Voter ID: Where Are We Now?

This may be hard to believe, but some of the “oomph” may have faded from the voter ID debate. That statement is supported by quantitative and qualitative evidence. Quantitatively, the number of voter ID bills active in 2014 is two-thirds the number in each of the past three years. Qualitatively, for the last three years, the phrase “voter ID” has ranked right up there with “immigration control,” “same-sex marriage” and “collective bargaining” in generating partisan rhetoric.

This year, voter ID legislation is less plentiful, more diverse and no longer the all-consuming issue it so recently was.

Using FAQs, we’ll see how the landscape is shifting and what’s on legislative agendas in 2014. But first, what is voter ID, and where are states now?

What is voter ID?

“Voter ID” is shorthand for a requirement that voters show a poll worker some kind of document proving their identity so they can receive a ballot on Election Day. Exactly what documents are accepted depends on the state. It’s also shorthand for a familiar argument. Proponents say showing an ID is a security measure states can adopt to prevent voter fraud; opponents counter that voter impersonation rarely occurs and that requiring an ID makes it hard for some eligible voters to vote.

What happens if a voter doesn’t have ID?

“From the voter’s point of view, what really matters is whether the ballot can be counted, and under what conditions,” said Justin Levitt, law professor at Loyola Law School. “There’s a big difference between states where an eligible citizen without the right kind of ID can still cast a valid ballot on Election Day, and those where an eligible citizen without perfect paperwork is out of luck. This is where state procedures really have an impact on the right to vote.”

Some states permit voters without ID to vote on a regular ballot by signing an affidavit or when a fellow voter or poll worker can confirm their identity.

Other states are more strict, and require voters without ID to use a provisional ballot. These ballots are not counted unless the voter returns to an election official’s office later that week, identification in hand.

New Hampshire falls in between.

A Granite State voter without ID signs an affidavit and votes on a regular ballot. Elections officials send a mailing to the voter at the address on record shortly after the election. If the voter does not return that mailing, the case will be investigated for potential fraud.
Voter ID: Where Are We Now? (cont. from page 1)

Voter Identification Laws in Effect in 2014

<table>
<thead>
<tr>
<th>Strict Photo ID</th>
<th>Strict Non-Photo ID</th>
<th>Photo ID requested</th>
<th>ID requested, photo not required</th>
<th>No document required to vote</th>
</tr>
</thead>
</table>

Voter ID Laws Across the U.S.

Our map reflects that voter ID laws can be categorized by two measures: whether a state requires a photo ID and what recourse is available to a person without identification. At times, these two categories overlap.

Some states require voters to present identification that includes a photo such as a driver’s license, other state-issued IDs or military ID. Other states accept indentifying documents without a photo such as a bank statement.

If a voter fails to show an ID required by law, states provide alternatives. Such requirements are defined as strict, which would allow a person without identification to vote on a provisional ballot but require the person to take additional steps after Election Day for that ballot to be counted. Non-strict alternatives for voters without identification include requiring a person to sign an affidavit of identity or allowing a poll worker to vouch for a voter.

How else do existing voter ID laws vary?

Each state determines which IDs are accepted, and the lists of what qualifies as ID varies widely. Will a person’s bank statement do? Or does it have to be a government-issued document with a photo?

All states accept a current driver’s license, but some make provisions for an expired license to be used. Passports are specifically noted in eight states. Fishing licenses are specified in two states, and tribal identification cards in four states. See NCSL’s webpage, Voter ID Requirements, for each state’s list of accepted IDs.

Exemptions from strict laws vary, too. South Carolina exempts anyone who has a “reasonable impediment” to getting an ID. Arkansas, Indiana, Kansas, Mississippi, South Carolina, Tennessee and Texas have exemptions for anyone with a religious objection to being photographed. Indigence can exempt a person in Indiana or Tennessee. Texas has an exemption for anyone who is without an ID due to a natural disaster.

How do states without voter ID requirements verify a voter’s identity?

At this point, 18 states don’t require a voter to bring anything to the polls. These states use other options for verifying a voter’s identification, often comparing the signature on Election Day to signatures on file. See NCSL’s webpage, Voter Verification Without Documents.

How has the voter ID landscape changed in the last few years?

At the beginning of 2011, 27 states asked voters to show an ID of some kind. Of those, 19 accepted non-photo IDs, and eight requested photo IDs. Two of the eight photo ID states—Georgia and Indiana—had strict laws, as described above.

Now, 32 states ask for an ID. Of these, 21 provide voters without ID an alternative way to vote on a regular ballot, and 11 states have strict requirements. See NCSL’s webpage, Voter ID Requirements.
Voter ID  (cont. from page 2)

Those numbers don’t capture all the action, however. During this time, five bills were vetoed and three states enacted strict voter ID requirements that have not yet been implemented. Voters in two states weighed in as well: voter ID won approval from voters in Mississippi while it was rejected by Minnesota voters.

“The activity we saw in 2011, 2012 and even 2013 was driven by the large number of Republican legislators elected in 2010,” said Doug Chapin, director of the Program for Excellence in Election Administration, and author of the Election Academy blog. “Since, on average, Republicans tend to support stricter voter ID requirements, it’s only natural that voter ID bills would get farther.”

How do we know voter ID is merely warm, instead of scalding, this year?

In 2014, fewer states have introduced voter ID legislation than in previous years. In 2011, 34 states had voter ID legislation of some kind introduced. In 2012, 32 states did, and voter ID bills were filed in 30 states last year.

Things are different in 2014. So far, only 24 states have voter ID legislation. This may be because four states are not in session and several others have short sessions or sessions that only address budget issues. The year is still young, too.

Perhaps the reduction in legislative action means simply that states that were most likely to adopt stricter voter ID requirements have already done so. Or, perhaps states are taking a “wait and see” approach. Most states that enacted strict voter ID legislation in the last few years have faced court challenges, so it is possible that other states may be waiting to see how those cases turn out. See ElectionLaw@Moritz for legal data.

What voter ID legislation is live in 2014?

Sixty-two bills in 20 states are active, many of them carried over from 2013. These bills offer a breadth of approaches not seen before, indicating that this black-and-white debate may now have shades of gray.

- Eight states that currently rely on voter signatures or affirmations for voter verification have legislation to establish an ID requirement: Maryland, Massachusetts, Iowa, Illinois, Minnesota, Nebraska, New York and West Virginia.
- Four states have bills that would make an existing ID requirement stricter (Alaska, Colorado, New Hampshire and Oklahoma).
- Missouri (SJR 31, HJR 47) hopes to put a referendum on the 2014 general election ballot, asking voters to approve a constitutional amendment that would permit a requirement for voter identification. “This issue is important to me mainly due to my time as a county clerk,” Minnesota Representative Tony Duggar said. “I feel that the only way we will ever prevent these fraudulent registrants from voting on Election Day is some sort of photo ID requirement.”
- A Rhode Island bill would rescind its voter ID law.
- Pennsylvania (HB 876/SB 636) would permit the district office of the general assembly to issue cards that could be used for voter identification.
- Six states have proposals to add documents to the accepted list: Arizona, Oklahoma, Pennsylvania (SB 69, SB 543), Rhode Island, South Carolina, Tennessee (SB 252, SB 1082, HB 292/SB 1098) and Wisconsin.
- Oklahoma legislation would permit the use of “finger imaging” for ID.
- Two states propose studying voter ID. Arizona would set up a task force to study how many provisional ballots are used because of voter ID requirements, and Massachusetts would gather data on how many voters have ID—without requiring that they have it.

Final Thoughts

As for 2015, when states are looking ahead to the presidential election, will voter ID come back to the forefront? “I do think there’s not the same kind of momentum there used to be,” Chapin said. “But the issue is far from gone. The next couple of months will show if it’s an actual cease-fire or merely a pause in the bombing.”

Wendy Underhill

---

18,064. That’s how many mail-ballots arrived after Election Day in 2012 in California.

Based on these uncounted votes, Senator Lou Correa (D) introduced SB 29 which would allow a ballot sent by mail and postmarked by Election Day to be counted up until three days after polls closed. A report by the Public Policy Institute of California shows that late ballots accounted for about 0.4 percent of all mailed ballots but those late ballots made up 47 percent of uncounted ballots.

This tally could prove crucial in close elections in California where the use of mail ballots is on the rise. About half of all votes counted in 2012 were delivered by mail.
Seeing Double: Can Candidates Run For Two Offices?

U.S. Senator Rand Paul's possible presidential candidacy and simultaneous U.S. Senate re-election bid in Kentucky is bringing attention to an interesting question: Can candidates run for two offices?

And the answer is...“well, maybe.” A variety of issues contribute to the answer’s uncertainty, such as:

- For which offices is the candidate running?
- What are the state’s ballot access laws?
- Would a state’s “resign-to-run” or “sore loser” laws be triggered?
- Do any dual office-holding prohibitions apply?

This month, a Kentucky state Senate committee approved SB 205, which would allow Paul, a Republican, to have his name in two places on the general election ballot as long as he is running for federal offices. The Kentucky measure harkens back to a 1959 bill passed in Texas, which allowed then-Senator Lyndon B. Johnson to have his name on the ballot as John F. Kennedy's vice presidential candidate and for re-election to the U.S. Senate.

Paul possibly will be (and Johnson was) running for two federal offices. Federal elections are controlled by federal constitutional or statutory provisions. State legislatures cannot change the qualifications for federal office. They can control access to state ballots, however, and as illustrated above, state law can address how many times a person’s name may appear on the ballot.

“Sore loser” laws prevent a candidate who loses in a primary election from running in the general election as a candidate of another party. In 2012, this measure prevented Texas Lt. Gov. David Dewhurst from considering a run for U.S. Senate as an independent after he lost to Ted Cruz in the Republican primary election.

State dual office-holding provisions and “resign-to-run” laws commonly are triggered when the combination of offices being sought is either federal-state, state-federal, state-state, state-local or local-state. Arizona, Florida, Georgia, Hawaii and Texas are “resign-to-run” states, requiring a candidate to step down from his or her current office to vie for another. Forty-seven states and all territories prohibit their legislators from holding another statewide office. Some states—such as Indiana, Oregon and Virginia—allow a legislator to hold a second county or municipal elected office if that role is not a paid position.

For more information on these ballot access questions, contact NCSL. Information also is available at Ballot Access News, a nonpartisan newsletter.

Michael D. Hernandez and Brenda Erickson

Legislative Action Bulletin

Quick facts

With 83 days of 2014 gone by already, it’s no surprise that governors have already signed into law a number of elections-related bills. Many this year relate to political parties, candidates and campaigning; below are some of those that relate directly to running elections.

Georgia SR 1236 asks the secretary of state to run a pilot project on voting by phone.

Indiana HB 1096 permits the use of ballot marking devices.

Ohio SB 238 makes absentee voting begin 29 days prior to Election Day, rather than 35 days, thus eliminating any period where voters can register and vote early on the same day.

South Dakota SB 34 permits overseas citizens to register for voting electronically.

Tennessee SB 1320/HB 1208 permits the consolidation of polling places in municipal elections.

Wyoming SB 25 includes email addresses provided on voter registration forms to be private information, permits the chief election officer to issue directives to county officials and a number of other minor changes.
From the Chair

Minnesota Senator Katie Sieben (D) chairs the Rules and Administration Committee’s Subcommittee on Elections. She represents a suburban part of St. Paul and previously served in the Minnesota House of Representatives. Sieben’s father, Michael Sieben, and grandfather, Harry Sieben, also served in the Minnesota House. The Canvass interviewed Sieben on March 14.

Excerpts:

- “There has been a tradition in Minnesota for the past couple of decades that major changes to elections policy should have bipartisan support…What I found is that I need to work very closely with Republican members of my committee to see things pass and become law.”

- “There’s a whole lot of election equipment that will need to be replaced in the next decade or even sooner but due to the absence of additional (Help America Vote Act) funds coming from the federal government, I think it’s a real concern that counties and cities all across the state will most likely have to rely on local property taxes to purchase new voting equipment.”

- “This will be the first general election where voters can request an absentee ballot without having to provide an excuse. I’m hopeful that this will lead to higher turnout for people who may have to work or anticipate that it might be difficult for them to make it to the polls. Seeing a direct result of the committee’s work is gratifying.”

Read the full interview with Sieben.

The Election Administrator’s Perspective

Paul Lux is supervisor of elections for Okaloosa County in Florida. About one-fifth of the 120,000 registered voters in his jurisdiction are members of the military or part of a military family, and many of those voters are overseas. The Canvass interviewed Lux on March 12.

Excerpts:

- “The voters who are in remote areas overseas do not have a problem with getting a blank ballot. Their problem is trying to return their ballot back to me. The federal government right now doesn’t want to have that conversation (about the return of ballots) because they don’t want to fight with the anti-Internet voting activists over the issue.”

- “I always tell legislators that if you really want to know what is going on, you need to come talk to election directors at the jurisdictional level where the work is being done.”

- “I enjoy this job because it allows me to pursue my interests in technology by helping to make sure that our process remains free and fair…I’ve yet to get up in the morning and think that I want to go do something else.”

Read the full interview with Lux.
Worth Noting

- Mississippi is offering free rides to any person who needs transportation to their local elections office to obtain a free voter ID. "We are committed to ensuring everyone who is qualified to vote has the opportunity to cast a ballot," Mississippi Secretary of State Delbert Hosemann said in a statement. The transportation is arranged through a hotline the state launched in advance of its June primary election to help voters meet a new requirement to present identification at voting polls.

- A Massachusetts court will soon hear a case relating to Section 7 of the National Voting Rights Act (NVRA) of 1993. The NVRA requires states to provide voter registration services at motor vehicle agencies—and also at public service agencies. In this case, the plaintiffs, Bethzaida Delgado and others, allege that Massachusetts has not done so.

- Utah could soon be the first in line for the 2016 presidential primary season and it would use online voting for that contest if HB 410 is passed. The House approved the bill by a 58-14 vote and the measure is now in the Senate. The bill's language calls for the election to be held "earlier than the scheduled date for any meeting, caucus, primary, vote, or other method used in any other state or territory of the United States." Arizona in 2000 had the first binding Internet election for its Democratic primary.

- About 2,900 people voted in Connecticut's November 2013 election using its new Election Day registration, enacted in 2012 by HB 5024. Eleven states and the District of Columbia offer a person the ability to register and vote on the same day.

- Simply expressing the joys of early voting and reminding people about the dread of Election Day hassles helped increase turnout in two states during the 2012 general election, according to a study conducted by Cornell University and Louisiana State University. Participants of the study sent out mailers reminding voters in Ohio and Georgia of the anticipatory rewards of early voting. Slightly more people voted early—about 1.9 percent more—in those states after receiving the get-out-the-vote mailings compared to voters who did not receive the mailings.

- "I don't know precisely what the numbers are going to be but they're going to be healthy and then if you add to that Ben's legal fees, it's astronomical," Robert Bauer joked in USA Today. Bauer was referring to the estimated price tag for the 2016 presidential campaigns, which could total in the billions of dollars. Bauer and Robert Ginsberg spoke to the newspaper about some of the findings of the Presidential Commission on Election Administration, a panel they co-chaired together. NCSL also interviewed the pair about the commission for the February edition of The Canvass.

- The U.S. Election Assistance Commission must modify a national voter registration form to include instructions for Arizona and Kansas residents about proof-of-citizenship requirements in those states, a U.S. District judge ruled this month. The case is being watched to see if it will be appealed and if other states will pursue proof-of-citizenship requirements. The form was created in response to the National Voter Registration Act of 1993. It can be used by U.S. citizens from any state to register to vote or update their registration information.

From NCSL’s Elections Team

The Canvass next month will look at online voter registration, a topic that has attracted interest from legislators seeking to save money and address concerns about fraud and security. If you've got any stories or perspectives on this topic (or others, for that matter), please contact us.

NCSL's elections staff is here to help legislators and their staffs so please let us know how we can assist you with information and analysis.

As always, thanks for reading.

Wendy Underhill, Michael D. Hernandez and Brenda Erickson