Arizona Certification Toolkit

Election certification is mandatory, on purpose

- Arizona 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
State Statutes	Each county board of supervisors "shall meet and canvass" by a specific date. A.R.S. § 16-642(A)(1). In 2024, the county canvassing deadlines are Aug. 12 for the primary and Nov. 21 for the general.
	The canvass "shall be made in public by opening the returns, other than the ballots, and determining the vote of the county, by polling places," for each candidate and ballot measure. A.R.S. § 16-643.
	For state and federal races, the Secretary of State "shall canvass" the election results in the presence of the Governor and Attorney General by a specific date. A.R.S. § 16-648(A). In 2024, the state canvassing deadlines are Aug. 15 for the primary and Nov. 25 for the general. A.R.S. § 16-642(A)(2).
	The Secretary of State "shall declare elected" the person who received the most votes and "shall . . . deliver" a certificate of election to that person unless enjoined by a court order. A.R.S. § 16-650.
Legal Precedent	For more than a century, the Arizona Supreme Court has made clear that mandamus is available to compel a county board to canvass election results when a board has "neglected or refused to perform its plain duty" to do so. *Hunt v. Campbell*, 19 Ariz. 254, 278-79 (1917).
2023 EPM	The 2023 Election Procedures Manual reiterates that a county board has a "non-discretionary duty to canvass the returns as provided by the County Recorder or other officer in charge of elections and has no authority to change vote totals, reject the election results, or delay certifying the results without express statutory authority or a court order."* **This provision of the EPM has been challenged in court* (Petersen v. Fontes). *A decision is expected before the November election.*

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

- The post-election process leading up to the final canvass 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 is not one of them.
- There are other processes to contest results or administration of an election, including recounts and election contests.

There are two principal ways to address concerns about election fraud or irregularities: election contests and recounts. These can take place only ***after*** the county canvass is complete.

	Opportunities to address fraud or error
Election Contests	Any voter may file an election contest in superior court on any of the following five grounds: (1) "misconduct" by local election officials; (2) ineligibility of the person elected to hold office; (3) bribery by the person elected; (4) the counting of "illegal votes"; and (5) an "erroneous count of votes." A.R.S. § 16-672(A).
	For a state or federal office, an election contest must be filed within 5 days of the completion of the statewide canvass and declaration of the winner by the Secretary of State. A.R.S. § 16-673(A).
	The court must set a hearing for no later than 10 days after the contest was filed (may be continued for up to 5 days for good cause). A.R.S. § 16-676. The court must issue a judgment within 5 days of the hearing.
	If the court decides that a person other than the declared winner received the highest number of legal votes, the court declares that person elected and issues an order nullifying the previously issued certificate of election. A.R.S. § 16-676(C).
Recounts	An automatic recount is triggered whenever "the canvass" reveals that the vote margin in an election is .5% or less. A.R.S. § 16-661. The Secretary of State must certify the facts requiring a recount to the Maricopa County superior court within 24 hours of the last county canvass (or the last day to receive county canvasses, i.e., Nov. 21, 2024).
	The results of the recount are presented to the court overseeing the recount, which enters an order announcing the election results. A.R.S. § 16-665(A). The court's order is delivered to the relevant state or county official, who must issue a certificate of election to the winning candidate as declared by the court. A.R.S. § 16-665(B).

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.
- Arizona law and federal law have many safeguards in place to ensure that certification happens, including civil accountability and criminal penalties.
- Two Cochise County supervisors who refused to certify the 2022 election have been criminally prosecuted for interfering with the election process.

	Legal Consequences
Criminal Liability	The two Cochise County supervisors who refused to certify the 2022 election (Tom Crosby and Peggy Judd) were indicted by a grand jury on two felony charges: (1) interference with an election officer and (2) conspiracy to do so. A.R.S. §§ 13-1003, 16-1004(A). The indictment states that by delaying certification, Crosby and Judd knowingly interfered with the Secretary of State's ability to complete the statewide canvass. Importantly, Judd was charged even though she later changed her vote and certified the election once a court ordered her to do so. In June 2024, the court denied the defendants' efforts to dismiss the indictments, reiterating that conducting the canvass is a ministerial, non-discretionary function. According to the criminal docket, the trial is scheduled for August 15.
	Refusing to certify election results could lead to criminal liability under other Arizona statutes as well. For example, it is a felony for any person charged with election-related duties to "knowingly refuse[] to perform such duty." A.R.S. § 16-1010. It is also a misdemeanor for any public officer to "knowingly fail[] or refuse[] to perform" a duty imposed by law, A.R.S. § 16-1009, and for any person to violate any rule prescribed by the EPM, A.R.S. § 16-452.
	Both the Attorney General and the County Attorney are authorized to open investigations and bring criminal actions against officials who violate these laws. A.R.S. § 16-1021.
Removal from Office	A county, district, or precinct official may be accused by a grand jury of "wilful or corrupt misconduct." A.R.S. § 38-341. If tried and convicted, the court will order the official to be removed from office. A.R.S. § 38-343.

Additional Resources

Election Certification

- Certification is Not Optional
- Election certification, explained

Cochise County

- Mandamus petitions filed by Arizona Secretary of State and Arizona voters
- Indictment charging Peggy Judd and Tom Crosby
- June 2024 denial of motion to remand the case to the grand jury
- Criminal docket