The Potential Impact of Voter Identification Laws on Transgender Voters in the 2016 General Election

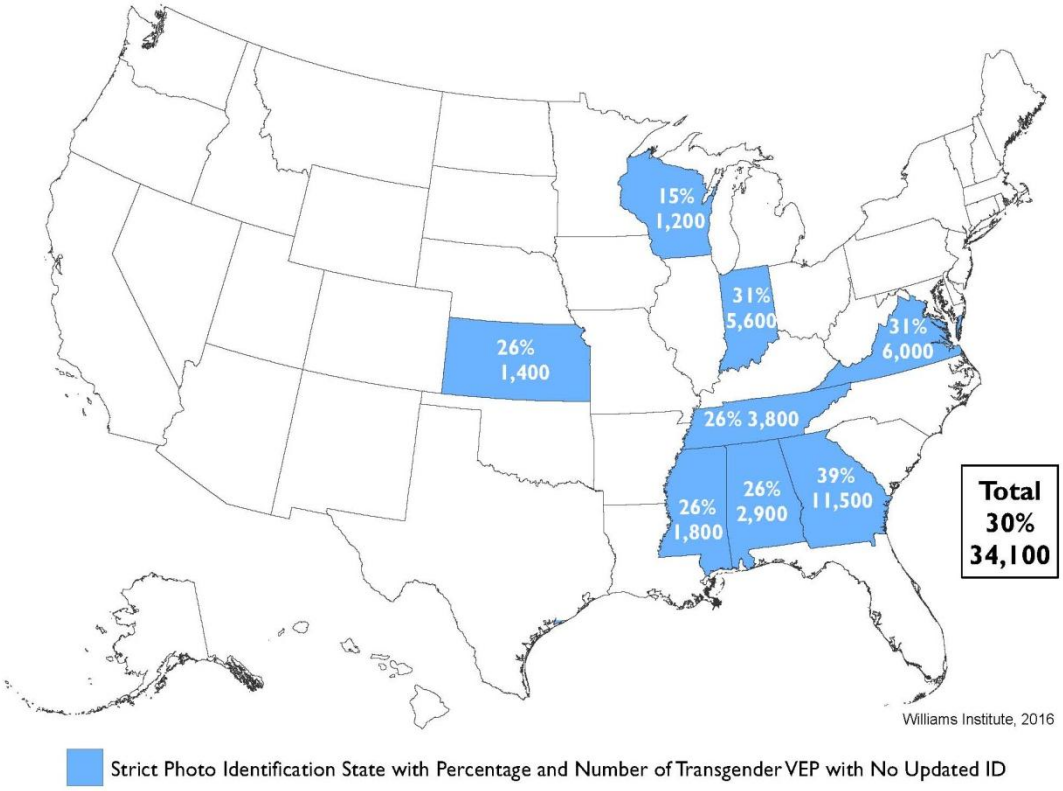
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Introduction and Summary

Transgender people who have transitioned to live in a gender different from the one assigned to them at birth face unique obstacles to obtaining identification documents that reflect their correct gender.[1] Having identification that does not accurately reflect one's gender can cause problems for transgender people during a variety of activities, from applying for employment or housing to interactions with police officers and government officials.[2] Transgender citizens with inaccurate identification may also encounter obstacles to voting. Thirty-four U.S. states have passed voter identification laws (voter ID laws), which require voters to prove their identity by providing an acceptable form of identification to poll workers before voting in an election.[3] The strictest voter ID laws require voters to present government-issued photo ID at the polls.[4] In the November 2016 general election, strict photo ID laws may create substantial barriers to voting and possible disenfranchisement for over 34,000 transgender people in eight states.

Figure 1: Transgender Voting-Eligible Population (VEP) with No Updated Identification in Strict Photo ID States (figures rounded)



In April 2012, the Williams Institute released the report "The Potential Impact of Voter Identification Laws on Transgender Voters," which described the problems transgender people may face when voting in states with the strictest voter identification laws (strict photo ID states) and provided an assessment of the potential impact of these laws on transgender voters.[5] A subsequent report was published in September 2014.[6] This report presents an update of findings from these prior studies to reflect the changed landscape of strict photo ID laws in the states and current population estimates for the U.S. adult citizen population and for transgender adults. This report relies on data from the National Transgender Discrimination Survey (NTDS), which was conducted by the National Gay and Lesbian Task Force and the National Center for Transgender Equality. While the NTDS cannot be considered a representative sample of the transgender population, it represents the best available data to estimate the number of voting-eligible transgender citizens who could face barriers to voting or possible disenfranchisement in the November 2016 general election.[7]

- According to the NTDS, 27 percent of transgender citizens who have transitioned reported that they had no identification documents or records that list their correct gender. If that rate holds true for the current U.S. population, about 261,000 transgender citizens who have transitioned have no updated identification or records.

- Transgender people of color, youth, students, people with low incomes and people with disabilities were more likely than the average NTDS respondent to have no updated identification documents or records.

- When presenting identification that did not accurately reflect their gender, many NTDS respondents reported being harassed (41%), being asked to leave the venue where they presented the identification (15%), and being assaulted or attacked (3%).

Strict photo ID states require voters to present government-issued photo identification in order to vote at the polls. If a voter does not present an acceptable ID, as determined by poll workers or election officials, they will have to vote a provisional ballot and provide an acceptable ID within a specified timeframe in order for their vote to count. In eight states with strict photo ID laws, transgender voters who have transitioned and do not have updated ID will be required to present ID that does not accurately reflect their gender in order to vote at the polls. In those cases, poll workers and election officials may decide that the ID presented does not match the voter, which could result in that vote not being counted.

- In the November 2016 general election, an estimated 112,000 transgender people who have transitioned will be eligible to vote in the eight strict photo ID states.

- Thirty percent of the transgender voting-eligible population in those states may have no identification or records that accurately reflect their gender.

- Accordingly, about 34,000 voting-eligible transgender people may face substantial barriers to voting and possible disenfranchisement in the November 2016 general election.

- Transgender people of color, youth, students, people with low incomes, and people with disabilities are likely overrepresented among those 34,000 voting-eligible transgender people.

Strict Photo ID States in the 2016 General Election

In strict photo ID states, voters must provide government-issued photo identification in order to vote and have their votes counted in the election. Acceptable forms of identification in all strict photo ID states include a state-issued driver's license or ID, a U.S. passport, or a military ID.[8] If voters do not provide an acceptable form of identification, they may vote on a provisional ballot. For the provisional ballot to be counted, they must provide an acceptable ID to government election officials within a certain limited timeframe.[9] The following eight states will likely have in place strict photo ID laws for the 2016 general election in November: Alabama, Georgia, Indiana, Kansas, Mississippi, Tennessee, Virginia, and Wisconsin.[10] [11] In voter ID states that do not have the strict photo ID requirement, voters have options available to them to comply with the law other than showing a photo ID.

Voter Identification and Transgender Voters

Some voters may not have the means or the ability to present the required voter identification for a variety of reasons, such as poverty, disability, or religious objection. A 2006 study found that 11 percent of U.S. citizens did not have government-issued photo identification, with minorities, the elderly, and those who have lower incomes being less likely than others to have government-issued photo identification.[12] Transgender people who have transitioned face additional burdens to acquiring or updating identification that would fulfill voter ID requirements because they must comply with requirements for updating the name and gender on their state-issued or federally-issued IDs and records.[13] Requirements for updating state-issued IDs vary widely by state and can be difficult and costly.[14] Federal requirements also vary by agency.[15]

Twenty-seven percent of transgender citizens who have transitioned reported in the NTDS that they had no identity documents or records that list their correct gender.[16] If that rate holds true for the current U.S. population, about 261,000 transgender citizens who have transitioned have no updated identification or records.[17] In the NTDS, people of color, youth, students, those with low incomes, and respondents with disabilities were more likely than the average NTDS respondent to have no updated identification documents or records. American Indian or Alaskan Native respondents (46%) and Black respondents (37%) lacked updated documents or records at the highest rates among racial and ethnic groups in the NTDS.

Government election officials and poll workers will decide whether transgender voters have identification that sufficiently conforms to the voter and the voter registration rolls in strict photo ID states. There is no way to predict precisely how election officials and poll workers will treat transgender voters at the polls if they do not present accurate identification. Respondents to the NTDS reported having negative experiences after presenting identification documents that did not match their gender presentation. Forty-one percent of transgender respondents who have transitioned reported being harassed and three percent reported being assaulted or attacked after presenting IDs that did not match their gender presentation. Fifteen percent were asked to leave the venue where they presented the ID. Furthermore, transgender respondents to the NTDS reported being denied equal treatment (22%) and being verbally harassed (22%) by government officials. These findings suggest that transgender people will face barriers to voting.

Potential Impact of Voter Identification Laws on Transgender Voters in the 2016 General Election

To estimate the transgender voting-eligible population for each state, general population figures for adult citizens in each state were calculated using the 2016 Current Population Survey.[18] For each state,

this figure was multiplied by the estimated proportion of adults who identify as transgender.[19] For purposes of estimating the impact of strict photo ID laws in this study, the transgender citizen population is then limited to those who have transitioned from male to female or female to male and are currently living full-time in a gender different from the one assigned to them at birth. Next, transgender people who might be ineligible to vote because of restrictions related to having been convicted of a felony are subtracted to estimate the transgender voting-eligible population (VEP).[20]

Table 1 presents the results of these calculations. Across the eight strict photo ID states, over 112,000 transgender people who have transitioned are estimated to be eligible to vote. Thirty percent of the transgender voting-eligible population in those states may have no identification or records that accurately reflect their gender. It is estimated, therefore, that over 34,000 voting-eligible transgender people across these eight states may face substantial barriers to voting and possible disenfranchisement in the November 2016 general election. It is likely that people of color, youth, students, those with low incomes, and people with disabilities are overrepresented among those 34,000 voting-eligible transgender people.

Table 1: Voting-Eligible Transgender Population with No Updated Identification or Records in Strict Photo Identification States for 2016 General Election

State	Transgender Voting-Eligible Population (VEP)[21]	Percentage of Transgender VEP with No Updated IDs or Records	Total Number of Transgender VEP with No Updated IDs or Records
Alabama	11106	26%	2888
Georgia	29365	39%	11453
Indiana	18223	31%	5649
Kansas	5206	26%	1354
Mississippi	6846	26%	1780
Tennessee	14493	26%	3768
Virginia	19228	31%	5961
Wisconsin	8022	15%	1203
TOTAL	**112489**	**30%**	**34055**

Conclusion

Voter ID laws create a unique barrier for transgender people who would otherwise be eligible to vote. Many transgender people who have transitioned do not have identification that accurately reflects their correct gender. In the November 2016 election, strict photo ID laws may create substantial barriers to voting and possible disenfranchisement for over 34,000 transgender people in eight states. Transgender people of color, youth, students, people with low incomes, and people with disabilities are likely overrepresented in that group. In order for these 34,000 voting-eligible transgender people to obtain the updated IDs required to vote in the November 2016 general election, they must comply with the requirements for updating their state-issued or federally-issued IDs. These requirements vary widely by state or federal agency and can be difficult and costly to meet. Voter ID laws, therefore, will create a unique barrier to voting in the November 2016 general election for a substantial number of transgender citizens.

[1] Grant, Jaime M., Lisa A. Mottet, Justin Tanis, Jack Harrison, Jody L. Herman, and Mara Keisling. (2011). *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey.* Washington, DC: National Center for Transgender Equality and National Gay and Lesbian Task Force, available at http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf (last accessed September 19, 2016).

[2] Grant, et al., *Injustice at Every Turn*.

[3] The National Conference of State Legislatures (NCSL), a bipartisan organization, provides current information on the status of voter identification laws and legislation in all U.S. states, available at http://www.ncsl.org/research/elections-and-campaigns/voter-id.aspx (last accessed September 19, 2016). The NCSL website also includes a description of identification requirements and statutory citations for each state.

[4] This analysis is limited to voting-eligible people voting in person at the polls. This analysis does not account for those people who may vote with an absentee ballot. Requirements for absentee voting vary by state and often require the voter to attest to having an acceptable reason for needing to vote absentee. Voting in the United States is a two-step process in all but one state: one must first register to vote and then cast a ballot. For the purposes of this study, it is assumed that transgender voters will have registered to vote under the name and address that is currently reflected in their citizenship documents or other identification documents that are required for purposes of voter registration and voting.

[5] Herman, Jody L. (April 2012). *The Potential Impact of Voter Identification Laws on Transgender Voters*. Los Angeles: The Williams Institute, available at http://williamsinstitute.law.ucla.edu/research/transgender-issues/the-potential-impact-of-voter-identification-laws-on-transgender-voters/ (last accessed September 19, 2016).

[6] Herman, Jody L. (September 2014). *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2014 General Election*. Los Angeles: The Williams Institute, available at http://williamsinstitute.law.ucla.edu/research/transgender-issues/voter-id-laws-sept-2014/ (last accessed September 19, 2016).

[7] The NTDS study was based on a national purposive sample of 6,456 transgender and gender non-conforming people. This sample provides the best available data on experiences of discrimination among transgender and gender non-conforming people in the U.S. The NTDS data was used by permission of The National Gay and Lesbian Task Force and the National Center for Transgender Equality. Additional calculations as needed for this study were completed by the author at The Williams Institute. Based on the wording of the NTDS survey instrument, rates of updated identity documents in this report likely only include the updating of the gender marker. Therefore, this study is limited to assessing the impact of voter ID laws for transgender citizens residing in strict photo ID states. Due to this data limitation, the number of transgender adult citizens who may be negatively impacted by voter ID laws generally is certainly larger than the affected pool of voting-eligible transgender people estimated in this report. Furthermore, the NTDS did not collect data on whether respondents had government-issued photo identification *at all*, regardless of the status of the gender marker. A survey by the Brennan Center for Justice (*see* note 12) found that 11 percent of U.S. citizens do not have any government-issued photo identification. The conservative assumption is made here that all transgender respondents to the NTDS who responded to questions about their identification documents *actually have* those identification documents.

[8] *See* note 3. Some strict photo ID states also accept other government-issued IDs, such as a tribal photo ID, student photo IDs from a state college or university, government employee ID, U.S. military photo ID, handgun licenses, and/or a state-issued voter ID card.

[9] *See* note 3. Some exemptions to the strict photo ID requirements exist, such as for religious objections to being photographed, for military and citizens overseas, and for those in poverty (*E.g.*, IND. CODE § 3-11.7-5-2.5(c)(2) (2015); TENN. CODE ANN. § 2-7-112(f)(2015)).

[10] In regard to Alabama's voter ID law, according to the NCSL (*see* note 3), even though Alabama requires government-issued photo ID, it is not categorized by NCSL as a strict photo ID state because voters can vote on a regular ballot without required ID if the voter is identified by two election officials as an eligible voter and both election officials sign a sworn affidavit stating the voter is eligible to vote. Because transgender respondents to the NTDS reported disparate treatment (22%) and harassment (22%) by government officials and reported harassment when presenting inaccurate ID (41%), we consider this provision a substantial burden to transgender voters and have classified Alabama as a strict photo ID state for purposes of this study.

[11] In regard to Wisconsin's voter ID law, it has been challenged on state and federal constitutional grounds. Frank v. Walker, No. 11-CV-01128 (E.D. Wis. Apr. 29, 2014); LULAC v. Deininger, No. 12-CV-00185 (E.D. Wis. Apr. 29, 2014); Milwaukee Branch of the NAACP v. Walker, No. 11 CV 5492 (Wis. Cir. Ct. July 17, 2012); League of Women Voters of Wis. v. Walker, No. 11 CV 4469 (Wis. Cir. Ct. Mar. 12, 2012). The U.S. Seventh Circuit Court of Appeals and the Wisconsin Supreme Court have held that the law is not facially invalid under the state or federal constitutions. Frank v. Walker, 768 F.3d 744 (7th Cir. 2014); League of Women Voters of Wis. v. Walker, 857 N.W.2d 302 (Wis. 2014). There is an ongoing federal constitutional challenge to the law as it applies to voters who face an unreasonable burden to obtaining photo IDs. Frank v. Walker, 2016 U.S. Dist. LEXIS 93878 (E.D. Wis. July 19, 2016); 2016 U.S. App. LEXIS 14917 (7th Cir. Aug. 10, 2016) (staying the district court's decision). Nonetheless, the law will be in effect for all Wisconsin voters for the 2016 general election.

[12] Brennan Center for Justice at NYU School of Law. (2006, November). *Citizens Without Proof: A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification.* New York: The Brennan Center for Justice at NYU School of Law, available at http://www.brennancenter.org/page/-/d/download_file_39242.pdf (last accessed September 19, 2016).

[13] Brown, Taylor N.T. and Jody L. Herman. (March 2016). *Voter ID Laws and Their Added Costs for Transgender Voters.* Los Angeles: The Williams Institute, available at http://williamsinstitute.law.ucla.edu/research/transgender-issues/voter-id-laws-and-their-added-costs-for-transgender-voters/ (last accessed September 19, 2016).

[14] For more information on state and federal requirements for updating identification, *see* National Center for Transgender Equality. "ID Documents Center" (webpage and map), available at http://www.transequality.org/documents (last accessed September 19, 2016).

[15] In 2010, subsequent to the fielding of the NTDS questionnaire, the U.S. Department of State revised their requirements for updating U.S. passports for people who are transitioning gender. (*See* note 14.) These revised requirements may make updating one's U.S. passport a more viable option for some transgender people to secure updated identification that meets voter ID requirements. Though updating one's U.S. passport may be an option for meeting voter ID requirements, the cost of obtaining or updating one's U.S. passport may be prohibitive for some transgender people. However, due to the changes in the requirements, it is possible that the rates of transgender people who have updated their passport have since increased.

[16] In this report, Question 60 of the NTDS is utilized, which asks respondents if all, some, or none of their IDs and records list the gender they prefer. This 27% figure differs slightly from the figure reported in *Injustice at Every Turn* due to the limitation of the calculation to U.S. citizens and the removal from the calculation of those who indicated earlier in the survey (Question 57) that they were allowed to update some specified identification documents.

[17] To estimate the transgender population without updated identity documents, the general population figure for adult citizens in the U.S. was calculated using the 2016 Current Population Survey (*see* note 18). This figure was multiplied by 0.6%, which is the percentage of the adult population that is estimated to identify as transgender in

the United States (about 1.4 million adults) (*see* note 19). That transgender population estimate was then limited to those who have transitioned from male to female or female to male and are currently living full-time in a gender different from the one assigned to them at birth in the NTDS (72%) (*see* notes 7 and 16). That final population figure (966,968) was then multiplied by the rate of transgender citizens who have transitioned and reported having no updated identity documents in the NTDS (27%).

[18] U.S. Census Bureau and the U.S. Bureau of Labor Statistics, Current Population Survey, 2016 Annual Social and Economic Supplement, available at http://www.census.gov/cps/data/cpstablecreator.html (last accessed September 19, 2016). Calculations were completed by the author.

[19] Flores, Andrew R., Jody L. Herman, Gary J. Gates, and Taylor N.T. Brown (June 2016). "How Many Adults Identify as Transgender in the United States." Los Angeles: The Williams Institute, available at http://williamsinstitute.law.ucla.edu/research/how-many-adults-identify-as-transgender-in-the-united-states/ (last accessed September 19, 2016). The adult transgender citizen population estimates in this report utilize the state-level transgender adult population estimates in Flores, et al., and assume that the proportion of transgender adults who would identify as transgender is the same among citizens and non-citizens in these states.

[20] In all states except for Indiana, a citizen who is convicted of a felony may not be eligible to vote after release from prison. *See* Brennan Center for Justice at NYU School of Law. (n.d.) "Criminal Disenfranchisement Laws Across the United States." New York: Brennan Center for Justice at NYU School of Law, available at http://www.brennancenter.org/sites/default/files/analysis/RTV%20Map%2010%2016%2013.pdf (last accessed September 19, 2016). The conservative assumption is made that those in the NTDS study who have ever been sent to jail or prison may be ineligible to vote in all states except Indiana. In some cases, where the NTDS sample size was too small (n<30) in a particular state to use a state-level rate for citizenship, transgender status, transition status, or respondents' ever having been to jail or prison, national rates were used for those states.

[21] This figure includes only those transgender people transitioning from male-to-female or female-to-male who are adults, citizens, have never been in jail or prison, and live full-time in a gender different from the one assigned to them at birth.

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