

# The Potential Impact of Voter Identification Laws on Transgender Voters in the 2014 General Election



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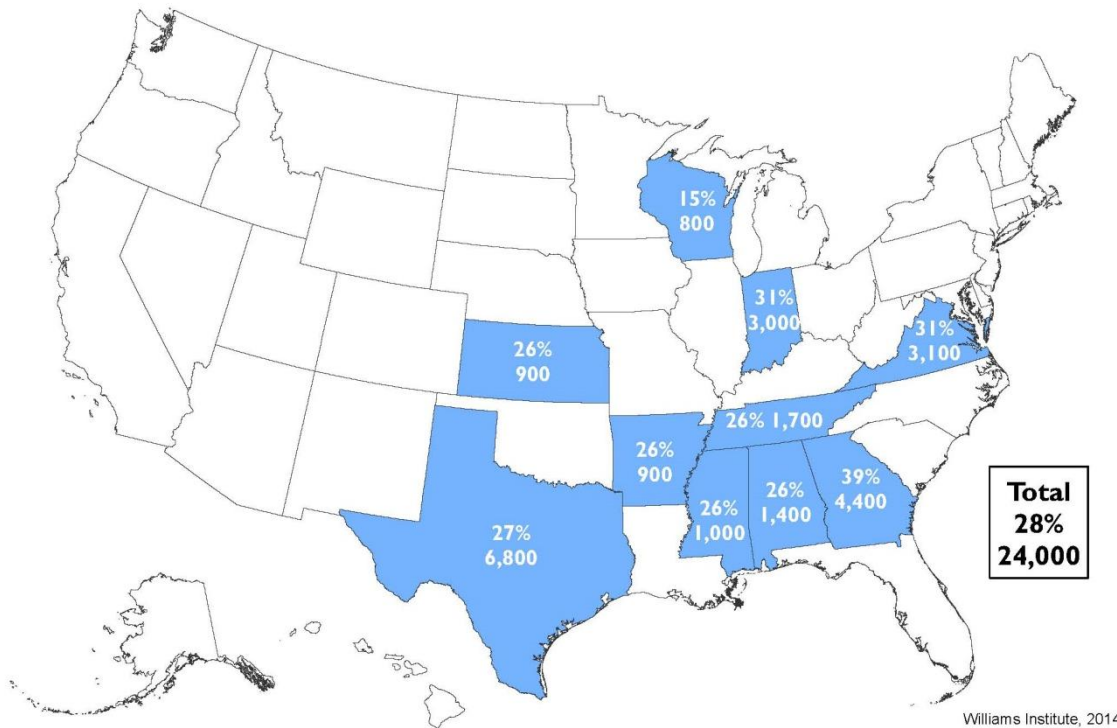
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September 2014

## 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.<sup>1</sup> 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.<sup>2</sup> Transgender citizens with inaccurate identification may also encounter obstacles to voting. Currently, 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.<sup>3</sup> The strictest voter ID laws require voters to present government-issued photo ID at the polls.<sup>4</sup> In the November 2014 general election, strict photo ID laws may create substantial barriers to voting and possible disenfranchisement for over 24,000 transgender people in ten states.

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



Williams Institute, 2014

Strict Photo Identification State with Percentage and Number of Transgender VEP with No Updated ID

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.<sup>5</sup> This report presents an update of findings from that prior study to reflect the changed landscape of strict photo ID laws in the states and current population estimates. 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 transgender citizens who could face barriers to voting or possible disenfranchisement in the November 2014 general election.<sup>6</sup>

- 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 126,000 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 respondent to have no updated identification documents or records.
- When presenting identification that did not 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 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 ten 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 2014 general election, an estimated 84,000 transgender people who have transitioned will be eligible to vote in the ten strict photo ID states.
- Twenty-eight percent of the transgender voting-eligible population in those states may have no identification or records that accurately reflect their gender.
- Accordingly, about 24,000 voting-eligible transgender people may face substantial barriers to voting and possible disenfranchisement in the November 2014 general election.
- Transgender people of color, youth, students, people with low incomes, and people with disabilities are likely overrepresented among those 24,000 voting-eligible transgender people.

## **Strict Photo ID States in the 2014 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.<sup>7</sup> 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.<sup>8</sup> The following ten states will have or could have in place strict photo ID laws for the 2014 general election in November: Alabama, Arkansas, Georgia, Indiana, Kansas, Mississippi, Tennessee, Texas, Virginia, and Wisconsin.<sup>9</sup> 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.<sup>10</sup> Transgender people who have transitioned face additional burdens to 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.<sup>11</sup> Requirements for updating state-issued IDs vary widely by state and can be difficult and costly. Federal requirements also vary by agency.<sup>12</sup>

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.<sup>13</sup> If that rate holds true for the current U.S. population, about 126,000 transgender citizens who have transitioned have no updated identification or records.<sup>14</sup> 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 2014 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 2013 Current Population Survey.<sup>15</sup> 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.<sup>16</sup> 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).<sup>17</sup>

Table 1 presents the results of these calculations. Across the ten strict photo ID states, about 84,000 transgender people who have transitioned are estimated to be eligible to vote. Twenty-eight 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 24,000 voting-eligible transgender people across these ten states may face substantial barriers to voting and possible disenfranchisement in the November 2014 general election. It is likely that people of color, youth, students, those with low incomes, and people with disabilities are overrepresented among those 24,000 voting-eligible transgender people.

**Table 1: Voting-Eligible Transgender Population with No Updated Identification or Records in Strict Photo Identification States for 2014 General Election**

State	Transgender Voting-Eligible Population (VEP) <sup>18</sup>	Percentage of Transgender VEP with No Updated IDs or Records	Total Number of Transgender VEP with No Updated IDs or Records
Alabama	5378	26%	1398
Arkansas	3485	26%	906
Georgia	11230	39%	4380
Indiana	9532	31%	2955
Kansas	3640	26%	946
Mississippi	3731	26%	970
Tennessee	6732	26%	1750
Texas	25160	27%	6793
Virginia	10042	31%	3113
Wisconsin	5449	15%	817
<b>TOTAL</b>	<b>84379</b>	<b>28%</b>	<b>24029</b>

## 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 2014 election, strict photo ID laws may create substantial barriers to voting and possible disenfranchisement for over 24,000 transgender people in nine 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 24,000 voting-eligible transgender people to obtain the updated IDs required to vote in the November 2014 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 2014 general election for a substantial number of transgender citizens.

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<sup>1</sup> 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](http://www.thetaskforce.org/reports_and_research/ntds) (last accessed August 16, 2014).

<sup>2</sup> Grant, et al., *Injustice at Every Turn*.

<sup>3</sup> 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 August 16, 2014). The NCSL website also includes a description of identification requirements and statutory citations for each state.

<sup>4</sup> This analysis is limited to a voting-eligible people 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. 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.

<sup>5</sup> 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 August 16, 2014).

<sup>6</sup> 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 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 10*) 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.

<sup>7</sup> *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.

<sup>8</sup> *See 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.

<sup>9</sup> In regard to Alabama, 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

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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. In regard to Arkansas, in *Kohls, et al. v. Martin* (60CV-14-1495), Pulaski County Circuit Judge Timothy Fox overturned the strict photo ID law in Arkansas. However, he stayed his ruling and the strict photo ID law was in effect for the 2014 primary election in May. Unless the stay is lifted, the strict photo ID law will remain in effect. The State has appealed to the Arkansas Supreme Court. It is unclear if the stay will be lifted or when the Arkansas Supreme Court will rule on the appeal. In regard to Wisconsin, the Wisconsin Supreme Court upheld the state's strict photo ID law. 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 appealed both cases to the Wisconsin Supreme Court and the Court upheld the strict photo ID law in both challenges. However, the Wisconsin law is also being challenged in federal court. In *Frank et al. v. Walker et al.* (11 CV 01128) and *League of United Latin American Citizens et al. v. Deininger et al.* (12 CV 00185), U.S. District Court Judge Lynn Adelman found the law unconstitutional. The State has appealed that decision to the U.S. 7<sup>th</sup> Circuit Court of Appeals, which has allowed the law to go into effect while it considers the case.

<sup>10</sup> 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](http://www.brennancenter.org/page/-/d/download_file_39242.pdf) (last accessed August 16, 2014).

<sup>11</sup> 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](http://transequality.org/Resources/DL/DL_policies.html) (last accessed August 16, 2014). 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](http://transequality.org/Resources/passports_2012.pdf) (last accessed August 16, 2014). Also see Lambda Legal. (July 2014). "Changing Birth Certificate Sex Designations: State-By-State Guidelines" (webpage), available at <http://www.lambdalegal.org/publications/changing-birth-certificate-sex-designations-state-by-state-guidelines> (last accessed August 16, 2014).

<sup>12</sup> 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 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. 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.

<sup>13</sup> 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.

<sup>14</sup> See notes 6 and 13. To estimate the transgender population without updated identity documents, the general population figure for adult citizens in the U.S. was calculated using the 2013 Current Population Survey (see note 15). 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 (650,450) (see note 16). 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%). That final population figure (468,324) was then multiplied by the rate of transgender citizens who have transitioned and reported no updated identity documents (27%).

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<sup>15</sup> U.S. Census Bureau and the U.S. Bureau of Labor Statistics, Current Population Survey, 2013 Annual Social and Economic Supplement, available at <http://www.census.gov/cps/> (last accessed August 16, 2014). Calculations were completed by the author.

<sup>16</sup> 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 August 16, 2014). 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).

<sup>17</sup> 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 August 16, 2014). 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.

<sup>18</sup> 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.

## About the Author

Jody L. Herman is the Peter J. Cooper Public Policy Fellow and Manager of Transgender Research at the Williams Institute, UCLA School of Law. She holds a Ph.D. in Public Policy and Public Administration from The George Washington University.

## Acknowledgements

The author thanks Gary Gates, Erin Ferns Lee, and Brad Sears for their thoughtful reviews of this report. The author also thanks Angeliki Kastanis and Ryan Nelson for their contributions to this report. The author also thanks the National Gay and Lesbian Task Force and the National Center for Transgender Equality for the use of the National Transgender Discrimination Survey data set.

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