



## Comparing North Carolina's Voter ID Law

### Background

Requiring in-person voters to present photo identification may seem uncontroversial to the average voter; however, such requirements have sparked years of debate and multiple lawsuits as states try to balance ease of voting with election integrity. Proponents of photo ID requirements argue they are necessary to prevent voter fraud and to ensure elections are secure and fair. Opponents argue these laws are unnecessary and make it more difficult for voters, primarily minority voters, to cast their ballots. Meaningful voter ID requirements address the concerns of both sides and are widely supported by voters of all political views.

After the Supreme Court upheld Indiana's photo ID law in *Crawford v. Marion County Elections Board*, 553 U.S. 181 (2008), a significant movement of states began implementing similar photo ID requirements for in-person voting to safeguard election integrity and improve voter confidence.

[Public sentiment](#) across party and racial lines weighs heavily in favor of photo ID requirements. A June 2021 [Monmouth University Poll](#) found that 4 in 5 Americans (80%) support requiring voters to show photo ID, including 62% of Democrats, 87% of independents, and 91% of Republicans. Similarly, a poll in March 2021 by [Rasmussen Reports](#) found 75% of voters support these requirements, including 69% of black voters. Despite this overwhelming support, not all states have been successful in their efforts to strengthen their voter ID laws.

### Overview of North Carolina's Voter Identification Law

In an effort to pass meaningful photo ID requirements without racial animus, North Carolina's General Assembly ratified H.B. 1092, an amendment to the North Carolina Constitution to require voters to present photo ID as a condition to vote in person. The General Assembly left the decision to the voters, who overwhelmingly approved the constitutional amendment 2,049,121 (55.49%) to 1,643,983 (44.51%) in the 2018 election. However, H.B. 1092 did not include proposed legislation necessary to implement the constitutional amendment. Therefore, the General Assembly enacted [Senate Bill 824](#) over Governor Cooper's veto just over one month after the constitutional amendment was adopted in late 2018.

S.B. 824 requires in-person voters to present a valid photo ID. The law allows voters to present any of the following forms of ID:

- North Carolina driver's license or state ID,
- Passport,
- Voter photo ID card,
- Tribal ID card,
- Student ID issued by an eligible postsecondary institution in North Carolina,
- Employee ID issued by a state or local government entity, or



- Driver's license or state ID issued by another state if the voter's registration was within 90 days of the election.

To be valid, these IDs must be unexpired or contain a photo if expired for less than one year.

The law makes an exception for certain IDs that are acceptable regardless of whether the ID contains an expiration or issuance date—so long as they contain a photograph of the voter. These include:

- Military ID,
- Veterans ID card, or
- Any expired form of acceptable ID presented by a registered voter 65 or older if the ID was unexpired on the voter's 65th birthday.

S.B. 824 also creates an option for voters lacking valid ID to obtain a free DMV ID or a free photo voter ID from the county boards of elections without needing to show any documentation.

S.B. 824's process to accommodate voters without a valid ID is also highly lenient. When a voter is unable to present a valid photo ID, S.B. 824 requires voters to cast a provisional ballot that will only be counted if the voter brings a valid ID to the county board of elections no later than the day before the canvass. However, to prevent voters without valid ID from being unable to vote, S.B. 824 allows voters to instead declare their inability to present valid ID to the county board due to religious objection, reasonable impediment, or natural disaster. S.B. 824 only requires voters claiming a reasonable impediment exception to fill out a Reasonable Impediment Declaration Form and affidavit, which is reviewed by the county board of elections. Unless the county board has grounds to believe the affidavit is false, the voter's provisional ballot will be counted.

Under the law, reasonable impediments include:

- The voter's inability to obtain photo ID due to lack of transportation,
- Disability or illness of the voter,
- The voter lacks a birth certificate or other underlying documents required,
- The voter's work schedule or family responsibilities,
- The voter's photo ID was lost or stolen,
- The voter has applied for a photo ID but has not yet received it, or
- There is some other reasonable impediment.

Only the last option requires the voter to provide written description of the impediment. The voter also has the option to indicate that state or federal law prohibits listing the impediment.

Despite the many ways S.B. 824 prevents voters lacking valid photo ID from disenfranchisement, the law was immediately challenged by voting rights groups upon its enactment.

### ***Holmes, et. al v. Moore***

Plaintiffs challenged S.B. 824 arguing the bill was enacted with the unconstitutional intent to discriminate against minority voters and made the voting process inherently and impermissibly different for them compared to the average voter. Defendants pointed to the photo ID requirement now imbedded



in the North Carolina Constitution as the neutral justification for enacting S.B. 824 and reminded the court that S.B. 824 was co-sponsored by a black Democratic Senator.

Yet without any evidence that the General Assembly acted with racially discriminatory intent and disregarding the myriad of race-neutral reasons the General Assembly showed to justify S.B. 824's enactment, two of the three judges on the panel voted to strike the law down. These judges held that S.B. 824 was motivated at least in part by an unconstitutional intent to target African-American voters. The court permanently enjoined S.B. 824 for violating the Equal Protection Clause in Article I, § 19 of the North Carolina Constitution even though that same Constitution required the General Assembly to enact a photo ID law.

## **Comparing North Carolina's Voter ID Requirements to Other States'**

Of the states enforcing photo ID requirements for in-person voters, S.B. 824 is one of the most permissive and broad. Comparing S.B. 824 to other valid requirements around the country shows how reasonable S.B. 824's provisions are.

According to the [National Conference of State Legislatures](#), 35 states currently enforce voter ID requirements. Seventeen of these states require voters to present photo ID to vote while the other 18 allow non-photo, documentary ID. In comparison to other states' laws, S.B. 824 adopts a very flexible approach to qualifying forms of ID. S.B. 824 also gives voters lacking photo IDs the opportunity to obtain one free of charge, even without supporting documentation. Not all state voter ID laws allow voters to circumvent presenting a photo ID to begin with, yet S.B. 824 provides voters with several options to get around the photo ID requirement.

Even some states that allow voters to show non-photo IDs have more strict requirements than S.B. 824. For example, four of these states do not accept employee IDs from local or government agencies like S.B. 824 allows. Furthermore, at least six of these states refuse to accept postsecondary school IDs and one even rejects the use of student IDs altogether. S.B. 824, on the other hand, allows students to present such IDs to vote.

Most importantly, S.B. 824's voter ID provisions are as or more lenient than several photo ID laws that courts have previously upheld.

As mentioned before, the U.S. Supreme Court upheld Indiana's voter ID law in *Crawford v. Marion County Election Board*. Notably, Indiana's law did not provide for free voter IDs that could be obtained without underlying documentation like S.B. 824 does. Indiana's law also permitted only certain voters without ID to vote by provisional ballot while S.B. 824 contains expansive exceptions. Indiana also required voters to return to a county office to verify their identity for their provisional ballot to be counted where S.B. 824 offers a reasonable impediment exception.

South Carolina's voter ID law was upheld by a three-judge panel in *South Carolina v. United States*, 898 F. Supp. 2d 30 (D.D.C. 2012). South Carolina's law contained an exception for voters claiming a reasonable impediment to obtaining, as opposed to presenting, valid photo ID. S.B. 824 is more lenient



in this regard. However, unlike S.B. 824, South Carolina's law still required the voter to present alternative ID and allowed county boards to reject the ballot if the reasonable impediment affidavit was used to simply circumvent the voter ID requirement. This is contrary to S.B. 824's standard to presume the excuse is valid unless there are grounds to believe it is false.

Texas's voter ID law, upheld in *Veasey v. Abbott*, 888 F.3d 792 (5th Cir. 2018), likewise contained an exception for voters claiming a reasonable impediment to acquiring, as opposed to showing, photo ID. Again, S.B. 824 is more lenient in this regard. Texas 'law also required the voter to present alternative ID and only allowed the voter to choose reasonable impediment only if certain exceptions applied. S.B. 824, however, allows voters to express their reasonable impediment if not listed. Texas 'law also did not provide for free, no-documentation voter IDs like S.B. 824 does.

Georgia's voter ID requirements were upheld in *Common Cause/Georgia v. Billups*, 554 F.3d 1340 (11th Cir. 2009). This law provided for free IDs for voters but contained no reasonable impediment exception like S.B. 824 does.

Virginia's voter ID requirements were upheld in *Lee v. Virginia State Board of Elections*, 843 F.3d 592 (4th Cir. 2016). Virginia's law provided voters with the option to obtain free IDs like S.B. 824; however, the law did not contain a reasonable impediment exception like S.B. 824's.

Alabama's voter ID requirements were upheld in *Greater Birmingham Ministries v. Secretary of State for Alabama*, 992 F.3d 1299 (11th Cir. 2021). Alabama's law provided voters with the option to obtain a free voter ID like S.B. 824 does, but the law contained no reasonable impediment exception.

History shows that no voter ID law providing both free voter IDs without underlying documents and a reasonable impediment exception has ever been invalidated. S.B. 824 is the first of its kind to be struck down.

## **Conclusion**

Given S.B. 824's broad list of valid photo IDs and the ability of voters to obtain a free ID or use the reasonable impediment option to circumvent the photo ID requirement, S.B. 824 ranks among the most lenient photo ID laws in the country.