

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF KANSAS

3 STEVEN WAYNE FISH, et al.,

Docket No. 16-2105-JAR

4 Plaintiffs,

Kansas City, Kansas

5 v.

Date: 10/05/2016

6 KRIS W. KOBACH,

7 Defendant.

8
9 TRANSCRIPT OF
10 TELEPHONE STATUS CONFERENCE
11 BEFORE THE HONORABLE JULIE A. ROBINSON
12 UNITED STATES DISTRICT JUDGE

11 APPEARANCES:

12 For Plaintiffs:

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20 For the Defendant Kris Kobach:

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25 Court Reporter: Kelli Stewart, RPR, CRR, RMR
Official Court Reporter

1 (11:59 a.m., proceedings commenced).

2 THE COURT: We're here on the record in
3 Steven Fish, et al., versus Kris Kobach. The case
4 number is 16-2105. And appearing for the plaintiff are
5 Mr. Bonney, Mr. Danjuma, Mr. Ho, Ms. Lakin, and Ms. Liu.
6 Appearing for the defendant is Mr. Kobach and Mr. Roe.

7 Did I miss anyone who's appearing for either
8 plaintiff or defendant? Okay. I hear not.

9 All right. So several matters that I'd like
10 to cover with you in today's hearing. And in advance of
11 this hearing, I had sent to plaintiff and defendant a
12 revised notice and with revisions that reflected your
13 submissions but also reflected some modifications that I
14 made to the things that you submitted.

15 And just to sort of summarize what those
16 modifications are, in particular the ones that I added,
17 I thought it important to draft a more detailed and
18 conspicuous paragraph at the beginning of the notice as
19 opposed to the middle of the notice, so I changed that
20 to the beginning, that acknowledges that the person has
21 received prior notices or information.

22 Because, of course, when they received these
23 prior notices, they were told that they needed to
24 produce proof of citizenship. And so I think it's
25 important that this new notice, in the most conspicuous

1 way possible, tells them that they need to disregard
2 prior notices and that this new notice replaces and
3 supersedes any information they previously provided. So
4 I tried to modify the language to make it more clear and
5 to move it to the beginning of the notice.

6 And then the second paragraph of the notice
7 tracks and revises the parties' first paragraph. It
8 refers to this as a revised notice. And I thought,
9 also, that whereas the prior notice I think said that
10 there was a court ruling, but, you know, basically was
11 talking about the state of all of this at that time,
12 that there was a court ruling, but there was a pending
13 case before the Tenth Circuit, et cetera, et cetera, we
14 needed to revise that language, I thought, to-- to
15 capture the current state, which is that there are, you
16 know, federal and-- well, that there had been court
17 decisions now that resolved this at least at the
18 injunctive stage. So I thought we needed to-- to make
19 sure that that was clear.

20 I think the defendant wanted a reference to
21 a court ruling or due to recent court rulings, so we
22 made it plural. Rather than "a court ruling," we said,
23 "due to recent court rulings," to reflect that there
24 have been recent court rulings in a variety of
25 jurisdictions.

1 And then rather than saying the person is
2 "deemed to be registered and qualified to vote for all
3 offices," I changed the language to "deemed fully
4 registered and eligible to vote for all offices." And I
5 recognize that the language in Judge Hendricks' order
6 said "qualified" instead of "eligible," but the
7 Secretary's prior notice had used the term "eligible."
8 And I think, again, we want this to be as consistent and
9 as clear as it could be. So rather than changing the
10 word from "eligible" to "qualified," since "eligible"
11 was used before I thought that's the word we ought to
12 use now.

13 I also added language declaring that the
14 person's name is on the list of registered voters, that
15 they will be given a standard ballot at their polling
16 place, that they can request an advance mail-in ballot.
17 I mean, consistent with their rights as registered
18 voters, they can do all of that. And I thought it
19 important to-- to add that language because, of course,
20 either through prior notices or just through the public
21 arena, reading newspapers and things the Secretary has
22 stated to the public through the media, they might have
23 some concern about provisional ballots or something like
24 that. So I wanted to make that clear.

25 And then finally, I added further detail to

1 the instructions on finding a polling place. Because we
2 went on the website and-- and when you go on the
3 website, the home page or the landing page does not--
4 there's nothing on that particular page that tells
5 someone where to go. So I just wanted to get-- let them
6 know in the notice they could click on this additional
7 link that would take them to that.

8 My concern being that, you know, some voters
9 are not computer literate, some are elderly, some may
10 not even own computers and are using somebody else's.
11 So anyway, to the extent they're doing this online, I
12 thought it would be helpful to add this additional step
13 for them.

14 So I have some additional questions and
15 issues I want to take up with you, but I wanted to start
16 with just this summary of how I came to the language
17 that I drafted and changed or supplemented your
18 language. So I want to start with just getting any
19 response or any additional suggestions from the parties.

20 So I'll start with plaintiff, anyone on
21 their team that wants to start. Just identify yourself
22 by name, though.

23 MR. DANJUMA: Yes, Your Honor. This is
24 Orion Danjuma. And obviously our principal concern now
25 is that covered voters haven't received the most

1 critical notice they need. And I-- we think that's a
2 serious problem. We certainly appreciate the Court's
3 detailed attention to that issue.

4 The-- the points that you've raised here we
5 agree with. We don't dispute sort of any of the
6 language that you've added. And I think the parties had
7 some differences over how bold and how clear the text
8 would be, and we agree that it should sort of lay out
9 the case that prior notice should be disregarded and
10 that this is what will happen going forward.

11 There's just a couple of notes that I might
12 add, and I'm not sure if it's relevant to the language
13 or not, but we do want to address what notice
14 individuals received going forward. So if you apply at
15 a DMV tomorrow or, you know, the next day, as many
16 people are, that those individuals won't have received
17 prior notice. They will not yet have received the kind
18 of confusing notice that was sent out in the middle of
19 the summer. And we just want to be very sure that they
20 receive something that's identical to what other voters
21 receive.

22 That may be a separate issue. But in terms
23 of the language that-- that the Court has added, we're--
24 we're in agreement with essentially everything. The
25 only small note is that in the very first sentence, it

1 says that, "You are receiving this revised official
2 notice because you have applied to register to vote and
3 you previously received," we might say, "you may have
4 received" that, because some individuals might've missed
5 the notice. But that's a minor distinction I-- I
6 wouldn't imagine that the Secretary would disagree with.

7 THE COURT: Okay. I think that's well noted
8 in case they didn't receive a prior notice. Your
9 concern about notices-- what notice at the DMV is
10 another question and it is-- it is subsumed in some
11 additional questions I have about other notices and
12 other procedures going forward. So we'll-- I'll come
13 back around to that, Mr. Danjuma.

14 Mr. Kobach, your view on the revised notice.

15 MR. KOBACH: Your Honor, we don't have many
16 objections. Certainly it is perfectly fine with us if
17 you wish to add the bold text.

18 There is one substantive change we would
19 advise and then one stylistic one. The substantive one
20 is on the second paragraph, the last sentence which
21 begins, "Your name is included." That sentence as it is
22 currently worded does not describe all of the
23 possibilities, and so it's technically not accurate as
24 it stands.

25 So either you could-- as the following-- we

1 could describe the standard ballot at the polling place
2 or advance ballot in-- mail-in ballot, there's another
3 one, or you may vote an advance ballot in person.

4 THE COURT: Correct. Yes.

5 MR. KOBACH: And then there's also a fourth
6 possibility. Or you may vote a provisional ballot at a
7 polling place other than your own.

8 I would suggest you just-- it would be a
9 long run-on sentence describing four possibilities.
10 If-- you normally don't put in a notice, you know, about
11 your registrations status, but if you want to include
12 that, then you'd have to include all the possibilities.
13 Or you could just end the sentence after the phrase
14 "your name is included on the Kansas list of registered
15 voters."

16 As for the minor stylistic one, I just think
17 the last sentence of the third paragraph "or you may
18 call my office" probably should be "this office" because
19 some of the counties will not sign it-- the name of the
20 clerk, it would rather be just, you know, Sherman County
21 election office. So "my" might be, you know,
22 grammatically incorrect if you don't have a person
23 there.

24 THE COURT: Okay. Yeah, I would agree with
25 that stylistic change.

1 Back up to the possibilities. I think it's
2 important to let them know, because there's been-- I
3 don't want there to be confusion about standard versus
4 provisional ballots. So I think it's important to let
5 them know that they will be given a standard ballot at
6 their polling place or they can request an advance
7 mail-in ballot or they may vote in advance.

8 I-- I am somewhat reluctant to talk about
9 provisional ballots at-- other than their polling place.
10 That may be their right, but I'm a little concerned that
11 introducing that fourth way revises some confusion about
12 provisional ballots.

13 So I'm inclined to just add this
14 additional-- one of the additional things you mentioned,
15 Mr. Kobach, and that is they can vote in advance. And
16 something that suggests-- they can vote in advance in
17 accordance with their-- I don't want to use that
18 language exactly, but in accordance with the procedures
19 in their county or the availability in their county.
20 Every county is different in terms of advance voting and
21 where that happens. Correct?

22 MR. KOBACH: Yeah, right. So they all allow
23 it. And at a minimum, advance voting is allowed at the
24 county clerk's office-- (reporter interruption).

25 THE COURT: I'm sorry. Somebody needs to

1 mute their phone, unless it's Mr. Kobach because he's
2 speaking, because we're getting some background noise.

3 Okay. Go ahead, Mr. Kobach.

4 MR. KOBACH: Your Honor, in all 105 counties
5 you can vote advance in person. At a minimum, the
6 county clerk's office has it. And at a maximum, in
7 places like Johnson County, I believe they-- they have
8 eight locations. So you might just want to add that--

9 (Interference due to background noise).

10 MR. KOBACH: You might just want to add that
11 phrase "or you may vote an advance ballot in person."

12 THE COURT: Okay. "Or you may vote in
13 advance in person." Yeah, I don't think we need to get
14 into the particulars. This notice isn't designed to
15 give them all of the instructions that they have
16 otherwise in terms of where they can go to vote, et
17 cetera.

18 Okay. Remind everyone, mute your phones,
19 please. This background noise is making it difficult
20 for the court reporter to hear what the speaker is
21 saying.

22 Okay. All right. So we'll make those
23 revisions.

24 And now I have some additional questions.
25 Will a version of this notice be posted on the

1 Secretary's website in both English and Spanish? I
2 mean, will this notice be in both English and Spanish?
3 I think that's consistent with what you do now, is it
4 not? You have--

5 MR. KOBACH: Your Honor, no, it's not,
6 because this notice would only apply to roughly 17,000
7 people at this point. So of the 1.7 million registered
8 voters, 99 percent of them would not-- you know, this
9 might be confusing to them. We normally wouldn't post a
10 notice like this on the website because--

11 THE COURT: Okay. But what I'm suggesting
12 is, whatever notice you do have on the website now is
13 probably needing modification as well. Even though it's
14 not specific to the 17,000, if you have a notice on the
15 website now that says you have to have proof of
16 citizenship, et cetera, that needs to be modified to be
17 consistent with this and with the law as it stands right
18 now.

19 MR. KOBACH: We-- we do have an entire
20 website that describes all of the procedures for
21 registering to vote in Kansas. Are you-- we can
22 certainly bring that up-to-date. We're a little
23 concerned with-- I'm not quite sure how you would word
24 it to say if you are in this category of people, then
25 here's your different situation.

1 THE COURT: Well, right now-- so right now
2 on your website for people that are registering at the
3 DMV or I guess for that matter registering by mailing in
4 a federal form, that language needs to be changed to
5 reflect what the law is. And that is, they don't have
6 to produce proof of citizenship.

7 MR. KOBACH: I'm not-- we can double-check.
8 I'm not sure if our-- I'm not sure if our website even
9 goes into differences at the DMV or use of a federal
10 form.

11 THE COURT: Okay. Well, has plaintiff
12 looked at the website?

13 MR. DANJUMA: Your Honor--

14 THE COURT: Do you want to weigh in on this
15 or not?

16 MR. DANJUMA: I'm sorry? I-- yeah, I'm
17 getting interference. I didn't hear you, Your Honor.

18 THE COURT: Is this Mr. Danjuma?

19 MR. DANJUMA: Yes.

20 THE COURT: Have you looked at the website?
21 I mean, are you concerned about any of the noticing on
22 the website?

23 MR. DANJUMA: Yes. We have looked at the
24 website and it does-- the voter ID provisions do give
25 information that is incorrect. And it's inconsistent

1 with the Court's-- with these multiple court rulings at
2 this point. And we think that it has to be updated to--
3 to be consistent with the law.

4 I don't know that-- why that would be so
5 technically difficult. I think a notice can be provided
6 that-- it's as simple as altering the web page and
7 saying that you do not need to provide documented proof
8 of citizenship when you register through these means and
9 providing a copy of this-- the notice that the Court has
10 produced for-- with a link that says that it's for
11 individuals who have already registered to vote in these
12 locations.

13 I think that that would eliminate confusion.
14 And as individuals are-- are continuing to register to
15 vote in high numbers now, it would clarify what their
16 status is in advance.

17 THE COURT: It absolutely has to be amended
18 to reflect the-- these rulings. So, you know, and I
19 haven't-- I don't have a screenshot, I don't know what
20 that looks like. But it absolutely has to be corrected.
21 It has to be corrected forthwith for new registrants,
22 for registrants that receive this notice and decide to
23 go online and now see something contrary to what this
24 notice says.

25 I mean, we're trying to avoid confusion at

1 all costs. So that needs to be done, Mr. Kobach, as
2 quickly as possible. I would say by the end of the week
3 it needs to be accomplished. Hopefully it's just a
4 matter of deleting some language.

5 Okay. And that's why I mentioned the
6 Spanish, because I know that on your website there's
7 something that is in both English and Spanish, so I was
8 just suggesting that they need to be the same. And they
9 both need to be modified to reflect these rulings if, in
10 fact, they say something about you have to provide proof
11 of citizenship.

12 MR. DANJUMA: And, Your Honor, just briefly,
13 this is Orion again. It's not just the Secretary of
14 State's Office. The proof of citizenship requirement is
15 also listed on-- or we've reviewed it on the Got Voter
16 ID website, which is a separate website that lists
17 several requirements for voting.

18 So that requirement which says, "evidence
19 required in order to register to vote" would also need
20 to be changed.

21 THE COURT: Okay. So, Mr. Kobach, what I'd
22 ask you to do is forthwith make these changes on the
23 Secretary of State website, the vote-- My Vote Info, et
24 cetera, website, any other websites you're utilizing,
25 even county election offices. And then send me I would

1 say next week sometime just by e-mail and-- and copy
2 plaintiff's counsel just that this has been complied
3 with.

4 Okay. So that's that. And then here's--
5 here's another question I have. Most of us receive
6 these postcards through the mail that tells us where our
7 precinct is and where to go vote. And I was wondering
8 what-- so the-- the 17,000 people, or however many it
9 is, that are going to get the notice, are they going to
10 also receive the postcard? I mean, how will they know
11 where to go vote?

12 MR. KOBACH: Your Honor, this is Kris
13 Kobach. They will get the same notice that others--
14 that other voters get, that it notifies you of your
15 polling place.

16 THE COURT: Okay. Great. And it doesn't
17 matter that this is happening at this point in October,
18 they should-- they should still be on track for getting
19 the postcards in the mail; is that correct?

20 MR. KOBACH: Your Honor, you mentioned a
21 moment ago to update county websites too. I-- it would
22 be very difficult for this office to be responsible for
23 the content of all 105 county's websites as well. So
24 I'm-- we can certainly update our websites to reflect
25 this information. But, you know, we don't control the

1 counties. So we can encourage them to make similar
2 modifications, but I-- I hope the Court is not holding
3 us responsible for websites we don't control.

4 THE COURT: Well, I'm holding you
5 responsible for directing them to and mandating them to,
6 because you're the Secretary of State. And you are
7 the-- you are the No. 1 authority and-- and it is your
8 responsibility to manage elections in Kansas.

9 So I know a lot of it is administered at the
10 county level, but I think you have the authority to
11 mandate that they do it. And then-- and then tell them
12 to tell you that they've complied, so that you can share
13 that with the Court. I know you can't physically go
14 perhaps to the county election office and do it
15 yourself, but you certainly can direct and mandate them
16 to do it, just like you did tell them what to do when
17 the, you know, DPOC law came into being. I mean, you
18 directed them what to do in response to that. So I
19 think you have to direct them what to do in response to
20 this as well.

21 MR. KOBACH: We will do our best, Your
22 Honor. Just bear in mind sometimes some counties are
23 faster than others when it comes to complying with
24 instructions from this office.

25 THE COURT: Okay, I understand.

1 MR. DANJUMA: And, Your Honor, this is Orion
2 Danjuma again. And if we-- if plaintiffs could be heard
3 just briefly on this point as well.

4 THE COURT: Okay.

5 MR. DANJUMA: We have received word from
6 individuals who have contacted the Shawnee County
7 Election Office in Topeka. And those callers were told
8 by state officials that NVRA registrants would not have
9 their votes counted for state and local elections. And
10 I don't raise that to sort of lay that at Mr. Kobach's
11 feet, particularly as, you know, this-- the issues of
12 compliance have been evolving this week.

13 But we do want to be very sure that at some
14 point very soon Mr. Kobach does issue an instruction to
15 all county election officials to advise callers that
16 they are registered and may participate in all
17 elections, because it-- it doesn't appear that that's
18 happened yet and that is continuing to cause problems.

19 THE COURT: All right. Well, apparently--
20 it sounds like there's confusion in the county election
21 offices. And that needs to be cured. And I think that
22 will be cured with a directive from you, Mr. Kobach. I
23 mean, it's all over the newspapers, I would hope those
24 folks would read the newspapers and understand that
25 there have been these rulings.

1 (Interference from background noise).

2 THE COURT: But if they don't, you know,
3 they don't. They have-- they take their direction from
4 you on this. And I think it's your responsibility to
5 give them that direction. I understand some of them may
6 be able to change it tomorrow and some it may take
7 longer. But they've got to do it. And for sure when
8 people are calling in, because people are confused-- I
9 mean, we've had calls to this office. And I'm not in a
10 position to take calls and answer questions.

11 But if people are calling their county
12 election offices, they need to get the right
13 information. And the only way apparently that's going
14 to happen in some counties is if you set them straight.
15 So I expect you to do that, Mr. Kobach, that's your job
16 obviously. All right.

17 MR. KOBACH: We will continue to notify the
18 counties of what their responsibilities are and what the
19 rules are.

20 THE COURT: Okay. All right. So returning
21 to what Mr. Danjuma brought up at the outset, and that
22 is other notices that-- and we've talked about the
23 website obviously. Are there any other media through
24 which notices are given, other than at the point of
25 registration, such as at the DMV, that we need to be

1 concerned about?

2 So like when somebody goes into the DMV, I
3 mean, isn't there something that's posted that they can
4 register? And I don't know if it has DPOC language on
5 it or not, but if that notice at the DMV says that,
6 obviously that needs to be modified.

7 Mr. Kobach, do you know?

8 MR. KOBACH: Your Honor, when they are--
9 when they register at the DMV, they are given a notice
10 that says that if you have not yet provided proof of
11 citizenship, you should do so.

12 I would note that-- that this Court's
13 jurisdiction is only over registration for federal
14 elections. We have only a temporary restraining order
15 in effect regarding state and location elections, so--
16 and then that may-- that may change.

17 So I would hesitate to discourage voters
18 from providing proof of citizenship. If the state court
19 decision changes, you will have people who have not been
20 notified that, hey, if you want to vote in all
21 elections, you need to get your proof of citizenship in.
22 So I think it would be a grave disservice to voters to
23 discourage them or not notify them that under Kansas law
24 they should provide proof of citizenship.

25 THE COURT: Well, they can't do that at the

1 DMV anyway. So consistent with my order, the language
2 needs to be taken out, period.

3 The way this-- the law is now, you have a
4 preliminary injunction that's been affirmed by the Tenth
5 Circuit, and that's going to be the state of law on
6 election day in Kansas. You have apparently-- I thought
7 it was a preliminary injunction, but if it's a temporary
8 restraining order in the state court, it's effective
9 now, it's the law right now. Presumably it will be
10 through election day.

11 We're going to operate like it is because, I
12 mean, I'm not going to assume that it's not. And,
13 therefore, the DPOC language needs to come out of the
14 materials at the DMV as well. Mr.-- I mean, rather,
15 Judge Hendricks' order says, "Defendant," meaning Mr.
16 Kobach, "is ordered to instruct the local election
17 officials to give timely notice to the voters impacted
18 by the federal court rulings in *Fish v. Kobach*, *League*
19 *of Women Voters versus Newby*, and be unequivocally
20 instructed that they are deemed registered and
21 qualified," we've already talked about qualified, I
22 think it's eligible, "to vote for the appropriate local,
23 state, and federal elections for purposes of the
24 November 8th, 2016 general election, subject only to
25 further official notice."

1 So the language at the DMV has to say you do
2 not have to submit proof of citizenship, you will be
3 deemed registered and eligible to vote for the
4 appropriate local, state, and federal elections for this
5 upcoming election, subject only to further official
6 notice. And if Judge Hendricks' order gets reversed,
7 we'll deal with that when we deal with it. But we're
8 going to deal with the law as it stands right now.

9 So those-- those also need to be changed,
10 and I'm going to be looking for you-- for an e-mail
11 assuring us all that that's been complied with as well.

12 That's all I had, counsel, unless there's
13 something else that you all want to discuss or any other
14 concerns.

15 First for the plaintiff, anything more from
16 you?

17 MR. DANJUMA: Well, Your Honor, we just--
18 I'm sorry, this is Orion Danjuma again. We just wanted
19 to check the-- to ensure that we were in agreement about
20 what new voters will-- new DMV registrants will receive,
21 the notice they'd receive. And I guess-- I guess the
22 best way to resolve that is to either have a
23 representation from Mr. Kobach that they'll receive the
24 same notice that every other registered voter receives
25 or that we'll see a copy of that notice before it's

1 issued.

2 THE COURT: Okay. I think that's fair. Mr.
3 Kobach.

4 MR. KOBACH: Your Honor, we can-- we
5 obviously have to coordinate with the Department of
6 Revenue as to the notice of-- they're the ones actually
7 providing it physically to the registrants, or the
8 applicants I should say, at the DMV. And so, yeah, we
9 can provide revised wording to-- to counsel.

10 THE COURT: Okay. That would be-- that
11 would be great. Send it to me by e-mail as well. And
12 hopefully, you know, you've-- you'll be able to
13 communicate all of this, as well as assurances of
14 compliance by the county and, you know, an assurance
15 that you've instructed them obviously by next week
16 sometime. And that will put a-- an end to this for now
17 and go forward with this lawsuit I suppose, but at least
18 we won't have to deal with any other issues before
19 November 8th.

20 Okay. Mr. Kobach, was there anything else
21 that you wanted to discuss today?

22 MR. KOBACH: No, Your Honor.

23 THE COURT: Okay. All right. Well, I
24 appreciate you all being available for the hearing. And
25 hopefully we won't be talking again before November 8th.

1 But obviously if something comes up, my door is open and
2 we'll hear from you. Thank you all. I'll disconnect.

3 MR. DANJUMA: Thank you, Your Honor.

4 THE COURT: Thank you.

5 (12:25 p.m., proceedings recessed).
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1 C E R T I F I C A T E

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3
4 I, Kelli Stewart, a Certified Shorthand Reporter and
5 the regularly appointed, qualified and acting official
6 reporter of the United States District Court for the
7 District of Kansas, do hereby certify that as such
8 official reporter, I was present at and reported in
9 machine shorthand the above and foregoing proceedings.

10 I further certify that the foregoing transcript,
11 consisting of 23 pages, is a full, true, and correct
12 reproduction of my shorthand notes as reflected by this
13 transcript.

14 SIGNED October 7, 2016.
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17

18 /s/ Kelli Stewart

19 Kelli Stewart, CSR, RPR, CCR, RMR
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Kelli Stewart, CSR, RPR, CRR, RMR