



**Voter Identification, Proof of Citizenship for Voting and Provisional Ballots:
A National Overview**

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Good morning and thank you, Mr. Chairman, for inviting me to appear at this hearing. I am Wendy Underhill, program director for elections and redistricting at the National Conference of State Legislatures (NCSL). NCSL is the nation's bipartisan organization that supports the work of both legislators and legislative staff. We are headquartered in Denver, Colorado.

As with all our work, we do not make recommendations on elections policy; instead we provide 50-state research and analysis. If, at the end of this hearing, you have a request for more information, I'll be glad to undertake that work when I am back at the office.

In the next 15 minutes or so I plan to provide a national overview on voter ID, proof of citizenship for voting purposes, and the use of provisional ballots in other states.

As with any other policy area, no two states manage elections in the same way—but they all do face the task of identifying eligible voters. We'll start by briefly looking at how that is done.

In all states, at some point, voters must meet at least four qualifications: are they 18 or older? Are they a citizen of the United States? Are they a resident of the state? And, most basically, who are they?

All states other than North Dakota use the voter registration application process to address these questions. The first two questions—age and citizenship—are dealt with by a check box on a registration form, and I will discuss confirmation of citizenship later in my remarks.

Identity and residency are the two most critical pieces. To prove these things, a few options exist. Voter registration applications generally ask for either a driver's license number or state ID number, or, failing that, the last four digits of the social security number, and date of birth.

If the driver's license or ID card was issued by the state where voter registration is sought, election administrators can check that DMV record as confirmation of identity and residency. If there is no match at the motor vehicle agency, the administrator can match the identification with the social security administration.

The National Voter Registration Act of 1993 requires election officials throughout the country to send a non-forwardable confirmation mailing to the newly registered person at the address they provided. If that mailing gets to the person, that serves as confirmation of their residency. If the mailing is returned to the election office, the registration is then in doubt, and follow-up is required.

On top of that check, the federal Help America Vote Act of 2002, or HAVA, governs identity verification to a limited extent. As a baseline, it requires that a voter's residency and identity must be proved at some point, and if that is not done at the time of registration—say, they registered on paper but didn't provide a driver's license number—then the first time they present themselves to vote, they must present an identification document. The act lists a "current and valid photo identification" or "a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter" as acceptable forms of ID.

This spring, I had three phone calls from people in Pennsylvania, a state that does not have a requirement that voters show an ID at the polls. Each person was irate that they'd been asked to show ID. In all three cases, it turns out they were new to their jurisdiction, and they were asked because of the "first time voter" requirement.

The point is that all states want to know the identity of voters and their residency status. In most states these facts are determined through the registration process.

Now I'd like to look at what documents voters are asked to show at the polls on a regular basis. Seventeen states don't ask for the voter to show an ID; most of these states, but not all, ask for a signature that gets compared to the signature in the voter record.

From here on, I'll be talking about the other 33 states, ones that request or require all voters to show an ID every time they vote. The first state to adopt a document to show identity was South Carolina, in 1950. Our timeline on this slide starts at 2000. On the slide, you can see that the green is shrinking over time. It represents the states that do not require an ID to be shown. You can also see that the brown down at the very bottom, is growing. That represents states with strict voter ID.

The point of this chart is to show that the legislative trend on voter ID has been one way only: toward more states adopting voter ID, and toward stricter versions of voter ID.

Perhaps more important than the kinds of IDs accepted, is what happens when a voter doesn't have it at the polls.

There are basically two options. Either the voter votes anyway on a regular ballot by signing an affidavit attesting to their identity, which NCSL calls "non-strict," or they vote on a provisional ballot, which we call "strict."

I'll discuss provisional ballots in more detail in a few minutes, but for these purposes, the point is that the voter must take some action after Election Day if that provisional ballot is to be counted, such as returning to an elections office a few days later and showing the required ID.

This categorization is based on whether the onus is on the voter to fix the ID problem (making it strict) or the onus is on the election officials to look into it (making it not-strict).

Having said that, I do want to mention that most states with strict voter ID laws do have some exceptions. A common exception is for people with a religious objection to being photographed, and another is for voters over 65 years of age.

What kinds of IDs are asked for vary, and states frequently tweaked their lists of what IDs are acceptable. All states accept driver's licenses and state-issued ID cards, and virtually all accept passports or government-issued employee cards. Some states simply use that federal list of IDs

intended for first-time voters, which includes utility bills and bank statements. That means that these states don't require a photo on the ID.

Two kinds of IDs have gotten particular scrutiny in recent years: student ID cards and firearms licenses. Sometimes the issue with these is whether they have a photo, or whether they have an expiration date.

It is the states with strict ID requirements that get the most attention, and that's perhaps because lawsuits have generally followed these enactments. Some strict voter ID laws have survived the challenges, and a few have not. This map shows a rundown of states with major cases.

I won't talk about the case here in North Dakota because you have experts in the room who understand it at its core.

We'll start with Wisconsin, which enacted a strict voter ID law in 2011. At one point Wisconsin had four cases going on—two in state court and two in federal court. Most recently, in July, a federal judge instructed the state to offer an affidavit option for those who didn't have the required ID. That ruling was quickly reversed, and now Wisconsin is waiting for the full appeals court to rule.

Also this summer, a federal appeals court found that a 2013 omnibus election bill from North Carolina that included strict voter ID had been enacted with discriminatory intent, and therefore it was struck down. It's worth noting that the legislature had already "softened" the ID requirement by including an option for indigent people. This exception was modeled after a similar one in South Carolina, which has been in place since 2012. North Carolina has appealed the recent ruling to the U.S. Supreme Court so it is possible that the lower court's ruling that struck down the law, may be put on hold until the case can be heard in full.

And in Texas, its 2011 strict voter ID law has been in the courts ever since enactment. Last month a federal appeals court struck it down. The state has agreed to offer an affidavit option to "soften" the law for the 2016 election, although I just read that the Texas Attorney General

may also appeal to the U.S. Supreme Court, asking that the Court allow the law to continue in place until there is a final determination.

Those are the three big cases. Additionally, Alabama and Virginia have each had federal judges uphold their strict voter ID laws this year. Appeals are likely in both those states. And in Oklahoma, a state judge just ruled this month that its 2013 voter ID law can stand.

Note, too, that at least three other states that have enacted strict voter ID laws have had them struck down by state Supreme Courts: Arkansas, Missouri, and Pennsylvania.

Proof of Citizenship

Now I'll turn to citizenship verification as it relates to voting. As I mentioned earlier, it's a requirement in all states that voters in federal elections must be citizens.

So how do states determine citizenship? They primarily address it at the time of registration. The first and by far the most common way is by asking a new voter to check a box on the voter registration form attesting to their citizenship. This is done under penalty of law, should the voter be found to have lied.

When a driver's license is used as documentation of identity at the time of registration, that may provide a way to check citizenship, depending on what is required to get a driver's license in that state. In many states, a birth certificate, naturalization papers or passport may be the required identification to get the driver's license, and these are all good documents to prove citizenship. So, if that information is on record at the DMV, it may be possible to share it with election officials.

A few states, including Kansas and California, have in recent years starting checking their registration lists against jury lists. That's because prospective jurors are asked to check a box attesting to citizenship, so anyone who doesn't check that box can be assumed to not be a citizen, and can be removed from the voter rolls.

Some potential jurors may purposely not check that box in hopes that by saying they aren't a citizen they won't have to serve on a jury. Those people will be disappointed when they go to the polls and their name isn't on the voter rolls. Honesty is, of course, the best policy.

Some states have looked for other ways to confirm citizenship, other than through the motor vehicle agency or juror lists. There is no federal registry of citizens to check, but there is a list of some non-citizens kept by the Department of Homeland Security called the Systematic Alien Verification for Entitlements, or SAVE, list. The list was not developed with voting in mind. In 2012 and 2013, a few states compared their voter registration lists to that list. That crosscheck can provide a state with records that then can be investigated further.

Kansas has used the SAVE list, but it has gotten the most attention in the last couple of years, for its 2012 law adding a requirement that new registrants must show documentation of their citizenship. Ever since its passage, Kansas has been in court with the federal government—with Kansas first suing the feds, and later voters suing Kansas.

Based on its state law, Kansas has requested that the U.S. Election Assistance Commission, which provides a single form that can be used for voter registration in every state, to add a note to the instructions on that form. The instruction would say that Kansas has a requirement that the voter show documentation of citizenship.

In the meantime, Kansas has over 35,000 voters on a "suspended" list. These people filled out a voter registration application at some point, but have not shown proof of citizenship. For the time being, Kansas will use a two-tiered system: voters who haven't shown proof of citizenship will be able to have their votes counted in federal races but not in state or local races.

I have used Kansas as an example of a state that requires a voter to prove citizenship, but it is worth noting that Alabama, Arizona and Georgia have similar laws on the books. Arizona has joined with Kansas on the request to the federal government, while Alabama and Georgia have not implemented their proof of citizenship laws yet.

One other state is worth mentioning in this context: Tennessee. Its law says "If evidence exists that a particular registered voter is not a citizen of the United States, the coordinator of elections shall

notify the county election commission where the person registered to vote that the registered voter may not be a citizen of the United States.” That notification begins a procedure for verifying the citizenship of that voter. The Tennessee approach is different than the Kansas approach because it only comes into play when there is reason to doubt citizenship, rather than creating a requirement for all voters to show proof of citizenship.

I’d now like to turn to the use of provisional ballots, which are sometimes known as fail-safe ballots, affidavit ballots or challenge ballots.

The idea is that when there is any doubt about a person’s eligibility to vote, the voter can use a provisional ballot and put it in an envelope for secrecy, and sign the outside. After the election is over, the eligibility of the voter can be determined, and if the voter is shown to be eligible to vote, the envelope is opened and the vote is counted.

Provisional ballots are required by federal law, as stated on this slide, but how they are managed is up to the states. And, a few states are not required to offer them, including North Dakota and a small handful of states that offer Election Day registration.

While providing a back-up option is required, administratively they have proved to be costly in time and money. On Election Day, they slow down voting lines, and after Election Day, each provisional ballot, in its sealed envelope, is reviewed by hand to determine if it is valid. That entails some serious work by election administrators.

Each state uses provisional ballots differently. For instance, Montana uses them as its method of providing Election Day registration. All Montana voters who show up on Election Day and aren’t on the rolls can vote on a provisional ballot. That ballot isn’t counted until the local election officials have verified the residency of the prospective voter.

Provisional ballots can also be used when a person was issued an absentee ballot but never received it, or at least never voted it. By far the most common reason provisional ballots are used is when required voter ID isn’t available.

In terms of provisional ballots, I thought I’d show a slide from Amber McReynolds, the election director for the city and county of Denver. Her perspective is that reducing the number of

people who need to use a provisional ballot is a good thing, because of the costs associated with processing them.

In 2010, Colorado had 39,361 provisional ballots. In 2014, it had just 980. She attributes the drop to an overhaul of its election system in 2013. The changes most noted were that Colorado now mails every voter a ballot, and it adopted an Election Day registration option.

Two smaller changes may account for the huge drop in the use of provisional ballots. Colorado changed its requirement that people have lived in their precinct for at least 30 days to register, to requiring them to have lived anywhere in the state for at least 22 days prior to Election Day. She also attributes some of that huge reduction in provisional ballots to Colorado's participation in the Electronic Registration Information Center, an organization run by the states to check the voter roll lists of members against each other.

With that, I want to thank you again, Mr. Chairman. I will be glad to answer any questions the Committee may have.