The Potential Impact of Voter Identification Laws on Transgender Voters in the 2018 General Election

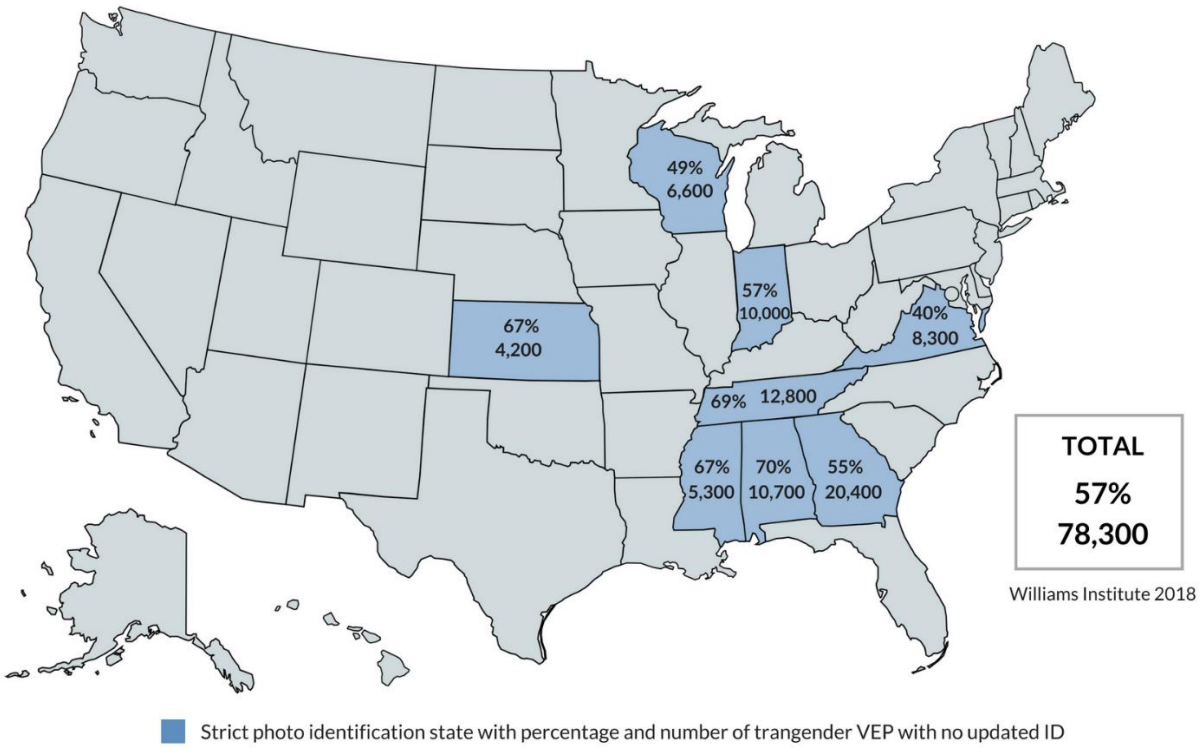
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Introduction and Summary

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 documents that do not accurately reflect one's gender, including in name or gender marker (e.g., male, female), can cause problems for transgender people during a variety of activities, such as when applying for a job or housing or when interacting with police officers or other government officials.[2] Transgender citizens with identification documents that do not match their gender may also encounter obstacles to voting. Thirty-four U.S. states have voter identification laws (voter ID laws), which require voters to prove their identities at the polls by providing an acceptable form of identification 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 2018 general election, strict photo ID laws may create substantial barriers to voting and possible disenfranchisement for over 78,000 transgender people in eight states.

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



This report relies on data from the 2017 Current Population Survey and the 2015 U.S. Transgender Survey (USTS) to estimate the impact of strict photo ID laws on transgender voters in the November 2018 general election. Key findings in this report include the following:

- Analysis of USTS data reveals that 46 percent of transgender adult citizens who have transitioned reported that they had no identification documents or records that accurately reflect their gender, meaning their IDs have an incorrect gender marker, an incorrect name, or both. If that percentage holds true for the full U.S. adult transgender population, about 450,000 transgender adult citizens who have transitioned have no IDs or records that accurately reflect their gender.

- In the November 2018 general election, an estimated 137,000 transgender people who have transitioned will be eligible to vote in the eight strict photo ID states: Alabama, Georgia, Indiana, Kansas, Mississippi, Tennessee, Virginia, and Wisconsin.

- Across these eight states, 57 percent of the transgender voting-eligible population may have no identification or records that accurately reflect their gender.

- Accordingly, about 78,000 voting-eligible transgender people may face substantial barriers to voting at the polls and possible disenfranchisement in the November 2018 general election.

- Transgender people of color, young adults, students, people with low incomes, and people with disabilities are likely overrepresented among the 78,000 voting-eligible transgender people who face barriers to voting and possible disenfranchisement in the November 2018 general election.

Background and Data Sources

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] Subsequent reports were published in September 2014 and in September 2016.[6] This report presents an update of findings from these prior studies to reflect current population estimates for the U.S. adult citizen population and improved data on transgender people's access to accurate identification documents.

This report relies on data from the 2017 Current Population Survey (CPS), conducted by the U.S. Census Bureau and the Bureau of Labor Statistics, and the 2015 U.S. Transgender Survey (USTS), conducted by the National Center for Transgender Equality. Prior Williams Institute reports on the impact of voter identification laws on transgender voters relied on the National Transgender Discrimination Survey (NTDS), which was fielded in 2008 and 2009. The NTDS only included information about the status of gender markers on respondents' identification documents and records. The USTS provides improved information about the status of both the name and gender marker on respondents' identification documents and records. While the USTS is not considered a representative sample of the U.S. transgender population, it provides the best available data to estimate the number of voting-eligible transgender people who could face barriers to voting or disenfranchisement in the November 2018 general election.[7]

Strict Photo ID States: Requirements and Voting Process

Strict photo ID states require voters to present government-issued photo identification to vote in person at the polls. The following eight states currently have in place strict photo ID laws: Alabama, Georgia, Indiana, Kansas, Mississippi, Tennessee, Virginia, and Wisconsin.[8,9] In all strict photo ID states, acceptable forms of identification include a state-issued driver's license or state ID, a U.S. passport, or a military ID.[10] In voter ID states that do not have the strict photo ID requirement, voters have options available to comply with the law other than showing a government-issued photo ID.

If a voter does not present an acceptable ID, as determined by poll workers or election officials at the polls, they will have to vote using a provisional ballot and provide an acceptable ID within a specified timeframe for their vote to be counted. In the eight states with strict photo ID laws, transgender voters who have transitioned and do not have updated ID will be required to present an ID at the polls that does not accurately reflect their gender, meaning the ID contains an incorrect name, incorrect gender marker, or both. In this case, poll workers or election officials may decide that the ID presented does not match the voter, which could result in that voter being required to vote using a provisional ballot. Unless the voter can produce an acceptable ID within the specified timeframe after the election (within three to five days in most strict photo ID states), their vote may not be counted in the election.[11]

In strict photo ID states, government election officials and poll workers will decide whether voters, including transgender voters, have the required form of identification that sufficiently identifies the voter and matches the voter's information as listed in the voter registration rolls. There is no way to predict precisely how election officials and poll workers will treat transgender voters at the polls if they present identification that does not accurately reflect their gender. Thirty-two percent of respondents to the USTS reported having negative experiences after presenting identification documents that did not match their gender presentation.[12] Respondents reported being verbally harassed (25%), denied services or benefits (16%), being asked to leave the venue where they presented the identification (9%), and being assaulted or attacked (2%) after presenting inaccurate IDs. Furthermore, respondents to the USTS reported being denied equal treatment or service (11%) and being verbally harassed (9%) by staff when seeking government benefits or assistance. These findings suggest that some transgender people will face barriers to voting at the polls.

Voter Identification and the Potential Impact on Transgender Voters in the November 2018 General Election

Some voters may not have the means or the ability to obtain 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.[13] Transgender people who have transitioned face additional burdens to acquiring or updating identification that would fulfill voter ID requirements in strict photo ID states. To acquire accurate identification for voting, transgender people who have transitioned must first comply with official requirements for updating the name and gender on their state-issued or federally-issued IDs and records, such as their driver's license or passport.[14] Requirements for updating state-issued IDs vary widely by state and can be difficult and costly.[15] Federal requirements also vary by agency.

Forty-six percent of transgender adult citizens who have transitioned and participated in the USTS reported that they had no IDs or records that accurately reflect their gender, meaning that their identity documents list the incorrect name, incorrect gender, or both.[16] If that percentage holds true for the full

U.S. adult transgender population, about 450,000 transgender adult citizens who have transitioned have no identification documents or records that accurately reflect their gender.[17] Analysis of USTS data reveals that transgender citizens who have transitioned were significantly more likely than others to have no IDs that accurately reflect their gender if they were people of color (48%), young adults (ages 18 to 24; 69%), students (54%), those with low incomes (less than $10,000 annual household income; 60%), and people with disabilities (55%).[18] American Indian or Alaskan Native (52%), Asian (49%), Multiracial (48%), and Black (48%) respondents lacked accurate IDs at the highest rates among racial and ethnic groups in the USTS.

To estimate the impact of strict photo ID laws on transgender voters, we first estimate the number of transgender people who would be eligible to vote. For each state, we calculated the number of adult citizens using population estimates from the 2017 Current Population Survey.[19] For each state, the adult citizen population was multiplied by the estimated proportion of adults who identify as transgender.[20] For purposes of estimating the impact of strict photo ID laws in this study, we used findings from the USTS to limit the transgender adult citizen population 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 due to having been convicted of certain crimes were subtracted to estimate the transgender voting-eligible population (VEP).[21]

Table 1 presents the results of these calculations. Across the eight strict photo ID states, we estimate that 137,000 transgender people who have transitioned are eligible to vote. Based on analysis of USTS data, 57 percent of the transgender voting-eligible population across those eight states report having no identification or records that accurately reflect their gender. It is estimated, therefore, that over 78,000 voting-eligible transgender people across these eight states may face substantial barriers to voting and possible disenfranchisement in the November 2018 general election. It is likely that people of color, young adults, students, those with low incomes, and people with disabilities are overrepresented among those 78,000 voting-eligible transgender people.

Table 1: Voting-Eligible Transgender Population with No Updated Identification or Records in Strict Photo Identification States for 2018 General Election (figures rounded)

State	Transgender Voting-Eligible Population (VEP)[22]	Percentage of Transgender VEP with No Updated IDs or Records	Total Number of Transgender VEP with No Updated IDs or Records
Alabama	15300	70%	10700
Georgia	37050	55%	20400
Indiana	17500	57%	10000
Kansas	6300	67%	4200
Mississippi	8000	67%	5350
Tennessee	18550	69%	12800
Virginia	20750	40%	8300
Wisconsin	13450	49%	6600
TOTAL	**136900**	**57%**	**78300**

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 documents that accurately reflect their correct gender. In the November 2018 general election, strict photo ID laws may create substantial barriers to voting and possible disenfranchisement for over 78,000 transgender people in eight states. This estimate is higher than our prior estimates for the 2012, 2014, and 2016 general elections, likely due to the availability of better data on the status of names and gender markers among transgender people.[23] Transgender people of color, young adults, students, people with low incomes, and people with disabilities are likely overrepresented among the 78,000 who do not have accurate ID for voting. In order for these 78,000 voting-eligible transgender people to obtain the updated IDs required to vote in the November 2018 general election, they must comply with official requirements for updating their state-issued or federally-issued IDs. These requirements vary widely by state and by federal agency and can be difficult and costly to meet. Voter ID laws, therefore, create a unique barrier to voting for a substantial number of transgender people.

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[1] James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality, available at https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf (last accessed June 12, 2018).

[2] James, et al., *The Report of the 2015 U.S. Transgender Survey*.

[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 June 12, 2018). The NCSL website also includes a description of identification requirements and statutory citations for legislation enacted in 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 July 24, 2018).

[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 July 24, 2018); Herman, Jody L. (September 2016). *The Potential Impact of Voter Identification Laws on Transgender Voters in the 2016 General Election*. Los Angeles: The Williams Institute, available at https://williamsinstitute.law.ucla.edu/wp-content/uploads/2016-Voter-ID.pdf (last accessed July 24, 2018).

[7] The USTS study was based on a national purposive sample of 27,715 transgender and non-binary adults. This sample provides the best available data on experiences of discrimination among transgender and non-binary adults in the U.S. The USTS data were used with the permission of the National Center for Transgender Equality. To find out more about the U.S. Transgender Survey, visit http://www.ustranssurvey.org/reports. Additional

calculations as needed for this study were completed by the authors at The Williams Institute. The USTS standard survey weight, which corrects for an overrepresentation of 18-year-olds in the dataset and corrects for bias in racial and ethnic representation, was applied to all USTS findings relied upon in this report. See the U.S. Transgender Survey report (linked above) for detailed information about the standard survey weight. This study is limited to assessing the impact of voter ID laws for transgender citizens residing in strict photo ID states. Due to this limitation, the number of transgender adult citizens who may be negatively impacted by voter ID laws is certainly larger than the affected pool of voting-eligible transgender people estimated in this report. Furthermore, the USTS questions this report relies on (Q10.13 and Q10.15) did not assess whether all respondents had government-issued photo identification *at all*, regardless of the status of the name or gender marker. A survey by the Brennan Center for Justice (*see* note 13) found in 2006 that 11% of U.S. citizens do not have any government-issued photo identification. The conservative assumption is made here that all transgender respondents to the USTS who responded to questions Q10.13 and Q10.15 *actually have* the identification documents mentioned.

[8] 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 USTS reported being harassed (25%) and being denied services or benefits (16%) when presenting inaccurate IDs, 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.

[9] 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). Unless there is further action in the courts on this issue, the law will be in effect for all Wisconsin voters for the 2018 general election.

[10] *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. 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)).

[11] *See* note 3.

[12] James, et al., *The Report of the 2015 U.S. Transgender Survey*.

[13] 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 June 15, 2018).

[14] 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 June 15, 2018).

[15] 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 June 15, 2018).

[16] In this report, Questions 10.13 and 10.15 of the USTS are utilized, which ask respondents if all, some, or none of their IDs and records list the name and gender they prefer. If a respondent reported that none of their IDs list the name they prefer and/or that none of their IDs list the gender they prefer, we consider that respondent to have no IDs that accurately reflect their gender (i.e., incorrect name, incorrect gender, or both). *See* note 7. This 46% figure differs from the figure reported in *The Report of the 2015 U.S. Transgender Survey* due to the limitation of the calculation in this report to transgender-identified U.S. citizens who live full-time in a gender different from the one they were assigned at birth.

[17] To estimate the transgender population without updated identification documents, the general population figure for adult citizens in the U.S. was calculated using the 2017 Current Population Survey (*see* note 19). This figure was multiplied by 0.58%, 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 20). That transgender adult citizen 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 (75% of transgender respondents to the USTS) (*see* notes 7 and 16). That final population figure (978,000) was then multiplied by the proportion of transgender citizens who have transitioned and reported having no updated identification documents in the USTS (46%).

[18] Significance tests were performed using Pearson's chi-square tests, which tested the relationship between the status of identification documents and race/ethnicity, age, student status, household income, and disability. All results presented here were significant at the 0.05 level. All test results are on file with the authors.

[19] U.S. Census Bureau and the U.S. Bureau of Labor Statistics, Current Population Survey, 2017 Annual Social and Economic Supplement, available at http://www.census.gov/cps/data/cpstablecreator.html (last accessed June 15, 2018). Calculations were completed by the authors.

[20] 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 July 25, 2018). 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.

[21] In all states considered in this study, except for Indiana, a citizen who is convicted of certain crimes may not be eligible to vote. *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 June 15, 2018). To estimate the voting-eligible population in each of the eight strict photo ID states, we assume that those who have been held in jail or prison in the past year may be ineligible to vote in all states except Indiana. In the USTS, three percent of transgender citizens who have transitioned in the eight strict photo ID states reported having been held in jail or prison in the past year. All those who have been in jail or prison in the past year may not be subject to criminal disenfranchisement laws, for instance if they committed a crime not included in criminal disenfranchisement laws. Additionally, there are those who may be subject to criminal disenfranchisement laws who have not been held in jail or prison in the past year, such as someone who has not completed probation. However, the USTS variable used in our calculations provides the best current estimate of those who may be subject to criminal disenfranchisement laws. We assume that all other eligibility requirements for voting are met.

[22] This figure includes only those transgender people transitioning from male-to-female or female-to-male who are adults, citizens, have not been held in jail or prison in the past year (except Indiana), and live full-time in a gender different from the one assigned to them at birth.

[23] *See* notes 5 and 6.

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