



LEGISLATIVE  
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August 20, 2025

# Voter Identification at a Polling Place

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# What this presentation does not address:

- Voter ID for mail-in or emergency ballots
- Voter ID for voter registration
- Proof of citizenship





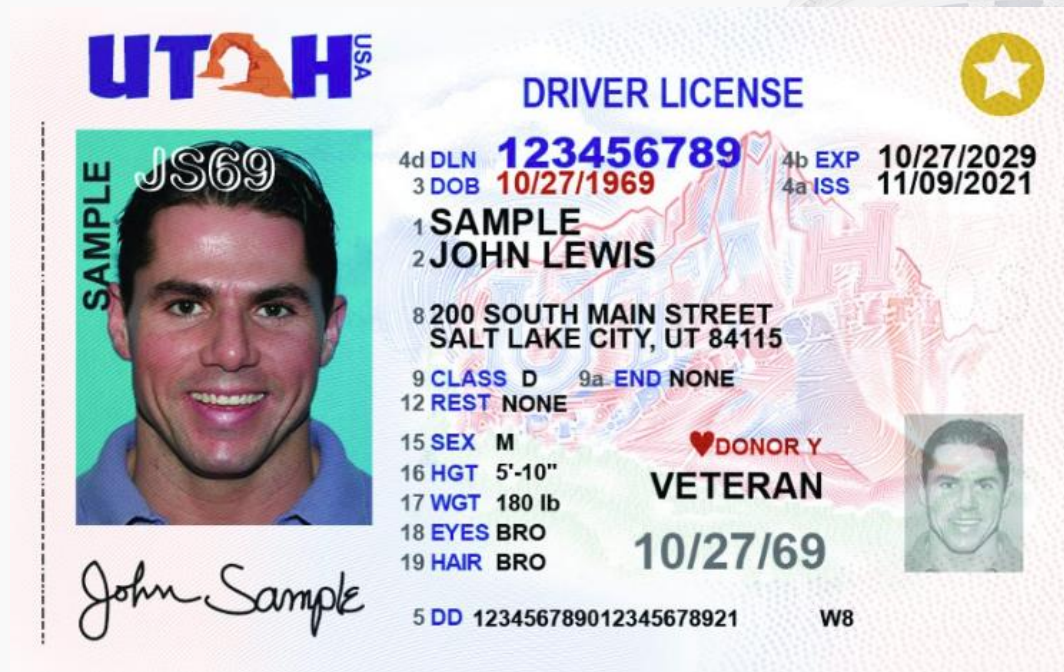
# What this presentation addresses:

- Voter ID for voting at a polling place (in-person voting)
  - HB300 did not address
  - Needed further study on legality and policy





# Current Utah Law





# Current Utah Law





# Current Utah Law

Two of the following that include the voter's name and evidence that they reside in the voter precinct:

- utility bill; \*
- bank or other financial account statement; \*
- certified birth certificate;
- social security card;
- check issued by Utah or the federal government;
- paycheck from the voter's employer;
- current Utah hunting or fishing license;
- certified naturalization documentation;
- license issued by an authorized agency of the United States;
- certified copy of court records showing voter's adoption or name change;
- Medicaid card, Medicare card, or Electronic Benefits Transfer Card;
- identification card issued by:
  - local government in Utah;
  - employer; or
  - college, university, technical school, or professional school in Utah; or
- Utah vehicle registration.

\* Repealed January 1, 2029



# Legal Analysis

## **Federal Caselaw – Constitutional challenges to voter ID statutes**

- What is likely to withstand constitutional challenge?
- What is unlikely to withstand constitutional challenge?

## **Authority**

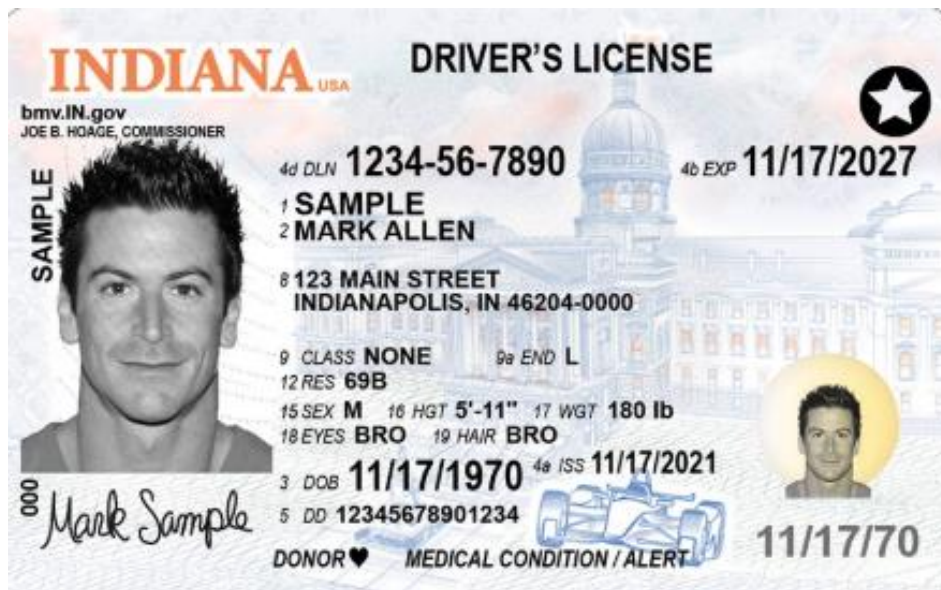
- Binding authority (SCOTUS and 10<sup>th</sup> Circuit)
- Persuasive authority



# Legal Analysis – SCOTUS

## *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008)

To vote at a polling place, voters required to produce:





# Legal Analysis – SCOTUS

## ***Crawford v. Marion County Election Board, 553 U.S. 181 (2008)***

- Exception to photo ID requirement for:
  - indigent people
  - people with religious objection to being photographed (affidavit instead)
- State provides photo ID for free
- If didn't bring photo ID, cast provisional ballot and present photo ID within 10 days
- Photo ID requirement did not apply to voting by mail
- Photo ID not required to register to vote



# Legal Analysis – SCOTUS

## ***Crawford v. Marion County Election Board, 553 U.S. 181 (2008)***

For an election law to be constitutional, the state must convince the Court that the interests put forward to justify voting qualifications outweigh the burden imposed on citizens by the law.

Each law must be evaluated on a case-by-case basis, with the Court balancing the interests on both sides.





# Legal Analysis – SCOTUS

***Crawford v. Marion County Election Board, 553 U.S. 181 (2008)***

- Modernizing elections
- Preventing voter fraud
- Preserving voter confidence



# Legal Analysis – SCOTUS

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# Legal Analysis – SCOTUS

## ***Crawford v. Marion County Election Board, 553 U.S. 181 (2008)***

“The fact that most voters already possess a valid driver's license, or some other form of acceptable identification, would not save the statute under our reasoning ... if the State required voters to pay a tax or a fee to obtain a new photo identification. But just as other States provide free voter registration cards, the photo identification cards issued by Indiana's BMV are also free.”



# Legal Analysis – SCOTUS

## ***Crawford v. Marion County Election Board*, 553 U.S. 181 (2008)**

“For most voters who need them, the inconvenience of making a trip to the BMV, gathering the required documents, and posing for a photograph surely does not qualify as a substantial burden on the right to vote, or even represent a significant increase over the usual burdens of voting.”





# Legal Analysis – SCOTUS

***Crawford v. Marion County Election Board, 553 U.S. 181 (2008)***

“In sum, on the basis of the record that has been made in this litigation, we cannot conclude that the statute imposes ‘excessively burdensome requirements’ on any class of voters.”



# Legal Analysis – 10<sup>th</sup> Circuit

## ***ACLU of New Mexico v. Santillanes (10th Cir. 2008)***

Photo ID required:

- any card issued by a government agency
- driver license
- student identification card
- credit or debit card
- insurance card
- union card
- professional association card
- voter ID card





# Legal Analysis – 10<sup>th</sup> Circuit

## ***ACLU of New Mexico v. Santillanes (10th Cir. 2008)***

Voter who does not have photo ID:

- cast provisional ballot after completing affidavit with DOB and last four digits of social security number
- voter has 10 days after election to provide photo ID
- voter can get free voter ID (through 10 days after the election)



# Legal Analysis – 10<sup>th</sup> Circuit

## ***Fish v. Schwab, 957 F.3d 1105 (10th Cir. 2020)***

- Statute requiring proof of citizenship to vote
- Court conducted an extensive analysis on the burden imposed by voters
- Evidence of significant number of voters burdened
- Statute did not provide for casting a provisional ballot with chance to cure



# Legal Analysis – *Persuasive Authority*

## ***Luft v. Evers, 963 F.3d 665 (7th Cir. 2020)***

- Case recognizes that Photo ID requirement is constitutional if state accommodates voters who cannot obtain photo ID with reasonable effort.
- Struck down a requirement that to use a student ID, the voter must prove they are currently enrolled in the school.





# Legal Analysis – *Persuasive Authority*

## ***Common Cause/Georgia v. Billups, 554 F.3d 1340 (11th Cir. 2009)***

Photo ID required:

- driver's license
- voter ID card
- U.S. passport
- government employee ID card
- U.S. military ID card
- tribal ID card



# Legal Analysis – *Persuasive Authority*

## ***Common Cause/Georgia v. Billups, 554 F.3d 1340 (11th Cir. 2009)***

- Free voter ID
- Voter's who don't bring photo ID may cast a provisional ballot and provide ID within 48 hours
- May vote by mail without photo ID (exception for 1<sup>st</sup> time voters)



# Legal Analysis – *Persuasive Authority*

Laws struck down because of proof of discriminatory intent or discriminatory effect:

- *North Carolina State Conf. of NAACP v. McCrory* (4<sup>th</sup> Cir. 2016)
- *Veasey v. Abbott* 830 F.3d 216 (5<sup>th</sup> Cir. 2016)





# Legal Analysis – *Conclusion*

Increased chance that Photo ID requirement will be upheld if:

- Multiple types of photo IDs accepted
- Exceptions granted (religious, indigent, etc.)
- May vote by other methods with non-photo ID
- Free photo ID available
- Ability to cast a provisional ballot and provide ID later
- Valid reasons for requirement
- No evidence of significant burdens
- No evidence of discriminatory intent or effect



# State Voter ID Policy Categories

- **Photo ID** = 24 states require identification that includes the voter's photo
- **Non-Photo ID** = 12 states accept non-photo identification
- **Non-ID** = 14 states allows voting without showing identification

## If a voter does not present required ID at the poll:

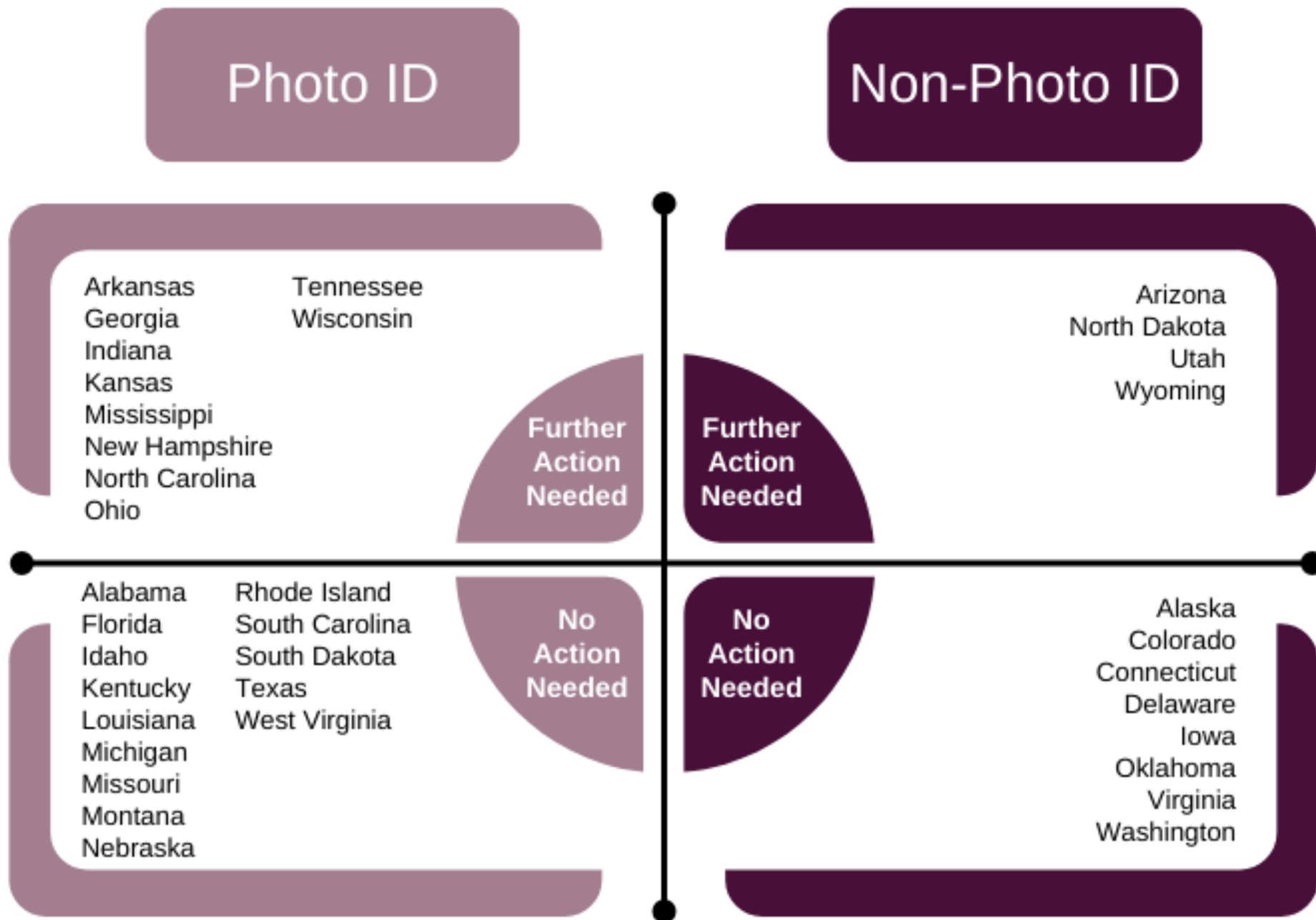
### Further Action Needed

Voter must vote a provisional ballot and take additional steps after election day for the ballot to be counted

### No Action Needed

Voter may cast a ballot that will be counted with no further steps





Source: NCSL, <https://www.ncsl.org/elections-and-campaigns/voter-id#toggleContent-15991>





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