

*"They write politics, we write government"*

## THE UTTER MYTH OF VOTER FRAUD: KRIS KOBACH

Among the swirl of other news, we had a new Executive Order yesterday. The President has created a commission to [look for voter fraud](#). One needn't look far to find bi-partisan, expert opinions that are highly opposed to the commission. Those compiled by [Rick Hasen](#) at [Election Law Blog](#) include concerns about:

- [Specific wording](#) of the EO betraying its intent.
- Use of the report to [undermine the public's trust](#) in our election process.
- [Distraction from the legitimate process](#) of improving our nation's election.
- [Severe conflicts](#) involving members of the Commission.

Helpfully, the EO defines fraudulent voting for us, "the act of casting a non-provisional ballot or multiple ballots with knowledge that casting the ballot of ballots is illegal." We know from Twitter that our President believes that "voter fraud", which was apparently concentrated in non-electoral-college-critical states like California, resulted in his losing the popular vote. He claims that 3 to 5 million fraudulent votes were cast; to this point he has offered literally no evidence thereof. I'm planning to write more about voter fraud in upcoming weeks, but let's talk first about the Committee's Vice-Chair, Kansas Secretary of State Kris Kobach.

Before achieving elected office, Kobach began his career by sticking his nose into various types of anti-immigrant activity, such as the notoriously [harsh SB 1070 in Arizona](#). He invented Mitt Romney's famous

and widely mocked "[self-deportation](#)" line. He is also [one of the leaders](#) in the nationwide promotion of voting laws. He promotes laws making it more difficult to vote; in his words, it should be "hard to cheat." During his time in Kansas, he has incorporated the usual litany of anti-voting laws, such as ID requirements and proof of citizenship requirements. More than anything else, Kobach has a history of making wild voter fraud claims which were immediately proven false. [Brennan Center](#) has a long list, but some highlights are:

- In his first election in 2010, Kobach claimed 2,000 voters adopted identities of dead persons. Election officials did not find a single definitive case.
- His best example of a vote from beyond the grave was a gentleman named Albert Brewer. Mr. Brewer was alive and well in Wichita, but his father had sadly passed (without casting a ballot).
- In 2011, Kobach claimed "he knew" of over 100 cases of voter fraud in Kansas. He has obtained only nine convictions.
- Among these convictions, most are similar to [Lincoln Wilson](#), as described in the Wichita Eagle. While Mr. Wilson was clearly confused about voting laws, it seems highly unlikely that his actions were intentional. By the Administration's own definition, this is not voter fraud.
- Despite being out of his jurisdiction, Kobach claimed that 11,805 non-citizens were registered in Colorado, of whom 4,947 voted.

- Of course, the methodology for finding these non-citizens was completely flawed. At most, [155 of these non-citizens were registered](#) and fewer than 35 had ever voted. This represents less than 0.001% of Colorado's registered voters.

However, once the bell is rung it is hard to un-ring. Becoming a fixture on the conservative talk news circuit, he pushed his evidence-free claims with little pushback. Soon, due to Kobach and others, rampant double-voting, non-citizen-voting, and dead-person-voting were core beliefs of Republican lawmakers everywhere.

This is as good a place as any to clarify the difference between voting and voter registration. The new executive order again provides us useful definitions:

*(a) The term "improper voter registration" means any situation where an individual who does not possess the legal right to vote in a jurisdiction is included as an eligible voter on that jurisdiction's voter list, regardless of the state of mind or intent of such individual...*

Have you ever moved? When you did, did you confirm with the relevant election commission for the old residence that you had been removed from their voter rolls? If not, then you are likely guilty of improper voter registration, especially if your move was inter-state (most states are decent at cleaning their internal voter rolls). We are talking about a huge number of voters potentially in this category; there is no evidence that any appreciable number of them voted in multiple jurisdictions.

I doubt Tiffany Trump voted twice; she is registered in both [Pennsylvania and New York](#). Sean Spicer is registered in [Virginia and Rhode Island](#), Jared Kushner in [New York and New Jersey](#), Steve Mnuchin in [New York and California](#). Steve Bannon is registered in [Florida and New York](#), but here it

seems possible that he intended to commit voter fraud. Gregg Philipps made the evidence-free claim of 3 million illegal votes which is a pillar of Donald Trump's "case" against voter fraud. He tops them all, registering in [Alabama, Texas and Mississippi](#).

None of these people have committed a crime, none of them are affecting election results. It would be nice if states did a better job of maintaining accurate voter rolls. Unfortunately, most voter purges have recently been conducted with obvious partisan intent and [little respect for the law](#).

*(c) The term "fraudulent voter registration" means any situation where an individual knowingly and intentionally takes steps to add ineligible individuals to voter lists.*

Many organizations exist to help citizens register to vote. While most of these organizations are officially non-partisan, in practice they operate in poor and minority areas. This means they have the effect of registering far more likely Democratic voters.

Most states have laws stating that when individuals are part of a voter registration drive, they must turn in all of the registration [forms they receive](#). These are good laws, or at least necessary laws. The registration worker doesn't know that your name isn't "Mickey Mouse" and it shouldn't be up to them to cull their registrations. If they get one wrong, Mr. Mouse will show up to vote thinking he was registered only to realize his registration form had been thrown out by a volunteer. Now, some of these registration workers are paid – and some are paid per registration form turned in. This isn't a great incentive. States do have ways to check for these, but sometimes they get through, so there are some Mickey's on the rolls. I'm not aware of any actual ballots getting cast by these non-existent individuals. But many states have made it a crime to turn in fraudulent forms; unfortunately, this creates a damned-either-way situation. The law requires them to turn in even the forms that they suspect

might be fraudulent, but turning in fraudulent forms is a crime.

This is all to say: when you see statistics on “voter fraud” be watchful against intentional conflation between problems with voting and problems with voting rolls. The latter is common, the former exceptionally rare. If the number quoted is in the millions or even the thousands, the number being claimed is probably talking about registration rather than voting. If the number quoted is from the mouth of one Kris Kobach, you should change the television channel.

Of course, there is a good way to fix problems of bad rolls that doesn't make voting more difficult: automatic voter registration. Republicans almost all oppose this.