

HOUSE ELECTIONS COMMITTEE
CHAIRMAN – REP. SCHWAB
TESTIMONY – SB 63

I am here today to present information to the committee regarding voter fraud in Kansas related to SB 63. I oppose increasing penalties from misdemeanors to felonies, support restricting the Secretary of State's PAC, and am neutral on giving the Secretary of State prosecutorial powers. I believe my testimony will help the committee in its decision-making process by providing data on voter fraud and some issues the committee might want to clarify before proceeding on the bill.

HOW WE GOT HERE

I asked Secretary Kobach how many cases of fraud were found in the 2010 general election. He reported that there were 41 incidents of election fraud reported to his office:

- 13 persons voted in Kansas and another state
- 3 persons in Johnson County voted advance ballots and also at their polling place
- 17 felons voted provisional ballots in Wyandotte County
- 4 unregistered persons in Wyandotte County signed false statements and voted
- 4 persons in Wyandotte County voted more than once

Two of these cases have been prosecuted to date, one each in Finney and Marshall counties for voting in two states. The Secretary reported that to his knowledge, none of the 41 were non-citizens. He also told me that none of these cases would have been prevented by a photo ID. In the 2012 primary and general elections, 787 votes were not counted due to lack of a photo ID. This means that there were hundreds times more instances where citizens had their votes thrown out for no photo ID than cases of actual fraud in the state.

Regarding the situation of non-citizens registering to vote, the Secretary reported that he had found 32 aliens registered to vote in Kansas. Upon further investigation, I found that 27 of the 32 registered aliens had registered at the DMV after 2007. That is significant, because we have been verifying status in the country since 2007 and there is no reason why the DMV should even have offered these non-citizens an opportunity to register. We may need to do some training at the DMV on this issue.

THE PROSECUTIONS

In the Finney County case, one person voted in Kansas and Oklahoma. The county attorney told me the defendant was genuinely surprised that this was against the law as he lived in both states. The defendant was charged with a misdemeanor and given diversion. In the Marshall County case, one person voted in Kansas and Nebraska. That person was also charged with a misdemeanor for not being a qualified elector and given diversion as he had no priors. The attorneys both told me that they felt the penalties were adequate for the crimes.

I visited with Wyandotte County District Attorney Jerome Gorman about the cases in his county, since that is where the bulk of the 2010 cases were from. He said he looked at all the cases presented to him. He said the 17 felons generally had either not completed their

sentences to get their rights restored or didn't know they needed to re-register to vote. None of their votes were counted. He felt that, like many other people who show up to vote without being registered, the election judges advise them to vote a provisional ballot and no crime was committed. He said he received notice that five voters were non-citizens, but when he checked into it, found that four of them were US citizens and the fifth had left the country.

2012 FRAUD CASES

I have not asked for an update on voter fraud from the Secretary's office from the 2012 election, but he has publicly stated most of the voter fraud is gone and he was waiting on information from other states about double voters. I did call the Wyandotte County Election Commissioner to see how many felons had tried to vote in 2012. He told me he just happened to see them in 2010 but he hadn't looked to see if any felons voted in 2012.

UNREGISTERED VOTERS

I noticed that in 2010 the Secretary reported that four unregistered persons had signed statements and voted a provisional ballot. In 2012 in Shawnee and Osage counties, there were dozens of people who were not registered to vote who signed affidavits and voted provisional ballots. I asked the Secretary of State if these dozens of voters were considered cases of fraud. He replied, "The opportunity to cast a provisional ballot is established in federal law as a fail-safe procedure. Provisional voting covers several situations one of which is the situation where a voter's name does not appear on the poll book. We do not count such situations as examples of voter fraud."

I agree. When people mistakenly show up to vote without being registered, or don't know they need to re-register after a felony conviction or after moving, they should not face criminal charges. Some election judges even encourage voters to fill out the affidavit/registration form so they can vote at the next opportunity. So I assume the four cases of people not registered to vote who tried to vote in 2010 in Wyandotte County were not actually cases of fraud as well. They were simply exercising that fail-safe option.

WHY IS THIS SIGNIFICANT?

The most bothersome part of SB 63 is that it changes the penalties for many kinds of voter fraud from a misdemeanor to a felony. As I noted above, the county attorneys felt the penalties in current law were adequate for their cases.

The thing you might want to clarify is will all of those people who used the fail-safe option of filling out a provisional ballot when they were not registered to vote now face a felony conviction, along with the election judges? Will someone who forgot they mailed in their advance ballot and went to the polls to vote "just in case" face felony charges? Section 6 says they will.

Since there never has been a hoard of aliens trying to vote in Kansas or people impersonating others at the polls, the Secretary is now focusing on voters who vote in two states. There are definitely voters who vote in two states. The question you have to ask is, when most folks

don't seem to know that is against the law, should it be a felony? If you think we need to turn snowbirds into jailbirds, then pass SB 63.

THE SECRETARY'S PAC

While it is true that elected officials sponsoring PACs is not unusual, I believe the Secretary of State is in a different situation than other officials. The Secretary by law gets the final say on the outcome of races as part of the state election board. The Secretary is to be the fair arbiter of elections. Allowing the Secretary to become personally involved in elections is like having the referee show up in the opposing team's jersey. I became the target of the Secretary's PAC during the November 2012 election. I don't know what impact his mailing had on the outcome, but in a move the Wichita Eagle called "an outrageous conflict of interest", the Secretary tried to seal the outcome by denying my access to the names of provisional ballot voters in the race. Those names had readily been available in the past and were provided in this case, after I filed an appeal in district court. Secretary Kobach continues to pursue this case in federal court at state expense. You may hear about that issue if you hear SB 177. Secretary Kobach seems to have no concept of conflict of interest, so it may be time to set it in law.

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One right on Kobach

The Kansas Senate took a needed step last week in voting to bar the secretary of state from having a political action committee, given that the current officeholder clearly can't see the problem with the state's chief election officer funding candidacies other than his own. Where the Senate went wrong was in adding investigation and prosecution of election crimes to the secretary of state's duties.

The legislation to give the office prosecutorial powers was a 31-9 vote of confidence that Secretary of State Kris Kobach hasn't earned. After two years in office, he has yet to demonstrate that Kansas has a problem with voter fraud so serious that the secretary of state as well as the attorney general and county and district attorneys need the power to fight it.

Kobach recently complained to state senators that of the 11 double-voting violations his office has referred for prosecution — "all slam dunks," he claimed — only two had been adjudicated, and that both resulted in diversion.

But Johnson County District Attorney Stephen Howe, testifying on behalf of the Kansas County and District Attorneys Association, suggested that what Kobach sees as widespread voter fraud doesn't hold up in local investigation. Howe spoke of a case of double voting by an elderly man showing "early stages of dementia," and of another case in which a man with developmental disabilities allegedly voted twice.

"Are we supposed to prosecute that case?" Howe asked lawmakers. "I

chose not to."

Kansans have reasons to doubt that Kobach would make the same sound judgment, which is why the House shouldn't go along with the prosecutorial powers in Senate Bill 63.

But House members should join senators in favoring the PAC ban for

secretaries of state, which passed with bipartisan support including Senate President Susan Wagle, R-Wichita.

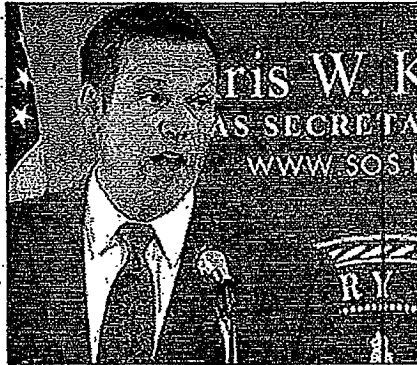
Kobach has claimed his government job is separate from his PAC, which spent \$23,000 helping Republican candidates last year. But

Kansans already saw them overlap in an outrageous conflict of interest last November — when Kobach, as the state's chief elections official, tangled in court over whether to release provisional voters' names to then-Rep. Ann Mah, who ended up losing by a few votes to a candidate supported by Kobach's PAC.

Kobach also has said the ban would violate his First Amendment rights. But legislative action is only being pursued because of his failure to do his job with the same nonpartisanship exhibited by predecessors Ron Thornburgh, Bill Graves and others.

Kobach shouldn't need the Legislature to tell him what he's doing is inappropriate and likely to erode trust in the integrity of elections — something he's so committed to protecting from voter fraud. If he can't bear to put his official duties ahead of his partisan politicking, he's in the wrong job.

— For the editorial board, Rhonda Holman



Secretary of State Kris Kobach shouldn't need the Legislature to tell him what he's doing is inappropriate.

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