



# THE CANVASS

## STATES AND ELECTION REFORM®



### can•vass (n.)

Compilation of election returns and validation of the outcome that forms the basis of the official results by a political subdivision.

—*U.S. Election Assistance Commission: Glossary of Key Election Terminology*

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## Voter ID: Where Are We Now?

If you want to start a lively political debate, just say the words, “voter ID.” Apparently, many folks thrive on that kind of exchange, given the number of lively debates on voter ID held in statehouses this year.

One side says, “We have to have these laws to prevent ineligible people from casting ballots and thus devaluing the votes of those who are legal voters.” The other side says, “These laws are a façade, covering an attempt to keep eligible voters from voting.” And it heats up from there. (For those new to elections, see the sidebar below, *Voter ID for Beginners*.)

As long as the controversy continues, NCSL will track the debate. Our webpage, [Voter ID: State Requirements](#), is the nation’s go-to resource for the most current and concise data on this issue—the facts without the spin.

### A Little Background

In 2001, 14 states requested that voters show IDs at the polls. Some specified a photo ID; others accepted Social Security cards, bank statements and other forms of ID that do not include a photo. None of these states, however, turned away a voter without an ID. Instead, they required a

signed affidavit, or allowed poll workers or other voters to vouch for the person. The ID-less person could then vote on a regular ballot.

In 2005 and 2006, Indiana and Georgia pioneered a new policy of *requiring* a photo ID. With this “strict photo ID” requirement, anyone without a photo ID has to vote on a provisional ballot, and that ballot is not counted unless the voter returns within a few days to a local election office to show the approved ID.

“Strict photo ID” laws have faced court challenges, resulting in boundaries that states tend to honor as they pursue their own policies.

- States must ensure that ID requirements don’t pose an undue burden to voters who find it difficult to obtain an ID. These may include age, disability, a religious objection to being photographed, or simple geographic distance from a motor vehicle office. In practical terms, this means states must provide free IDs to those who don’t have them.
- States may need to expand the number of ID-issuing offices and extend operating hours to accommodate voters who need to get the required ID. *(cont. on p. 2)*

### Voter ID for Beginners

“Voter ID” refers to requirements that voters show an ID at their polling places before they are allowed to vote. These laws are designed to prevent a specific kind of election fraud: voter impersonation at the polls. Other forms of voter fraud, including vote-buying, voter intimidation, fraudulent registration and fraud by absentee ballot are not addressed by voter ID requirements. So far, little evidence exists that fraud by impersonation at the polls is a common problem. Likewise, little evidence exists that large numbers of people have been barred from voting in states with strict voter ID laws.

The issue tends to divide on a strict party-line basis, with Republicans supporting voter ID requirements and Democrats opposing them, but not always. In 2011, Ohio’s Republican Secretary of State Jon Husted opposed photo ID legislation because he expected it would delay election results and he believed Ohio’s existing ID law was sufficient to deter fraud. And in Rhode Island, the Democratic-controlled legislature enacted a voter ID law last year that includes a photo ID requirement to go into effect in 2014.





# Voter ID: Where are we now? Cont. from page 1

- States must provide a “voter education” plan so voters know the new requirements.

In 2011, voter ID laws exploded. Lawmakers in 34 states introduced legislation to either strengthen existing voter ID laws or institute new ones. Lawmakers in Kansas, Rhode Island and Wisconsin enacted new voter ID laws (and in Mississippi, citizens did so through an initiative). Legislators in Alabama, South Carolina, Tennessee and Texas strengthened existing voter ID laws. At the same time, five governors vetoed new laws that would have enacted strict photo ID requirements in Minnesota, Missouri, Montana, New Hampshire and North Carolina.

- [Minnesota](#) lawmakers have put a constitutional amendment to require voter ID on the November 2012 ballot.
- Legislative proposals for new or strengthened voter ID requirements are on the table in 19 states.
- Lawmakers in Georgia, Kansas, Oklahoma, Rhode Island, South Carolina, Tennessee and Wisconsin introduced legislation to ease existing voter ID requirements. Most would expand the list of acceptable IDs; [Tennessee](#) has a bill to repeal voter ID altogether.

## What the Courts and Justice Department are Saying

New legislation sometimes breeds new court challenges, and that has been true for voter ID this year. In Wisconsin, two separate district courts declared the state’s voter ID law unconstitutional under the state’s constitution. Both cases have been appealed to the Wisconsin Supreme Court, where four of the seven justices must agree before the court can take up a case.

In recent months, the U.S. Department of Justice denied pre-clearance for South Carolina and Texas’s laws; these are two “covered” states under [Section 5 of the Voting Rights Act](#). (To prevent racial discrimination in election practices, this section requires certain states and localities to seek “pre-clearance” before making any change to voting laws.) Both states have turned to the courts for reconsideration; any appeals to those rulings will go directly to the U.S. Supreme Court. While the pre-clearance fight plays out, older voter ID laws remain in effect in South Carolina and Texas.

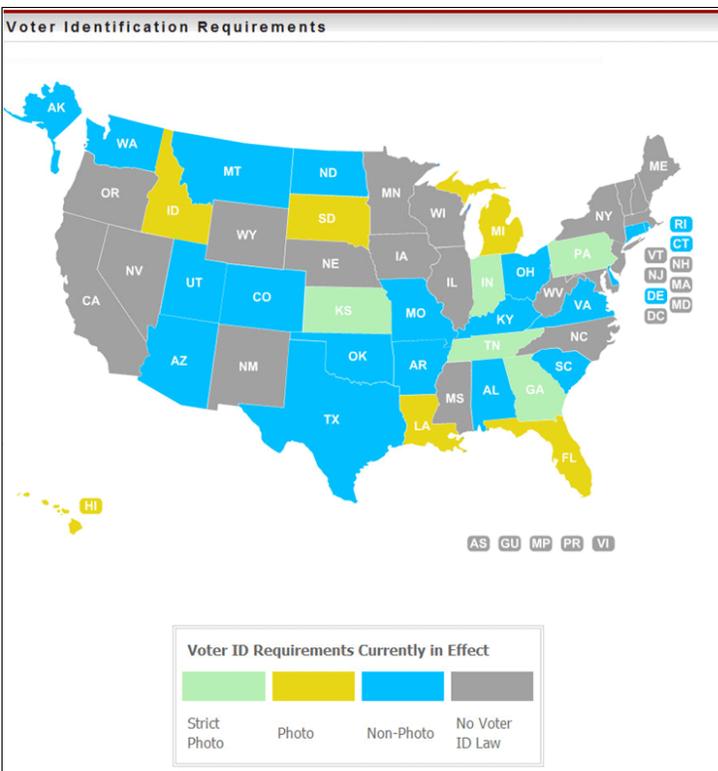
Alabama’s law, passed in 2011 with a start date of 2014, is also subject to Section 5 pre-clearance, but it has not yet applied for pre-clearance. Virginia’s pending law also requires pre-clearance, but some expect it will face [less difficulty](#) than the laws in Texas and South Carolina because it is not as strict. Finally, the language passed by Mississippi voters in November 2011 is very general, and will require implementing legislation to outline specifics. Once that’s done, the state will have to seek pre-clearance before it goes into effect.

For a more complete review of court action on voter ID requirements, see [this article](#) in *The Jurist*.

## Expectations

It is safe to expect more partisan analysis of voter ID as the year goes on, such as these two pieces published in March. Hans von Spakovsky, of the Heritage Foundation, authored [Lessons Learned from the Voter ID Experience in Georgia](#), and Keesha Gaskins, from the Brennan Center for Justice, wrote [Analyzing Minority Voter Turnout After Voter ID](#).

This fall’s presidential election will provide a laboratory for research on voter ID for advocacy groups, nonpartisan academicians and elections researchers, as well. They’ll be watching polling places and election results, looking for signs of voter fraud and/or voter disenfranchisement. And NCSL will be watching them.



Footnote: Mississippi, South Carolina, Texas and Wisconsin have passed a strict photo ID requirement that is not presently in effect

## Legislation This Year

At the beginning of 2012, 31 states had passed voter ID laws, with half of them requesting or requiring a photo ID. So far this year:

- [Pennsylvania](#) lawmakers enacted a new “strict photo ID” law.
- [Virginia](#) lawmakers passed a bill that permits a wide variety of IDs to be used, including some without photos, and allows poll workers to sign affidavits to identify voters. It is awaiting legislative action on the governor’s recommendations for changes.





## Cast Ballots Are Open Records?

Legislation is often designed to fix last year’s snafus. Here’s one example: Colorado lawmakers are considering a bill this year to determine how “voted” or “cast” ballots are to be handled. The bill addresses who can see them, when they can see them, and which ballots are exempt from ever being seen. Why? Blame it on a kerfuffle in Saguache County (size: 3,168 square miles; population: 6,108; elevation: 7,800 feet).

In the 2010 general election, preliminary results showed that the opponent of the sitting county clerk had won. Programming errors were uncovered, with the final tally giving the win to the sitting clerk. A recount confirmed that result. (In January 2012, the county clerk faced, and lost, a recall election.)

No wrong-doing was ever alleged, but the secretary of state’s office stepped in to review the election, which meant looking at ballots. The county clerk refused to turn them over to the secretary of state based on what she said was a lack of authority to review the ballots, and her concern that individual ballots could be tracked back to voters, negating the secrecy of the ballot. The secretary of state sued, and a [Colorado District Court](#) ruled in 2011 that Saguache must permit the secretary of state’s office to view the ballots.

A separate case, in Aspen, also hinged on who could see voted ballots. Here, a candidate for municipal office lost, and sued to see the ballots, even though this was prohibited by municipal code. The first court upheld the city’s position. The second court overturned that ruling, saying that ballots are open records. (Note: some of Colorado’s ballots have a bar code that, in certain circumstances, can be traced back to the voter. According to [state law](#), ballots must be designed so that “secrecy in voting is protected.”)



These cases left Colorado with the question, “What matters more: the secrecy of ballots or government transparency?”

Both matter. So Colorado’s main players in election law—legislators, county clerks, political parties, the secretary of state, and others—banded together for some “political sausage-making,” according to Donetta Davidson, the director of the [Colorado County Clerks Association](#).

“It’s better to have rules and processes before you go into a major election,” says Davidson. “We could have complete chaos otherwise. We could have a Florida,” referring to the 2000 presidential race.

The result of their deliberations is [Senate bill 155](#), which is still in committee at press time. The bill would:

- Clarify that voted ballots are subject to the Colorado Open Records Act.
- Set a time frame when ballots can and cannot be inspected (from 45 days before

Election Day to after the canvass is complete).

- Include provisions to protect the very few ballots that are susceptible to personal identification.

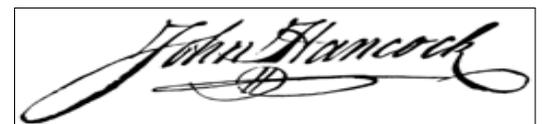
The bill could be seen as a local fix for a quirky Colorado problem, but Davidson says it could be the beginning of a national trend, especially when elections are close. “If other state courts rule that ballots are open records, they’ll have to go through the same process,” says Davidson.

Last year, [Maine](#) enacted a law to permit a disputed ballot to be made available for public inspection, so long as the voter’s anonymity is protected. This year, bills addressing voted ballots as open records are pending in [Arizona](#) and [Maine](#). For more information, see the 2007 National Association of Secretaries of State report, [Cast Ballots as Open Records](#).



## Signature Verification

If 30 states ask for some kind of ID at the polls, what do the other states do? Some states use “signature verification” to ensure that the person who votes is the same person who registered. In these states, the voter completes an application when registering to vote that usually includes providing a driver’s license or Social Security number. By signing the application, the new voter is swearing that the information is correct. After the state verifies the information, the registrant is added to the voter rolls and the signature is stored. When the voter shows up at the polls, he or she signs in (or if voting by mail, signs the ballot’s return envelope). If that signature doesn’t match the one on file, questions are raised and the ballot doesn’t get counted until those questions are satisfactorily answered. One state’s signature verification system is described in detail in [Ballot Integrity and Voting by Mail: The Oregon Experience](#).





## From the Chair



*Delegate Jon Cardin (D) is the chair of Maryland's Election Law subcommittee of the House Ways and Means Committee. On March 22, 2012, NCSL asked him about the work he and his state are doing on elections. These are excerpts from the [full interview](#).*

- For all Marylanders who are legal to vote, I try to make voting as convenient and transparent as possible, and in so doing, make sure we have mechanisms to catch fraud and mistakes.
- We have to make sure that we create the availability of funds to improve our voting systems. That needs to be done fairly soon, as nearly 100 percent of our machines will be obsolete by 2016.
- I'm open to hearing other people's opinions and willing to move from one position to another. For example, I had been personally in favor of Sunday voting, and I've changed my opinion after hearing more about it. The practicalities are difficult and it put people in uncomfortable positions. If I learn still more, I may change my mind again.

## The Election Administrator's Perspective

*Cameron Quinn, the general registrar for Fairfax County, Va., is unusual in the world of elections in that she also has experience at the state level with the Virginia Board of Elections and at the federal level with the Federal Voting Assistance Program and the U.S. Department of Justice's Civil Rights Division. On March 22, 2012, NCSL asked for her perspective on elections and the key issues for her office and state. These are excerpts from the [full interview](#).*



- In the recent presidential primary election we had three policy issues in Virginia that either resulted in litigation or threatened to do so. This kind of escalation or questioning of every rule or procedure makes it hard to finalize the planning and execution of elections.
- We are all going to need to buy new voting equipment; the equipment purchased 10 years ago with federal money ... is at or beyond its warranted lifetime. States will make these choices differently, but legislators need to understand that someone's going to have to find the money, and that it won't be federal money this time.
- The expectations of your under-35 voters and your voters over 60 are very different, and those kinds of things are going to drive policy.

## Bookmark This

[Election Law Blog](#), from professor Rick Hasen of the University of California-Irvine, is an invaluable source of up-to-the-hour news on elections. Primarily the blog provides links to original sources such as news reports, journal articles, and videos, but commentary by Hasen and others is offered, too. Not everyone will agree with Hasen's slant, but he's a must-read for election geeks of all political stripes.



## Worth Noting

- “We currently have an ‘easy to vote’ and ‘easy to cheat’ Minnesota system. I want an ‘easy to vote’ and ‘hard to cheat’ Minnesota system. Integrity and access should be in balance.” **Representative Mary Kiffmeyer**, sponsor of Minnesota’s proposed constitutional amendment that will go before voters in November.
- If you like details, you’ll love the February report, “[Election Administration by the Numbers](#),” from the Pew Center on the States. This is a first-of-its-kind review of the strengths, weaknesses, comprehensiveness and usefulness of election-related data. The data come from state election divisions, the U.S. Census Bureau, the U.S. Election Assistance Commission and its Election Administration and Voting Survey, and public opinion surveys. The report is intended to make it easier for academics and policymakers to use data in their work.
- [Ohio](#)’s 2011 elections reform bill that reduced the early voting period was contentious enough that opponents put it on the 2012 ballot as a citizen referendum. Republicans, who largely supported the bill, are now forwarding legislation to repeal it, while Democrats, who largely disapproved of the bill, now oppose a legislative repeal, preferring that citizens vote on it.
- Connecticut Secretary of State Denise W. Merrill called for a task force last year to review the state’s election policies and look for needed improvements. The task force, as presented in “[Election Performance Report 2012](#),” made many recommendations, some of which have already led to pending legislation. While not everyone will agree with all the recommendations—instituting Election Day registration, passing a constitutional amendment to permit the legislature to determine absentee voting policies, and adopting online voter registration and electronic poll books—the concept of taking an occasional in-depth look at how elections are run is a good one.
- NCSL occasionally gets calls from recently released felons seeking advice on how to restore their voting rights. This advice, we cannot provide. We do, however, have a newly updated [Felon Voting Rights](#) webpage intended to assist legislators and legislative staff as they address their state’s policies on this topic.
- The “[Plain Language](#)” movement started in the 1980s to take the “legalese” out of contracts and other documents. While not a front-burner issue, it comes up from time to time, most recently in [Kansas](#), where an amendment to a bill would permit local election officials to provide plain language explanations of local ballot questions.
- NCSL’s wrap-up of [2011 Election Legislation Enactments](#) is now available. Last year saw more bill introductions and more enactments than almost any other in the last decade. And, the changes these laws made to state election policy were more significant than in most years. Take a look, and if we missed something from your state, let us know.

## From NCSL’s Elections Team

Many states are past the halfway point in their legislative sessions; some have already reached sine die. If you’d like to know where the states stand, see NCSL’s [2012 Legislative Session Calendar](#). The close of the legislative season finds administrators beginning the “lock and load” phase before the big November election. At the same time, policymakers are starting to take the long view, asking, “What will the issues be for the next quadrennial?”

NCSL’s elections staff are here to help by offering information, analysis, speakers and opportunities for election specialists to contact their peers. Let us know how we can help you, and keep the questions coming. Thank you.

*Jennie Drage Bowser and Wendy Underhill*



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