The Potential Impact of Voter Identification Laws on Transgender Voters

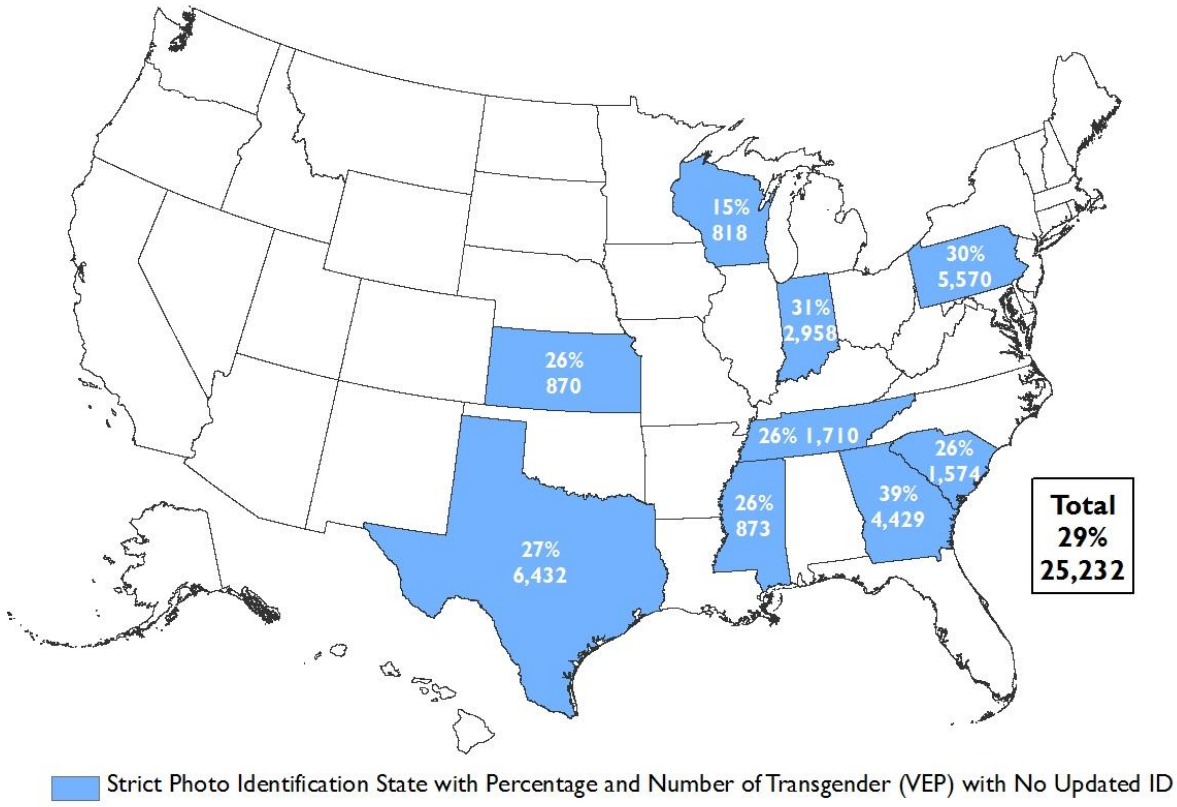
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April 2012

Introduction and Summary

Transgender people who have transitioned to live in a gender different from the gender assigned to them at birth face unique obstacles to obtaining identification documents that reflect their correct gender. 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.[1] Transgender citizens with inaccurate identification may also encounter obstacles to voting. An increasing number of U.S. states have adopted 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. The strictest voter ID laws require voters to present government-issued photo ID at the polls. In the November 2012 election, strict photo ID laws may create substantial barriers to voting and possible disenfranchisement for over 25,000 transgender people in nine states.

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



This report presents the best available data from the National Transgender Discrimination Survey (NTDS) to describe the problems transgender people may face when voting in states with the strictest voter identification laws (strict photo ID states) and provides an assessment of the potential impact of these laws on transgender voters.

- According to the NTDS, 40 percent of transgender citizens who have transitioned to live full-time in a gender different from the gender assigned at birth reported not having an updated driver's license and 74 percent did not have an updated U.S. passport. If these rates hold true for the current U.S. population, about 183,000 transgender citizens who have transitioned are without updated driver's licenses and 338,000 are without updated U.S. passports.

- Twenty-seven 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 124,000 transgender citizens who have transitioned have no updated identification or records.

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

- When presenting identification that didn't accurately reflect their gender, many transgender 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. If a voter does not present the required ID, they will have to vote a provisional ballot and provide the required ID within a certain limited timeframe in order for their vote to count. In nine states where strict photo ID laws have passed, 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. 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 2012 general election, 88,000 transgender people who have transitioned will be eligible to vote in the nine strict photo ID states.

- Twenty-nine percent of the transgender voting-eligible population in those states has no identification or records that accurately reflect their gender.

- Accordingly, over 25,000 voting-eligible transgender people may face substantial barriers to voting and possible disenfranchisement in the November 2012 general election.

- Transgender people of color, youth, students, those with low incomes, and people with disabilities are likely overrepresented among those 25,000 voting-eligible transgender people.

Voter Identification Laws

The Help America Vote Act of 2002 (HAVA) created a requirement for U.S. citizens who are voting in a state for the first time and who registered in that state by mail to provide to election officials photo identification or identification that confirms the voter's name and address.[2] Since HAVA was enacted, an increasing number of states have adopted stricter identification requirements that require all voters to provide proof of their identity to poll workers in order to vote on a regular ballot. Currently, thirty-two states have passed voter identification laws (voter ID laws), which vary by state in what forms of identification voters are required to provide at the polls.[3] Due to the wide variation in state requirements and means by which voters can fulfill the requirements, the National Conference of State Legislatures (NCSL) has categorized these laws into three main categories: strict photo ID, photo ID, and non-photo ID.[4]

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 military ID.[5] If voters do not provide the required form of identification, they may vote on a provisional ballot. For the provisional ballot to be counted they must provide the required ID to government election officials within a certain limited timeframe.[6] 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.

Access to Required Voter Identification

Voter ID laws have sparked debate over the impact the laws will have on electoral participation. Some voters may not have the means or the ability to provide the required voter identification for a variety of reasons, such as poverty, disability, or religious objection. A survey conducted by the Opinion Research Corporation and sponsored by the Brennan Center for Justice at NYU School of Law found that 7 percent of U.S. citizens cannot readily access documents to prove their U.S. citizenship and 11 percent of U.S. citizens do not have government-issued photo identification.[7] The study also found that U.S. citizens who are minorities, are elderly, and those who have lower incomes are all less likely than the general U.S. citizen population to have government-issued photo identification.

Some voter ID states have recognized these limitations and have provided exemptions from the ID requirement for reasons of poverty, disability, and religious objection.[8] Some states, such as Georgia, Indiana, and Kansas, offer free state-issued ID cards for the purpose of voting.[9] It is not known at this time if exemptions to these requirements and programs for free state-issued ID are sufficient to overcome barriers to obtaining identification required for voting.

Voter Identification and Transgender Voters

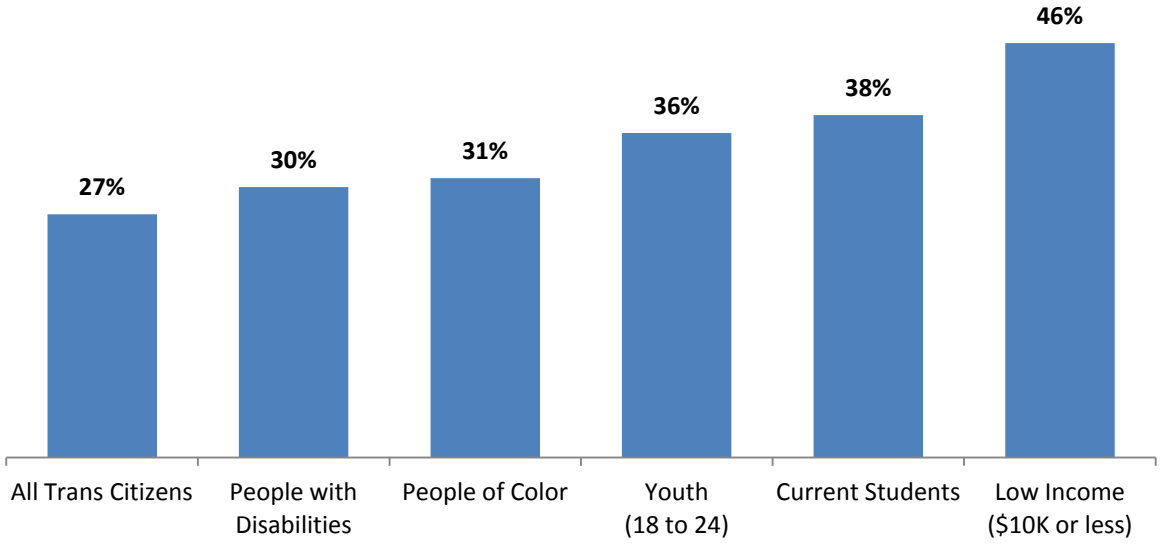
While the debate over voter ID laws continues, little attention has been paid to the impact these laws may have on transgender voters. Transgender people who have transitioned face unique hurdles when acquiring or updating identification that would fulfill voter ID requirements because they must comply with the requirements for updating the name and gender on their state-issued or federally-issued IDs and records.[10] Requirements for updating state-issued IDs vary widely by state and can be difficult and costly. Federal requirements also vary by agency. Recently, the U.S. Department of State revised their requirements for updating U.S. passports for people who are transitioning gender.[11] 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.

It is not surprising to find that many transgender people who have transitioned to live full-time in a gender different from the gender assigned at birth do not have identification or records that reflect their current name or gender.[12] In the National Transgender Discrimination Survey (NTDS), the largest survey of transgender and gender non-conforming adults in the United States, 40 percent of transgender citizens who have transitioned reported not having an updated driver's license and 74 percent did not have an updated U.S. passport.[13] If these rates hold true for the current U.S. population, about 183,000 transgender citizens who have transitioned are without updated driver's licenses and 338,000 are without updated U.S. passports.[14]

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.[15] If that rate holds true for the current U.S. population, about 124,000 transgender citizens who have transitioned have no updated identification or records.[16] As Figure 2 illustrates, people of color, youth, students, those with low incomes, and respondents with disabilities in the NTDS 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.

Figure 2: Lack of any updated identification among transgender citizens in the NTDS, by selected groups



There is no way to predict precisely how transgender voters will be treated when voting at the polls without accurate identification in strict photo ID states. However, data from the NTDS suggest they will face barriers to voting. Respondents to the NTDS reported having negative experiences after presenting identification documents that did not match their gender presentation, which is what many transgender people will be required to do at the polls. Forty-one percent of transgender respondents who have transitioned have been harassed and three percent have been 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.

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. It is not likely that election officials and poll workers will have had any training on the unique situation of transgender voters who do not have IDs that reflect the correct gender.[17] When a transgender voter presents ID that does not match the gender in which they are presenting, such as someone who has transitioned from male to female but their ID still lists them as male, officials may decide that person's ID does not match the person standing in front of them. In that case, they would require that person to vote on a provisional ballot. That voter would then have to provide the required ID within a limited amount of time to specified government officials who will review the ID to determine if the provisional ballot will be counted. Those government officials also could decide that the ID does not match the voter and the vote would then not be counted. Therefore, transgender citizens who would otherwise be eligible to vote may face substantial barriers to voting at the polls and possible disenfranchisement in strict photo ID states.

Potential Impact of Voter Identification Laws on Transgender Voters in the November 2012 General Election

Currently, nine states could have strict photo identification laws in place for the November 2012 general election. These states are Georgia, Indiana, Kansas, Mississippi, South Carolina, Pennsylvania, Tennessee, Texas, and Wisconsin.[18] Transgender voters in these states will be required to produce government-issued photo identification in order to vote on a regular ballot in November 2012. In voter identification states that do not have the strict photo identification requirement in place for the November 2012 general election, transgender voters have options other than showing a photo ID.[19] Though transgender voters may have difficulty voting in the states with less strict ID requirements, such as in the case where a transgender voter has not updated their name, this report is restricted to assessing the impact on transgender voters in the nine strict photo ID states due to limitations imposed by the available data.[20] The best available data source, the NTDS, only provides data for updating the gender indicated on respondents' IDs or records. The NTDS does not include data on updating one's name. Therefore, this assessment of the impact on transgender voters is limited to those states where government-issued photo identification is required to vote, that is identification that includes a gender marker and/or a photo.[21] Rates of updated identification found in the NTDS state-level data are assumed to hold true of the transgender populations in the states included in this study.[22]

To estimate the transgender voting-eligible population for each state, general population figures for adult citizens in each state were calculated using the 2011 Current Population Survey.[23] For each state, this figure was multiplied by 0.3%, which is the percentage of the adult population that is estimated to identify as transgender in the United States.[24] For purposes of estimating the impact of strict photo ID laws in this study, the transgender 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 gender 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). In all states except for Indiana and Pennsylvania, a citizen who is convicted of a felony may not be eligible to

vote after release from prison.[25] In Mississippi and Tennessee, a person with a felony conviction may be permanently disenfranchised unless the government restores their right to vote.[26] In all other strict photo ID states, those with felony convictions are not eligible to vote until they have completed probation.[27] Therefore, 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 and Pennsylvania.

Table 1 presents the results of these calculations. Across the nine strict photo ID states, 88,000 transgender people who have transitioned will be eligible to vote. Twenty-nine percent of the transgender voting-eligible population in those states has no identification or records that accurately reflect their gender. It is estimated, therefore, that over 25,000 voting-eligible transgender people across these nine states may face substantial barriers to voting and possible disenfranchisement in the November 2012 general election. It is likely that people of color, youth, students, those with low incomes, and people with disabilities are overrepresented among those 25,000 voting-eligible transgender people.

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

State	Transgender Voting-Eligible Population (VEP)[28]	Percentage of Transgender VEP with No Updated IDs or Records	Total Number of Transgender VEP with No Updated IDs or Records
Georgia	11,356	39%	4,429
Indiana	9,541	31%	2,958
Kansas	3,345	26%	870
Mississippi	3,357	26%	873
Pennsylvania	18,567	30%	5,570
South Carolina	6,052	26%	1,574
Tennessee	6,576	26%	1,710
Texas	23,821	27%	6,432
Wisconsin	5,453	15%	818
TOTAL	**88,069**	**29%**	**25,232**

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 2012 election, strict photo ID laws may create substantial barriers to voting and possible disenfranchisement for over 25,000 transgender people in nine states. Transgender people of color, youth, students, those with low incomes, and people with disabilities are likely overrepresented in that group. In order for these 25,000 voting-eligible transgender people to obtain the updated IDs required to vote in the November 2012 general election, they must comply with the requirements for updating their state-issued IDs or their U.S. passport. These requirements vary widely by state and can be difficult and costly. Voter ID laws, therefore, will create a unique barrier to voting in the November 2012 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/reports_and_research/ntds (last accessed March 14, 2012).

[2] Help America Vote Act of 2002, 42 U.S.C. §§ 15301-15545 (2010).

[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/legislatures-elections/elections/voter-id-state-requirements.aspx. The NCSL website also includes a description of identification requirements and statutory citations for each voter identification state.

[4] *See supra* note 3.

[5] *See supra* 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, handgun licenses, and/or a state-issued voter ID card.

[6] *See supra* note 3. Some exemptions to the strict photo ID requirements exist, such as for religious objections to being photographed, poverty, and residence within a state-licensed facility.

[7] Brennan Center for Justice at NYU School of Law. (2006, November). *Citizens Without Proof: A Survey of Americans' Posession 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 March 13, 2012).

[8] *See supra* note 3.

[9] For examples of how citizens can acquire free IDs that will comply with voter identification laws, see the following websites for Georgia, Indiana, and Kansas: http://www.sos.georgia.gov/gaphotoid/default.htm (Georgia) (last accessed April 3, 2012), http://www.in.gov/sos/elections/2625.htm (Indiana) (last accessed April 3, 2012), and http://www.gotvoterid.com/valid-photo-ids.html#idlist (Kansas) (last accessed April 3, 2012).

[10] For more information on state and federal requirements for updating identification, *see* National Center for Transgender Equality. (May 2010). "Driver's License Policies by State" (webpage and map), available at http://transequality.org/Resources/DL/DL_policies.html (last accessed April 3, 2012. *Also see* National Center for Transgender Equality. (January 2012). *Understanding the New Passport Gender Change Policy*. Washington, DC: National Center for Transgender Equality, available at http://transequality.org/Resources/passports_2012.pdf (last accessed April 3, 2012).

[11] For the current rules for passport changes for those who are transitioning or have transitioned gender, see the U.S. Department of State website: http://travel.state.gov/passport/get/first/first_5100.html (last accessed March 14, 2012).

[12] Voting in the United States is a two-step process in nearly all states: 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.

[13] *See supra* note 1. The NTDS study was based on a national convenience 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 set was used by permission of The National Gay and Lesbian Task Force. 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. 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 supra* note 5) found that 11 percent of U.S. citizens do not have 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. The NTDS was fielded beginning in the fall of 2008, so changes in June 2010 to the requirements for changing the gender on one's U.S. passport would not have been in place at the time of the survey (*see supra* notes 10 and 11). Due to the changes in the requirements, it is possible that the rates of transgender people who have updated their passport have since increased.

[14] To estimate the transgender population without updated driver's licenses or U.S. passports, the general population figure for adult citizens in the U.S. was calculated using the 2011 Current Population Survey (*see* note 21). This figure was multiplied by 0.3%, which is the percentage of the adult population that is estimated to identify as transgender in the United States (635,288) (*see* note 22). 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 gender assigned to them at birth in the NTDS (72%). That final population figure (457,408) was then multiplied by the rate of transgender citizens who have transitioned and reported not having an updated driver's license (40%) and U.S. passport (74%).

[15] In this report, Question 60 of the NTDS survey 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.

[16] *See supra* notes 13 and 14. In this case, the final population figure of 457,408 adult transgender citizens was multiplied by the rate of transgender citizens who have transitioned and reported having no updated identification or records in the NTDS (27%).

[17] Poll worker training manuals available online as of March 28, 2012 for the states of Georgia, Indiana, and Kansas contained no instructions regarding transgender voters or how to review identification that may not match a voter's gender presentation. Instructions for poll workers in these manuals leave it ambiguous how transgender voters will be treated at the polls and if they will be allowed to vote on a regular ballot without updated ID. For instance, the January 2012 poll worker training program for the State of Kansas instructs poll workers as follows:

> "Verify that the name is consistent with the name on the poll book, and that the photo on the ID document resembles the person standing before you. If you are satisfied that the voter is the person depicted in the photo ID, write your initials in the space provided on the poll book. Use the photo ID only to verify the voter's name and appearance…If there is disagreement among poll workers as to whether a voter's ID document is valid, the supervising judge shall decide whether to issue a regular ballot or a provisional ballot." (*Kansas Poll Worker Training Program*, pg. 36-44, available at http://www.jocoelection.org/WORKERS/PollWorkerTraining%20State%20Version.pdf (last accessed March 28, 2012)).

Poll worker training manuals in other states included in this report either had not been updated to reflect their photo ID laws, either because the law is too new or is currently under review by the courts, or were not made available to the public online.

[18] According to the NCSL, voter identification laws that have passed in Mississippi, South Carolina, Texas, and Wisconsin have not yet been implemented. Mississippi's strict photo ID law was passed through a citizen initiative and amends the state constitution. The legislature must pass implementing language. Laws in Mississippi, South Carolina, and Texas must be pre-cleared by the Department of Justice (in accordance with Section 5 of the Voting Rights Act of 1965 (42 U.S.C.§§ 1973-1973aa-6). South Carolina and Texas have been denied pre-clearance by the Department of Justice and are pursuing clearance through the U.S. District Court for the District of Columbia. Mississippi has not yet submitted for pre-clearance. In *League of Women Voters of Wisconsin v. Walker* (11 CV 4469) and *Milwaukee Branch of the NAACP v. Walker* (11 CV 5492), Dane County Circuit Court Judges Niess and Flanagan, respectively, both ruled Wisconsin's voter ID law unconstitutional. The State is currently appealing both rulings.

[19] According to the NCSL, non-strict photo ID states include Alabama, Florida, Hawaii, Idaho, Louisiana, Michigan, and South Dakota. Non-photo ID states include Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Kentucky, Missouri, Montana, North Dakota, Ohio, Oklahoma, Rhode Island, Utah, Virginia, and Washington.

[20] 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.

[21] This analysis is limited to a voting-eligible person voting at the polls on the day of the election. 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.

[22] 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.

[23] U.S. Census Bureau and the U.S. Bureau of Labor Statistics, Current Population Survey, 2011 Annual Social and Economic Supplement, available at http://www.census.gov/cps/ (last accessed March 14, 2012). Calculations were completed by the author.

[24] Gates, Gary J. (April 2011) "How Many People are Lesbian, Gay, Bisexual, and Transgender?" Los Angeles: The Williams Institute at the UCLA School of Law, available at http://williamsinstitute.law.ucla.edu/wp-content/uploads/Gates-How-Many-People-LGBT-Apr-2011.pdf (last accessed March 14, 2012). The adult transgender citizen population estimates in this report assume transgender people are distributed evenly among citizens and non-citizens (0.3% of citizens and 0.3% of non-citizens).

[25] 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/page/-/Democracy/USA%20MAP%203.23.2011.pdf (last accessed March 14, 2012).

[26] *See supra* note 25.

[27] *See supra* note 25.

[28] This 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 have transitioned (i.e. living full-time in a gender different from the gender assigned to them at birth).

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Acknowledgements

The author thanks Angeliki Kastanis, Keesha Gaskins, Jack Harrison, Erin Ferns Lee, Mara Keisling, Christy Mallory, Jenny Pizer, M.V. Lee Badgett, and Brad Sears for their thoughtful reviews and contributions to this study. The author also thanks the National Gay and Lesbian Task Force and National Center for Transgender Equality for the use of the NTDS data set.

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