

State of Kansas



Representative Ann Mah
Kansas House of Representatives

SENATE JUDICIARY COMMITTEE
CHAIRMAN SEN. KING
TESTIMONY – SB 63

I am here today to present information to the committee regarding voter fraud in Kansas, taking a neutral position on SB 63. I believe the information I have gathered 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 said 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 about 400 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.

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. The 17 felons thought they were eligible to vote but were not. They had either not completed their sentences to get their rights restored or didn't know they needed to re-register to vote. 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 5 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 it is gone. 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. I guess when you don't look, you don't find it.

UNREGISTERED VOTERS

I also noted that in 2010 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. So I asked the Secretary of State if these dozens of voters were not 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 didn't know they needed to re-register after a felony conviction or after moving, they should not face criminal charges. Some election judges even encourage them 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. I'll let you decide if we really need to increase that penalty to stem the "wave" of fraudulent voters.

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 5 says they will.

So now we're into the next phase of the Secretary's quest to stop the rampant voter fraud in Kansas. Since there never have been a hoard of aliens trying to vote or people impersonating others at the polls, the Secretary is now focusing on voters who vote in two states. That's fine. There are definitely voters who vote in two states. The question you have to ask yourself 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 those snowbirds into jailbirds, then go for it.