IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

STEVEN WAYNE FISH, ET AL.,

Plaintiffs,

v.

KRIS KOBACH, SECRETARY OF STATE FOR THE STATE OF KANSAS,

Defendant.

Case No. 16-2105-JAR-JPO

MEMORANDUM AND ORDER

On September 23, 2016, Plaintiffs filed a Motion to Enforce Preliminary Injunction; for Order to Show Cause Why Defendant Kobach Should not be Held in Contempt; and for Expedited Briefing and Hearing.[1] The Court ordered Defendant Kobach to appear in person on Friday, September 30, 2016, to show cause why he should not be held in contempt given the allegations set forth in Plaintiffs' motion that he is not in compliance with the Court's May 17, 2016 Preliminary Injunction (Doc. 129). On September 29, 2016, the parties filed a Joint Status Report setting forth an interim agreement on the matters raised in Plaintiffs' motion. Part of this agreement was that Defendant:

> will instruct the county election officials to send out a new notice that unequivocally advises covered voters that they "are deemed registered and qualified to vote for the appropriate local, state, and federal elections for purposes of the November 8, 2016 general election, subject only to further official notice." The parties will prepare a draft notice for this Court's review, revision, and approval. Upon approval by this Court, Defendant will direct county election officials to send the approved notice to covered voters on or before October 12, 2016.[2]

[1]Doc. 220.

[2]Doc. 225 at 2 ¶ 1.

The Court cancelled the show cause hearing, but ordered the parties to submit to the Court a draft joint proposed notice to send to those Kansas voter registrants affected by the Court's preliminary injunction and a related state court matter, and scheduled a telephonic status conference with the parties on the contents of the notice for October 5, 2016. On October 3, 2016, the parties submitted their proposed notices to the Court by e-mail. The following day, the Court sent the parties by e-mail its revised notice. The Court discussed this notice with the parties at the October 5 telephone conference, and reached agreement as to the following language to be sent to those who had attempted to register to vote at the DMV or by mail and previously may have been instructed to provide documentary proof of citizenship ("DPOC"):

> DATE
>
> Dear Kansas Voter Registration Applicant,
>
> You are receiving this revised official notice because you have applied to register to vote and you may have received an official notice(s) or other information instructing you to complete your voter registration application by submitting an acceptable form of proof of citizenship to this office. **PLEASE DISREGARD ANY PRIOR NOTICE OR INSTRUCTION YOU MAY HAVE RECEIVED ABOUT YOUR VOTER REGISTRATION STATUS. THE INFORMATION PROVIDED TO YOU IN THIS NOTICE SUPERSEDES AND REPLACES ANY CONTRARY INFORMATION YOU MAY HAVE RECEIVED FROM THIS OFFICE**.
>
> This revised notice is to inform you that, due to recent court rulings, **YOU ARE DEEMED FULLY REGISTERED AND ELIGIBLE TO VOTE FOR ALL OFFICES** – federal, state, and local. This means that you are registered and may vote in the November 8, 2016 General Election. You do not need to provide additional documents to complete your voter registration at this time. Your name is included on the Kansas list of registered voters, and you will be given a standard ballot to complete at your polling place, or you may request an advance mail-in ballot, or you may vote in advance in person.
>
> To find your correct polling location, please visit the Kansas Voter View website at https://myvoteinfo.voteks.org, click on "Polling Place," and input your address into the required fields. Or, you may call this office to request polling place information.

> You may contact this office at _____ (phone number), or the Kansas Secretary of State's office at 1-800-262-8683, with any questions.
>
> Sincerely,
> _____ County Election Office

The Court and Plaintiffs also expressed concern during this hearing about other notices that had not been changed in accordance with the various court orders that now make clear that motor voter registrants may vote in federal, state, and local elections without first providing DPOC in the upcoming general election. Specifically, the Court 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, and that the notices at the DMV given to new motor voter registrants also must be modified. The Court asked the parties to send these revised notices to the Court by e-mail once completed.

On October 13, 2016, the parties filed a "Joint Status Report" regarding the status of these notices. But this document is joint in name only. Although it appears that the parties continue to agree on the notices to be mailed to covered past registrants, and to covered new registrants, they disagree on three other notices: (1) the website notice letter; (2) the DMV receipt; and (3) the gotvoterid.com website language. Each party sets forth its respective positions on these three items in the joint status report. Although neither party has filed a motion, it is apparent that they expect the Court to mediate this disagreement. Given the stakes and the short timeframe before the Kansas registration deadline, the Court provides the following guidance.

As to the **website notice**, the Court agrees with Plaintiffs that Secretary Kobach's insertion of language about what will happen after November 8, 2016 is outside the scope of

what was discussed at last week's phone conference, and could lead to voter confusion.

Secretary Kobach is directed to **remove** the following language from both proposed notices:

> For elections that take place after the November 8, 2016, general election, it is at this time unknown whether you will be registered to vote depending on subsequent court rulings and should provide an acceptable form of proof of citizenship to your local county election office or to the Secretary of State to ensure future registration. For a complete list of acceptable forms of proof of citizenship, visit www.gotvoterid.com.

Instead, the Court **approves** the notice as revised by Plaintiffs that reads as follows:

> This notice covers persons who have applied to register to vote and have not yet provided proof of citizenship. 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 standard 'state form') and have not yet provided proof of citizenship, you are registered to vote for the November 8, 2016, general election. 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 subject only to further official notice.
> If you have questions concerning your eligibility or this notice you may contact your local county election office or the Secretary of State's office at (800) 262-8683.[3]

As to the **DMV receipt**, the Court also agrees with Plaintiffs that the notice proposed by Secretary Kobach is confusing. It is not a matter of providing more instead of less information to voters. It is a matter of providing them with consistent information about the law as it stands now, with the caveat that it would be subject to further official notice. Therefore, the Court **approves** of the DMV receipt language as revised by Plaintiffs:

> THANK YOU FOR APPLYING TO REGISTER TO VOTE. YOUR VOTER REGISTRATION APPLICATION WILL BE SENT TO YOUR COUNTY ELECTION OFFICE FOR PROCESSING.
> YOU WILL BE DEEMED FULLY REGISTERED AND ELIGIBLE TO VOTE FOR ALL OFFICES – FEDERAL, STATE, AND LOCAL—WHETHER OR NOT YOU PROVIDED A DOCUMENT DEMONSTRATING UNITED STATES CITIZENSHIP. YOU DO NOT NEED TO PROVIDE ADDITIONAL

[3]Doc. 240, Ex. C at 2.

> DOCUMENTS TO COMPLETE YOUR VOTER REGISTRATION SUBJECT ONLY TO FURTHER OFFICIAL NOTICE.
> A NOTICE WILL BE MAILED TO YOU WHEN YOUR VOTER REGISTRATION APPLICATION HAS BEEN PROCESSED. IF YOU HAVE QUESTIONS ABOUT YOUR APPLICATION, PLEASE CALL YOUR COUNTY ELECTION OFFICE OR THE KANSAS SECRETARY OF STATE AT 1-800-262-8683.[4]

The gotvoterid.com **website**, and its various pages and links, is a closer question. First, the Court agrees with Plaintiffs that the insertion of notice language on the main webpage under the heading "If you're a registered voter, bring one of these to the polls" is extremely confusing.[5] Of course, this case does not concern the photo identification requirement at the time of voting. Adding Secretary Kobach's proposed language risks confusing voters by conflating what is and is not required for registration, with what is and is not required to prove identification when voting in person. The Court also agrees that instead, notice language should appear under "Changes in Kansas Voting Law; Starting January 1, 2013." **Defendant shall move the notice language from the photo identification section to the bottom of the main webpage**. Otherwise, the Court is satisfied with Secretary Kobach's modifications to this website for purposes of the upcoming election and will not require him to adopt Plaintiff's further proposed revisions.

IT IS SO ORDERED.

Dated: October 14, 2016

S/ Julie A. Robinson
JULIE A. ROBINSON
UNITED STATES DISTRICT JUDGE

[4]Doc. 240, Ex. C at 3.

[5]Doc. 240, Ex. A at 2.