

# State Voter Identification Requirements: Analysis, Legal Issues, and Policy Considerations

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## Summary

About 60% of U.S. voters live in the 32 states that require a voter at a polling place to produce an identification document (ID) before casting a ballot. Among those states, 19 permit voters without ID to cast a ballot through alternative means, such as signing an affidavit; 13 strictly enforce the ID requirement. The other 18 states and the District of Columbia have a range of nondocument requirements instead.

Over the last two decades, the number of states requiring voter IDs has tripled. The stringency of those requirements is controversial. States vary substantially in the range of IDs accepted, the information they must contain, and the ease with which a voter can procure an ID. Although all states requiring voter ID accept a local driver's license, no two states have the same overall requirements. Among states with voter ID laws, 18 require photographic identification (photo ID), while 14 permit a *nonphoto ID*. In addition, eight states require ID for voters casting absentee or mail-in ballots.

Several states enacted voter ID laws that have been struck down by courts or are not yet in effect. Recent congresses have seen a number of bills with voter ID provisions, including H.R. 885, H.R. 2867, H.R. 3277, H.R. 3364, H.R. 5557, S. 1659, and S. 1912 in the 114<sup>th</sup> Congress. State legislatures also continue to consider the issue.

Supporters of the more stringent requirements often emphasize the need to prevent voter fraud, while opponents emphasize the need to avoid disenfranchising legitimate voters who do not have ready access to an accepted ID. Polling data suggest that most voters and most local election officials support a voter ID requirement but that many are also concerned about the risk of disenfranchisement. Both voter fraud and disenfranchisement pose potential risks to the integrity of the electoral process, but the policy debate is being conducted in the absence of a consensus about the evidence pertaining to those risks, with available studies producing a broad range of results.

As with the 2014 election, leading up to the November 8, 2016, presidential election, state voter photo ID laws have been challenged under the Fourteenth Amendment to the U.S. Constitution, Section 2 of the Voting Rights Act (VRA), and state constitutional provisions. Such challenges have drawn attention in view of a 2008 U.S. Supreme Court ruling that upheld the constitutionality under the Fourteenth Amendment of a voter photo ID law, and because some suits have been brought under Section 2 of the VRA, which in the past, has generally been invoked in the context of redistricting. As the case law challenging voter photo ID laws under Section 2 of the VRA is just beginning to develop, it ultimately may be considered by the U.S. Supreme Court.

Election administration is complex, and changes in voter ID requirements may affect elections in unanticipated ways, such as a need for more provisional ballots, increased waiting times at polling places, and misapplication of the rules by pollworkers. The longer that election officials have to implement changes to voting procedures, the lower the risk of unintended and potentially harmful consequences may be.

The impact of state voter ID laws is likely to continue to be a topic of high interest beyond November 2016. It seems likely that state legislators will continue to consider such legislation in the future. The 2016 election may provide useful data on the implementation and performance of voter ID laws, which Congress may choose to examine, and which may lead to greater consensus about the benefits and disadvantages of voter identification requirements.

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## Introduction and Overview

More than half the states require a voter to provide a specified identification document (ID) to cast a ballot at the polling place, and a few extend the requirement to absentee or mail-in voting. Many states require an ID with a photograph of the voter (photo ID). Some require a document that does not need to include such a photograph (nonphoto ID). Others do not require any type of ID to vote, but a voter may be asked to provide certain information to verify what is contained in the registration record or otherwise confirm his or her identity, such as stating an address or birth date or providing a signature.

Voter identification requirements across the states vary in flexibility, in the types of documents allowed, in exceptions made to the requirements, and in the recourse available to a voter who cannot comply with the ID requirement at the polls. Photo ID requirements in particular have been a major issue of policy debate in recent years, but for both photo and nonphoto ID, the range of IDs accepted and how strictly the state enforces the requirement have also been sources of controversy. Debates over such requirements are typically complex and can be contentious.

This report provides an updated overview of state requirements for voters to present some form of ID before casting a ballot in a federal election.<sup>1</sup> The report also discusses the origins of voter ID, relevant federal legislative action in the 114<sup>th</sup> Congress, and selected legal and policy issues related to state voter ID laws. The scope is limited to identification requirements for voting; the report does not address voter registration requirements.

## Status of Voter ID Requirements in the States

Thirty-two states require voters to show an ID to cast a ballot at a polling place. Nine of those permit no alternatives to photo IDs. Another 9 states require a voter to show a photo ID, if available, but also permit means of identification other than an ID. Examples of such alternatives include signing an affidavit and permitting the voter to cast a provisional ballot, with the election office confirming identity subsequently by matching information or a signature provided by the voter to what the office has on file (see **Table A-1**).

Fourteen states require a voter to present an ID but accept documents that do not include a photo, such as a voter registration card, current utility bill, hunting or fishing license, bank statement, paycheck, tribal ID, Social Security card, or other approved document (see **Table A-2**).

See “Differences in Voter Identification Requirements among the States” for further discussion of requirements among the states.

## The Help America Vote Act Identification Requirement and the Origins of Voter Photo ID

A number of notable developments are relevant to the increased attention to voter identification in policy debates during the past 15 years. Requirements for voters to present an ID have reportedly been in force in some states since at least the 1950s.<sup>2</sup> By the year 2000, about a dozen states had

<sup>1</sup> The report was previously updated in November 2014. Voter ID requirements in some states have been subject to litigation that is unresolved as of the date of this report. This update does not attempt to provide a complete summary of such litigation or to cover all policy matters that might be relevant. The authors can provide updates and other information to congressional offices upon request.

<sup>2</sup> National Conference of State Legislatures, “History of Voter ID,” April 18, 2016, <http://www.ncsl.org/research/> (continued...)

voter ID requirements.<sup>3</sup> After the 2000 election, numerous studies and reports assessed the nation's voting process, or aspects of it, and made policy recommendations. Perhaps the best known study was issued in August 2001 by the National Commission on Federal Election Reform, often referred to as the "Carter-Ford Commission." The study was sponsored by the Miller Center of Public Affairs at the University of Virginia and The Century Foundation, and it was co-chaired by former Presidents Gerald R. Ford and Jimmy Carter.<sup>4</sup> The report noted that states should work to improve "verification of voter identification at the polling place"<sup>5</sup> and recommended that they

require those who are registering to vote and those who are casting their ballot to provide some form of official identification, such as a photo ID issued by a government agency (e.g., a driver's license). A photo ID is already required in many other transactions, such as check-cashing and using airline tickets. These Commissioners point out that those who register and vote should expect to identify themselves. If they do not have photo identification then they should be issued such cards from the government or have available alternative forms of official ID. They believe this burden is reasonable, that voters will understand it, and that most democratic nations recognize this act as a valid means of protecting the sanctity of the franchise.<sup>6</sup>

Many of the report's recommendations were incorporated in the Help America Vote Act (HAVA, P.L. 107-252) which was enacted in October 2002.<sup>7</sup> Title III of HAVA includes requirements for states on voting systems, voter information, provisional voting, and voter registration. Since 2006, states have been required to maintain a single, computerized list of all registered voters that every election official in the state can access.<sup>8</sup>

Title III also includes a limited voter identification requirement. An individual who registers to vote by mail and has not previously voted in a federal election in the jurisdiction must provide a current, valid photo ID *or* a copy of a current utility bill, bank statement, government check, paycheck, or other government document with the voter's name and address, whether voting in person or by mail.<sup>9</sup> The requirement does not apply to a voter who registers under the National Voter Registration Act of 1993 (NVRA, P.L. 103-31, also known as the "motor-voter" law),<sup>10</sup> and submits with the registration application one of the required identifications, or who provides a driver's license number or the last four digits of the voter's Social Security number that matches an existing state record with the same number, name, and date of birth as provided in the registration. A voter who does not provide required documentation may submit a provisional

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[elections-and-campaigns/voter-id-history.aspx](http://www.elections-and-campaigns/voter-id-history.aspx).

<sup>3</sup> Ibid.; Commission on Federal Election Reform, "Building Confidence in U.S. Elections," September 2005, [http://www1.american.edu/ia/cfer/report/full\\_report.pdf](http://www1.american.edu/ia/cfer/report/full_report.pdf).

<sup>4</sup> The National Commission on Federal Election Reform, *To Assure Pride and Confidence in the Electoral Process*, August 2001, at [http://web1.millercenter.org/commissions/comm\\_2001.pdf](http://web1.millercenter.org/commissions/comm_2001.pdf).

<sup>5</sup> Ibid., p. 14.

<sup>6</sup> Ibid., p. 31.

<sup>7</sup> HAVA is codified at 52 U.S.C. §10101 note *et seq.*

<sup>8</sup> §303. Under the requirement states must maintain a "single, uniform, official, centralized, interactive computerized statewide voter registration list" that contains the name and registration information of every registered voter in the state and to which every election official, including local officials, may obtain "immediate electronic access to the information contained in the computerized list." The requirement does not apply to states that do not have voter registration. The only such state is North Dakota, where voters must provide a photo ID (see **Table A-1**).

<sup>9</sup> §303(b).

<sup>10</sup> NVRA is codified at 52 U.S.C. §20501 *et seq.*

ballot that is counted in accordance with state law if the appropriate election official determines that the voter is eligible.

Another provision in HAVA made clear that states are free to adopt more stringent election administration requirements than those imposed by the act:

The requirements established by this title are minimum requirements and nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title or any law described in section 906.<sup>11</sup>

Following passage of HAVA, states enacted laws to implement the act's identification requirement, and in some cases, more stringent requirements, leading to a doubling over the next few years in the number of states with voter ID requirements.<sup>12</sup>

After the 2004 election, another study was issued in September 2005 by the Commission on Federal Election Reform. Often referred to as the "Carter-Baker Commission," it was organized by the Center for Democracy and Election Management at American University and co-chaired by former President Carter and former Secretary of State James A. Baker, III. Its report repeated the recommendation of the Carter-Ford Commission for states to adopt an ID requirement for voters. Further, it recommended that states require a photo ID that meets requirements specified in Title II of the REAL ID Act of 2005 (P.L. 109-13), and that states provide IDs with no charge to voters without them.<sup>13</sup> However, some members of the commission considered that recommendation "troublesome," for reasons similar to the concerns of some observers about stringent photo ID requirements discussed in the section on "Implementation Issues and Policy Considerations."<sup>14</sup>

Some attempts have been made to enact federal photo ID requirements. A notable bill from the 109<sup>th</sup> Congress, H.R. 4844, passed the House of Representatives in September 2006. It would have required photo ID and proof of citizenship to vote in federal elections. It would also have required that voters who cast a provisional ballot because they did not have the required ID present an approved ID within 48 hours for the ballot to be counted. The bill included an exception for military and overseas voters. It would have required states to provide photo IDs to qualified voters who did not have them, and to provide them to indigent voters at no cost. It would have authorized appropriations to cover the costs of providing such IDs to indigent voters. The bill was not taken up by the Senate before the 109<sup>th</sup> Congress adjourned, but several states have adopted similar requirements (see **Table A-1**).

<sup>11</sup> §304. The statutes referred to in §906 are the Voting Rights Act of 1965, the Voting Accessibility for the Elderly and Handicapped Act, the Uniformed and Overseas Citizens Absentee Voting Act, the National Voter Registration Act of 1993, the Americans with Disabilities Act of 1990, and the Rehabilitation Act of 1973.

<sup>12</sup> Commission on Federal Election Reform, "Building Confidence in U.S. Elections." According to this source, 24 states had voter ID requirements in 2005.

<sup>13</sup> Ibid. Title II of the act (49 U.S.C. §30301 note) sets out requirements for acceptance by the federal government of state driver's licenses and IDs. The requirements include both information (name, photo, date of birth, gender, ID number, residence address) and features (security, machine readability) to be present on the ID, and standards for minimum information to be provided to obtain the ID (a photo ID or nonphoto ID with full legal name and date of birth, documentation of date of birth, proof of a social security account number or verification of ineligibility, and documentation showing name and residence address).

<sup>14</sup> Three of the 20 members dissented (ibid.).

## Public Opinion on Voter ID Requirements

Much of the public discussion about voter ID focuses on how to balance the goals of preventing voter fraud and protecting voter rights (see “Impacts on Turnout and Voter Fraud”). Public opinion surveys over the past decade have consistently found significant majority support for requiring a photo ID to vote. The wording of the questions has varied, with some surveys providing more context about the issues than others. Although all of the surveys described broad categories of ID, several specified that they be “valid,” “official,” or “government” documents. Some points from the surveys relevant to this report are summarized below:

- According to one study that compared results from 19 polls between 2006 and 2014, overall support for voter ID has decreased somewhat, from more than 80% in 2006 to about 75% in 2014.<sup>15</sup>
- In a 2012 survey by the Pew Research Center, respondents were asked if they possessed the needed identification, and 98% said they did.<sup>16</sup> Other studies, however, have found a broader range, from 80% to 95%.<sup>17</sup>
- A *Washington Post* poll from 2012 asked whether voter fraud was a problem in presidential elections.<sup>18</sup> About half of respondents said they believed it to be a major problem, one-third considered it a minor problem, and about one in six said it was not a problem.
- The same poll asked whether voter suppression—described as eligible voters taken off registration lists or denied the right to vote—was a problem in presidential elections. About 40% of respondents believed it to be a major problem, one-third believed it a minor problem, and 20% believed it not to be a problem.
- One question from that poll joined those two concepts by asking which was more of a concern to the respondent, the potential for vote fraud or the potential that eligible voters could be denied the right to vote. The response was about evenly split, with a few percent more stating they thought vote fraud was more of a concern.

It is not clear to what extent respondents in any of the polls were aware of evidence on the degree to which voter fraud occurs; nor is it possible to know how such information would have affected their opinions.

No information was found in the surveys about how voters respond to the different specific kinds of photo ID that different states permit (e.g., a driver’s license, an employee ID card, a passport). These and similar policy concerns remain factors in the ongoing debate about whether obtaining required ID presents an undue hardship for some who wish to vote, or whether voter IDs are

<sup>15</sup> Paul Gronke et al., “Voter ID Laws: A View from the Public,” Research Paper No. 2015-13 (Massachusetts Institute of Technology, Political Science Department, 2015), [http://papers.ssrn.com/sol3/Papers.cfm?abstract\\_id=2594290](http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2594290). According to this study, the decrease can be accounted for by a drop in average support by Democrats from 75% in 2006 to 55% in 2014, with support by Republicans remaining near 90% throughout.

<sup>16</sup> Pew Research Center for the People & the Press, “Broad Support for Photo ID Voting Requirements,” October 11, 2012, <http://www.people-press.org/2012/10/11/broad-support-for-photo-id-voting-requirements/>.

<sup>17</sup> See “Obtaining an ID.”

<sup>18</sup> Michael Brandon and Jon Cohen, “Poll: Concerns About Voter Fraud Spur Broad Support for Voter ID Laws,” *The Washington Post*, August 11, 2012, [https://www.washingtonpost.com/politics/poll-concerns-about-voter-fraud-spur-broad-support-for-voter-id-laws/2012/08/11/40db3aba-e2fb-11e1-ae7f-d2a13e249eb2\\_story.html](https://www.washingtonpost.com/politics/poll-concerns-about-voter-fraud-spur-broad-support-for-voter-id-laws/2012/08/11/40db3aba-e2fb-11e1-ae7f-d2a13e249eb2_story.html).



essential, despite any such hardships, to prevent voter fraud (see “Implementation Issues and Policy Considerations”).

## Voter ID Legislation in the 114<sup>th</sup> Congress

Several bills introduced in the 114<sup>th</sup> Congress contain provisions pertaining to voter ID. Some of those bills contain provisions would promote or protect voter ID requirements, while provisions in others would modify, restrict, or eliminate the use of such requirements.

- H.R. 885 would shield voter ID requirements from some challenges. It would amend Section 2 of the Voting Rights Act (VRA) relating to the requirement for federal courts to block procedures that deny or abridge voting rights. It would expand the kinds of violations that would trigger such actions by the courts, but it would exclude voter photo ID requirements from the list of violations under the section.
- H.R. 2867 and S. 1659 would restrict the use of voter ID. It would amend the VRA to require preclearance under Section 4 of state changes to voter ID requirements that would make them more stringent than either those required of first-time voters under HAVA or, for voter registration, those in effect in the state at the time of enactment of the bill.
- H.R. 3277 would eliminate voter ID requirements. It would amend HAVA to prohibit election officials from requiring photo ID for registering to vote or for voting.
- H.R. 3364 would not directly prohibit voter ID requirements but would require states to provide an alternative. It would amend HAVA to permit a voter—other than a first-time voter who registered by mail—to meet an identification requirement for voting by signing a sworn statement attesting to his or her identity. The bill would require states to make preprinted statements available to absentee voters and at the polls, and it would prohibit a state from requiring a voter who presents the form to be required to vote a provisional ballot. Similar proposals for first-time voters were debated in Congress when HAVA was being considered.<sup>19</sup> Several states that do not require voter ID currently require an affidavit or signature by a voter before the voter can cast a ballot.<sup>20</sup>
- H.R. 5557 would restrict voter ID requirements. It would amend HAVA and NVRA to prohibit requiring a voter ID that has an associated cost.
- S. 1912 would modify state voter ID requirements. The bill stipulates that states or jurisdictions with such requirements shall accept a tribal identification card as valid for that purpose.

As of June 2016, none of those bills had received further consideration by the committees to which they were referred. A discharge petition was filed that month for H.R. 2867.

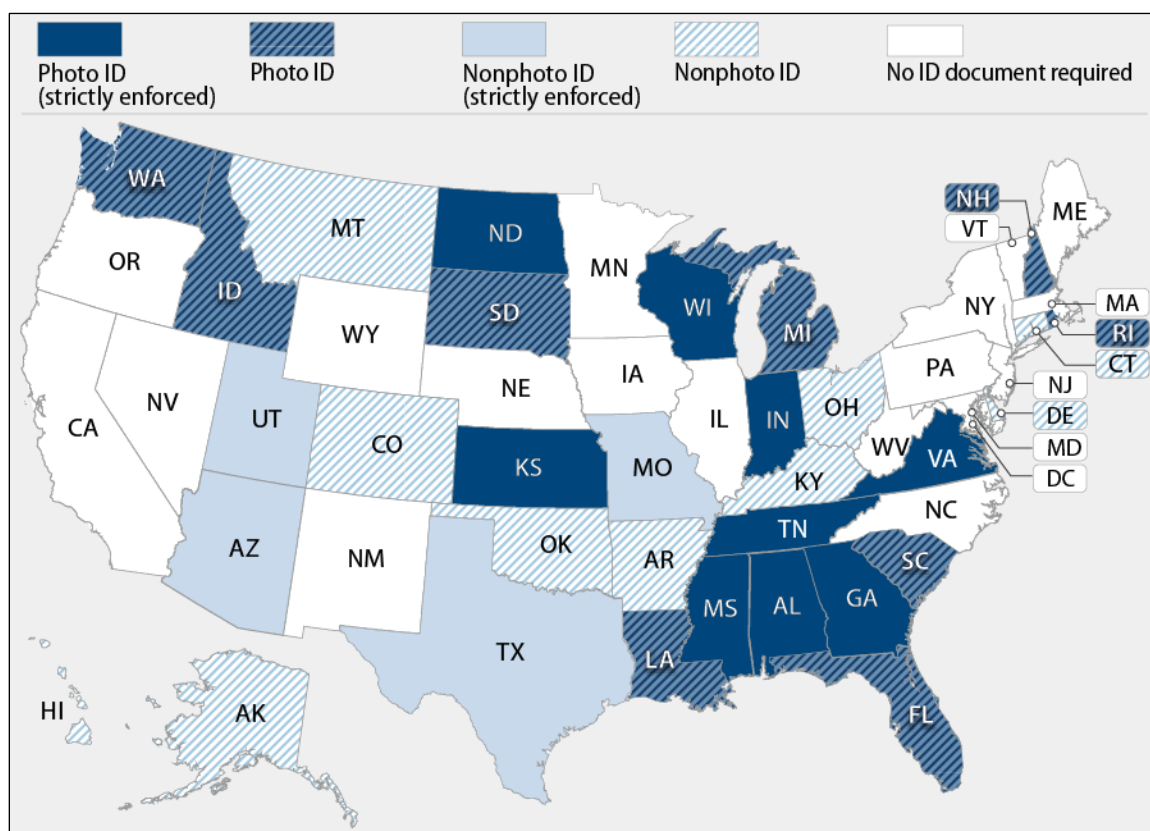
<sup>19</sup> See, for example, Senate debate, *Congressional Record*, vol. 148, No. 18 (February 27, 2002), pp. S1223-S1232.

<sup>20</sup> See, for example, National Conference of State Legislatures, “Voter Verification without ID Documents,” May 12, 2016, <http://www.ncsl.org/research/elections-and-campaigns/voter-verification-without-id-documents.aspx>.

## Differences in Voter Identification Requirements among the States

As with many aspects of election administration, states vary widely with respect to verifying voter identity. Some require photo ID, others nonphoto ID, and yet others nondocument identification. Some states with ID requirements accept a broad range of documents, while others permit only a narrow range. Some states permit voters without ID to confirm their identity through another means, while others do not.

**Figure 1. Voter Identification Requirements in the States**



**Sources:** CRS figure based on analysis of information from the following sources: Government Accountability Office, "Elections: State Laws Addressing Voter Registration and Voting on or Before Election Day," GAO-13-90R, (October 4, 2012), <http://www.gao.gov/assets/650/649203.pdf>; Government Accountability Office, "Elections: Issues Related to State Voter Identification Laws," GAO-14-634, (September 19, 2014), <http://www.gao.gov/products/GAO-14-634>; Wendy Underhill, "Voter Identification Requirements | Voter ID Laws," *National Conference of State Legislatures*, April 11, 2016, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Laws%20in%20Effect>; state election-office websites; state election statutes.

**Note:** "Strictly enforced" means that, with specified exceptions (see **Appendix**), a voter who does not present the required ID at the polling place either cannot vote or must take action after leaving the polling place to verify his or her identity in order for the ballot to be counted. The figure depicts state voter ID requirements as of the date of this report. Ongoing litigation in some states may lead to changes in requirements that may not be reflected in the figure. See text.

As shown in **Figure 1** and the two tables in the **Appendix**, 32 states require a voter to show ID before voting at a polling place.<sup>21</sup> The other 18 states and the District of Columbia do not require a voter to provide any ID to vote—they have a range of nondocument requirements instead.<sup>22</sup>

**Figure 1** depicts state ID requirements as organized into five categories, based on whether the state requires a document ID, whether an ID must have the voter's photograph, and whether the ID requirement is strictly enforced. **Table A-1** describes the specific requirements for photo ID states, and **Table A-2** for states requiring an ID that need not be photographic.<sup>23</sup>

The differences among requirements in the states are sufficiently nuanced that observers may reasonably differ in characterizing a state's requirements as strictly enforced or not. For purposes of this report, whether an ID requirement is considered strictly enforced is based on interpretation of the requirement as described in state law or available guidance. In a state with a strictly enforced requirement, a voter who does not present the required ID at the polling place—with certain exceptions that vary among the states—either cannot cast a ballot at all or must cast a provisional ballot and take action after leaving the polling place to verify his or her identity in order for the ballot to be counted.<sup>24</sup> By those criteria,

- 9 states have a strictly enforced photo ID requirement (Alabama, Georgia, Indiana, Kansas, Mississippi, North Dakota, Tennessee, Virginia, and Wisconsin),<sup>25</sup> and
- 4 states have a strictly enforced nonphoto ID requirement (Arizona, Missouri, Texas,<sup>26</sup> and Utah).

<sup>21</sup> Interpretation of a state's requirement may not always be clear-cut. For example, the Kansas requirement does not include an alternative to photo ID for most voters, but it exempts members of the military and their dependents, people with religious objections to being photographed, and, for absentee voting, voters with permanent disabilities (State of Kansas, Office of the Secretary of State, "Election Standards: Chapter II. Election Administration," July 7, 2014, [http://www.sos.ks.gov/forms/elections/election\\_standards/ChapII-ElecAdmin.pdf](http://www.sos.ks.gov/forms/elections/election_standards/ChapII-ElecAdmin.pdf)). Delaware requires a photo or nonphoto ID, but a voter without one can cast a regular ballot after signing an affidavit affirming the voter's identity (Delaware State Election Commissioner, "Voting in Delaware," September 19, 2012, <http://elections.delaware.gov/pubs/Voting%20in%20Delaware.pdf>).

<sup>22</sup> The specific requirements for the states that do not require an ID from voters are not presented in this report. For more information on the requirements of those states, see National Conference of State Legislatures, "Voter Verification without ID Documents."

<sup>23</sup> Information presented in the figure and tables are based on CRS analysis of requirements as described in the following sources: Government Accountability Office, "Elections: State Laws Addressing Voter Registration and Voting on or Before Election Day," GAO-13-90R, (October 4, 2012), <http://www.gao.gov/assets/650/649203.pdf>; Government Accountability Office, "Elections: Issues Related to State Voter Identification Laws," GAO-14-634, (September 19, 2014), <http://www.gao.gov/products/GAO-14-634>; Wendy Underhill, "Voter Identification Requirements | Voter ID Laws," *National Conference of State Legislatures*, April 11, 2016, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Laws%20in%20Effect>; requirements as described on state election-office websites; wording of provisions in state election statutes. Where differences in information in those sources were identified, the state sources were considered to be the most accurate for purposes of this analysis.

<sup>24</sup> In 11 of the 13 states with a strictly enforced requirement, that involves presenting the required information subsequently to election officials, prior to a specified deadline. North Dakota, which does not have a voter registration requirement and is therefore exempt from HAVA's provisional ballot requirement (52 U.S.C. §21082), provides no such option. A voter who does not bring an approved ID to the polling place cannot cast a ballot. That is also the case in Missouri, except if two election officials from different parties attest that they know the voter.

<sup>25</sup> All but two of those states (North Dakota and Virginia) were listed by the Department of Homeland Security as being in compliance with the REAL ID Act in June 2016 (Department of Homeland Security, "Current Status of States/Territories," June 16, 2016, <https://www.dhs.gov/current-status-states-territories>).

<sup>26</sup> Texas is a strictly enforced ID state that requires a photo ID if available. It is categorized in this report as a nonphoto ID state because any voter without a photo ID can vote a regular ballot upon presentation of an accepted nonphoto ID (continued...)

A voter without an ID is permitted other means of identification in

- 9 other states requiring photo ID (Florida, Idaho, Louisiana, Michigan, New Hampshire, Rhode Island, South Carolina, South Dakota, and Washington),<sup>27</sup> and the
- 10 others requiring nonphoto ID (Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Kentucky, Montana, Ohio,<sup>28</sup> and Oklahoma).

Examples of such alternative means of identification include signing an affidavit or providing a nonphoto ID. In some states voters may cast a provisional ballot, and the election office will attempt to confirm identity subsequently by matching information or a signature that is provided by the voter against the information that the office has on file.

Georgia and Indiana were the first states to enact strictly enforced photo ID requirements, in 2003 and 2005, respectively. The most recent such requirement is that of North Dakota, enacted in 2015.

Oregon and Washington conduct elections entirely by mail. In these two states, election officials mail ballots to all registered voters, who are not required to provide IDs when submitting those ballots. Both states also permit voters to cast a ballot in person during a designated voting period that ends on Election Day. Washington requires either a photo ID or signature declaration for in-person voting. Oregon uses signature verification for both mail-in and in-person ballots.<sup>29</sup>

Some states in the “strictly enforced” category also provide exceptions or other recourse to a restricted group of voters. For example, Kansas permits voters with religious objection against being photographed to sign a form declaring the objection either in advance or at the polling place.<sup>30</sup> Alabama and Missouri permit voters without IDs to cast regular ballots if two election officials at the polling place sign an affidavit attesting to the voter’s identity and eligibility.<sup>31</sup>

The 19 states with ID requirements not categorized as strictly enforced permit ballots to be counted for most or all voters who do not have ID without the need for them to take action after leaving the polling place. For example, in Florida, a voter without an ID must cast a provisional

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(...continued)

and signing of a declaration describing a reasonable impediment to obtaining a photo ID.

<sup>27</sup> North Carolina had such a requirement and has appealed a July 2016 court order overturning it. According to the state elections board, “Barring a different outcome on appeal, photo ID will not be required in the upcoming general election” (North Carolina State Board of Elections, “Voter ID Requirements,” 2016, <http://ncsbe2.azurewebsites.net/Voter-Registration/Voter-Id-Req>).

<sup>28</sup> Some observers list Ohio as having a strict voter ID requirements (see, for example, Underhill, “Voter Identification Requirements”). However, the requirement is characterized as not strictly enforced in this report because a voter without ID can cast a regular ballot by providing the number of the voter’s driver’s license or state ID or the last four digits of the Social Security number (State of Ohio, Office of the Secretary of State, “Frequently Asked Questions About Voter Identification,” 2016, <http://www.sos.state.oh.us/sos/elections/Voters/FAQ/ID.aspx>). Montana has a similar but not identical requirement (State of Montana, Office of the Secretary of State, “Montana Voter Information,” 2016, <http://sos.mt.gov/elections/Vote/index.aspx#vote>).

<sup>29</sup> State of Oregon, Office of the Secretary of State, “Laws, Rules, Restrictions and Statistics Governing the Elections Process,” 2016, <http://sos.oregon.gov/elections/Pages/laws-rules.aspx>. See 23 ORS §254.470(8).

<sup>30</sup> State of Kansas, Office of the Secretary of State, “Election Standards: Chapter II. Election Administration.”

<sup>31</sup> State of Alabama, Office of the Secretary of State, “Implementation of Photo Voter Identification Law,” October 22, 2013, [http://www.sos.alabama.gov/downloads/press/photo-voter-id-rules\\_FINAL.pdf](http://www.sos.alabama.gov/downloads/press/photo-voter-id-rules_FINAL.pdf); State of Missouri, Office of the Secretary of State, “How to Vote,” 2016, <http://www.sos.mo.gov/elections/goVoteMissouri/howtovote>. In Missouri, the two officials must be “supervising election judges, one from each major political party.” Alabama also provides that a voter can cast a provisional ballot and present an ID subsequently; Missouri does not.

ballot, but it will be counted if the signature on the ballot matches that in the registration record.<sup>32</sup> In South Carolina, a voter without a photo ID must cast a provisional ballot along with a declaration of a “reasonable impediment” to obtaining such an ID. The ballot will be counted unless someone presents proof to the election commission that the voter is lying about his or her identity or the impediment.<sup>33</sup>

Sixteen states with photo ID requirements had them in effect for the federal election in November 2014.<sup>34</sup> Among the other states that had enacted such requirements before the 2014 election, Wisconsin’s went into effect in 2015. Because North Dakota enacted its requirement in 2015, the 2016 federal election will be the first for which it will be in effect. The requirements enacted in Arkansas and Pennsylvania were rejected by state courts. See also the section on “Legal and Constitutional Issues Regarding Voter Photo ID Laws.”

In the **Appendix**, **Table A-1** describes the photo ID requirements for the 19 states with such a requirement. **Table A-2** describes requirements for the 14 states in which a voter is to provide some form of identification document that may be a photo or a nonphoto ID. About 60% of voters live in states with voter ID requirements—30% in photo ID states and 20% in nonphoto ID states—and about 30% live in the 13 states with strictly enforced voter ID requirements.<sup>35</sup>

Some patterns can be discerned from the tables, such as on the kinds of IDs accepted, application to mail-in and absentee voting, and the recourse voters have if they do not have an accepted ID. The discussion below illustrates both commonalities and the complexity of variation among state requirements.

## Commonly Accepted IDs

There is a common set of IDs accepted by most or all states. All states accept driver’s licenses or nondriver IDs issued by that state. All but one state (North Dakota) will accept a U.S. passport or other federal photo ID, although some states stipulate that a voter produce an ID showing the voter’s address (e.g., Arizona, Ohio), in which case a second ID might be necessary. Other IDs are specified as acceptable by several states. For example, tribal IDs are explicitly mentioned by 16 states. Overall, while the requirements in some states, such as Alabama and Mississippi, appear to be similar overall, no two states have clearly identical requirements.

## Range of Accepted IDs

The range of other authorized IDs listed in the tables for different states is broad. In addition to those discussed above, photo IDs specified as accepted by one or more states in **Table A-1** include employee, neighborhood association, public assistance, retirement center, and student IDs, credit and debit cards, weapon licenses, election identification certificates, certificates of

<sup>32</sup> Florida Department of State, Division of Elections, “Election Day Voting,” 2016, <http://dos.myflorida.com/elections/for-voters/voting/election-day-voting/#voting>.

<sup>33</sup> South Carolina State Election Commission, “Photo ID Requirements,” *SCVotes.org*, September 24, 2012, [http://www.scvotes.org/2012/09/24/photo\\_id\\_requirements](http://www.scvotes.org/2012/09/24/photo_id_requirements).

<sup>34</sup> Texas had a photo ID requirement in effect in 2014, but it has since been modified to permit use of a nonphoto ID (see “Texas” section, below).

<sup>35</sup> These figures are from calculations by CRS using information in **Table A-1** and **Table A-2** and population estimates from U.S. Census Bureau, “Voting and Registration in the Election of November 2014,” July 2015, <http://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-577.html>.



naturalization, government-issued medical cards, military, veterans, and other government IDs, and others as determined by election officials.

Additional IDs specified by one or more states in **Table A-2** include birth certificates, Bureau of Indian Affairs cards, certified court records with adoption or name change, hunting or fishing licenses, Indian census cards, leases or mortgages, local election authority IDs, naturalization documents, official election material mailed to voters, pilot's licenses, property tax statements, recorder's certificates, Social Security cards, tribal treaty cards, vehicle registration or insurance cards, verification of residency in group facility or medical confinement, voter confirmation notices, and voter registration cards, as well as documents required for some voters by Section 303(b) of HAVA—bank statement, government check, paycheck, utility bill, and other government document with the name and address of the voter (see “The Help America Vote Act Identification Requirement and the Origins of Voter Photo ID”).

Some states in **Table A-1** accept only a narrow range of photo IDs. The narrowest requirement is that of North Dakota, which accepts only a driver's license or photo ID issued by the North Dakota Department of Transportation or a photo ID issued by a tribal government. Twelve states permit state-issued IDs only from that state but also permit other classes of ID such as those issued by the federal government. Some states permit IDs to be expired, at least in some cases, while others require that they be current. All of the states with strictly enforced photo ID requirements issue free IDs to voters who qualify.<sup>36</sup> Several of the other photo ID states do as well. However, there may be other costs associated with obtaining a free voter ID (see “Obtaining an ID”).

## Application to Absentee and Mail-in Voting

The ID requirements for polling-place voters apply to those voting by absentee or mail-in ballots in eight states (Alabama, Alaska, Kansas, North Dakota, Ohio, South Dakota, Virginia, and Wisconsin). Three of those (Alaska, Ohio, and South Dakota) do not have strictly enforced voter ID requirements. Eight states with strictly enforced requirements do not extend them to absentee voters (Arizona, Georgia, Indiana, Mississippi, Missouri, Tennessee, Texas, and Utah). Three of those (Arizona, Georgia, and Utah) do not require voters to provide a reason when applying to vote absentee.

Among the states with voter ID requirements for absentee voting, notable exceptions occur in two: North Dakota permits absentee voters who do not have approved IDs to have their identities attested to by other qualified voters.<sup>37</sup> In Virginia, this ID requirement pertains only to those applying in person for an absentee ballot.<sup>38</sup> See also “Impacts on Turnout and Voter Fraud.”

<sup>36</sup> Typically, IDs are available without charge only to registered voters who do not already have an accepted voter ID such as a current local driver's license and who can provide specified documentation. Specific qualifications and requirements vary among the states.

<sup>37</sup> North Dakota Secretary of State, “ID Required for Voting in North Dakota,” 2016, <https://vip.sos.nd.gov/IDRequirements.aspx?ptlhPKID=103&ptlPKID=7>.

<sup>38</sup> The requirement does not extend to voters who send in their ballot applications by mail, fax, or email (State of Virginia, Department of Elections, “Absentee Voting,” 2016, <http://elections.virginia.gov/casting-a-ballot/absentee-voting/index.html>).

## Recourse for Voters without ID

In 8 of the 9 states with strictly enforced photo ID requirements, (Alabama, Georgia, Indiana, Kansas, Mississippi, Tennessee, Virginia, and Wisconsin), a voter who does not have the required photo ID may cast a provisional ballot that will be counted if the voter presents an accepted ID to election officials within a specified period after the election. North Dakota does not provide such an option.<sup>39</sup> Two states (Kansas and Virginia) specify that a voter can provide the ID via mail or other designated means rather than in person.

Five of the photo ID states where the requirement is not strictly enforced permit a voter without ID to cast a regular ballot after signing an affidavit (Idaho, Louisiana, Michigan, New Hampshire, and South Dakota). The other four permit the voter to cast a provisional ballot, which will be counted after confirmation of a signature match (Florida and Washington) or information provided in an affidavit (Rhode Island and South Carolina). The voter's eligibility may be challengeable or subject to subsequent investigation to verify eligibility.

Among the 14 nonphoto ID states in **Table A-2**, a voter who does not have an acceptable ID can establish his or her identity by some other means at the polling place in 10 (Alaska, Arkansas, Colorado, Connecticut, Delaware, Hawaii, Kentucky, Montana, Ohio, and Oklahoma). Arizona, Missouri, Texas, and Utah are the four states where the requirement is strictly enforced. In Arizona, Texas, and Utah, a voter who cannot produce a nonphoto ID from the list of approved documents may vote provisionally and provide the ID to county election officials within a specified time after the election.

Missouri's requirement does not contain such an option. A voter without ID can cast a ballot only if two supervising election judges at the polling place who are from different major political parties sign an affidavit attesting to the voter's identity. No data were available on the frequency of such attestations, but they would seem unlikely except for polling places in small, tight-knit communities where most voters would be known to the pollworkers. That suggests that among the nonphoto ID states, Missouri's requirements are most similar to those of North Dakota, which has a strictly enforced photo ID requirement.<sup>40</sup>

Among the 11 states with strictly enforced ID requirements permitting subsequent verification of identity, the time period within which verification must occur varies. It might be a specified day or number of days after the election—ranging from 2 to 10 days—or before a meeting of election officials or county certification of the election, or by a deadline to be provided to the voter at the polling place. Ohio permits a voter who cannot present identifying information at the polling place to present it within 7 days to the election office.

To further illustrate differences in state laws, in Louisiana, a voter without a “generally recognized” photo ID with name and signature must sign an affidavit and present other identifying information to an election official, and may be subject to challenge. In Indiana, a voter without a current or recently expired photo ID issued by the Indiana or federal government can cast a provisional ballot that will be counted if the voter appears at the county elections office by noon on the Monday after the election and either brings the required ID or signs an affidavit affirming indigence or religious objection to being photographed. In Ohio, an in-person or absentee voter must present an Ohio or federal government ID which is unexpired or other specified document dated within the last year, with ID or document containing the voter's name

<sup>39</sup> See footnote 24.

<sup>40</sup> Missouri's guidance to voters on ID requirements does not include an option for provisional voting if the voter does not present an accepted ID (State of Missouri, Office of the Secretary of State, “How to Vote”).

and address (except for a military ID); a voter without an accepted ID may cast a provisional ballot and provide an Ohio driver's license or nondriver ID number or the last four digits of the social security number, either as part of the provisional ballot information or within seven days after the election. For additional details and other examples, see the **Appendix**. For further discussion, see "Voters Who Do Not Have an Accepted ID."

## Legal and Constitutional Issues Regarding Voter Photo ID Laws<sup>41</sup>

State voter photo ID laws have been the subject of litigation. (While nonphoto ID laws have also been challenged, this section focuses on legal issues relating to the generally stricter voter photo ID laws.) These laws have been challenged under the Fourteenth Amendment to the U.S. Constitution, Section 2 of the Voting Rights Act (VRA),<sup>42</sup> and state constitutional provisions. Such challenges have drawn attention in view of a 2008 U.S. Supreme Court ruling, discussed below, that upheld the constitutionality of an Indiana voter photo ID law.

Challenges under Section 2 of the VRA are also notable because in the past, Section 2 has generally been invoked in the context of redistricting.<sup>43</sup> Section 2 of the VRA provides a right of action for private citizens or the government to challenge discriminatory voting practices or procedures. The law prohibits any voting qualification or practice by any state or political subdivision that results in the denial or abridgement of the right to vote based on race, color, or membership in a language minority.<sup>44</sup> The statute further provides that a violation is established if, based on the totality of circumstances, electoral processes are not equally open to participation by members of a racial or language minority group in that its members have less opportunity than other members of the electorate to elect representatives of their choice.<sup>45</sup>

Until the final weeks and months preceding the November 2014 election, due to ongoing appeals, the question of whether some state voter ID laws would be in effect was unknown. Likewise, leading up to the November 8, 2016, presidential election, there has been ongoing litigation challenging certain state laws.<sup>46</sup>

This section of the report analyzes challenges to voter photo ID laws under the Fourteenth Amendment and Section 2 of the VRA, specifically addressing, by way of example, recent court rulings in North Carolina and Texas; provides an overview of a challenge to a voter photo ID law

<sup>41</sup> This section of the report was written by (name redacted), Legislative Attorney.

<sup>42</sup> Section 2 is being invoked in some challenges to voter ID laws because following the 2013 Supreme Court ruling in *Shelby County*, which invalidated the coverage formula in Section 4 of the VRA, the preclearance requirements in Section 5 are inoperable. See *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). Therefore, recently enacted voter ID laws in those states and jurisdictions formerly required to obtain preclearance under Section 5 are no longer subject to this requirement. For further discussion, see CRS Report R42482, *Congressional Redistricting and the Voting Rights Act: A Legal Overview*, by (name redacted).

<sup>43</sup> See, e.g., *Bartlett v. Strickland*, 556 U.S. 1, 25-26 (2009) (holding that in a vote dilution challenge to a redistricting map under Section 2 of the VRA, a minority group must constitute more than 50% of the voting population in order to satisfy the requirement of geographical compactness sufficient to constitute a majority in a district); see also, Department of Justice, "Cases Raising Claims Under Section 2 of the Voting Rights Act," <https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0> (last visited June 28, 2016).

<sup>44</sup> 52 U.S.C. §§10301, 10303(f).

<sup>45</sup> 52 U.S.C. §10301(b).

<sup>46</sup> See e.g., Election Law at Moritz, "Major Pending Election Administration Cases," <http://moritzlaw.osu.edu/election-law/major-pending-cases/> (last visited June 28, 2016).



under a state constitutional provision; and finally, discusses some potential implications of these challenges.

## Fourteenth Amendment and Voting Rights Act

### Supreme Court Ruling

In a 2008 ruling, *Crawford v. Marion County Election Board*,<sup>47</sup> the Supreme Court upheld an Indiana voter photo ID law against a facial challenge under the equal protection clause of the Fourteenth Amendment. The Indiana law requires voters to present a photo identification card issued by the government.<sup>48</sup>

A majority of the Court in *Crawford* did not agree on a rationale for upholding the voter photo ID law. The lead opinion found that although the law imposes a “somewhat heavier burden” on a “limited number” of people, the severity of that burden is mitigated by the fact that eligible voters may cast provisional ballots that will ultimately be counted.<sup>49</sup> Moreover, the opinion reasoned, even if the burden cannot be justified as to a few voters, that fact would be insufficient to require the relief sought by the petitioners, which was to invalidate the voter photo ID law in *all* its applications.<sup>50</sup> In conclusion, the lead opinion determined that Indiana’s voter photo ID law imposed only a “limited burden” on voting rights that is justified by the state interest in protecting election integrity.<sup>51</sup> Notably, the opinion announced that if a law is nondiscriminatory, and supported by valid, neutral justifications, then such justifications are still relevant to consider even if one of the legislature’s motivations in enacting the law was to pursue partisan political interests.<sup>52</sup> Importantly, although the lead opinion in *Crawford* rejected a facial challenge, i.e., a case seeking to invalidate the statute in all its applications, to a voter photo ID law, it appears to have left open the possibility of “as applied” challenges to such laws if greater evidence of the burdens imposed on voters’ rights could be shown.<sup>53</sup>

### Lower Court Rulings

Litigation challenging a number of state voter photo ID laws has occurred, or is currently ongoing, in the lower courts.<sup>54</sup> By way of example, this report discusses recent court rulings in long running litigation evaluating two state laws. In the first ruling, a partially divided U.S. Court of Appeals for the Fourth Circuit invalidated North Carolina’s voter photo ID law, holding that it

<sup>47</sup> 553 U.S. 181 (2008). For further discussion of the *Crawford* decision, see CRS Report RS22882, *The Constitutionality of Requiring Photo Identification for Voting: An Analysis of Crawford v. Marion County Election Board*, by (name redacted) .

<sup>48</sup> 2005 Ind. Acts 109, codified at Indiana Code §3-11-8-25.1 (2016).

<sup>49</sup> *Crawford*, 553 U.S. at 199.

<sup>50</sup> See *ibid.* at 199-200.

<sup>51</sup> *Ibid.* at 203.

<sup>52</sup> See *ibid.* at 204.

<sup>53</sup> See *ibid.* at 202-203. “A facial challenge must fail where the statute has a ‘plainly legitimate sweep.’ When we consider only the statute’s broad application to all Indiana voters we conclude that it ‘imposes only a limited burden on voters’ rights.’ The ‘precise interests’ advanced by the State are therefore sufficient to defeat petitioners’ facial challenge to [the law].” *Ibid.* (internal citations omitted) (quoting *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008); *Burdick v. Takushi*, 504 U.S. 428, 439 (1992)).

<sup>54</sup> For an overview of pending cases, see e.g., Election Law at Moritz, “Major Pending Election Administration Cases,” <http://moritzlaw.osu.edu/election-law/major-pending-cases/> (last visited June 28, 1016).

was enacted with a racially discriminatory intent in violation of the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the VRA. In the second ruling, issuing a plurality opinion, a divided *en banc* panel of the U.S. Court of Appeals for the Fifth Circuit ruled that a Texas voter photo ID law has a discriminatory effect on minorities' voting rights in violation of Section 2 of the VRA. While not invalidating the Texas law, the court required that it be administered on November 8 with modifications. On the issue of whether the law was enacted with a discriminatory intent, however, in contrast to the Fourth Circuit ruling, the court remanded.

### *North Carolina*

In July 2016, a partially divided U.S. Court of Appeals for the Fourth Circuit (Fourth Circuit) invalidated North Carolina's voter photo ID requirement, along with other provisions of its election law.<sup>55</sup> In *North Carolina State Conference of the NAACP v. McCrory*,<sup>56</sup> the court held that the 2013 law was enacted with a racially discriminatory intent in violation of the Equal Protection Clause of the Fourteenth Amendment and Section 2 of the VRA.<sup>57</sup> Reversing and remanding a lower court ruling, the court enjoined implementation of the law.<sup>58</sup> On August 31, by a 4-4 vote with regard to the voter photo ID provision, the U.S. Supreme Court denied North Carolina's request for a stay of the appellate court ruling.<sup>59</sup> As a result, the law will not be in effect for the November 8 election.

As a threshold matter, the Fourth Circuit observed that, similar to laws that expressly discriminate on the basis of race, if a law is discriminatorily motivated, it is unconstitutional.<sup>60</sup> In determining whether discriminatory intent motivates a facially neutral law, the court interpreted Supreme Court precedent as requiring consideration of several factors, including first, the historical background in a case.<sup>61</sup> Here, the appellate court determined that the lower court clearly erred in finding minimal evidence of official discrimination in North Carolina since the 1980s, and instead identified evidence of attempts by the legislature "to suppress and dilute" African American voting rights.<sup>62</sup> Second, a court is required to consider the sequence of events leading to the challenge.<sup>63</sup> According to the court, the record of the case showed that immediately after a 2013 Supreme Court ruling that rendered the preclearance requirements of the VRA inoperable,<sup>64</sup> the North Carolina legislature substantially expanded an earlier photo ID bill and "rushed through ... the most restrictive voting legislation seen in North Carolina since enactment of the Voting Rights

<sup>55</sup> 2013 N.C. Sess. Laws 381, codified at N.C. Gen. Stat. §163-166.13 (2016). For further discussion of the ruling, see CRS Legal Sidebar WSLG1639, *Appellate Court Invalidates North Carolina Election Law, Including Voter Photo ID Requirement*, by (name redacted) .

<sup>56</sup> 831 F.3d 204 (4<sup>th</sup> Cir. 2016), stay denied by *North Carolina v. N.C. State Conf. of the NAACP*, 85 U.S.L.W. 3075 (U.S. Aug. 31, 2016).

<sup>57</sup> See *ibid.* at \*21.

<sup>58</sup> See *ibid.* at \*78-80.

<sup>59</sup> See *North Carolina v. N.C. State Conf. of the NAACP*, 85 U.S.L.W. 3075 (U.S. Aug. 31, 2016).

<sup>60</sup> See *N.C. State Conf. of the NAACP*, 831 F.3d at \*23 (citing *Washington v. Davis*, 426 U.S. 229, 241 (1976)).

<sup>61</sup> See *ibid.* at \*29 (citing *Village of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977)).

<sup>62</sup> *Ibid.* at \*31.

<sup>63</sup> See *ibid.* at \*40.

<sup>64</sup> See *Shelby County v. Holder*, 133 S. Ct. 2612 (2013) (invalidating the coverage formula in Section 4(b) of the VRA, and thereby rendering the Section 5 preclearance requirement inoperable). In North Carolina, 40 jurisdictions had been subject to preclearance. 28 C.F.R. pt. 51, app. For further discussion of *Shelby County*, see CRS Legal Sidebar WSLG574, *Supreme Court Strikes Key Provision of Voting Rights Act*, by (name redacted) .

Act of 1965.”<sup>65</sup> The court held that the lower court erred by not drawing “the obvious inference” of discriminatory intent from this sequence of events.<sup>66</sup> Third, Supreme Court precedent recognizes the relevance of legislative history.<sup>67</sup> In this case, the court determined it relevant that the legislature requested and utilized racial data, including a breakdown by race of DMV-issued ID ownership, absentee and early voting, and same-day registration, which showed that African Americans disproportionately use such procedures. When compared to the “unpersuasive non-racial explanations the State proffered for the specific choices it made,” the court considered this element of the legislative history probative.<sup>68</sup> Last, a court is instructed to consider whether the law impacts one race more than another.<sup>69</sup> The court found error in the lower court’s conclusion that the voting procedures eliminated by the law were simply “more convenient,” and “preferred” by African Americans.<sup>70</sup> African-American voters disproportionately use the voting procedures eliminated or reduced by the challenged law as a result of socioeconomic disparities, the court held, and such use is not borne from a simple “preference.”<sup>71</sup> The court concluded: “Registration and voting tools may be a simple ‘preference’ for many white North Carolinians, but for many African Americans, they are a necessity.”<sup>72</sup>

The court was also careful to note that its holding was not meant to suggest that any member of the North Carolina legislature “harbored racial hatred or animosity toward any minority group.”<sup>73</sup> The court concluded that the totality of the circumstances evidenced that the law was enacted to “entrench” the majority party’s control of the legislature, and even if enacted for such “partisan ends,” the court held, “targeting voters who, based on race, were unlikely to vote for the majority party ... constituted racial discrimination.”<sup>74</sup> Finally, the court held that the challenged provisions of the North Carolina law, including the voter photo ID requirement, were not tailored to achieve the stated justifications, and in several ways, were “solutions in search of a problem.”<sup>75</sup>

## Texas

Also in July 2016, issuing a plurality opinion, a divided *en banc* panel of the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) ruled that a Texas voter photo ID law<sup>76</sup> must be administered in such a manner to rectify a discriminatory effect on voters who do not have the required ID or are unable to obtain such ID reasonably. Affirming a lower court, in *Veasey v. Abbott*,<sup>77</sup> the plurality found that the law has a discriminatory effect on minorities’ voting rights and therefore violates Section 2 of the VRA.<sup>78</sup> While the court did not invalidate the law, it

<sup>65</sup> *N.C. State Conf. of the NAACP*, 831 F.3d at \*40.

<sup>66</sup> *Ibid.* at \*40-41.

<sup>67</sup> See *ibid.* at \*46.

<sup>68</sup> *Ibid.* at \*49.

<sup>69</sup> See *ibid.*

<sup>70</sup> *Ibid.* at \*56 (quoting *N.C. State Conf. of the NAACP v. McCrory*, 2016 U.S. Dist. LEXIS 55712, at \*170 (M.D.N.C. 2016)).

<sup>71</sup> *Ibid.* at \*56.

<sup>72</sup> *Ibid.* at \*56-57.

<sup>73</sup> *Ibid.* at \*57.

<sup>74</sup> *Ibid.* at \*58.

<sup>75</sup> *Ibid.* at \*70.

<sup>76</sup> 2011 Tex. Gen. Laws 619, codified at Tex. Elec. Code Ann. §63.0101 (2016).

<sup>77</sup> See *Veasey v. Abbott*, 830 F.3d 216 (5<sup>th</sup> Cir. 2016).

<sup>78</sup> See *ibid.* at \*121.

remanded for consideration by the district court of an appropriate remedy.<sup>79</sup> The court also held that the indirect cost on voters who were not born in Texas to obtain an ID was not the equivalent of a poll tax.<sup>80</sup> On the issue of whether the law was enacted with a discriminatory *intent*, however, in contrast to the Fourth Circuit ruling discussed above, the court reversed the lower court's judgment and remanded for the district court to consider in light of guidance that the appellate court provided.<sup>81</sup> In August, the district court entered an order approving a plan that, among other things, for the November 8 election, allows certain Texas voters without the required voter photo ID, and who cannot obtain such ID due to a reasonable impediment, to cast a ballot after completing a "reasonable impediment declaration."<sup>82</sup> Furthermore, in September, the district court ordered the State of Texas to insure that voter education materials accurately reflect the court's August order setting forth how the voter photo ID law is to be administered for the November 8 election.<sup>83</sup>

In *Veasey*, regarding the finding that the voter photo ID law has a discriminatory effect in violation of Section 2 of the VRA, the plurality opinion invoked Supreme Court precedent.<sup>84</sup> As required under such precedent, the opinion determined that the challengers showed not only that the law imposes a burden on minorities, but also that it interacts with social and historical conditions to cause an inequality in the opportunities of minority voters to elect preferred representatives.<sup>85</sup> The opinion approved of the lower court's analysis and resulting determination that (1) the law burdens Texans living in poverty, who are less likely to have, or to be able to procure, the requisite ID; (2) a disproportionate number of Texans living in poverty are African Americans and Hispanics; and (3) such minority voters are more likely to be living in poverty because they bear the socioeconomic effects of historical racial discrimination.<sup>86</sup> Further, the opinion determined that the district court thoroughly evaluated the totality of the circumstances, with each finding well supported, and that the State of Texas had failed to contest many of the factual findings.<sup>87</sup>

On September 23, the State of Texas filed a petition for writ of certiorari in the U.S. Supreme Court, arguing for a reversal of the Fifth Circuit's holding that the law has a discriminatory effect.<sup>88</sup> If the Court agrees to hear this case, a decision would be expected after November 8, and therefore would not affect the 2016 election.

<sup>79</sup> See *ibid.* at \*135-40.

<sup>80</sup> See *ibid.* at \*125-130.

<sup>81</sup> See *ibid.* The court encouraged the district court to determine the issue of discriminatory intent after the November 8, 2016 election and, notwithstanding when the determination is made, ordered the district court not to implement any remedy arising from the discriminatory intent claim until after the election.

<sup>82</sup> Order Regarding Agreed Interim Plan for Elections, *Veasey v. Abbott*, No. 2:13-cv-00193 Document 895 (S.D. Tex. 2016), <http://electionlawblog.org/wp-content/uploads/texas-id-order.pdf> (last visited October 18, 2016). "Voters who appear on the official list of registered voters and present a valid voter registration certificate, a certified birth certificate, a current utility bill, a bank statement, a government check, a paycheck, or any other government document that displays the voter's name and address and complete and sign a reasonable impediment declaration shall be permitted to vote using a regular ballot." *Ibid.* at 1-2.

<sup>83</sup> Order, *Veasey v. Abbott*, No. 2:13-cv-00193 (S.D. Tex. 2016), <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Veasey-OrderGrantingMotionToEnforce092016.pdf> (last visited Oct. 17, 2016).

<sup>84</sup> See *Veasey*, 830 F.3d at \*60 (citing *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986)).

<sup>85</sup> See *ibid.*

<sup>86</sup> See *ibid.* at \*118-19 (citing *Veasey v. Perry*, 71 F. Supp. 3d 627, 664 (S.D. Tex. 2014)).

<sup>87</sup> See *ibid.* at \*119.

<sup>88</sup> Pet. for Writ of Cert., *Veasey v. Abbott*, No. 16-393 (U.S. Sept. 20, 2016).

## State Constitutional Qualifications

Beyond challenges under the U.S. Constitution or federal law, challenges to voter photo ID laws may also arise under state constitutional provisions. For example, similar to certain other state constitutions, the Arkansas Constitution sets forth qualifications for voters.<sup>89</sup> Based on that constitutional provision, less than three weeks prior to the November 2014 election, the Arkansas Supreme Court invalidated a voter photo ID law.<sup>90</sup> According to the court, the framers of the constitutional provision intended that only the four listed voter qualifications be required, and nothing further. The court found that upholding the voter ID law would disenfranchise Arkansas voters, and negate the intent of the framers of the state constitution.<sup>91</sup>

## Implications

The question of whether voter photo ID laws comply with the U.S. Constitution, the VRA, and state constitutional provisions continues to unfold. Although the Supreme Court upheld the constitutionality of an Indiana voter photo ID law in 2008 against a facial challenge, as discussed above, some courts have found other state laws distinguishable or have evaluated such laws under the VRA or state constitutional provisions. Litigation in this area is ongoing, and it is unclear how various courts will rule.

Most notably, case law addressing the question of whether voter photo ID laws violate Section 2 of the VRA is just beginning to develop. In the past, litigation under Section 2 was generally invoked in the context of redistricting. Therefore, case law applying Section 2 to voter photo ID laws is evolving and ultimately, may be considered by the U.S. Supreme Court.

## Implementation Issues and Policy Considerations

Several issues may arise in the application of voter ID requirements. Among them are these:

- implementation problems, especially for new or modified requirements
- voter difficulties in obtaining IDs
- issues with recourse for voters with no ID
- effects on turnout and risk of fraud

## Implementation

Election administration changes have the potential to introduce a degree of uncertainty in the voting process simply because they involve new procedures. That is especially true in the first election for which they are implemented. Some states, such as Florida, Georgia, Indiana, and Michigan, have had photo ID requirements in effect for two or more presidential elections. In 8 others (Alabama, Mississippi, New Hampshire, North Dakota, Rhode Island, South Carolina, Virginia, and Wisconsin), the November 2016 election will mark the first time the current

<sup>89</sup> The Arkansas Constitution sets forth four qualifications for voters: (1) U.S. citizenship; (2) Arkansas residency; (3) at least 18 years of age; and (4) lawful registration to vote in the election. Ark. Const. Art. III, §1.

<sup>90</sup> See *Martin v. Kohls*, 2014 Ark. 427, 15 (2014).

<sup>91</sup> See *ibid.*

requirements will be in effect in a presidential election.<sup>92</sup> In addition, lawsuits that could affect voter ID requirements for that election have been filed in some states.<sup>93</sup>

The administration of federal elections by state and local jurisdictions is a complex, interconnected process, in which changes to any part may have both expected and unexpected effects, not only on what those changes affect directly, but on other parts of the process, and on individual voters, as well. Implementing such changes may reduce the resources available for other tasks before the election, or may have unforeseen effects that would require correction. It may therefore be advantageous for policymakers to provide as much time as possible for implementation, so that election officials, pollworkers, and voters have time to adjust.

Some changes, such as moving the location of an individual polling place, affect a limited number of voters. Others, such as changing voting systems or identification procedures, may affect all the voters in the state. Election officials may be required to educate the voting public about the changes and make the necessary adjustments to pollworker training and procedures before the election to ensure a smooth implementation on Election Day. Voters need to understand the changes and may need to undertake actions, such as obtaining an ID, to insure that they do not jeopardize their ability to cast a ballot.

Other issues that could arise because of new photo ID laws include the potential for long lines and the possibility that pollworkers could misapply the rules. Long lines may develop in high-turnout elections, such as presidential ones, if new check-in procedures require each voter to present an ID. Voters who are unaware of such new requirements and those who do not have an acceptable ID may cause delays and complications if they need to execute affidavit votes or cast provisional ballots.

Finally, there is the possibility that some pollworkers will not be sufficiently trained to know which IDs are acceptable (particularly in states that accept a range of federal, state, and other IDs), which voters, if any, are exempt from the requirement,<sup>94</sup> the procedures to be followed if a voter lacks the proper ID, and how to interpret an ID photograph, especially if the voter has changed in appearance in some way, such as hair color or facial hair. Pollworker training is one of several kinds of costs that state and local governments may incur in implementing voter ID requirements.<sup>95</sup>

Such considerations suggest that implementation of new or newly modified voter ID requirements could increase the risk of polling-place problems, but that such risks can be mitigated through administrative preparation, training of pollworkers, and timely education of voters. According to survey data, most local election officials believe that pollworker training and voter education can be important factors in preventing problems at the polling place, and many have said there is a need for improvement.<sup>96</sup> While no systematic studies were available for this report on the effects

<sup>92</sup> They may have been in effect, however, for other elections in some cases.

<sup>93</sup> See, for example, Brennan Center for Justice, "Election 2016 Newsletter: Voting Law Challenges Head to Court," May 3, 2016, <https://www.brennancenter.org/newsletter/election-2016-newsletter-voting-law-challenges-head-court-2016#voting>; Moritz College of Law, "Major Pending Cases," *The Ohio State University*, May 2016, <http://moritzlaw.osu.edu/election-law/major-pending-cases/?sort=topic&active=yes>. See also "Legal and Constitutional Issues Regarding Voter Photo ID Laws."

<sup>94</sup> In some states, indigent voters and those with a religious objection to being photographed are exempt from the photo ID requirement. For more information, see CRS Report R40515, *Legal Analysis of Religious Exemptions for Photo Identification Requirements*, by (name redacted)

<sup>95</sup> Karen Shanton and Wendy Underhill, "Costs of Voter Identification" (National Conference of State Legislatures, June 2014), [http://www.ncsl.org/documents/legismgt/elect/Voter\\_ID\\_Costs\\_June2014.pdf](http://www.ncsl.org/documents/legismgt/elect/Voter_ID_Costs_June2014.pdf).

<sup>96</sup> CRS Report R41667, *How Local Election Officials View Election Reform: Results of Three National Surveys*, by (continued...)



of changes in election procedures, examples can be found where problems are attributed to such changes.<sup>97</sup>

Even after implementation issues have been addressed, the wide variation in voter ID requirements among the states may create difficulties for voters who move to a different state. Census data suggest that 8-10% of the U.S. population relocates to another state approximately every five years.<sup>98</sup> In 2014, about 2.3% (7.3 million people) moved to a new state, with about 1.4% (4.4 million people) moving to a state with a different class of voter ID requirement (e.g., photo ID to nonphoto ID, no ID to photo ID).<sup>99</sup>

## Obtaining an ID

There is no universal voter ID that is used in the United States (including the voter registration card, which is mostly used to provide information for the voter rather than for identification).<sup>100</sup> Acceptable forms of identification differ by state and may be obtained from agencies or other entities that vary among the states.

Voters who possess one of the acceptable IDs need not take any action except to bring it with them to the polling place. However, it is also possible that a voter may possess an approved ID that does not match the information in the voter's registration record, for example because of a recent name change due to marriage or divorce, which would require the voter to rectify the discrepancy. Or the ID might be of a type that is accepted, such as a tribal ID, but does not have information that may be required under state law, such as an address and date of birth.<sup>101</sup>

In several studies published between 2007 and 2013 for five states, and one nationwide study from 2013, the percentage of registered voters with valid ID ranged from 80% to 95%.<sup>102</sup> Some of the studies found that the percentage of voters with IDs was lower for some minority groups or for voters without regular access to vehicular transportation.<sup>103</sup>

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(...continued)

(name redacted) and (name redacted) .

<sup>97</sup> See, for example, Thad E. Hall and R. Michael Alvarez, "Why Everything That Can Go Wrong Often Does: An Analysis of Election Administration Problems," 2003, [http://www.vote.caltech.edu/sites/default/files/vtp\\_wp10.pdf](http://www.vote.caltech.edu/sites/default/files/vtp_wp10.pdf); George Merritt and Katy Human, "Voting Problems Overwhelm City," *The Denver Post*, November 8, 2006, [http://www.denverpost.com/ci\\_4620304](http://www.denverpost.com/ci_4620304); Kate Taylor, "Chaos at New York City Polls Amid New Rules and Voting Machines," *The New York Times*, November 6, 2012, <http://www.nytimes.com/2012/11/07/nyregion/chaos-at-new-york-city-polls-amid-new-rules-and-voting-machines.html>.

<sup>98</sup> Bonny Berkner and Carol S. Faber, *Geographical Mobility, 1995 to 2000* (U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau, 2003), [http://als.peoriabulldogs.com/R85Content/media/pictures/sociology/documents/unit\\_01/geographical\\_mobility\\_1995\\_2000.pdf](http://als.peoriabulldogs.com/R85Content/media/pictures/sociology/documents/unit_01/geographical_mobility_1995_2000.pdf). The researchers found that 9.4% of the population moved to a different state between 1985 and 1990, and 8.4% between 1995 and 2000.

<sup>99</sup> These estimates are from calculations by CRS using information in **Table A-1** and **Table A-2** and 2014 migration data from U.S. Census Bureau, "State-to-State Migration Flows," September 11, 2015, <http://www.census.gov/hhes/migration/data/acs/state-to-state.html>.

<sup>100</sup> Some countries issue such ID cards, either specifically for voting, or in the form of a national identification card. For further discussion, see ACE Electoral Knowledge Network, "Encyclopaedia," 2013, <http://aceproject.org/ace-en>.

<sup>101</sup> See, for example, Mica Rosenberg, "Native Americans Move to Frontlines in Battle Over Voting Rights," *Reuters*, May 31, 2016, <http://www.reuters.com/article/us-usa-votingrights-nativeamericans-insi-idUSKCN0YM190>.

<sup>102</sup> Government Accountability Office, "Elections: Issues Related to State Voter Identification Laws." The lowest percentage, 80%, was voters with valid driver's licenses from the nationwide study. Interpretation of the results of the studies is subject to limitations arising from scope, methodology, and other factors as discussed in the report.

<sup>103</sup> *Ibid.*

In the 12 states with strictly enforced ID requirements, voters who do not have an acceptable ID must secure one in order to cast a ballot. All 9 states with strictly enforced photo ID requirements as well as some others provide free IDs to voters who qualify.

It is not only the kinds of IDs accepted that may affect a voter's ability to cast a ballot, but also the kinds of information required to obtain an accepted ID. The voter may need to obtain one or more other documents first—such as a birth certificate, government-issued ID, or proof of residence such as a current utility bill—to apply successfully for a voter ID.<sup>104</sup> The documents required vary among the states, may have associated costs, and may be difficult to obtain for some eligible voters.<sup>105</sup> Whether such costs and other factors, such as difficulty in obtaining supporting documents, place an inappropriate burden on some voters, especially those who are poor, elderly, or members of minority groups, has been a subject of debate for several years.<sup>106</sup>

## Voters Who Do Not Have an Accepted ID

In states with strictly enforced voter ID requirements, except Missouri and North Dakota, voters who do not bring an accepted ID to the polling place may cast a provisional ballot. Such voters need to present required documentation at the county election office within a specified time period for the provisional ballot to be counted. One study found that in two states, Kansas and Tennessee, in the 2012 election, fewer than one in a thousand voters cast a provisional ballot because of ID problems, with fewer than half of those being counted.<sup>107</sup> No information was available for this report on the application and impacts of that requirement in other states, however.

## Impacts on Turnout and Voter Fraud

The term *turnout* refers in this report to the number of voters or the proportion of the electorate that votes in a given election. Definitions of the term *voter fraud* vary.<sup>108</sup> Herein, the term comprises voter impersonation and illicit voter registration—namely, illegal activities that voter ID might potentially help to reduce. It does not include other electoral crimes such as vote buying.<sup>109</sup>

Whatever their individual views on voter ID or other voting requirements, most observers would probably agree on these two goals:

<sup>104</sup> See, for example, Sari Horwitz, “Getting a Photo ID so You Can Vote Is Easy. Unless You’re Poor, Black, Latino or Elderly,” *The Washington Post*, May 23, 2015, [https://www.washingtonpost.com/politics/courts\\_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972\\_story.html](https://www.washingtonpost.com/politics/courts_law/getting-a-photo-id-so-you-can-vote-is-easy-unless-youre-poor-black-latino-or-elderly/2016/05/23/8d5474ec-20f0-11e6-8690-f14ca9de2972_story.html).

<sup>105</sup> Government Accountability Office, “Elections: Issues Related to State Voter Identification Laws.” According to the report, costs of obtaining a birth certificate in states with strictly enforced photo ID requirements range from \$7 to \$22 but may be waived in some states. Costs may be higher in cases where supporting documents are difficult to obtain (see, for example, Horwitz, “Getting a Photo ID”; Rosenberg, “Native Americans Move to Frontlines in Battle Over Voting Rights”).

<sup>106</sup> See, for example, Krissah Thompson, “Study Finds Costs Associated with Voter IDs,” *The Washington Post*, July 18, 2012, [https://www.washingtonpost.com/politics/study-finds-costs-associated-with-voter-ids/2012/07/17/gJQAAlrcXsW\\_story.html](https://www.washingtonpost.com/politics/study-finds-costs-associated-with-voter-ids/2012/07/17/gJQAAlrcXsW_story.html).

<sup>107</sup> Government Accountability Office, “Elections: Issues Related to State Voter Identification Laws.”

<sup>108</sup> See, for example, Election Assistance Commission, “Election Crimes: An Initial Review and Recommendations for Future Study,” December 2006, [http://www.eac.gov/assets/1/workflow\\_staging/Page/57.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/57.PDF).

<sup>109</sup> See, for example, Federal Bureau of Investigation, “Election Crimes,” 2016, <https://www.fbi.gov/about-us/investigate/corruption/election-crimes>.



1. All eligible voters should have equal opportunity to cast a ballot.
2. All necessary steps should be taken to protect the election process from fraud, abuse, and error at any stage.

Both of those goals are arguably essential to ensuring the integrity of elections, but they are sometimes thought of as conflicting. On the one hand, it may be reasonable to suppose that the more focus is placed on providing access to the ballot box for all eligible voters, the greater the risk that people who do not meet the criteria for eligibility—for example by reason of noncitizenship, nonresidence, or criminal history—will be improperly included on the voter rolls, or succeed in voting despite not being on the rolls.

Also, once a voter is registered, it may be reasonable to suppose that the less stringent the identification requirements at the polling place, the greater the risk that someone might successfully impersonate a legitimately registered voter either at the polling place or on an absentee or mail-in ballot.<sup>110</sup> Voter ID laws would appear to be best suited to preventing voter impersonation rather than illicit registration. Some observers might argue, however, that voter ID requirements can serve as an additional line of defense against illicit or erroneous voter registration.

On the other hand, it may also be reasonable to suppose that the more focus is placed on preventing fraud and abuse, the greater the risk that people who do meet the fundamental criteria for eligibility will be improperly excluded from the voter rolls, or not succeed in voting despite being on the rolls. Such concerns have been raised especially for specific demographic groups such as elderly, poor, and minority voters.<sup>111</sup> Some observers have proposed solutions that might reduce the risk of such a conflict, for example, by placing digital photographs of registered voters in electronic pollbooks, thereby eliminating the need for most voters to present separate identification documents.<sup>112</sup>

It could be that the apparent conflict is in fact a false one—for example, changes to the election process aimed at increasing access or at decreasing fraud might not have significant effects on actual access and fraud—or that the impact of any particular measure that seems likely to be effective is in fact minimal. Some observers argue that examples of voter fraud at the polling place are rare.<sup>113</sup> Some also claim that voter fraud is much more of a risk with absentee and mail-in voting than at the polling place.<sup>114</sup> Among the 33 states with voter ID requirements, 8 apply those requirements to voters casting absentee or mail-in ballots. However, there does not appear

<sup>110</sup> In addition to impersonating someone else on the voter rolls, this can include people still on the rolls but no longer legitimately registered in the jurisdiction, such as voters who have moved out of the jurisdiction but have not been removed from the rolls. However, the distinction between registration fraud and impersonation fraud would be blurred in states with polling-place election-day registration or no voter registration.

<sup>111</sup> See, for example, Zoltan Hajnal, Nazita Lajevardi, and Lindsay Nielson, “Voter Identification Laws and the Suppression of Minority Votes,” February 5, 2016, <http://pages.ucsd.edu/~zhajnal/page5/documents/VoterIDLawsandtheSuppressionofMinorityVoters2ndrevision.pdf>; and studies discussed in Government Accountability Office, “Elections: Issues Related to State Voter Identification Laws.”

<sup>112</sup> Caltech/MIT Voting Technology Project, *Voting: What Has Changed, What Hasn't, and What Needs Improvement*, October 18, 2012, at [http://www.vote.caltech.edu/sites/default/files/Voting%20Technology%20Report\\_final.pdf](http://www.vote.caltech.edu/sites/default/files/Voting%20Technology%20Report_final.pdf).

<sup>113</sup> See, for example, Justin Levitt, “A Comprehensive Investigation of Voter Impersonation Finds 31 Credible Incidents Out of One Billion Ballots Cast,” *The Washington Post*, August 6, 2014, <https://www.washingtonpost.com/news/wonk/wp/2014/08/06/a-comprehensive-investigation-of-voter-impersonation-finds-31-credible-incidents-out-of-one-billion-ballots-cast/>.

<sup>114</sup> See, for example, Commission on Federal Election Reform, “Building Confidence in U.S. Elections”; Adam Liptak, “Error and Fraud at Issue as Absentee Voting Rises,” *The New York Times*, October 6, 2012, [http://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html?\\_r=0](http://www.nytimes.com/2012/10/07/us/politics/as-more-vote-by-mail-faulty-ballots-could-impact-elections.html?_r=0).

to be sufficient information available to determine the degree to which more broadly applied ID requirements for absentee and mail-in voting would reduce the risk of fraud or how they would affect turnout.

In general, no broad consensus has emerged on how to interpret the data on voter fraud that exist.<sup>115</sup> That uncertainty is not surprising, given the complexities of the election process, the difficulties of collecting data about it that are amenable to scientific analysis, the difficulty of controlling for the effects of various factors other than voter ID requirements, the relative recency of ID requirements in several states, variation among states in the stringency of the requirements, and other factors.<sup>116</sup>

In addition, as with many aspects of election administration, the impact of any effect of voter ID requirements on the results of the election will depend on factors such as the closeness of the contest. For example, if the implementation of an ID requirement caused a change in turnout, either a reduction or an increase, of 2%,<sup>117</sup> but the margin of victory for a contest was 5%, there would be no effect on the outcome of the election for that contest. In contrast, if the margin of victory were 1%, a 2% reduction in turnout might change the outcome.

The observed tendency for some demographic groups to vote more frequently for one major political party than another has raised questions for some commentators about the impacts of voter ID requirements that might affect turnout more for some groups than others.<sup>118</sup> However, given the range of results found in various studies, no compelling consensus has yet emerged about the strength or direction of such impacts.

The lack of conclusive data may also help explain seemingly paradoxical views of election officials on voter ID. Two scientific surveys of local election officials in 2006 and 2008 found that on average the officials supported a photo ID requirement, but they believed it would have a negative effect on turnout. They also believed it would increase election security, even though they found voter fraud uncommon and not a serious problem in their jurisdictions.<sup>119</sup>

A systematic approach to achieving the two goals discussed in this section would presumably include a risk analysis of all steps in the election process with respect to each goal. In recent elections, attention has shifted among different points in the process, although voter ID has been subject to significant legislative attention for several election cycles. But in the absence of systematic risk analyses, it is difficult to determine what points in the election process—voter registration, voting systems, polling place location and hours, pollworker training, voter identification, vote tabulation, or other steps—actually involve the greatest potential risks to

<sup>115</sup> See, for example, the disparate views presented in two books: Lorraine Carol Minnite, *The Myth of Voter Fraud* (Ithaca [N.Y.]: Cornell University Press, 2010); John Fund, *Who's Counting?: How Fraudsters and Bureaucrats Put Your Vote at Risk* (New York: Encounter Books, 2012).

<sup>116</sup> For example, one study found that more stringent voter ID requirements were associated with lower turnout, but the effect was small, there was no evidence of an effect of photo ID per se, and no evidence was presented with respect to impacts on voter fraud (The Eagleton Institute of Politics and The Moritz College of Law, *Best Practices to Improve Voter Identification Requirements* [Election Assistance Commission, June 28, 2006], at [http://www.eac.gov/assets/1/workflow\\_staging/Page/62.PDF](http://www.eac.gov/assets/1/workflow_staging/Page/62.PDF)). Problems caused by confounding factors are discussed in Government Accountability Office, "Elections: Issues Related to State Voter Identification Laws."

<sup>117</sup> Studies discussed in one report found changes ranging from -3.9% to +1.8% overall, with larger effects in some demographic groups in specific states (ibid.).

<sup>118</sup> See, for example, Hajnal, Lajevardi, and Nielson, "Voter Identification Laws and the Suppression of Minority Votes"; Rosenberg, "Native Americans Move to Frontlines in Battle Over Voting Rights."

<sup>119</sup> CRS Report R41667, *How Local Election Officials View Election Reform: Results of Three National Surveys*, by (name redacted) and (name redacted) .

election integrity with respect to fraud, access, and other factors, and therefore what priorities would be most effective for reducing those risks.

## Concluding Observations

Given recent state legislative activity on photo ID, and identification requirements generally, it is likely that legislators in the states will continue to consider similar legislation in the future. According to the National Conference of State Legislatures (NCSL), more than 200 voter ID bills were considered in the states during legislative sessions in both the current (2015-2016), and previous (2013-2014) federal election cycles, although that is a significant decrease from the more than 300 bills considered in the preceding cycle (2011-2012).<sup>120</sup> Further action in the courts and the Department of Justice should be expected as well on voter ID in response to the several new laws that have recently gone into effect.

The 2016 election may provide useful data on the implementation and performance of voter ID laws, data that Congress may choose to examine. As more experience is obtained with the impacts of the range of voter ID requirements in different states on both individual voters and elections, a consensus may emerge about the benefits and disadvantages of those requirements, including answers to questions such as the following:

- Does attempted voter fraud occur frequently enough that it poses significant risk to the validity of the outcome of elections?
- Is there a significant difference in that risk for polling place versus absentee or mail-in voting?
- Do voter ID requirements significantly reduce or eliminate the chances of voter fraud?
- Do voter ID requirements in any states prevent a large enough number of legitimate voters from casting ballots to pose significant risk to the validity of the outcome of elections?
- Do those risks vary significantly depending on the type and stringency of the requirements?

In any case, voter ID is likely to continue to be a topic of significant interest well beyond the November 2016 election.

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<sup>120</sup> National Conference of State Legislatures, "2011-2016 Elections Legislation Database," 2016, <http://www.ncsl.org/research/elections-and-campaigns/elections-legislation-database.aspx>.

## Appendix. State Voter ID Requirements

This appendix contains two tables describing ID requirements for in-person voting in the states that have voter ID requirements. **Table A-1** covers states that require a voter to present a photo ID; **Table A-2** covers states that require an ID that need not include a photograph.

The tables briefly summarize the major requirements for each state, describing

- the types of IDs accepted,
- whether the requirements apply to absentee and mail-in voting as well as in-person balloting,
- exceptions to the ID requirements for specified classes of voters,
- the recourse available to voters who do not present an accepted ID,
- year of enactment of the requirement (for photo ID states)<sup>121</sup> and additional information such as whether an expired ID will be accepted and whether the state makes an ID available without charge to qualified voters.

Specific types of accepted IDs (e.g., passport) are listed in the tables if they are specified in state law or guidance. A glossary of summary terms and abbreviations in the table (in addition to postal abbreviations, used for all states except Idaho) is below:

DL	a state driver's license
DMV	the state agency that issues driver's licenses and nondriver IDs, and that may issue other forms of ID in some states, such as Texas
DOB	date of birth
DVA	U.S. Department of Veterans Affairs
Federal	issued by the U.S. government
ID	identification document
IHE	a post-secondary institution of higher education, such as a college or university
Passport	U.S. passport
State	issued by a state government agency
any	any ID card of the specified class (e.g., "State: RI, any" means any photo ID issued by the state of Rhode Island).

In both tables, states with names in *italics* (e.g., *Alabama*) are categorized in this report as having a strictly enforced voter ID requirement.<sup>122</sup> The states with names not in italics (e.g., Florida) are categorized as not having a strictly enforced requirement.

<sup>121</sup> Date of enactment is likely more relevant for states with photo ID requirements because such requirements have been more subject to debate and controversy than nonphoto ID requirements for voters, which has a longer history of use (see, for example, National Conference of State Legislatures, "History of Voter ID"). Dates in **Table A-1** should not be regarded as definitive, as the analysis in this report did not attempt to reconcile alternative interpretations; see, for example, differences in the timelines in *Ibid.* and Government Accountability Office, "Elections: Issues Related to State Voter Identification Laws."

<sup>122</sup> As noted in **Figure 1**, the term "strictly enforced" is used in this report to refer to states where, with certain exceptions, a voter who does not present the required ID at the polling place either cannot vote or must take specified action after leaving the polling place to verify his or her identity in order for the ballot to be counted.

**Table A-1. Description of Requirements in States That Mandate a Photo ID for In-Person Voting**

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
Alabama	State: from any state, any ID Federal: any, including Passport Military Employee: Government Student or employee: AL IHE Tribal	X	Exempt for absentee/mail-in: military and overseas voters, voters with disabilities whose polling place is not accessible.	Regular ballot upon affidavit sworn by two election officials attesting to voter's identity and eligibility. Provisional ballot, counted if, by 5 pm on the Friday after the election, voter presents ID at county election office.	Enacted 2011; went into effect 2014. ID must be valid—that is, having legal strength, force, and effect. Free ID available to qualified voters.
Florida	State: FL, DMV-issued Federal: only Passport Military Student Debit or credit card Retirement center Neighborhood association Public assistance			Provisional ballot, counted if validated by signature matching.	Enacted 2003; amended 2005, 2007, 2011. ID or combination of IDs must include name, photo, and signature.
Georgia	State: from any state, any ID, including GA DL GA ID card Federal: any ID, including Passport Military Employee: Government Tribal			Provisional ballot, counted if, within 3 days after the election, voter presents ID at county election office.	Enacted 2003; amended 2005, and 2006; went into effect 2008. DL may be expired. Free ID available to qualified voters.

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
Idaho	State: Idaho, DMV-issued Federal: any, including Passport Student: Idaho high school or state-accredited IHE Tribal			Voter must complete and sign affidavit, which must be accurate under penalty of law.	Enacted 2010.
Indiana	State: IN, any Federal: any		State-licensed care facility where the voter resides. Indigence or religious objection to being photographed— requires affidavit.	Provisional ballot counted if, by noon 10 days following the election, voter, at county election office, presents ID or signs an affidavit declaring indigence or religious objection to being photographed.	Enacted 2005; went into effect 2008. Except for military IDs, must include expiration date, which must be after the last general election. Free ID available to qualified voters.
Kansas	State: from any state, only DL Nondriver ID Concealed-carry weapon license Federal: only Passport Military Employee: Government Government: other, as specified Student: KS accredited IHE Public assistance Tribal	X	Active duty military and their dependents; religious objection to being photographed— requires affidavit. Exempt for absentee/mail-in: permanent physical disability preventing travel.	Provisional ballot, counted if, before the meeting of the county board of canvassers, voter presents ID to county election officer in person or by mail or electronic means. Affidavit declaring religious objection may be submitted before the election or at the polling place.	Enacted 2011. ID may be expired if voter is 65 or older. Voters applying by mail for absentee ballots must provide either state DL or ID card numbers or copies of other accepted ID. Examples of other accepted government IDs are public IHE employee ID and city library card or pool pass. Free ID available to qualified voters.

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
Louisiana	State: LA, DMV-issued Generally recognized ID: any			Voter must sign affidavit that includes DOB and mother's maiden name, and is subject to challenge.	Enacted 1997; amended several times subsequently. Generally recognized ID must have name, photo, and signature. Free ID available to qualified voters.
Michigan	State: from any state, any, including DL Personal ID card Federal: any, including Passport Military Student: High school or accredited IHE Tribal			Voter must sign affidavit and is subject to challenge.	Enacted 2005; went into effect 2007. ID must be current.
Mississippi	State: from any state, any, including DL MS ID card MS firearms license Federal: any, including Passport Military Employee: Government Student: MS accredited IHE Tribal		Religious objection to being photographed.	Affidavit (provisional) ballot, counted if, within five days following the election, voter presents ID at county election office; a voter with a religious objection to being photographed must execute an affidavit at county election office within five days following the election.	Enacted 2012; went into effect 2014. State or federal ID may be expired if 10 years old or less. Free ID available to qualified voters.

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
New Hampshire	State: from any state, DMV-issued Federal: only Passport Military Student: NH approved high school or IHE Other: as determined by election officials (subject to challenge)		For registration, residents of care facilities may use a letter from the administrator rather than a photo ID.	Verification of voter's identity by an authorized election official (subject to challenge). Affidavit, with photo taken at polling place (except religious exemption, requiring additional affidavit). A subsequent mailing is sent to the voter to sign and return. If unreturned, the voter may be investigated for vote fraud.	Enacted 2012; amended 2013; went fully into effect 2015. ID may have expired within last 5 years, except no time limit if voter is 65 or older. Free ID available to qualified voters.
North Dakota	State: ND, only DL ID card Tribal	X (see Comments)	Long-term care certificate (non-photo) issued by ND facility	No recourse specified. ND is exempt from the HAVA provisional-ballot requirements.	Enacted 2015. ID must include name, current address, and DOB. Absentee/mail-in voting: passport or military ID accepted for out-of-state military and overseas voters; applicant with no valid ID may have ballot application attested by another qualified voter. Free ID available to qualified voters.
Rhode Island	State: RI, any Federal: any, including Passport Military U.S. educational institution Government-issued medical card			Provisional ballot, counted if provisional ballot application signature matches the voter registration signature.	Enacted 2011; nonphoto ID went into effect 2012; photo ID went into effect 2014. Must be current. Free ID available to qualified voters.



State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
South Carolina	State: SC, only DMV-issued Voter ID from elections office Federal: only Passport Military		Religious objection to being photographed—requires affidavit.	Provisional ballot, counted if, before county certification of the election, voter presents photo ID to county election office; or if voter completes an affidavit attesting a reasonable impediment (any valid reason, beyond voter's control) to obtaining photo ID.	Enacted 2011; went into effect 2013. Free ID available to qualified voters.
South Dakota	State: SD, DMV-issued Federal: any, including Passport Military Student: SD accredited High school or IHE Tribal	X	Overseas absentee voters	Voter must complete and sign affidavit with name and address, under penalty of perjury. Absentee ballot application must be notarized or accompanied by a copy of a photo ID.	Enacted 2003; amended 2004 and 2006. Overseas military and nonmilitary are exempt from ID/notarization requirement for absentee ballot application.
Tennessee	State: TN, any (except student), including DMV-issued Handgun carry permit Federal: any (except student), including Passport Military		Indigence or religious objection to being photographed—requires affidavit.	Provisional ballot, counted if, by the end of the second business day after the election, voter presents ID to county election officer.	Enacted 2011; amended 2013. ID may be expired. Free ID available to qualified voters.

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
<i>Virginia</i>	State: VA, any, including DMV-issued Voter ID Federal: any, including Passport Local government: VA, any Concealed handgun permit Student: VA School or IHE Employee: any Tribal: VA recognized	X (in-person application only)		Provisional ballot marked “ID-ONLY” and counted if, by noon on third day after the election, voter submits a copy of an accepted ID to the electoral board by facsimile, email, in-person, USPS, or commercial delivery.	Enacted 2013; amended 2015. Must be current, except DL, passport, student and employee ID may be expired within the last year. Voter ID card is issued by election office. Free ID available to qualified voters.

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
Wisconsin	State: WI DMV-issued Federal: only Passport Military or DVA Certificate of naturalization Student: WI accredited IHE Tribal: federally recognized in WI	X	Religious objection to being photographed—requires DMV nonphoto ID. DL confiscated—requires documentation. Exempt for absentee voting: Military and permanent overseas voters; voters designated as “confidential electors.” Absentee voters who are confined or in care facilities may have identity verified by authorized representative.	Provisional ballot, counted if voter presents ID to election inspectors before the polls close on election day or to the municipal clerk by 4 pm on the Friday following the election.	Enacted 2011; went into effect 2015. DMV-issued, military, and passport may have expired after the most recent general election. DVA ID must be unexpired. Certificate of naturalization must be issued not more than 2 years before the election. Student ID must have signature, issue date, and expiration date no later than 2 years after the election, and be accompanied by proof of enrollment. Free ID available to qualified voters.
Washington (Vote-by-Mail State)	Valid Photo ID: any, including DMV-issued Student Employee Tribal			Provisional ballot, counted if signature on declaration matches signature on voter registration record.	Enacted 2011. All voters receive a ballot in the mail, but each county must have a voting center for in-person voting during the 18-day voting period through the date of the election.

**Sources:** CRS analysis of requirements as described in the following sources: Government Accountability Office, “Elections: State Laws Addressing Voter Registration and Voting on or Before Election Day,” GAO-13-90R, (October 4, 2012), <http://www.gao.gov/assets/650/649203.pdf>; Government Accountability Office, “Elections: Issues Related to State Voter Identification Laws,” GAO-14-634, (September 19, 2014), <http://www.gao.gov/products/GAO-14-634>; Wendy Underhill, “Voter Identification Requirements | Voter ID Laws,” *National Conference of State Legislatures*, April 11, 2016, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Laws%20in%20Effect>; State election-office websites; State election statutes.

**Notes:** The table text is intended to briefly summarize major requirements in each state for purposes of analysis and general comparison and does not constitute a comprehensive description of them. State requirements may change and may be variously interpreted or modified by election jurisdictions and the courts. Oklahoma has a photo ID requirement enacted in 2010, but it permits use of a county voter registration card, which is issued to all voters at registration and is not a photo ID. Therefore, its requirements are described in **Table A-2**. Texas is a strictly enforced ID state that requires a photo ID if available. It is listed in **Table A-2** because any voter without a photo ID can sign an affidavit listing a “reasonable impediment” to obtaining one, present an accepted nonphoto ID, and vote a regular ballot.

**Table A-2. Description of Requirements in States That Mandate an ID (Either Photo or Nonphoto) for In-Person Voting**

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
Alaska	State: DL ID card Federal: Passport Military ID Birth certificate Hunting or fishing license Document with name and address: Bank statement Current utility bill Government-issued check or other document Paycheck	X	An election official who knows the voter may waive the requirement.	The voter may cast a “questioned” (provisional) ballot, counted if information provided by the voter is verified by review board.	Whether state ID can be from another state is not specified. Absentee ID can be a DL number or other specified identifier. State provides free ID for voters 60 and older.
Arizona	State: from any state, any, including AZ DL AZ ID card AZ vehicle registration Federal: any Local: any Tribal Bank/Credit Union statement Indian census card Property tax statement Recorder’s Certificate Utility bill Vehicle insurance card Official election material mailed to voter			Provisional ballot, counted if voter ID presented to county recorder by 5 pm on the fifth business day after a federal general election, or 5 pm on the third business day after any other election.	Two IDs required if non-photo or if photo ID does not contain address. Utility bill and bank statement must be dated within 90 days of election. State provides free ID for some voters, including those 65 and older.

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
Arkansas	Photo ID Bank statement Utility bill Government document that shows name and address of voter			Pollworker indicates on the precinct voter registration list that the voter did not provide ID and the county election board may review the list and send the information to the prosecuting attorney for possible investigation	Pollworker must ask for ID but voter is not required to show it.
Colorado	State: CO only DL ID card Federal: Passport Military or DVA ID with photo Medicare or Medicaid card Pilot's license Employee: Photo ID, only Federal, CO state or local Student: CO IHE, with photo Certified birth certificate Certified naturalization document Tribal Verification of residency in group facility or medical confinement Other document that shows name and address of voter: only Bank statement Paycheck Utility bill Government check or other document			Provisional ballot, counted if a designated election official can verify the voter's eligibility.	All voters receive a ballot in the mail, but each county must provide one or more (as prescribed by law) polling places for early and Election-Day in-person voting. "Other document" with name and address must be dated within 60 days of voting. State provides free ID for voters 60 and older.

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
Connecticut	ID with name and with address, signature, or photo Federal: Social Security card			Voter must sign, under penalty of false statement, a form with voter's address and date of birth attesting identity.	
Delaware	Photo ID Bank statement Lease or mortgage Paycheck Utility bill Government: Check or other document with voter's name and address			Voter must sign an affidavit affirming identity.	Pollworker must ask for ID but voter is not required to show it.
Hawaii	ID type not specified but must contain voter's signature			Voter must state date of birth and residence address.	ID to be provided if requested by pollworker.
Kentucky	State: DL Federal: Social Security card Credit card Photo ID with signature Other approved ID			Provisional ballot, counted if the county board of elections confirms voter's eligibility.	ID not required if voter is known to pollworker.
Missouri	State: MO, any, including DL ID Card Local election authority ID State: from any state, only DL ID Card Federal: any, including Passport Student: MO only, IHE Bank statement			Voter may cast regular ballot if voter signs affidavit with two supervising election judges, one from each party, attesting that they know the voter. No other recourse specified.	No provision in state law for permitting a voter who does not present ID to cast a provisional ballot.

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
Montana	Paycheck Utility bill Government: Check or other document with voter's name and address  Photo ID Bank statement Paycheck Utility bill Voter confirmation notice Government: Check or other document with voter's name and address			Voter may fill out form with identifying information; if verified with county election office, voter may cast a regular ballot. Otherwise, voter may cast provisional ballot, counted if ID presented to county election office by 5pm on the day after the election or mailed and postmarked by the day after the election.	
Ohio	State: OH, any, including DL ID Card Federal: any, including Military ID Bank statement Paycheck Utility bill Government: Check or other document (with voter's name and address)	X		Provisional ballot accompanied by OH DL or ID number, or last four digits of SSN, provided at polling place or at board of elections within 7 days of the election.	Except for military ID, documents must include current name and address, government IDs must be unexpired, and other documents must be dated within the past 12 months.
Oklahoma	State: OK, any photo ID Federal: any photo ID Tribal photo ID County voter registration card			Provisional ballot, counted if name, address, DOB, and DL or last four digits of SSN match registration record.	Photo IDs must show name and be unexpired.
Texas	Photo ID: State: TX, DMV-issued, including DL Personal ID		Permanent exemption for disability; must provide SSA or DVA document.	Provisional ballot, counted if, within six calendar days of the election, voter presents to county election office ID or, under penalty of perjury, affidavit	Enacted 2011; amended 2015, further modified 2016. Except citizenship certificate, Photo ID must be current or



State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
Utah	Election identification certificate Handgun license Federal: only Passport Military Citizenship certificate Nonphoto ID: Bank statement Certified birth certificate Paycheck Utility bill Government: Check or other document with voter's name and address Voter registration certificate		Religious objection to being photographed—requires affidavit.	declaring religious objection to being photographed, or that lack of ID resulted from declared natural disaster within 45 days of casting of ballot.	expired within the last 4 years. All TX photo IDs listed are provided by the state Department of Public Safety. Free ID available to qualified voters. Voters presenting nonphoto ID must sign a declaration describing a reasonable impediment to obtaining a photo ID.
	State: UT, any, including DL Concealed weapon permit Hunting/fishing license Vehicle registration Federal: any, including Passport Military ID Medicaid, Medicare, or electronic benefits transfer card Social Security Card Bureau of Indian Affairs card Tribal: ID Treaty card Bank/financial statement Certified birth certificate Certified naturalization			Provisional ballot, counted if ID provided subsequently at polling place or at county clerk's office by close of business on the Monday after the election.	One ID required if DL, weapons permit, state or federal ID, passport, or tribal ID. In other cases, two IDs required, which must provide name and evidence that voter resides in district. Utility bill must be dated within 90 days of election.

State	Type of Voter ID Accepted	Also Applies to Absentee/ Mail-in	Exceptions	Recourse if No ID	Comments
	document Certified court record with adoption or name change Employer ID Federal or state government check Local government ID Paycheck Student: UT IHE Utility bill				

**Source:** CRS analysis of requirements as described in the following sources: Government Accountability Office, “Elections: State Laws Addressing Voter Registration and Voting on or Before Election Day,” GAO-13-90R, (October 4, 2012), <http://www.gao.gov/assets/650/649203.pdf>; Government Accountability Office, “Elections: Issues Related to State Voter Identification Laws,” GAO-14-634, (September 19, 2014), <http://www.gao.gov/products/GAO-14-634>; Wendy Underhill, “Voter Identification Requirements | Voter ID Laws,” *National Conference of State Legislatures*, April 11, 2016, <http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx#Laws%20in%20Effect>; State election-office websites; State election statutes.

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