

EXHIBIT 16

SUPPLEMENTAL REPORT OF LORRAINE C. MINNITE, Ph.D.

***Fish v. Kobach*, No. 2:16-cv-02105**

This report supplements my February 26, 2016 expert report in *Fish v. Kobach*, and reviews new information concerning voter fraud produced in discovery and alleged in an amicus brief filed by the Public Interest Legal Foundation on behalf of defendants. None of this information has caused me to change or revise my original conclusion that while a handful of non-citizens have appeared on the registration rolls in Kansas over the last fifteen years, Kansas Secretary of State Kris Kobach has not set forth, and I have not found, any empirical evidence to suggest that non-citizen registration and voting are problems of any significance in the state.

I reviewed the following documents, looking for any new evidence of fraudulent registration and/or voting or alleged fraudulent registration and/or voting in general, and specifically, as committed by non-citizens in Kansas:

- a) Defendant Kobach's Response to Plaintiffs' First Interrogatories, dated March 23, 2016;
- b) Defendant Kobach's Response to Plaintiffs' First Request for the Production of Documents, dated March 23, 2016;
- c) Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction, dated March 29, 2016; including the following exhibits:
 - i) Affidavit of Bryan Caskey, Assistant Secretary of State, Elections and Legislative Matters for the State of Kansas, dated March 29, 2016;
 - ii) Declaration of Tabitha Lehman, County Election Commissioner of Sedgwick County, Kansas, dated March 29, 2016;
 - iii) Letter from Secretary of State Kris Kobach to Brian Newby, Executive Director, U.S. Election Assistance Commission, dated November 17, 2015;
 - iv) Letter from Brian Newby, Executive Director, U.S. Elections Assistance Commission to Bryan Caskey, Election Director, Office of Kansas Secretary of State, dated January 29, 2016;
- d) a spreadsheet titled, "Known Reported Incidents of Election Crimes, 1997-2012," dated January 13, 2014;
- e) *Amicus Curiae* Brief of the Public Interest Legal Foundation in Opposition to Motion for Preliminary Injunction, including Exhibit A, dated April 5, 2016;
- f) Deposition of Tabitha Lehman, including exhibits 1 through 7, which include some information provided under Protective Order, dated April 6, 2016 ('Lehman Deposition');
- g) other documents provided under Protective Order.

In my February 26, 2016 expert report, I analyzed in detail Kansas Secretary of State Kris Kobach's statements about an alleged "pervasive" and "massive" problem of voter fraud afflicting his state. I also reviewed the evidence of voter fraud in Kansas (and nationally) and found an unbridgeable chasm between Secretary Kobach's statements about the incidence of voter fraud in Kansas and the actual facts as produced by him, his predecessor in office, Secretary Ron Thornburg, or anyone else, for that matter.

To summarize the findings of my expert report:

- based on data compiled by the Kansas Secretary of State's Office, over a 14-year period between 1997 and 2011 (before and after Mr. Kobach was elected Secretary in 2010), five non-citizens cast ballots in Kansas;
- based on data compiled by Sedgwick County officials¹ and other sources, in Sedgwick County, the second largest county in Kansas and home to more than 270,000 registered voters:
 - *prior to* the implementation of Kansas' 'proof-of-citizenship' (DPOC) law in January 2013, eight non-citizens² got registered to vote and two of these people voted (the two voters are included in the tally of five non-citizen voters cited above; in other words, 40 percent of the five non-citizens who cast ballots in Kansas over the last 19 years did so in Sedgwick County);
 - *after* the implementation of Kansas' DPOC law, there were eleven non-citizen registration attempts in Sedgwick County;
 - none of the non-citizens who got registered to vote when applying for driver licenses at Kansas' DMV ever voted; most appear to have gotten registered by mistake;

¹ The data on 18 alleged non-citizens who either got registered to vote by Sedgwick County elections personnel or may have attempted to register to vote was compiled by the Sedgwick County Elections Office in a spreadsheet that was later attached to a letter from Bryan Caskey, Election Director for the State of Kansas (operating out of Secretary Kobach's office) to Brian Newby, Executive Director of the U.S. Elections Assistance Commission, dated November 17, 2015. The spreadsheet was included twice in Defendants' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction in this litigation, once as part of Exhibit B ("Declaration of Tabitha Lehman"), and again as part of Exhibit C ("Caskey Letter" cited above). It again entered this litigation as Exhibit 1 attached to Tabitha Lehman's Deposition. As explained below, Ms. Lehman produced an updated version of the spreadsheet that included eight more cases.

² Seven of these people are listed on the Sedgwick County spreadsheet discussed below. I describe in my initial expert report an additional case in Sedgwick County reported on in a March 1, 2011 *Wichita Eagle* news story. The case involved a Filipino-born woman who was not a citizen, but who voted in a Wichita primary election in 2009. See Minnite Expert Report, February 26, 2016, pp. 20-21, and p. 29, note 98; see also, Dion Lefler, "Officials Say Only Two Cases of Voter Fraud in Sedgwick County," *Wichita Eagle*, March 1, 2011.

- overall, some relatively small number of non-citizens has gotten registered to vote in Kansas since 1997; the precise number, however, is impossible to pin down from conflicting statements made by Secretary Kobach that fail to match any written reports the Secretary has shared with the Kansas legislature and other government bodies; most likely, fewer than 100 non-citizens have gotten registered to vote in Kansas over the past nearly twenty years;³
- since acquiring prosecutorial power in July 2015, Secretary Kobach has indicted only six people for illegal registration and voting, none of who are non-citizens.

In this supplemental report I would like to focus my analysis and findings on what is new in the material provided to me by counsel since I completed my initial report. Primarily, what is new is the argument that election administration mistakes or mistakes made by voter registration applicants resulting in the registration of an ineligible voter are evidence of a willful intent on the part of non-citizens to commit voter fraud. Related to this is the upside-down argument (made by amici for defendants) that asking prospective voter registrants if they are U.S. citizens on a voter registration form (the “citizenship checkbox”) is not sufficient to prevent such applicants from getting registered, presumably because election administrators are either not bound to abide by the information provided by applicants, or because the checkbox does not prevent election administrators from simply making mistakes. These arguments are not credible.

The core argument that the citizenship checkbox does not deter non-citizens from registering and illegally voting in U.S. or Kansas elections runs through the two new pieces of information I can identify in the materials under review. The first new piece of information comes from the April 6, 2016 Deposition of Ms. Tabitha Lehman, Sedgwick County Elections Commissioner. The second is the aforementioned amicus brief of the Public Interest Legal Foundation. I will discuss these two new developments in turn.

Lehman Deposition

Secretary Kobach has repeatedly relied upon data from Sedgwick County in making official statements about an alleged “pervasive” and “massive” problem of non-citizen voter fraud in Kansas. The data were produced in the form of a chart listing seven non-citizens who got registered to vote prior to January 1, 2013, and eleven non-citizens who allegedly attempted to register to vote after that date. The chart is marked Lehman Exhibit #1, and I will refer to it as the ‘Sedgwick County spreadsheet.’ Earlier this year, Secretary Kobach told a federal judge that the 18 cases on the Sedgwick County spreadsheet are “a lot of evidence” of a “significant

³ The conflicting statements by the Secretary extend to his response to Interrogatories 5 and 6 (see Defendant Kobach’s Response to Plaintiffs’ First Interrogatories, *Fish v. Kobach*, U.S. District Court for the District of Kansas, Case No. 16-2105-JAR-JPO, pp. 3-4). In response to Interrogatory 5, Secretary Kobach states that, “...forty-seven (47) non-citizens have actually registered to vote in Kansas.” On the next page, in his response to Interrogatory 6, Secretary Kobach states that, “...sixty-four (64) non-citizens have actually registered to vote in Kansas.”

number of aliens who became registered to vote because there were no proof-of-citizenship requirements” in Kansas.⁴

Saying so, however, does not make it so. Secretary Kobach’s conclusion *is simply indefensible*. Even if all 18 non-citizens on the chart had gotten registered and voted in every federal election in Sedgwick County since 2000 (and nothing like this happened), they would comprise an infinitesimal fraction of the votes cast in those elections⁵ or in just about any other county-wide contest in Sedgwick County. We could look at it another way: if all 18 non-citizens had gotten registered to vote and lived in the four Sedgwick County precincts voting in last year’s Unified School District No. 261 (Haysville) Special Bond Election (to ask the voters to decide whether the USD could issue \$59 million in general obligation bonds), and if all 18 had actually cast (illegal) ballots, they would have comprised one-tenth of one percent of the 12,067 votes cast in that election⁶ – again, evidence of an infinitesimal not a “pervasive” or “massive” problem.

The April 6, 2016 Deposition of Tabitha Lehman revealed that Ms. Lehman, in her capacity as County Elections Commissioner, was the source of the Sedgwick County spreadsheet data on the 18 non-citizens.⁷ Secretary Kobach, acting as counsel to his office, queried Ms. Lehman about these 18 people. For each of the seven people listed as “aliens who registered prior to 1/1/2013,” Secretary Kobach asked Ms. Lehman if the person “falsely declared” that he or she was a U.S. citizen. For each person, Ms. Lehman answered yes, however, given evidence I describe below in discussing the amicus brief of the Public Interest Legal Foundation showing that it is possible for mistakes to be made by election administrators who register people who indicate that *they are NOT U.S. citizens*, we can not conclude from the information provided on the Sedgwick County spreadsheet that these individuals actually indicated that they were citizens, or did not indicate that they were not U.S. citizens.

Mistakes may also be made by Department of Vehicles personnel. In an email communication chain from March 27th and 28th, 2014, Ms. Lehman and Brad Bryant, who was Kansas’ State Elections Director at the time, suggest that one of the people on the Sedgwick County spreadsheet was the victim of a mistake by the DMV. Mr. Bryant writes to Ms. Lehman, “I just wish DMV would not register people who they know to be noncitizens,” to which Ms. Lehman replies, “I agree.”⁸ Presumably, Ms. Lehman was simply assuming that because her

⁴ Sari Horwitz, “The Conservative Gladiator from Kansas Behind Restrictive Voting Laws,” *Washington Post*, April 6, 2016.

⁵ According to data posted on the Sedgwick County Elections Office’s website, there were 1,244,333 votes cast in the eight federal general elections since 2000, averaging 155,542 votes per federal election. See, http://www.sedgwickcounty.org/elections/election_results.asp. Eighteen illegal ballots cast by non-citizens comprise one one-hundredths of one percent of the average number of ballots cast in these elections.

⁶ The June 9, 2015 election results may be found on the Sedgwick County Elections Office website, http://www.sedgwickcounty.org/elections/election_results/usd261_060915/index.html. See also, “About the Bond,” USD 261 Haysville Schools, available at <http://www.usd261.com/keepkidssafe/index.php>.

⁷ Lehman Deposition, 65.

⁸ Lehman Deposition Exhibit #6.

office now believes that the seven people who were not citizens when they were recorded as having been registered to vote by Sedgwick County elections personnel, they must have “falsely declared” their citizenship. Without inspecting the original voter registration cards, however, we do not know that.⁹ In fact, for DMV applicants, it appears that Sedgwick County personnel would have no way of ascertaining whether the registrant attested to citizenship based on the registration information that they receive from the DMV.¹⁰ Human error, election administration mistakes or voter confusion cannot be ruled out as likely explanations for how a handful of non-citizens got added to Sedgwick County’s registration rolls over the decade between 2003 and 2013.

In her Deposition, Ms. Lehman also revealed that she kept her own list of non-citizens allegedly attempting to register to vote in Sedgwick County (marked Lehman Exhibit #4). As noted above (in footnote #1), it includes all of the 18 non-citizens on what I have been calling the Sedgwick County spreadsheet, plus eight more cases. Of these eight additional cases, only two people may have gotten registered before becoming citizens. One of the two identified the mistake and requested cancellation of her registration “upon request of immigration service officer during her citizenship interview.”¹¹ Ms. Lehman indicates in her notes that this individual “...then re-registered after being sworn in as a citizen.”¹² She also indicates (and affirms in her Deposition¹³) that this person actually voted three times. If the new registrant had been deemed to have committed a crime rather than a mistake in registering to vote before obtaining citizenship, it is puzzling why Sedgwick County elections personnel would have re-registered the person. Providing false information in registering to vote is a federal crime,¹⁴ as is falsely claiming citizenship.¹⁵ Knowingly falsifying citizenship eligibility in order to vote in any federal, state or local election is a deportable offense,¹⁶ and yet Ms. Lehman says the person was re-registered to vote.

Of the other six additional people, none of whom were ever registered to vote according to Ms. Lehman, two actually indicated on their voter registration forms that they were not citizens, and a third failed to indicate citizenship status one way or the other. A fourth person “stated that her registration was a mistake on the part of the DMV when she renewed her license.”¹⁷ These four attempted or mistaken registrations clearly suggest confusion and human error at work – not an intent on the part of non-citizens to commit fraud.

⁹ At her Deposition, Ms. Lehman simply affirmed the seven non-citizens who got registered to vote in Sedgwick County between 2003 and 2013, “falsely declared” their U.S. citizenship. I saw no evidence documenting positive affirmation of citizenship (or non-citizenship, for that matter) in the Deposition testimony or exhibits.

¹⁰ Lehman Exhibit #7; Lehman Deposition 92-93.

¹¹ Lehman Exhibit #4 (see registrant #1463509).

¹² *Ibid.*

¹³ Lehman Deposition, 78.

¹⁴ 42 U.S.C. § 1973gg-10(2)

¹⁵ 18 U.S.C. § 911

¹⁶ 18 U.S.C. § 1015(f)

¹⁷ Lehman Exhibit #4 (see registrant #5772434). Ms. Lehman offered no evidence to contradict this statement and later indicated that it was her understanding that DMV personnel

Public Interest Law Foundation (Proposed) Amicus Brief

In addition to the discovery documents and Ms. Lehman's Deposition, I reviewed an amicus brief submitted by the Public Interest Law Foundation. The brief asserts, "There is evidence of noncitizens registering to vote and casting ballots." I agree with this statement. I cite the evidence above. I disagree with the conclusion offered by amici that the evidence "...provide(s) sufficient justification for Kansas' proof-of-citizenship requirement."¹⁸

To support their conclusion, it would have been helpful for amici to have cited Kansas evidence, or facts that I may have missed. They do not do this. Instead, they mostly discuss a handful of cases of non-citizens getting registered to vote in Texas five-and-a-half years ago, similar to the Sedgwick County evidence provided by Ms. Lehman. And like the Sedgwick County cases, the Texas cases clearly are not cases of voter fraud (defined as 'the intentional corruption of the electoral process by voters').

Amici include copies of thirteen voter registration forms for alleged non-citizens that were submitted to the Registrar of Harris County, Texas in July of 2010, and apparently processed. In all 13 cases, if Harris County voter registration personnel had been doing their jobs correctly, none of these people would have gotten registered to vote because *all of them failed to indicate that they were citizens of the United States*. As amici note, "...four of the individuals actually checked 'no' on the citizenship question, six checked 'no' and 'yes,' and the remaining three left the check box blank entirely."¹⁹ The purpose of the federally-mandated citizenship question on the voter registration application is to collect information on citizenship and use it to inform voters that they are not eligible to vote if they are not citizens.

It is not a crime to truthfully answer the citizenship question. Voter registration personnel should know whether state law requires applicants be U.S. citizens in order to register to vote, and to not register people who tell them they are not citizens. Amici provide an incoherent interpretation of the thirteen voter registration applications. Instead of asking why obvious mistakes were made on the part of election administrators, they conclude that, "the citizenship checkbox, even when checked 'no,' does not prevent noncitizen registration without additional citizenship verification." But it is not the checkbox that is at fault here. Rather, the checkbox is the reason why we know election administrators made mistakes and registered people who may not have been eligible to register to vote.

Amici cite a few other anecdotes of non-citizens registering or voting in the U.S. over the last twenty years, recycling well-known incidents that have been de-bunked, such as the case of non-citizens getting registered during the California congressional election contest between

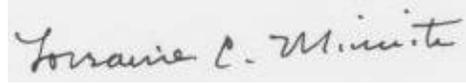
are the ones who populate the information on the registration form that her office receives from the DMV. Leman Deposition, 92.

¹⁸ *Amicus Curiae* Brief of the Public Interest Legal Foundation in Opposition to Motion for Preliminary Injunction, including Exhibit A, *Fish v. Kobach*, U.S. District Court for the District of Kansas, Case No. 16-2105-JAR-JPO, April 5, 2016, p. 4.

¹⁹ *Ibid.*, 5.

Robert K. Dornan and Loretta Sanchez in 1996.²⁰ They cite research by Prof. Jesse Richman purporting to find millions of non-citizens voting in recent federal elections, also de-bunked, as discussed in my initial expert report. In sum, the amicus brief filed by the Public Interest Law Foundation provides absolutely no evidence of voter fraud in Kansas, and only a scattering of anecdotes concerning non-citizen voter registration or voting elsewhere. I am familiar with all of the stories recited in the brief, none of which challenge the conclusions of my expert report.

Executed on April 12, 2016.

A handwritten signature in cursive script that reads "Lorraine C. Minnite". The signature is written in black ink on a light-colored background.

Lorraine C. Minnite

²⁰ See, Lorraine C. Minnite, *The Myth of Voter Fraud* (Ithaca, N.Y.: Cornell University Press, 2010), 49-56.