

Fish et al

v.

Kobach

Plaintiffs' Closing Argument

United States District Court for the District of Kansas
Case Number: 2:16-cv-02105-JAR

Thousands of U.S. Citizens Disenfranchised

Donna Bucci - Disenfranchised

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1 Q. And how much is that in relation to your daily
2 expenses?
3 A. At that time it was a lot. I was only working
4 part-time.
5 Q. So can you tell me a little bit about your daily
6 expenses?
7 A. Well, you have your basics; your rent, your gas,
8 your i
9 Q.
10 certif
11 A.
12 though
13 Q.
14 voter
15 did th
16 A.
17 Q.
18 A.
19 going on in Kansas I would like to be able to be
20 involved in.
21 Q. So after the preliminary injunction was issued in
22 this case in 2016, did you vote in the presidential
23 election?
24 A. Yes, I did.
25 Q. So you voted in November, 2016?

Kelli Stewart, CSR, RPR, CRR, RMR

9

Q. So how would the cost of the replacement birth

certif

10

certificate affect your life then?

A.

though

11

A. My share of the rent or no place to live, I

Q.

voter

did th

12

thought it was a lot.

A.

Q.

A.

going on in Kansas I would like to be able to be

involved in.

Q.

So after the preliminary injunction was issued in

this case in 2016, did you vote in the presidential

election?

A.

Yes, I did.

Q.

So you voted in November, 2016?

Wayne Fish - Disenfranchised

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1 Q. At the time you went to the DMV office in
2 August 2014, did you know where your birth certificate
3 was?
4 A. Not exactly, no.
5 Q. Did you try to figure out how to obtain a copy of
6 your birth certificate from a government agency at that
7 time?
8 A.
9 The r
10 them
11 I did
12 in I
13 the f
14 those
15 an attempt, but I didn't get very far, no.
16 Q. Were you ever able to figure out how to order a
17 copy of your birth certificate from a government agency?
18 A. No.
19 Q. When the Douglas County clerk's office advised
20 you that you needed documentary proof of citizenship to
21 complete your voter registration, did you believe that
22 anyone in your family might've had a copy of your birth
23 certificate?
24 A. I knew there was a copy located at my
25 stepfather's house somewhere. My mother had had it, but

Kelli Stewart, CSR, RPR, CRR, RMR

16

Q. Were you ever able to figure out how to order a

17

copy of your birth certificate from a government agency?

18

A. No.

Tad Stricker - Disenfranchised

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71

1 ended up giving me a provisional ballot. At the time I
2 really didn't understand what a provisional ballot was
3 so I asked some more questions about that.

4 And then by that point, my wife had already

5 gotte

6 Meanw

7 this

8 were

9 perso

10 kind

11 ballo

12 over

13 sitti

14 and I

15 she c

16 was p

17

18 Q.

19 provi

20 A.

21 I-- I

22 publi

23

24

25

18

Q. And what did it feel like to vote on-- with a provisional ballot in that election?

19

20

A. It-- it was confusing, I didn't understand why.

21

I-- I felt embarrassed by having to sit there on-- on public display. It was almost like I was the one that did something wrong. And I just-- I left very confused about the whole experience.

22

23

24

23 did something wrong. And I just-- I left very confused

24 about the whole experience.

25 Q. Did anyone ever tell you at the polls why you

Kelli Stewart, CSR, RPR, CRR, RMR

T.J. Boynton - Disenfranchised

15-9300/16-2105 Bednasek/Fish v. Kobach 03.06.18 PM 271

1 A. The same line of thought as well as I
2 had become a pl 6 Q. And how did it make you feel when you learned
3 And I remember 7 that your voter registration had been canceled and you
4 whether registe 7 would not be able to cast your vote?
5 case would -- w
6 Q. And how 8
7 that your voter
8 would not be ab
9 A. I was ir 9 A. I was irritated and disappointed.
10 Q. Is votin 10 Q. Is voting important to you?
11 A. It is. 10 A. It is.
12 Q. Why is t 11 Q. Why is that?
13 A. I -- it' 11 A. I -- it's -- I like to have my voice heard in
14 the -- the runn 12 Q. Why is that?
15 of the structur 12 A. I -- it's -- I like to have my voice heard in
16 life and my soc 13 the -- the running and election of people to the running
17 Q. And had 13 of the structures that govern me and are in charge of my
18 elections? 14 life and my society.
19 A. Yes. 14
20 Q. When? 15
21 A. Upon whe 15
22 the first elect 16
23 presidential el
24 elections, pret
25 maybe one or two midterms elections since I became

Kimberly R. Greiner, CRR, RMR, RDR, CRC

League of Women Voters – Voter Registrations Drives



15-9300/16-2105 Bednasek/Fish v. Kobach 03.07.18 AM 338

1 barriers to the vote and we'd never seen such barriers
2 to the vote in Kansas, at least that I know of.

3 Q. I apologize.

4 A. That's all right.

5 Q. What are some specific provisions in the SAFE Act

6 that the Kansas League of Women Voters?

7 A. Both ph

8 Q. Now, I

9 documentary pr

10 that requireme

11 A. January

12 Q. And whe

13 requirement fi

14 have on the Ka

15 mission?

16 A. It was

17 absolutely a b

18 appropriate in

19 really knocked

20 we recognize t

21 something that

22 members, our v

23 accept that if

24 any citizens' privacy with having contact with their

25 documents.

12

Q. And when the documentary proof of citizenship

13

requirement first went into effect, what impact did it

14

have on the Kansas League's ability to fulfill its

15

mission?

16

A. It was huge. It was a dead hit. It was

17

absolutely a blow and I found the word shock to be

18

appropriate in thinking about this. The league was

19

really knocked off its feet. And the reason for that is

Kimberly R. Greiner, CRR, RMR, RDR, CRC

Plaintiffs' Expert Dr. Michael McDonald



Plaintiffs' Expert
Dr. Michael McDonald,
University of Florida

Supplemental Report of Dr. Michael P. McDonald

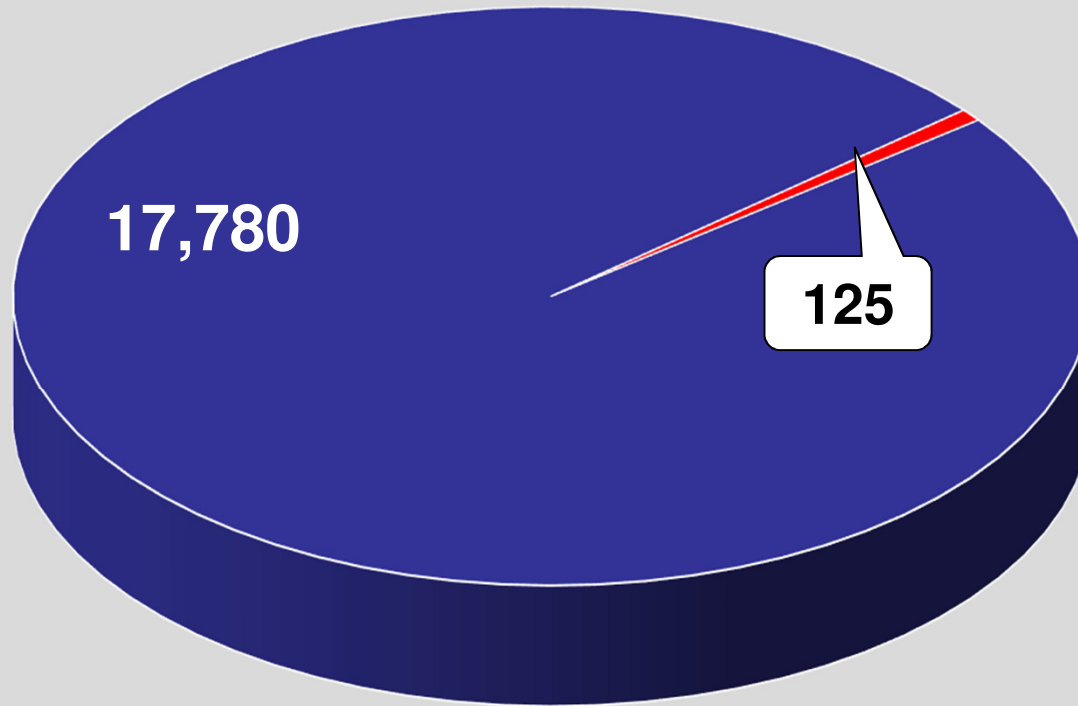
I have been asked by Plaintiffs to analyze updated Kansas voter registration data from electronic files provided to me by Plaintiff's counsel. The first is the Suspense List as of March 31, 2016. The second is a list of registered voters whose registrations were canceled pursuant to a so-called "90-day rule."¹ I have also reviewed an affidavit submitted by Kansas Elections Director Bryan Caskey on September 29, 2016 in conjunction with this case.

From these updated files and documents, I find that of the 22,888 DMV registrants who were placed on the suspense list or whose registrations were canceled for failure to provide documentary proof of citizenship, 43.2% percent are between ages 18-29 and 53.4% percent are

From these updated files and documents, I find that of the 22,888 DMV registrants who were placed on the suspense list or whose registrations were canceled for failure to provide documentary proof of citizenship, 43.2% percent are between ages 18-29 and 53.4% percent are unaffiliated with a political party. The updated information supports my prior conclusion that

¹ The files contain registrants' public data, as well as registrants' confidential data regarding the method by which the registration occurred and the reason why registrants' are or were on the Suspense List. This report does not disclose any confidential data in that it does not link any individual registration file with information regarding the method of registration or reason for being on the suspense list.

Richman: Suspense List is 99%+ U.S. Citizens



Dr. Jesse Richman, Mar. 13, 2018 AM Rough Draft Trial Tr. at 81:16-23.

Dr. Stephen Ansolabehere, Mar. 13, 2018 PM Rough Draft Trial Tr. at 148:15-22.

Defendant's 3 Arguments on Burden

Document Possession

Hearing

Turnout Rates

Defendant's 3 Arguments on Burden

Document Possession

Hearing

Turnout Rates

Defendant's Experts on Document Possession: Pat McFerron & Jesse Richman



Jesse Richman



Pat McFerron

Richman Survey Is Unreliable

US citizenship and immigration services, a Bureau of Indian Affairs card number, tribal treaty card or tribal enrolment number or an American Indian card with KIC classification issued by the Department of Homeland Security.

(READ LIST)

- <1> Do you have at least one of these documents at your home, office, or other location
- <2> Someone else keeps document(s) for you
- <3> Does not exist
- <4> (Do not read) Uncertain.

Thank you very much for taking the time to answer my questions.

**“Someone Keeps It for You”
= “Immediate Access”**

**Inconsistent & Unreliable
Weighting by “Foreign
Name” (Carlos Murguia?)**

**Admits that DPOC
Requirement Increases the
Costs of Voting**

- <1> Do you have at least one of these documents at your home, office, or other location
- <2> Someone else keeps document(s) for you
- <3> Does not exist
- <4> (Do not read) Uncertain.

McFerron Survey Is Unreliable



Dr. Matt Barreto, UCLA explained that McFerron:

Used a discredited quota-based approach

Made no effort to ensure sample was representative or to weight to survey

Survey conducted during odd hours of the day – guarantees unrepresentative sample

No information on response rate

Document Possession Rates Irrelevant

“During oral argument Kobach advised that approximately 17,000 registration applications were being held on a suspension list.... It does not matter whether that is because they lack access to the requisite documentary proof or simply because the process of obtaining that proof is so onerous that they give up... The outcome is the same—the abridgment of the right to vote.”

Defendant's 3 Arguments on Burden

Document Possession

Hearing

Turnout Rates

Hearing Alternative Is Insufficient

Only 5 (or is it 6?) people have used it

None of the plaintiffs were informed about it

League not aware of anyone using it

Form is intimidating – swear you “do not possess” or face “Felony-9”

No information on standards

Hearing Alternative: Jo French

Wanted to make Kobach “look good”; described Rucker as her “friend”

Paid \$8 in unsuccessful effort to obtain documents

Had assistance from friends in other states to gather documents

Used a family Bible

Had to drive 40 minutes to Topeka

Took her 5 months to complete the process

Defendant's 3 Arguments on Burden

Document Possession

Hearing

Turnout Rates

Defendant's Turnout Expert: Steven Camarota



Anti-immigration advocate

No peer-reviewed publications on voting

No experience analyzing effects of voting laws on registration or turnout

Ignored fact that the law only affects new applicants

Camarota Assumes 2010 and 2014 Elections Were Identical



Plaintiffs' Expert
Dr. Michael McDonald,
University of Florida

15-9300/16-2105 Bednasek/Fish v. Kobach 03.06.18 PM 179

1 And he claims that by looking at Kansas registration
2 rates and comparing it to either a previous point in
3 time in Kansas or comparing Kansas to another state that
4 that's -- somehow that's direct evidence of the effect

13 And the reason why I call that indirect
14 evidence is because in order to make a valid comparison
15 of that nature, I have to assume that the only thing
16 that has changed, say, from the 2010 election to the
17 2014 election in Kansas, is the documentary proof of
18 citizenship law. That is just not true. There are
19 other election effects that are going on.

18 citizenship law. That is just not true. There are
19 other election effects that are going on.

20 The 2010 gubernatorial and senate elections
21 weren't particularly competitive. The senate and
22 gubernatorial elections in 2014 were particularly
23 competitive. I've published in peer reviewed articles
24 about the effect of competition on turnout. I know that
25 when elections are competitive, turnout goes up. And so

Kimberly R. Greiner, CRR, RMR, RDR, CRC

Camarota's Turnout Analysis Is Irrelevant

“An election law may keep some voters from going to the polls, but in the same election, turnout by different voters might increase for some other reason.... That does not mean the voters kept away were any less disenfranchised.”

Defendant's Proffer

**Post-Injunction Suspense
Numbers**

Post-Injunction Evidence Irrelevant

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29

1 proof of citizenship?

2 A. Yes. I believe the notices are worded slightly
3 different to remind everyone that even though they are

4 deemed fully registe

5 information and ever

6 not yet provided pro

7 do so in case the ou

8 way that may have je

9 the road after the l

10 Those ar

11 but explaining there

12 notice because of th

13 Q. I have one mo

14 noted, Mr. Caskey th

15 complying with the p

16 Is it --

17 who registered to vo

18 from the suspense li

19 documentary proof of

20 A. That is corre

21 verified that and th

22 because someone's ap

23 vehicles office and has not yet provided proof of

24 citizenship. I verified that myself personally on

25 Saturday.

13

14

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20

Q. I have one more question. Now, I -- you've noted, Mr. Caskey that your office is in your view complying with the preliminary injunction order.

Is it -- is it correct that no individuals who registered to vote at the DMV have been canceled from the suspense list as a result of failure to provide documentary proof of citizenship?

A. That is correct. On Saturday I went in and

Post-Injunction Evidence Irrelevant



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1 look at 2012 versus 2016. Do you recall?
2 A. I do remember that.
3 Q. And what were the reasons that you didn't do
4 that?
5 A. I didn't have the 2016 data. It was not
6 available when I -- when I wrote this report. The
7 recent federal election which means that the current
8 the census data was available was 2014. So that's
9 didn't use 2010 and 2014.
10 Q. If you had attempted to do a supplemental I
11 report that looked at 2016, would the preliminary
12 injunction affected in this court have affected the
13 numbers?
14 A. Well, that's a good point. The law is no longer
15 fully implemented as I understand it. And so now we
16 have a confounding factor that would not allow us to
17 evaluate the likely impact of the law. So probably is
18 the case that only 10 in 14 are the only off year
19 federal elections that we would be able to look at.
20 Q. Opposing counsel then asked you why you didn't
21 control for education in comparing 2010 to 2014 and you
22 said you needed to clarify further when she insisted
23 that you give a yes or no answer. Could you clarify,
24 please.
25 A. Right. So this gets to the point but I think

10 Q. If you had attempted to do a supplemental I
11 report that looked at 2016, would the preliminary
12 injunction affected in this court have affected the 2016
13 numbers?

14 A. Well, that's a good point. The law is no longer
15 fully implemented as I understand it. And so now we
16 have a confounding factor that would not allow us to
17 evaluate the likely impact of the law. So probably is
18 the case that only 10 in 14 are the only off year
19 federal elections that we would be able to look at.

Incidents and Statistical Estimates

of Noncitizen Registration or
“Attempted Registration”

**Incidents of Noncitizen
Registration or “Attempted
Registration”**

Incidents of Noncitizen Registration of Attempted Registration



“we’ve only been able to-- we can see a pretty large number, 129.

Case 2:18-cv-01209-JMS-PTO Document 353 Filed 06/20/17 Page 3 of 32

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

STEVEN WAYNE FISH, et al., on behalf
of themselves and all others similarly
situated,

Plaintiffs,

vs.

KRIS KOBACH, in his official capacity as
Secretary of State for the State of Kansas,
Defendant.

AMENDED

A partial conference was conducted
Judge James P. O'Hara. The plaintiff,
Thomas J. Byrnes, Douglas Hutchinson
(“BYNS”), appeared through counsel, the
Defendant, Secretary of State Kris K.
Kobach, J. Lee. Mr. Kobach, who's had
partial conference was scheduled for 11:00
AM. It will not be necessary to
order of the court to proceed with
16,203.

80. Bryan Caskey submitted a declaration dated March 24, 2017, which identifies 125 individuals who he believes were non-citizens and who “either attempted to register to vote or successfully registered to vote prior to the grand-citizenship requirement’s implementation, or attempted to register after the requirement was implemented.”

81. The number of non-citizens Mr. Caskey specifically identified in his declaration as registered or attempted to register, and not including the non-citizens that were not identified in his declaration, is equal to approximately 5000% of registered voters in Kansas.

82. Tabitha Lehman is the County Election Officer of Sedgewick County.

83. In addition to the 125 individuals identified by Bryan Caskey, a spreadsheet from Tabitha Lehman identifies an additional 2 non-citizens who registered to vote.

84. Collectively, Mr. Caskey and Ms. Lehman have identified a total of 127 individuals who they believe were non-citizens at the time that they registered to vote or attempted to register to vote.

Source: Defendant Secretary of State Kris Kobach, Mar. 6, 2018 (Day 1 AM), Trial Tr. at 43:17-18.

84. Collectively, Mr. Caskey and Ms. Lehman have identified a total of 127 individuals who they believe were non-citizens at the time that they registered to vote or attempted to register to vote.

Source: Doc 353 (Amended PTO Stip. 84)

Specific Incidents of Possible Noncitizen Registration or Attempted Registration

Evidence in Record

- **Sedgwick County Spreadsheet**
(38 from Tabitha Lehman)
- **TDL Matches**
(79 from Bryan Caskey)
- **Testimony of Hans von Spakovsky**

Specific Incidents of Possible Noncitizen Registration or Attempted Registration

Evidence in Record

- Sedgwick County Spreadsheet
(38 from Tabitha Lehman)
- **TDL Matches**
(79 from Bryan Caskey)
- **Testimony of Hans von Spakovsky**

Evidence From Sedgwick County

38 cases of registration or attempted registration

SEDGWICK COUNTY, KANSAS, ALIENS WHO REGISTERED PRIOR TO 1/1/2013 OR WERE SUCCESSFULLY PREVENTED FROM REGISTERING AFTER 1/1/2013 (Amended January 2018)						
Date original registration application submitted	Reg ID	Source of Registration	Current Citizenship Status	Date of Naturalization	Voted	Note
ALIENS WHO SUCCESSFULLY REGISTERED						
6/16/1999	1373536	Paper	Citizen	3/17/2017	No	Was registered for nearly 18 years prior to being a citizen. Applicant was registered under a different first name. Sedgwick County Election Office called the applicant to confirm he was the same person. Applicant confirmed that he previously changed his name and also stated he tried to contact the Sedgwick County Election Office in the past that he needed to be removed from the registration list since he wasn't a citizen.
4/16/2003	4296515	DMV paper address change	Citizen	2/27/2015	No	Was registered for nearly 12 years prior to being a citizen. Was sent ballot for 4 elections but never voted. Sedgwick County Election Office discovered the fact that non-citizen had been registered when the individual re-applied at naturalization ceremony in Sedgwick County Kansas.
5/18/2004	1424962	Paper	Citizen	4/14/2017	No	Was registered for over 12 years prior to being a citizen. Sedgwick County Election Office discovered this fact when registering new citizens at a naturalization ceremony.
9/14/2004	1463509	Paper	Citizen	01/25/2016	Yes	Voted 3 times, GN2004, SP2007, GN2010. Voter called the Sedgwick County Election Office to request cancellation of registration and copies of registration documents upon request of immigration service officer during citizenship interview. She canceled her registration and then re-registered after being sworn in as a citizen.
10/12/2004	1447321	By Mail - Paper	Non-citizen	NA	Yes	Voted 4 times, GN2004, CG2005, SP2007, GN2008. Voter called Sedgwick County Election office because while applying to become a citizen of the United States she realized she had voted and was registered to vote here in Sedgwick County. She was requesting her voting history (she has voted 4 times) and a voter ID card along with a cancellation form. Her statement was that she "was a permanent resident of the U.S. and did not know she wasn't allowed to vote until after 2008 when one of her friends told her she couldn't, she then stopped voting."

DEFENDANT
KOBACH'S
EXHIBIT 1133
16-CV-2105

Tabitha Lehman Trial Testimony

Only 18 Successfully Registered Since 1999

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1 proof-of-citizenship law was January 1st, 2013.
2 Correct?
3 A. Correct.
4 Q. So you mentioned that this spreadsheet lists a
5 total of 18 alleged non-citizen registrations in
6 Sedgwick County prior to 2013. Correct?
7 A. Yes, I believe so. Let me-- yes.
8 Q. And these instances range from 1999 to 2012.
9 Correct?
10 4 Q. So you mentioned that this spreadsheet lists a
11 5 total of 18 alleged non-citizen registrations in
12 6 Sedgwick County prior to 2013. Correct?
13 to
14 Cor
15 6
16 the
17 7 A. Yes, I believe so. Let me-- yes.
18 A. Correct.
19 Q. And only two who registered to vote at the DOV
20 before 2013 actually cast a vote. Correct?
21 A. I'm going to double-check that again. That looks
22 to be correct, yes.
23 Q. And you also mentioned that this spreadsheet also
24 lists 16 alleged non-citizens who purportedly attempted
25

Kelli Stewart, CSR, RPR, CRR, RMR