



Recommendations for ECRA Compliance in Pennsylvania

Under the ECRA, the deadline to certify a state's presidential electors will be December 11th in 2024. We recommend the following legislative changes to ensure that all election processes are completed in the 36-day window between Election Day (November 5, 2024) and the new certification deadline (December 11, 2024).¹

1. Supply a deadline for court to decide appeals from board determinations (such as after a recount).

Problem:

County boards of election are responsible for canvassing returns from elections, and, in the event of a recount, either correcting or finding the original returns correct. However, any person aggrieved by a county board's determination can file an appeal within two days of the determination. If the county board conducted a recount as part of a statewide recount ordered by the Secretary of the Commonwealth, the appeal must be filed in the Commonwealth court; otherwise, the appeal must be filed with the court of common pleas of the proper county.

A recount conducted as part of a statewide recount must be completed by the third Tuesday following the election (November 26, 2024, or E+21 Days). [25 P.S. § 3154\(g\)](#). While there is no statutory deadline for completing a district-level recount, county boards must report certified results to the Secretary of the Commonwealth by the third Monday following an election (November 25, 2024, or E+20 days), so any recount presumably needs to be completed by then. [25 P.S. § 2642\(k\)](#). This means that the latest date a county board's determination in a statewide recount could be appealed is November 28, 2024 (or E+23 days), and the latest date for the appeal of a district-level recount determination is November 27, 2024 (or E+22 days).

¹ "The ECRA makes clear that the executive of each state must certify the state's appointment of electors no later than six days before the electors meet. 3 U.S.C. § 5(a)(1). The electors meet on "the first Tuesday after the second Wednesday in December", 3 U.S.C. § 7, or December 17th in 2024. Six days before that is December 11th.



In either case, there is no stated deadline by which the court must decide the appeal, and “[p]ending such appeal, the county board shall suspend any official certification of the votes cast in such election district.” [25 P.S. § 3157\(b\)](#).

This could potentially prevent a presidential election from being certified by the ECRA’s deadline.

Recommendation:

Set a date by which the court must issue its decision on an appeal to a county board’s determination.

Suggested language:

Add a new section, 25 P.S. § 3157 (c), as follows:

(c) The court on an appeal shall proceed without delay to hear said appeal and shall give such appeal precedence over other business before it, and shall finally determine said appeal not later than seven days after the date said appeal was filed.

2. Supply deadlines for Class II contest procedures.

Problem:

Currently, the procedural rules for Class II challenges (which govern challenges to presidential election results) specify a filing deadline but does not provide other key deadlines like the timeframe by when the court has to resolve the challenges, or a timeline for appeals. [25 P.S. §§ 3351 – 52; 3456](#). This lack of clarity means that the process of contesting a presidential election could easily extend past the federal certification deadline.

Recommendations:

- Supply a required timeframe for a court to conduct and conclude a hearing on a contest, and a timeline for an appeal.
- The following timetable would ensure that Class II contests are resolved by the ECRA’s certification deadline:
 - Require the trial court to conduct and conclude any hearing on the contest within seven days of the contest’s filing and no later than 27 days after the election. [December 3, 2024].



- Require the trial court to issue a decision within four days of any hearing held on the contest [December 7, 2024].
- Require parties that wish to appeal the trial court's decision to file their appeal within one day. [December 9, 2024].²
- Require the Pennsylvania Supreme Court to decide any appeal within two days of the appeal being filed (that is, by the certification deadline) [December 11, 2024].

While this suggested timeline would ensure Pennsylvania meets the ECRA's deadline, the state may use any timeline that would enable it to complete canvassing, recounts, and recount appeals in time to certify results six days before electors meet.

Suggested language:

Revise [25 P.S. § 3352](#) as follows:

After the hearing of the said case, the said judges shall, ~~without unnecessary delay~~ as expeditiously as possible, and in any event no later than four (4) days after the petition's filing, decide which of the candidates voted for received the greatest number of legal votes, and is entitled to the nomination or office, which decision shall be entered of record to the case in the said court, and a certified copy thereof shall, within five (5) days from the rendering thereof, be delivered to the Secretary of the Commonwealth, whereupon the person who, by the decision of the court, shall appear to have received the largest number of votes, shall be entitled to the nomination or to the office, and be commissioned accordingly.

Add new section to statute (likely 1733, no P.S equivalent currently exists), as follows:

² In 2024 (and in future years where this deadline falls on a Sunday), the filing deadline will fall on the Monday immediately after. In all cases, the dates specified in this section should be seen as the last possible dates. In some cases, the dates will be sooner as they are tied to the contest filing date.



Any party aggrieved by the judges' decision may appeal that decision to the Pennsylvania Supreme Court within one day of the rendering of the decision. The Pennsylvania Supreme Court shall, within two (2) days of the appeal's filing, or no later than six days before the date for the meeting of Presidential electors specified under 3 U.S.C. § 7, whichever is earlier, issue its determination of that appeal.

3. Clarify that county boards of election have a non-discretionary duty to certify election results no later than the third Sunday following the election.

Problem:

While current law already implies that certifying election results is a mandatory duty of county boards, the language is not explicit. [25 P.S. § 2642\(k\)](#). This could lead to county boards refusing to certify election results and thus impact Pennsylvania's ability to meet the ECRA's certification deadline.

Recommendations:

- Explicitly state that certification is a nondiscretionary duty of county boards of election and that any refusal to fulfill that duty is subject to judicial review.
- Empower the Secretary of the Commonwealth and/or private plaintiffs to compel certification if a county board fails to certify election results by the third Monday after Election Day (E+20).

Suggested language:

Revise [25 P.S. § 3154\(f\)](#) as follows:

(f) As the returns from each election district are read, computed and found to be correct or corrected as aforesaid, they shall be recorded on the blanks prepared for the purpose until all the returns from the various election districts which are entitled to be counted shall have been duly recorded, when they shall be added together, announced



and attested by the clerks who made and computed the entries respectively and signed by the members of the county board. Returns under this subsection shall be considered unofficial for five (5) days. The county board shall submit the unofficial returns to the Secretary of the Commonwealth by five o'clock P. M. on the Tuesday following the election. The submission shall be as directed by the secretary for public office which appears on the ballot in every election district in this Commonwealth or for a ballot question which appears on the ballot in every election district in this Commonwealth. At the expiration of five (5) days after the completion of the computation of votes, in case no petition for a recount or recanvass has been filed in accordance with the provisions of this act, or upon the completion of the recount or recanvass if a petition therefor has been filed within five (5) days after the completion of the computation of votes, the county board shall certify the returns so computed in said county in the manner required by this act, unless upon appeals taken from any decision, the court of common pleas shall have directed any returns to be revised, or unless in case of a recount, errors in the said returns shall have been found, in which case said returns shall be revised, corrected and certified accordingly. The county board shall thereupon, in the case of elections, issue certificates of election to the successful candidates for all county, city, borough, township, ward, school district, poor district and election offices, and local party offices to be filled by the votes of the electors of said county, or of any part thereof. Certification of returns shall be a ministerial, nondiscretionary duty of the county board, and of each individual member thereof, and failure to do so by the third Monday after the election may result in the Secretary of the Commonwealth filing an action for a writ of mandamus in the Commonwealth Court of this state to compel certification. Any eligible voter in the state who voted in the election to be certified or candidate for the office involved in the election to be certified may also bring a writ of mandamus to compel certification.



Revise [25 P.S. § 2642\(k\)](#) as follows:

(k) To receive from district election officers the returns of all primaries and elections, to canvass and compute the same, and to certify, no later than the third **Monday** following the primary or election, the results thereof, **to consist solely of the votes cast for each candidate**, to the Secretary of the Commonwealth, as may be provided by law, and to such other authorities as may be provided by law. The certification shall include the number of votes received in each election district by each candidate for the General Assembly.

4. Provide a deadline by which the Secretary must certify results following the county canvass

Problem:

Under current law, the Secretary of the Commonwealth must certify election results following the county canvass “forthwith.” [25 P.S. § 3159](#). The discretion given to the Secretary could result in Pennsylvania’s failure to certify a presidential election by the ECRA’s certification deadline.

Recommendations:

Require the Secretary of the Commonwealth to certify election results by the fourth Thursday after Election Day (E+23).

Suggested language:

Revise [25 P.S. § 3159](#) as follows:

Upon receiving the certified returns of any primary or election from the various county boards, the Secretary of the Commonwealth shall forthwith proceed to tabulate, compute and canvass the votes cast for all candidates enumerated in section 1408,¹ and upon all questions voted for by the electors of the State at large, and shall



thereupon certify and file in his office the tabulation thereof no later than the fourth Thursday after Election Day.