relief must generally establish a “clear legal right” to the requested relief, meaning that several different types of parties can file a mandamus action in a given state. Most often, state officials responsible for certifying statewide election results seek mandamus relief if a county refuses to certify, as the county’s refusal interferes with their statutory duty to certify the election.<sup>139</sup> Candidates whose races are affected by a refusal can also generally obtain mandamus relief.<sup>140</sup>

By the same logic, voters who stand to be disenfranchised by a refusal should also be able to obtain mandamus relief. But few courts have had the opportunity to decide that question. In fact, the court in the Waynesboro dispute — which found that the voters who brought the suit would be “directly affected by . . . the [board’s] failure to certify” — is one of just a few courts that have considered whether voters can sue to compel certification.<sup>141</sup>

To ensure that voters can sue to have their votes counted, legislators should consider the example of states such as New Mexico, which allows its trial courts, “upon petition of any voter,” to “issue a writ of mandamus to the county canvassing board to compel it to approve the report of the county canvass and certify the election returns.”<sup>142</sup> Ensuring that voters have a private right of action serves as an important safeguard if, for example, a rogue state official refuses to certify, or if a state sees so many certification disputes that state officials and candidates struggle to enforce certification on their own — a very real possibility in a close and contentious presidential or statewide election.<sup>143</sup>

Further, actions brought by voters may be particularly important when officials announce their intention to refuse to certify before an election has taken place, as was the case in Kalamazoo County, Delta County, and Waynesboro. Whereas candidates may not want to expend limited campaign resources on a lawsuit so close to the election (particularly before they know the outcome), voters will always have a strong incentive to ensure that their votes are counted and certified on time. Indeed, it was voters, not candidates, who filed suit in both the Waynesboro and Kalamazoo County actions.<sup>144</sup> Relatedly, legislators may consider adding a fee-shifting provision to guarantee that the cost of bringing a mandamus action does not deter voters or candidates from filing a suit.

## Conclusion

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**B**etween 2020 and 2024, states faced an unprecedented spike in election certification threats. State officials, voters, and advocates responded to the challenge, filing lawsuits, issuing guidance to certifying officials, and educating the public about the certification process and their rights. But certification refusals still caused harm.

By basing their actions on false claims of fraud and conspiracy theories, many of the local officials who refused to certify validated and encouraged the broader election denial movement. Refusals also sowed disorder in the election administration process, interfering with postelection deadlines and alarming voters who worried that their ballots might not be counted.

Though the 2024 presidential election outcome quieted many of the loudest voices against certification, the sharp

increase in refusals since 2020 suggests that attacks on certification are not over yet. And going forward, the 2024 cycle demonstrates that states may see more refusals rooted in local disagreements, downballot races, and doubts about the election process. Now that the presidential election has concluded, states must seize the opportunity to shore up their certification frameworks to meet this new challenge. Any one of these simple but significant reforms could make the difference between a smooth and a disputed election.

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