

October 10, 2023

By Email To: All County Election Officials

Re: *Transgender Kansans Voting Rights and Gender Markers on Identity Documents*



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Kansas

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Dear County Election Official,

In light of the upcoming 2023 General Elections and ongoing litigation/policy changes impacting transgender Kansans' ability to access accurate gender markers on Kansas identity documents, we write to provide information necessary to ensure that no transgender Kansans are improperly turned away from the polls.

Kansas does have voter identification laws and policies that voters must comply with to vote. However, there is no requirement in Kansas that these voter identification documents list a gender marker—nor is there a requirement that, if a gender marker is listed on the document, it must “match” or correspond with the gender expression of the voter.

Put another way, the gender marker on a voter's identification document (or lack thereof) should have no impact on their ability to vote in Kansas.

Kansas election law requires a voter to provide a valid form of identification to vote. *See* K.S.A. § 25-2908(b). This identification can be a driver's license, a state identification card, a United States passport, a concealed carry license, a government employee badge, a military identification document, a student identification card from an accredited post-secondary education institution in Kansas, a government-issued public assistance identification card, or an identification card issued by an Indian tribe. *See* K.S.A. § 25-2908(h). Some of these forms of identification have a gender marker; others do not.

Kansas election law states that these forms of identification “shall be valid if the identification contains the name and photograph of the voter and has not expired.” K.S.A. § 25-2908(h). Therefore, the gender marker on a voter's provided identification document (or lack thereof) has no impact on the validity of the document for the purpose of voting.

While some transgender voters in Kansas may provide an identification document with a gender marker that is different than how they physically express their gender, this is no reason to deny the voter a ballot or to require casting of a provisional ballot. Similarly, some transgender voters'



identification document photo may depict different hairstyles or hair colors, clothing, or makeup than how the voter appears when they show up at the polls. This may be the case for cisgender *and* transgender individuals.

Of course, all voters—whether cisgender or transgender—have the right to change their appearance; minor photo discrepancies such as these are no reason to deny a voter a ballot or to require casting of a provisional ballot.

If you'd like to read more about ensuring transgender people are not improperly turned away from the polls, you can look at the National Center for Transgender Equality's #VotingWhileTrans Guide, available at <https://transformthevote.org/voting-resources>.

Thank you for your prompt attention to this letter. We appreciate your time and all the great work you do to administer fair elections in your county. Should you wish to discuss this or any other related issues, please do not hesitate to contact us at dhiegert@aclukansas.org or sbrett@aclukansas.org.

Kind regards,

A handwritten signature in black ink that reads "D.C. Hiegert".

D.C. Hiegert
Skadden Foundation LGBTQ+
Fellow
ACLU of Kansas

A handwritten signature in black ink that reads "Sharon Brett".

Sharon Brett
Legal Director
ACLU of Kansas