



May 10, 2018

VIA E-MAIL

Kris Kobach
Secretary of State of the State of Kansas
Memorial Hall, 1st Floor
120 SW 10th Avenue
Topeka, KS 6612-1594

Re: *Fish v. Kobach*: Additional Non-Compliance Issues with Respect to Public Notice

Dear Secretary Kobach:

We write to you on behalf of the Plaintiffs in *Fish v. Kobach*, Case No. 16-2105-JAR (D. Kan.), regarding several public notice issues that we hope to resolve without the Court's intervention. Specifically, through a recent review of your own website and the websites of some of the largest counties in Kansas, we have determined that KSOS's and several counties' online voter registration information continue to contain inaccurate information about the need to provide documentary proof of citizenship (DPOC).

As you know, under the courts' decisions in *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016) and *League of Women Voters v. Newby*, 838 F.3d 1 (D.C. Cir. 2016), motor-voter and Federal Form applicants do not need to provide DPOC in order to become registered to vote. Nevertheless, your own webpage and the webpages of numerous Kansas counties continue to disseminate incorrect information erroneously instructing voters that they must submit DPOC in order to become registered to vote, regardless of method of registration.

County Webpages

We have determined that several of the webpages of the ten largest counties in Kansas contain no instructions or information concerning the fact that motor-voter applicants and Federal Form users need not provide DPOC in order to become registered to vote in Kansas.

It is your office's responsibility to instruct the counties to correct this erroneous information. As you are aware, the Court in the *Fish* litigation has held that the Kansas

Secretary of State is responsible for “providing [voters] with consistent information about the law as it stands now,” Mem. and Order dated Oct. 14, 2016 (Doc. 241) (the “Public Notice Order”) at 4. The Court further “made clear that Secretary Kobach was responsible for correcting the information on the State’s website to provide clear guidance to Kansas citizens seeking registration information.” *Id.* at 3. And the Court recently noted that “it would be impossible for Defendant to fully comply with this Court’s orders unless he provided clear and unambiguous direction to the counties” about the effect of the preliminary injunction, and “to ensure the counties’ compliance.” Mem. and Order dated April 18, 2018 (Doc. 520) (the “Contempt Order”) at 14. *See also* 52 U.S.C. § 20509 (chief state election official is “responsible for coordination of State responsibilities under [the NVRA]”).

Below, we describe incorrect information found on three county webpages (Douglas, Riley, and Crawford Counties).

1. Douglas County

The Douglas County Clerk’s “Register to Vote” webpage states that

Kansas law does require new registrants to provide proof of citizenship when they register to vote. We recommend you still send a copy of your proof of citizenship document directly to our office to assure successful submission. For a complete list of acceptable documentation, please visit our Proof of Citizenship Requirement for Voter Registration page.¹

The Douglas County Clerk’s page on “Citizenship Requirements” further states that

If you do not provide a copy of your citizenship document by *midnight* the day before Election Day, you are not eligible to vote.

If you do not provide a copy of your citizenship document within 90 days of submitting your voter registration application, your application will be cancelled and you will be required to submit a new voter registration application.²

Neither Douglas County page references the fact that, under current law, motor-voter and Federal Form applicants need not provide DPOC in order to become registered to vote. A copy of the Douglas County webpages is attached to this letter as Attachment 1.

2. Riley County

Similarly, the Riley County webpage states that “[a]ny person registering to vote in Kansas for the FIRST TIME will be required to provide satisfactory evidence of United States

¹ <https://www.douglascountyks.org/depts/voting-and-elections/register-to-vote>.

² <https://www.douglascountyks.org/depts/voting-and-elections/proof-of-citizenship-requirement-voter-registration>.

citizenship,” and lists the 13 documents that, under K.S.A. § 25-2309, constitute adequate evidence of citizenship.³ Notably, the Riley County webpage states that “[i]ndividuals registered to vote in Kansas as of the effective date of this requirement are deemed to have submitted proof of citizenship and are exempt from the requirement,”⁴ but makes no mention of the fact that motor-voter applicants and Federal Form users are similarly exempt from the DPOC requirement. A copy of the Riley County webpage is attached to this letter as Attachment 2.

3. Crawford County

The Crawford County webpage states that “[a]ny person registering to vote in Kansas for the first time will be required to provide satisfactory evidence of United States citizenship,” and lists the 13 documents that, under K.S.A. 25-2309, constitute adequate evidence of citizenship.⁵ Notably, the page states that “[i]ndividuals registered to vote in Kansas as of the effective date of this requirement” need not provide DPOC in order to register to vote,⁶ but again makes no mention of the fact that motor-voter applicants and Federal Form users need not do so either. A copy of the Crawford County webpage is attached to this letter as Attachment 3.

KSOS Webpages

A review of your office’s webpages reveals a number of other problems with respect to public information for voters. These include the following:

1. On the Kansas Secretary of State webpage titled “Registration and Voting,”⁷ the link to a document titled “A Guide to Voting in Kansas” brings a user to a document that erroneously states, without exception that “[i]f you are registering for the first time in Kansas, you must submit a document proving you are a U.S. citizen.” A copy of this document is attached as Attachment 4. The Spanish language version of this document also appears to contain the same incorrect information.⁸ A copy of this document is attached as Attachment 5.
2. On the Kansas Secretary of State webpage titled “Registration and Voting,” the link to a document titled “A Guide to Voter Registration Drives”⁹ states that “a person must submit proof of U.S. citizenship along with the voter registration application,” and makes no mention of the fact that voter registration drives may

³ <https://www.rileycountyks.gov/1118/Register-to-Vote>.

⁴ *Id.*

⁵ <https://www.crawfordcountykansas.org/register-to-vote1.html>.

⁶ *Id.*

⁷ http://www.kssos.org/elections/elections_registration.html.

⁸ http://www.kssos.org/forms/elections/Spanish/A_Guide_to_Voting_in_Kansas.pdf.

⁹ http://www.kssos.org/forms/elections/A_Guide_to_Voter_Registration_Drives.pdf.

be conducted using the Federal Form, which does not require DPOC. A copy of this document is attached as Attachment 6. The Spanish language version of this document also appears to contain the same incorrect information.¹⁰ A copy of this document is attached as Attachment 7.

3. On the Kansas Secretary of State webpage, the link to a document titled “A Guide to Kansas Secure and Fair Elections (SAFE) Act” brings a user to a document that simply states “This File Is Unavailable.”¹¹
4. On the Kansas “Got Voter ID?” webpage, the link to the “Voter Registration Toolkit” is brings a user to a document that simply states “This File Is Unavailable.”¹²

Conclusion

We request that you address these issues immediately.

First, given that several of the largest counties in Kansas continue to disseminate incorrect information regarding voter registration requirements in the state, we request that you issue a written directive to all county elections officials to ensure that their respective county webpages, and all written notices distributed or posted by the counties, clearly state that motor-voter and Federal Form applicants are not required to submit DPOC in order to become registered to vote. For the sake of consistency and ease, we request that you instruct all county elections to include the following language on all online and printed materials:

Due to recent court rulings, if you have applied to register to vote at a Kansas Division of Motor Vehicles office or if you have applied to register to vote using the “Federal Form” voter registration application (as opposed to the “state form”) and have not yet provided documentary proof of citizenship, you are registered to vote unless you receive official notice stating otherwise. Your name will appear on the poll book for your voting location and you will be given a standard ballot. There is nothing further you need to provide unless and until you receive further notice.

Second, we request that you immediately correct the documents on the KSOS webpage titled “A Guide to Voting in Kansas” and “A Guide to Voter Registration Drives” to accurately reflect the fact that motor-voter and/or Federal Form applicants do not need to provide DPOC in order to become registered to vote. Both documents (and the Spanish language versions of each document) should be revised to contain the following statement:

¹⁰ http://www.kssos.org/forms/elections/Spanish/A_Guide_to_Voter_Registration_Drives.pdf.

¹¹ http://www.kssos.org/forms/elections/A_Guide_to_SAFE_Act.pdf.

¹² <http://www.gotvoterid.com/pdf/Kansas-Voter-Registration-Kit.pdf>.

At this time, applicants who apply to register to vote at a Kansas Division of Motor Vehicles office or using the “Federal Form” voter registration application (as opposed to the “state form”) need not provide documentary proof of citizenship to be registered to vote, unless they receive official notice stating otherwise.

Third, we request that you fix the links to the “Guide to Kansas Secure and Fair Elections (SAFE) Act” and the “Voter Registration Toolkit” to connect to actual documents with correct information about the DPOC requirement, *i.e.*, that, at this time, motor-voter and Federal Form applicants are not required to provide documentary proof of citizenship in order to become registered to vote.

Please confirm that you have issued instructions to the counties and corrected the information on your own webpages no later than Friday May 18, 2018. We hope that these simple issues can be resolved without judicial intervention, but will avail ourselves of all legal remedies necessary if your office continues to fail to adhere to its responsibilities under the preliminary injunctions in *Fish* and *Newby*.

Sincerely,



Dale Ho

Attachments

cc: Neil Steiner
Micah Kubic
Doug Bonney