



## Voter ID in the Courts

*An introduction to legal challenges to voter ID laws*

By Karen Shanton

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As of May 2014, [34 states have enacted laws requiring voters to show identification at the polls](#). This legislation has been controversial — and the controversy isn't limited to the political sphere. Voter identification (ID) laws have faced legal scrutiny in more than half the states that have enacted them.

Given that litigation rate, there's a good chance new voter ID proposals will end up in the courts. This brief overview of voter ID cases is intended to give lawmakers who support and oppose voter ID requirements a sense of what to expect. Which legal challenges are commonly raised against voter ID laws and how have those challenges fared in the past? Why have some challenges been more successful than others? Which variables affect the outcomes of voter ID cases?

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### Legal Challenges

More than half the states that have enacted voter ID laws have seen at least one legal challenge to their law — and some have faced as many as three or four. With this much litigation,

there have been opportunities for a range of challenges to voter ID. Some of these arguments, such as the Privacy Act complaint in [Stewart v. Marion County \(2010\)](#), didn't reach far beyond a single case. Others, such as challenges under the Civil Rights Act, were popular with ID challengers early on but seem to have since dropped out of favor.

However, some legal challenges have played a sustained — or particularly prominent — role in voter ID litigation. Below, we summarize five of these major challenges to voter ID laws.

#### 1. EQUAL PROTECTION ARGUMENT

This argument holds that voter ID laws violate the equal protection clause of the U.S. or state constitution.

**The Basics:** The [Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution](#) prohibits states from denying anyone under their jurisdiction equal protection of the laws. Many state constitutions contain similar equal protection provisions. For example, the Georgia Constitution [says that](#), “No person shall be denied the equal protection of the laws.”

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Voter ID opponents argue that ID laws violate equal protection provisions because they unduly burden eligible voters' right to vote.

In some cases, plaintiffs argue that voter ID laws unduly burden voters in general. In others, the claim is that they impose a disproportionate burden on particular groups of voters, such as racial minorities or women. Citing evidence that members of these groups are less likely to have acceptable identification and/or more likely to have trouble obtaining such ID, plaintiffs argue that they would be disproportionately burdened by ID laws.

**How It's Fared:** In [\*Crawford v. Marion County Election Board \(2008\)\*](#), the U.S. Supreme Court considered a claim that Indiana's voter ID law was unconstitutional "on its face" under the federal Equal Protection Clause. According to this facial challenge, the law was unconstitutional in all its applications. In assessing the challenge, the Court used a flexible test introduced in [\*Anderson v. Celebrezze \(1983\)\*](#) and refined in [\*Burdick v. Takushi \(1992\)\*](#). When applying this test, courts start by determining what level of scrutiny to apply to a challenged law. If the law imposes a severe burden on voters' right to vote, they apply [strict scrutiny](#). If not, they apply a less demanding standard, weighing the burdens the law imposes on voters against the state's interests in it.

In the lead opinion in *Crawford*, the U.S. Supreme Court concluded that plaintiffs had not presented sufficient evidence that the ID law would impose a severe burden on Indiana voters to warrant strict scrutiny and applied a lower standard of review instead. Under this less demanding standard, Indiana only had to show that it had a reasonable interest in implementing the ID law. The Court [found that the state's claimed interests in preventing voter fraud, modernizing elections and safeguard-](#)

[ing voter confidence satisfied this standard.](#)

Though it left the door open to a future as-applied challenge to Indiana's ID law (i.e., a claim that the law is unconstitutional "as applied" to a particular individual or group), it rejected the *Crawford* plaintiffs' facial challenge.

Federal courts have generally followed the U.S. Supreme Court's lead on equal protection challenges to ID laws. For example, in [\*Common Cause v. Billups \(2009\)\*](#), a federal appellate court applied the same balancing test to Georgia's ID law and arrived at a similar conclusion. And many state courts have done the same. To take just one example, in [\*Democratic Party of Georgia v. Perdue \(2011\)\*](#), a Georgia state court found that Georgia's state constitutional equal protection provision "is generally 'coextensive' with and 'substantially equivalent' to the federal equal protection clause," applied the test used by the U.S. Supreme Court in *Crawford* and upheld the state's ID law.

However, some cases have bucked this trend. At the state level, the Missouri Supreme Court — the only court of final jurisdiction to reject a voter ID law to date — [found that Missouri's ID law violated the equal protection clause of the state constitution and struck it down](#). An Indiana state court [reached a similar conclusion about its state's ID law](#) (though this ruling [was later overturned by the state supreme court](#)). In federal court, a U.S. district court judge recently [concluded that](#) "it is absolutely clear that [Wisconsin's voter ID law] will prevent more legitimate votes from being cast than fraudulent votes" and, thus, that that law violates the Fourteenth Amendment.

**Provisions Cited:** [Fourteenth Amendment to the U.S. Constitution](#); [Article I of the Georgia Constitution](#); [Article I of the Michigan Constitution](#);

[Article I of the Minnesota Constitution](#); [Article I of the Missouri Constitution](#); [Article I of the North Carolina Constitution](#); [Article I of the Pennsylvania Constitution](#); [Article XI of the Tennessee Constitution](#); [Article I of the Texas Constitution](#); [Article I of the Wisconsin Constitution](#)

## 2. POLL TAX ARGUMENT

This argument holds that voter ID laws violate the U.S. Constitution’s prohibition against poll taxes.

**The Basics:** The [Twenty-fourth Amendment to the U.S. Constitution](#) prohibits requiring payment to vote in federal elections. In [Harper v. Virginia Board of Elections \(1966\)](#), the U.S. Supreme Court extended this prohibition to state elections. The Court found that state election poll taxes violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and, thus, are unconstitutional.

Some early voter ID laws, such as Georgia’s original ID law, included fees for voter identification cards. ID opponents argued that these fees violated the prohibition on poll taxes.

More recent ID laws have included provisions requiring states to provide ID cards to voters free of charge. Though there is no direct fee for ID in these cases, ID opponents maintain that the laws still violate the poll tax prohibition. Because there are costs associated with obtaining the free ID cards, such as the expense of traveling to an ID-issuing agency, they say these laws still condition voting on a payment.

**How It’s Fared:** As noted above, there are two versions of the poll tax argument: a direct version, which is leveled against fees for voter ID cards, and an indirect version, which is directed at other expenses associated with obtaining ID.

The direct version of the poll tax argument has been very successful. This challenge was raised against the original version of Georgia’s voter ID law, which included a \$20 fee for ID cards, and [the courts seemed inclined to accept it](#). That prompted the Georgia General Assembly to revise the law to remove the fee. Since that case, provisions requiring states to provide free voter ID cards have become a staple of voter ID legislation.

The indirect version of the argument, on the other hand, has not met with as much success. Once the fee was removed from Georgia’s law, the state’s ID requirement was upheld by the courts. Other courts have seemed similarly disinclined to interpret indirect expenses associated with obtaining ID as poll taxes. For example, the Michigan Supreme Court [rejected a Twenty-fourth Amendment-based argument against its voter ID law](#), as did a federal court in [Indiana Democratic Party v. Rokita \(2006\)](#).

**Provisions Cited:** [Fourteenth](#) and [Twenty-fourth Amendments to the U.S. Constitution](#)

## 3. DISCRIMINATORY INTENT/EFFECTS ARGUMENT

This argument holds that voter ID laws violate the Voting Rights Act’s prohibition on denying or abridging the right to vote on the basis of race, color or membership in a language minority.

**The Basics:** The [Voting Rights Act](#) is a landmark piece of federal legislation that prohibits denying or abridging the right to vote on the basis of race, color or membership in a language minority group.

Until last year, the provision of the Voting Rights Act that played the most prominent role in voter ID litigation was [Section 5](#). Under Section 5, jurisdictions with a history of discriminatory voting practices were required to obtain preclearance (i.e., approval by the U.S. Department of Justice or the U.S.

District Court for the District of Columbia) for any proposed changes to their election laws. To obtain preclearance for a law, a jurisdiction had to demonstrate (1) that the law was not enacted with the *intent* of denying or abridging the right to vote on the basis of race, color or membership in a language minority group and (2) that it would not have that *effect*.

However, in *Shelby County v. Holder (2013)*, the U.S. Supreme Court rejected the Voting Rights Act’s formula for determining which jurisdictions should be subject to Section 5. That effectively rendered Section 5 inoperative. Because the formula that was used to subject them to Section 5 has been ruled unconstitutional, states that were formerly covered by Section 5’s preclearance requirement are no longer required to seek preclearance for election law changes.

Since *Shelby County*, another Section of the Voting Rights Act — [Section 2](#) — has taken on more importance in voter ID litigation. This provision, which applies nationwide, prohibits all jurisdictions from denying or abridging the right to vote on the basis of race, color or membership in a language minority group. Citing evidence that voter ID laws disproportionately impact minority groups, voter ID opponents have argued that they violate this section of the Voting Rights Act.

Voter ID opponents have also raised challenges to ID laws under [Section 3 of the Voting Rights Act](#). Section 3 provides for jurisdictions that enact discriminatory voting practices to be “bailed in” to a preclearance requirement. Jurisdictions that are bailed in under Section 3 are required to seek preclearance for some or all proposed election law changes for a time period specified by the courts.

***How It’s Fared:*** [South Carolina](#) and [Texas](#) were both denied preclearance for their voter ID laws

under Section 5 before the U.S. Supreme Court handed down its opinion in *Shelby County*. Both states appealed the rulings.

South Carolina [was ultimately granted judicial preclearance for its ID law](#) but only after the state legislature revised the law to make it significantly less restrictive. Texas’ request for judicial preclearance was denied. The court [found that Texas failed to establish that its law would not deny or abridge the right to vote on the basis of race, color or membership in a language minority group](#).

As the Texas ruling suggests, the burden of proof in Section 5 cases was on states that wanted to make changes to their election laws. They had to establish, to the U.S. Department of Justice’s or courts’ satisfaction, that the change *wouldn’t* deny or abridge the right to vote on the basis of race, color or membership in a language minority group.

In Section 2 cases, by contrast, the burden of proof rests with opponents of ID laws. In these cases, challengers have to show that the change *would* deny or abridge the right to vote.

That makes it more difficult to win a challenge to an ID law under Section 2 than under Section 5. And that increased level of difficulty is largely reflected in the record. None of the Section 2 voter ID challenges that were adjudicated before the U.S. Supreme Court handed down its ruling in *Shelby County* resulted in rejection of an ID law.

However, recent developments suggest that it’s possible to use a Section 2 argument. In April 2014, a U.S. district court accepted a Section 2 challenge to Wisconsin’s voter ID requirement, [issuing a permanent injunction against the law](#). Time will tell whether this ruling holds up under appeal and whether pending Section 2 challenges

in other states, such as [North Carolina](#) and [Texas](#) (both of which were formerly fully or partially covered by Section 5), will follow its lead or revert to the pre-*Shelby County* pattern.

Solid conclusions about the prospects for Section 3 challenges will also have to await further action in the courts. The U.S. Department of Justice’s calls to bail [North Carolina](#) and [Texas](#) into pre-clearance requirements under Section 3 have not yet been adjudicated so it remains to be seen how such challenges will fare. However, if a Section 3 challenge *does* succeed in the courts, it may serve as a deterrent to future ID laws because states may be reluctant to risk being bailed in to a preclearance requirement.

**Provisions Cited:** [Sections 2, 3 and 5 of the Voting Rights Act](#)

#### 4. RIGHT TO VOTE ARGUMENT

This argument holds that voter ID laws violate the state constitution’s protections for the right to vote.

**The Basics:** Though the U.S. Constitution does not contain explicit protections for the right to vote, state constitutions often do. Many state constitutions include provisions guaranteeing that elections in the state will be free (and equal or open). For example, the Pennsylvania Constitution [says that](#), “Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.”

Almost all state constitutions also have provisions that set out criteria for eligibility to vote. These provisions [are often interpreted as granting the right to vote to everyone who satisfies the criteria](#).

Voter ID opponents argue that ID requirements violate these safeguards for the franchise. Because

ID laws unduly burden the right to vote, they violate state constitutional protections for the right to vote.

**How It’s Fared:** This argument has met with provisional success in states like Arkansas and Wisconsin and lasting success in Missouri and Pennsylvania. An Arkansas state court cited its state constitution’s free elections provision in two [separate rulings](#) against the state’s ID law. (As of this writing, one of these rulings [has been vacated by the state supreme court](#) and the other [was stayed by the original court pending appeal](#).)

Unlike the Arkansas Constitution, the Wisconsin Constitution does not include a free elections clause. However, it does set out criteria for eligibility to vote. In [Milwaukee NAACP v. Walker \(2012\)](#), a state court found that this amounts to a guarantee of the right to vote and that Wisconsin’s ID law would substantially impair that right. That ruling [is currently under appeal in the state supreme court](#).

[Missouri](#) and [Pennsylvania](#) both saw ID laws struck down under free elections clauses of their respective state constitutions and, unlike in Arkansas and Wisconsin, those rulings aren’t expected to be revisited by the courts. Missouri’s judgment was entered by the state supreme court, which is the court of final jurisdiction in the case. And Pennsylvania [recently announced that it would not appeal the Commonwealth Court’s finding against its voter ID law](#), opting instead to draft new, less voter-restrictive ID legislation.

**Provisions Cited:** [Article III of the Arkansas Constitution](#); [Article II of the Colorado Constitution](#); [Article II of the Georgia Constitution](#); [Article II of the Michigan Constitution](#); [Article I of the Missouri Constitution](#); [Article I of the North Caro-](#)

[lina Constitution](#); [Articles II and III of the Oklahoma Constitution](#); [Article I of the Pennsylvania Constitution](#); [Article I of the Tennessee Constitution](#); [Article III of the Wisconsin Constitution](#)

## 5. UNLAWFUL ADDITIONAL QUALIFICATION ARGUMENT

This argument holds that voter ID requirements unlawfully add a qualification on the right to vote, over and above the necessary and sufficient list of qualifications in the state constitution.

**The Basics:** Most state constitutions set out explicit lists of qualifications to vote. For example, the Tennessee Constitution [says that](#), “Every person, being eighteen years of age, being a citizen of the United States, being a resident of the state for a period of time as prescribed by the General Assembly, and being duly registered in the county of residence for a period of time prior to the day of any election as prescribed by the General Assembly, shall be entitled to vote in all federal, state, and local elections held in the county or district in which such person resides. All such requirements shall be equal and uniform across the state, and there shall be no other qualification attached to the right of suffrage.”

ID opponents argue that voter ID laws violate these voter eligibility provisions because they unlawfully add a qualification on the right to vote, over and above the list set out in the state constitution. The state constitution’s list of voter eligibility qualifications is both necessary and sufficient and the state legislature does not have the authority to add to it. So, voter ID opponents argue, legislatures that enact ID requirements are overstepping their rightful authority.

**How It’s Fared:** Lower courts in a number of states, including [Arkansas](#) (twice), [Georgia](#) and [Wisconsin](#), accepted this argument. However, the [Georgia](#)

and [Wisconsin](#) rulings were overturned by higher courts in those states and the argument was rejected entirely by courts in other states. (As of this writing, one of the Arkansas rulings [has been vacated by the state supreme court](#) and the other [was stayed by the original court pending appeal](#).)

The courts that rejected this argument objected to the plaintiffs’ characterization of voter ID requirements. Plaintiffs argued that voter ID laws create a new qualification on the right to vote. However, these courts found that ID laws are best characterized as *regulations on existing* qualifications to vote, not entirely *new* qualifications. Because states typically grant their legislatures the authority to regulate voting, the courts concluded, imposing a regulation on an existing qualification to vote is not an unlawful overreach of legislative authority.

**Provisions Cited:** [Article III of the Arkansas Constitution](#); [Article VII of the Colorado Constitution](#); [Article II of the Georgia Constitution](#); [Article II of the Indiana Constitution](#); [Article VIII of the Missouri Constitution](#); [Article VI of the North Carolina Constitution](#); [Article VII of the Pennsylvania Constitution](#); [Article IV of the Tennessee Constitution](#); [Article III of the Wisconsin Constitution](#)

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## Deciding Factors

Predicting the outcomes of current or future voter ID cases from past rulings isn’t a straightforward task. There are many differences between ID cases—from the details of the challenged law to the state constitutional provisions available to challenge it—and these variables can affect their prospects in court.

Even so, past cases do give a sense for factors that might make a voter ID challenge more or less likely to succeed. Below are six variables that have been cited by courts as factors in their rulings on voter ID laws.

### 1. DETAILS OF THE LAW

Voter ID laws vary in their details, from the types of identification they allow to whether they permit alternative proofs of identity like affidavits. Some of these differences have affected the outcomes of voter ID cases:

- **Georgia's** ID law originally included a \$20 fee for voter ID cards. With this fee in place, the law [seemed likely to be struck down as a poll tax](#). That prompted the Georgia General Assembly to revise the law to remove the fee. The revised law survived the legal challenge.
- **South Carolina's** voter ID law [was initially denied preclearance under Section 5 of the Voting Rights Act](#). In response to this ruling, the South Carolina Legislature made a number of changes to the law to make it less restrictive, such as adding an option to sign an affidavit attesting to a “reasonable impediment” to obtaining ID in lieu of showing ID. After these changes were made, the law [was granted preclearance](#).

### 2. IMPLEMENTATION OF THE LAW

Some states have had trouble implementing their voter ID laws. Implementation problems can lead to setbacks in the courts:

- A **Pennsylvania** court issued first a [preliminary](#) then a [permanent injunction](#) against its state's voter ID law, largely due to concerns about the way the law was to be implemented. The [state recently announced](#)

[that it will not appeal this ruling](#). The governor will instead work with the Pennsylvania General Assembly to craft a new voter ID bill.

### 3. STATE CHARACTERISTICS

States vary in many ways, from the availability of public transportation to hours and locations of ID-issuing agencies to racial demographics. Some of these differences have been cited in courts' opinions in voter ID cases. [Texas v. Holder \(2013\)](#) — the pre-[Shelby County v. Holder \(2013\)](#) ruling that denied Texas preclearance for its ID law — offers some examples:

- In [Crawford v. Marion County Election Board \(2008\)](#), the U.S. Supreme Court found that the inconveniences associated with obtaining ID in Indiana did not constitute a significant burden on Indiana voters' right to vote. In [Texas v. Holder, Texas](#) cited this as support for its claim that its law would not unduly burden Texas voters. However, the court [rejected this move](#). Texas' ID-issuing agencies are further apart and less easily accessible by public transportation than Indiana's. Therefore, the court reasoned, even if obtaining ID is a straightforward process in Indiana, that doesn't necessarily mean it isn't unduly burdensome in Texas.
- **Texas** also cited evidence that Indiana's voter ID law was nondiscriminatory as support for its claim that its law wouldn't have a discriminatory effect. Again, though, the [Texas court rejected this move](#). Though Indiana and Texas both have large minority populations, the makeup of those populations is different. For example, Texas has a substantially larger Hispanic population than Indiana. Because different groups may be affected differently by ID laws, evidence that

Indiana’s ID law is nondiscriminatory doesn’t necessarily show that Texas’ law would not be.

#### 4. EVIDENCE FOR A VIOLATION

Making a strong case is always important in the courts. But it’s particularly important in voter ID cases because ID laws are often evaluated using the flexible *Burdick* test. The first step in this test is to determine what level of scrutiny to apply to the challenged law. If plaintiffs can show that the law imposes a severe burden on voters’ right to vote, the court applies strict scrutiny. If not, it employs a less demanding standard of review. For obvious reasons, laws are less likely to survive legal scrutiny when the standard of review is high than when it is low:

- The U.S. Supreme Court found that the plaintiffs in *Crawford* failed to make a strong case that voters would be significantly harmed by **Indiana’s** voter ID law. Lacking compelling evidence that the law would cause severe harm to Indiana voters, the Court [applied a low standard of review](#). Under this standard, the state only had to show that it had a reasonable interest in implementing the law. The Court found that Indiana’s stated interests in preventing voter fraud, modernizing elections and safeguarding voter confidence met this standard and upheld its ID law.
- In [Milwaukee NAACP v. Walker \(2012\)](#), by contrast, the court found that plaintiffs’ evidence that **Wisconsin’s** ID law would significantly impair the right to vote was “substantial and entirely credible.” In striking down the law as unconstitutional under the state constitution, the court explicitly emphasized that the factual record was stronger in this case than in *Crawford*.
- In [another challenge to Wisconsin’s ID law](#), a federal court was similarly convinced by the evidence that the law’s “burdens will deter or prevent a substantial number of the 300,000 plus voters who lack an ID from voting” and that “the burdens imposed by [the law] on those who lack an ID are not justified.”

#### 5. SPECIFICS OF STATE CONSTITUTIONS

State constitutions, like most aspects of state governance, vary from state to state. Though all states’ constitutions contain more explicit protections for the right to vote than the U.S. Constitution, the details of these protections vary. And some are better suited for supporting challenges to voter ID laws than others:

- State constitutions take different approaches to explicitly protecting the franchise. Some guarantee eligible residents free (and equal or open) elections, some set out a list of qualifications for eligibility to vote and some do both. The different provisions tend to prompt different challenges to ID laws: free elections provisions typically prompt free elections arguments while voter eligibility provisions tend to prompt unlawful additional qualification arguments [though see [Wisconsin’s Milwaukee NAACP v. Walker \(2012\)](#), for an example of an exception to this rule]. So far, free elections challenges to voter ID laws have met with more success than unlawful additional qualification arguments.
- Some state constitutions contain provisions that explicitly grant the state legislature the authority to make laws to protect the integrity of elections or prevent voter fraud. These provisions can make it more difficult to win a voter ID challenge. For example, courts in both [Michigan](#) and [Tennessee](#) cited such provisions in upholding their states’ voter ID laws.



## 6. JUDICIAL INTERPRETATION

As with all litigation, the fate of voter ID cases sometimes hangs on courts' interpretation of the laws:

- In 2006, the **Michigan** Supreme Court accepted a request from the state House of Representatives to assess the constitutionality of the state's voter ID law. In making the case for unconstitutionality, Michigan's attorney general argued that the state constitution's equal protection clause offers more expansive protections than the federal Equal Protection Clause. The state supreme court [declined to interpret the state constitution this way](#), maintaining that Michigan's equal protection clause should be read as coextensive, or equal in scope, with its federal counterpart.
- Many state constitutions set out lists of qualifications to vote. ID opponents in these states have argued that voter ID requirements unlawfully add an additional qualification on voting, over and above the necessary and sufficient set of criteria in the state constitution. Lower courts in **Georgia** and **Wisconsin** accepted this argument. However, their rulings [were overturned](#) by higher courts, which interpreted ID requirements as *regulations* on *existing* qualifications to vote rather than entirely *new* qualifications.

## GLOSSARY

**Affidavit:** A written statement of facts, made voluntarily under an oath or affirmation. Some states with voter ID laws permit voters to sign affidavits attesting to their identity or to having a “reasonable impediment” to obtaining ID in lieu of showing ID.

**Appellate Court (Court of Appeals):** A court with the power to hear appeals from a lower court. Some states do not have intermediate appellate courts. Trial court rulings in these states are appealed directly to the state supreme court.

**As-Applied Challenge:** A challenge that claims a law is unconstitutional “as applied” to a particular individual or group. According to this type of challenge, the law is unconstitutional as it is applied to an individual or group but not necessarily in other cases or circumstances.

**Burdick Test:** A test that is often used to evaluate laws related to the right to vote. This test was introduced in *Anderson v. Celebrezze (1983)* and refined in *Burdick v. Takushi (1992)*. As presented in *Burdick*, the test has two parts: (1) use the severity of the harm the law imposes on voters to determine the appropriate standard of review and (2) apply that standard of review to the challenged law.

**Chancery Court:** A state trial court in some states (e.g., Tennessee).

**Civil Rights Act of 1964:** Landmark legislation that prohibited discrimination based on “race, color, religion, sex or national origin.”

**Circuit Court:** A state trial court in some states (e.g., Wisconsin). In the federal court system,

there are 13 intermediate appellate courts and these courts are referred to as circuit courts of appeals (e.g., Ninth Circuit Court of Appeals).

**Concurring Opinion:** An opinion that arrives at the same conclusion as the majority opinion but for different reasons.

**District Court:** A trial court in the federal court system.

**Enjoin:** Order a party to perform or refrain from performing a particular action. When courts enjoin a voter ID law, they are ordering the state to discontinue implementation or enforcement of the law.

**Equal Protection Clause:** A clause of the Fourteenth Amendment to the U.S. Constitution and corresponding sections of state constitutions. Equal protection clauses prohibit denial of equal protection of the laws.

**Facial Challenge:** A challenge that claims a law is unconstitutional “on its face.” This type of challenge claims that a law is unconstitutional in all its applications.

**High Court:** The U.S. Supreme Court or a state supreme court.

**Injunction:** An order to perform or refrain from performing a particular action. Prohibitions against implementing or enforcing a voter ID law are injunctions against the law.

**Permanent Injunction:** A permanent order to perform or refrain from performing a particular action. Unlike preliminary injunctions and temporary restraining orders, a permanent injunction is typically a court’s final ruling.

**Photo ID Law:** A law that requires voters to show photographic identification at the polls.

**Plurality Opinion:** An opinion that receives more support than any other opinion but less than a full majority of the court.

**Poll Tax:** A tax imposed as a requirement for voting. In the 19th century, poll taxes were commonly used to suppress voter turnout by members of racial minority groups.

**Preclearance:** Approval of a law by the U.S. Department of Justice or the U.S. District Court for the District of Columbia. Prior to the U.S. Supreme Court’s ruling in [Shelby County v. Holder \(2013\)](#), some jurisdictions were required to seek preclearance for all election law changes under Section 5 of the Voting Rights Act. Section 3 of the Voting Rights Act provides for jurisdictions that enact discriminatory voting practices to be “bailed in” to a preclearance requirement. When a jurisdiction is bailed in under Section 3, it is required to seek preclearance for some or all of its election law changes for a period of time specified by the courts.

**Preliminary Injunction:** A temporary order to perform or refrain from performing an action, issued before the final ruling in a case has been handed down. Motions for preliminary injunctions are typically filed in voter ID cases to prevent enforcement of an ID law in an election that is scheduled before the court is likely to arrive at a final ruling.

**Provisional Ballot:** Ballots cast by voters whose eligibility to vote is in question. In the context of voter ID, provisional ballots are ballots cast by voters who lack acceptable voter ID in states that don’t accept alternative proofs of identity, such as affidavits.

**Rational Basis Review:** The lowest standard of judicial review. To survive rational basis review, a law only has to be rationally related to a legitimate government interest.

**Section 2 of the Voting Rights Act of 1965:** The provision of the Voting Rights Act that prohibits all jurisdictions nationwide from denying or abridging the right to vote on the basis of race, color or membership in a language minority group.

**Section 3 of the Voting Rights Act of 1965:** The provision of the Voting Rights Act that provides for jurisdictions that enact discriminatory voting practices to be “bailed in” to a preclearance requirement. Jurisdictions that are bailed in under Section 3 are required to submit some or all of their proposed election law changes for preclearance for a period of time specified by the courts.

**Section 5 of the Voting Rights Act of 1965:** The provision of the Voting Rights Act that required jurisdictions with a history of discriminatory voting practices to have election law changes precleared by the U.S. Department of Justice or the U.S. District Court for the District of Columbia. This provision was effectively rendered inoperative by the U.S. Supreme Court’s ruling, in [Shelby County v. Holder \(2013\)](#), against the formula used to determine which jurisdictions should be covered by it. Unless the U.S. Congress revises the coverage formula in a way that is acceptable to the U.S. Supreme Court, states formerly covered by Section 5 are not required to seek preclearance for changes to their election laws.

**Strict Scrutiny:** The highest standard of judicial review. To survive strict scrutiny, a law must be narrowly tailored to serve a compelling state interest.

***Superior Court:*** A state trial court in some states (e.g., Georgia).

***Supreme Court:*** The highest court in a court system. The U.S. high court is referred to as the Supreme Court, as are state high courts.

***Temporary Restraining Order:*** A temporary order to perform or refrain from performing an action, issued before the final ruling in a case has been handed down. Motions for temporary restraining orders are typically filed in voter ID cases to prevent enforcement of an ID law in an election that is scheduled before the court is likely to arrive at a ruling on a motion for an injunction.

***Trial Court:*** A court of first instance, where a case is first heard. Rulings by trial courts can typically be appealed to intermediate appellate courts or, in states without intermediate appellate courts, high courts.

***Voter ID Law:*** A law that requires voters to show identification at the polls.

***Voting Rights Act of 1965:*** Landmark legislation that prohibited many types of discriminatory voting practices. In the voter ID debate, the Voting Rights Act's most commonly-cited provisions are Sections 2, 3 and 5.