The Man Behind Trump’s Voter-Fraud Obsession

How Kris Kobach, the Kansas secretary of state, plans to remake America through restrictive voting and immigration laws.

By ARI BERMAN  JUNE 13, 2017

Kris Kobach likes to bill himself as “the A.C.L.U.’s worst nightmare.” The Kansas secretary of state, who was a champion debater in high school, speaks quickly for a rural Midwesterner, with the confidence of a man who holds degrees from Harvard, Oxford and Yale Law School, and until January he hosted his own local radio show, which used that line about the A.C.L.U. to introduce each episode. On March 3 he strode into the Robert J. Dole Federal Courthouse in Kansas City, Kan., to face the latest lawsuit filed against him by the civil-liberties organization. In an unusual arrangement for a secretary of state, Kobach, 51, personally argues all of his cases. He seems to see it as a perk of the job — and a mission.

The A.C.L.U. has filed four suits against Kobach since he was elected in 2010. All of them challenge some aspect of his signature piece of legislation, the Secure and Fair Elections Act, or SAFE Act, a 2011 state law that requires people to show a birth certificate, passport or naturalization papers to register to vote. Kobach has long argued that such a law is necessary to prevent noncitizens from registering to vote, a phenomenon that he has repeatedly claimed is both pervasive and a threat to democracy. The A.C.L.U. has countered that the real purpose of the law is not to prevent fraud but to stop the existing electorate from expanding and shifting demographically. The same principle informed the “grandfather clauses” of the Jim Crow era, which exempted most white voters from literacy tests and poll taxes designed to disenfranchise black voters. Even a seemingly small impediment to
registration, like a new ID requirement, favors the status quo, and in Kansas, and indeed nationally, the status quo favors the Republican Party.

The Voting Rights Act of 1965 outlawed tactics that prevented blacks, Hispanics and other minority groups from voting. But for decades, Republicans have fought to circumvent the law by describing their proposed restrictions — requiring specific forms of identification to vote, preventing early voting, purging voting rolls — as colorblind security measures, even though there is little evidence of any individual voter fraud in the United States. The A.C.L.U. has repeatedly argued that the Kansas law discriminated against minorities, young people and low-income people, all of whom are more likely to be registering for the first time and less likely to have immediate access to citizenship papers, because they can’t afford them or were more transient and don’t have copies of their documents at hand. No state has been as aggressive as Kansas in restricting ballot access, and no elected official has been as dogged as Kobach.

Standing before Judge Julie Robinson in Kansas City, Orion Danjuma, one of the A.C.L.U. lawyers, noted that Kansas’s proof-of-citizenship law applied only to people registering or updating their registrations after 2013. “Tens of thousands of Kansans have already been prevented from registering to vote because of this requirement,” Danjuma said — one in seven new registrants. Close to half of those were under 30.

Today the A.C.L.U. was arguing that a new program called Birth Link — which crosschecked flagged names on the list of voter registrations with Kansas state birth records, conveniently automating the proof-of-citizenship process — discriminated against Kansas residents who were born outside the state. “The Birth Link policy is, in our view, a constitutional smoking gun,” Danjuma said. “There’s nothing wrong at all with the fact that the Kansas Department of Vital Records records people who were born in the state. The problem is when the state starts to distribute benefits — like the right to vote — based on whether or not you’re in that database.”

For Kobach, the question of citizenship, and who has a rightful claim to it, is at the heart of his lawsuits and legislation. Years before Donald Trump began talking about building a wall, the fate of America’s white majority was a matter of
considerable interest to Kobach, who once agreed with a caller to his radio show that a rise in Latino immigration could lead to the “ethnic cleansing” of whites and has written scores of laws across the country to crack down on undocumented immigration. He told The Associated Press in May that he met Trump through his son Donald Trump Jr., with whom he has a mutual friend. Kobach has since become close to the White House inner circle, including the president and his chief strategist, Steve Bannon. Two weeks after the election, Kobach met with Trump at his golf club in Bedminster, N.J., where the president-elect was auditioning potential members of his cabinet before the press, and was photographed holding a white paper outlining a “Kobach Strategic Plan for First 365 Days.” Though partly obscured, what could be read of the document was a bullet-pointed wish-list of right-wing policies that included “extreme vetting” and tracking of “all aliens from high-risk areas,” reducing “intake of Syrian refugees to zero,” deporting a “record number of criminal aliens in the first year” and the “rapid build” of a wall along the U.S.-Mexico border.

Kobach did not go to work in the Trump administration: He said in May that he had turned down two offered positions, one in the White House and the other at the Department of Homeland Security, although The Wall Street Journal reported in January that John Kelly, the secretary of the Department of Homeland Security, had balked at making Kobach his deputy. But on May 11 Trump named him vice chairman of a new Presidential Advisory Commission on Election Integrity to be led by Vice President Mike Pence. The commission will examine “improper voter registrations and improper voting” — issues that Kobach, with his high-profile efforts in Kansas, almost single-handedly put on the Trump administration’s radar.

Kobach’s plans represent a radical reordering of American priorities. They would help preserve Republican majorities. But they could also reduce the size and influence of the country’s nonwhite population. For years, Republicans have used racially coded appeals to white voters as a means to win elections. Kobach has inverted the priorities, using elections, and advocating voting restrictions that make it easier for Republicans to win them, as the vehicle for implementing policies that protect the interests and aims of a shrinking white majority. This has made him one of the leading intellectual architects of a new nativist movement that is rapidly gaining influence not just in the United States but across the globe.
On June 8, Kobach announced his candidacy in the 2018 Kansas gubernatorial race, telling a room full of supporters in the Kansas City suburb of Lenexa that he had “the honor of personally advising President Trump, both before the election and after the election, on how to reduce illegal immigration. And is he doing a good job?” The crowd cheered. If Kobach wins, he could be positioned to run for president as the legal mind who can deliver the promise of Trumpism without the baggage of Trump himself.

At the A.C.L.U. hearing, Kobach argued that his restrictive measures were justified by the high stakes. “We are preventing noncitizens from voting in elections,” he said. “And when a few noncitizens vote, those can swing a close election.” Afterward, sipping a Diet Coke at the restaurant in the Hilton Garden Inn across the street from the courthouse, Kobach told me he wants his work in Kansas to become a model for the rest of the country. Other state and federal laws would follow, if only he could create “the absolute best legal framework,” he said. “That’s what I set out to do.”

No one better represents the kind of America that Kobach is promoting than Kobach himself. He is tall and broad-shouldered and looks like John Wayne. He was born in Wisconsin and moved to Topeka, Kan., when he was 7. In high school, he mowed lawns and worked at his father’s Buick dealership. After becoming class president, he went on to Harvard.

It was at Harvard that Kobach became a protégé of Prof. Samuel Huntington, then the director of Harvard’s Center for International Affairs. Huntington had worked in the National Security Council under President Jimmy Carter, but he is now best known for his dire warnings about an inevitable “clash of civilizations” between various regional and religious groups, including Islam and the West. Under Huntington’s guidance, Kobach wrote his senior thesis on how the movement to divest from South Africa was misguided because international businesses were already leading the way against apartheid. (Huntington, who had advised South Africa’s government, argued that a transition away from white minority rule might require a period of “enlightened despotism.”)
Kobach says Huntington “touched on a lot of themes I’ve worked on with immigration law,” but he distances himself from some of Huntington’s more radical ideas. Two of those ideas, however, have played an important role in the direction of the larger reactionary movement that Kobach leads.

The first was that broad-based participation in a democracy was not always a good thing. “Some of the problems of governance in the United States today stem from an excess of democracy,” Huntington wrote in a 1975 report called “The Crisis of Democracy,” and there are “potentially desirable limits to the indefinite extension of political democracy.”

Huntington warned of the dangers of expanding the franchise to previously disenfranchised and marginalized groups of voters. “In itself, this marginality on the part of some groups is inherently undemocratic, but it has also been one of the factors which has enabled democracy to function effectively,” Huntington wrote. “Marginal social groups, as in the case of the blacks, are now becoming full participants in the political system. Yet the danger of overloading the political system with demands which extend its functions and undermine its authority still remains.”

The second idea was that the changing demographics of the United States would lead to a culture war between Anglo-Protestants and newer immigrant groups, particularly Latinos. “While Muslims pose the immediate problem to Europe,” Huntington wrote in his 1996 book “The Clash of Civilizations,” “Mexicans pose the problem for the United States.”

He expanded on this view in his 2004 book “Who Are We? The Challenges to America’s National Identity,” denouncing the “Hispanization” of the United States and claiming that many Mexican-American immigrants “do not appear to identify primarily with the United States” and were “often contemptuous of American culture.”

Huntington’s central thesis was that the country’s “Anglo-Protestant culture” was under siege: He warned that “the large and continuing influx of Hispanics threatens the pre-eminence of white Anglo-Protestant culture and the place of English as the only national language. White nativist movements are a possible and
plausible response to these trends.” Five years later, in an essay in Foreign Policy, he amplified the point: “Demographically, socially and culturally, the reconquista (reconquest) of the Southwest United States by Mexican immigrants is well underway.”

Kobach enrolled at Yale Law School in 1992. In his final year, California voters approved Prop. 187, a sweeping law, also known as the Save Our State initiative, that for the first time restricted public benefits, including education and health care, for undocumented immigrants. The federal courts ultimately blocked the law, on the grounds that California was overstepping federal immigration authority, and it is now largely remembered as a political debacle. California had been predominately Republican for decades, but a backlash from the state’s growing Hispanic population pushed Gov. Pete Wilson out of office and flipped the state from more-or-less red to permanently blue.

Kobach says that it was not Huntington so much as Prop. 187 that sparked his interest in immigration law. “It was not popular at Yale Law School, but I defended it,” he said. “It just struck me as obvious that a state has the right to restrict its welfare benefits only to those people who are U.S. citizens or are visiting the state legally.”

Jed Shugerman, a legal historian at Fordham Law School, attended a debate at Yale as an undergraduate in which Kobach defended Prop. 187. “While the other pro-187 debaters were careful to distinguish between the ‘legal’ and ‘illegal’ process, Kobach struck me even then as far more xenophobic than other Yale conservatives,” Shugerman wrote on his personal blog in May. “His image at that moment is seared into my memory, because I remember thinking, This dude is really smart and really scary. Remember his name, because he’ll be back with a vengeance.”

In 2001, Kobach took a leave of absence from his job as a law professor at the University of Missouri-Kansas City to become a White House fellow in the George W. Bush administration. He was assigned to the Justice Department a week before Sept. 11. While much of the national-security establishment regarded the attacks as an intelligence failure, Kobach viewed them as a failure of border security. Mark
Johnson, a partner at Dentons law firm in Kansas City who has known Kobach for 25 years, says, “It radicalized him on the issue of immigration.”

Kobach grew close to Attorney General John Ashcroft, and when the fellowship ended a year later, he stayed on as his chief adviser on immigration and border-security issues. One of his first tasks was to implement the National Security Entry-Exit Registration System, or Nseers, a program he designed that required all male visa holders over the age of 16 from 24 predominantly Muslim countries (and North Korea) to be fingerprinted, photographed and interviewed by immigration authorities. The program was controversial inside and outside the government. The A.C.L.U. said in a statement that it “mandated ethnic profiling on a scale not seen in the United States since Japanese-American internment during World War II and the ‘Operation Wetback’ deportations to Mexico of 1954.” The Obama administration halted the program in 2011. Nseers did not result in a single known conviction on terrorism charges, but it did result in deportation proceedings for nearly 14,000 Muslim men, many for minor immigration violations. Today Kobach recalls it as a “great success.”

In 2003, Kobach returned to Kansas to challenge Dennis Moore, a Democrat, for his seat in Congress. The following year, he also represented students in a lawsuit sponsored by the Federation for American Immigration Reform, or FAIR, a far-right advocacy group, in a lawsuit challenging a provision that allowed public universities to charge undocumented residents of Kansas in-state tuition rates. (The suit was unsuccessful.)

FAIR was founded in 1978 by John Tanton, an ophthalmologist in rural Michigan. Tanton was initially concerned about how human population growth was harming the environment, but increasingly embraced nativist arguments that demonized all kinds of immigration, illegal and legal. He was especially struck by a brazenly racist 1973 novel called “The Camp of the Saints,” by a French author, Jean Raspail, depicting “the end of the white world” after a fleet of savage refugees, led by an Indian called “the turd eater,” overwhelm Europe. Tanton republished the book in English, and it attracted some influential American readers, including Steve Bannon, who has cited the book frequently.
Tanton argued that white people needed to take action against the country’s demographic changes. Tanton outlined his concerns in a 1986 memo, now available from The Southern Poverty Law Center, which labeled FAIR a “hate group.” “Will Latin American migrants bring with them the tradition of the mordida (bribe), the lack of involvement in public affairs, etc.?“ he asked in the memo addressed to colleagues at a retreat of anti-immigration activists in 1986. “As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion?” The Los Angeles Times studied FAIR’s tax returns and found that it had received at least $600,000 in grants from the Pioneer Fund, a nonprofit foundation that subsidizes research that claims to prove blacks and other minorities are genetically inferior to whites.

Kobach’s connection to Tanton — in addition to representing FAIR in court, he received contributions totaling $10,000 from a political-action committee run by Tanton’s wife — became an issue in his congressional run. “People and groups tied to white supremacists gave Kobach thousands,” said a TV ad run by Moore. “One even hired Kobach.” But Kobach refused to return the donations or disavow Tanton or FAIR. Instead, he made opposition to undocumented immigration the centerpiece of his campaign, criticizing Moore for supporting what Kobach described as “amnesty” and calling for the National Guard to patrol the Mexican border.

Kobach lost the race by 11 points but earned national headlines for his outspoken nativism. “I want to just applaud you for your courage,” Bill O’Reilly told him that year, during Kobach’s first of many appearances on O’Reilly’s show. “You’re the first former administration official to come up and really tell the folks what’s going on.” Kobach became counsel to the Immigration Reform Law Institute, the legal arm of FAIR, and began drafting a series of ordinances for cities around the country, preventing landlords from knowingly renting to undocumented immigrants or employers from hiring them. Most of the laws were defeated in court because the federal government had the exclusive power to enforce immigration laws. But Kobach’s co-counsel, Michael Hethmon, recognized their real purpose. He told the filmmakers of the 2009 documentary “9500 Liberty,” that the effort to institute one of Kobach’s model ordinances in Prince William County, Virginia, might best be understood as “a field study.”
In 2006, Kobach received a call from the Maricopa County Attorney’s office in Phoenix. Andrew Thomas, the county attorney, wanted Kobach to defend his interpretation of the state’s “coyote law,” which in his view should allow undocumented immigrants to be charged as co-conspirators when they were caught illegally crossing the border. Kobach agreed.

Even as he remained active in his own state’s politics, serving as chairman of the Kansas Republican Party from 2007 to 2009, Kobach began spending more time in Arizona. He struck up a friendship with Joe Arpaio, the Maricopa County sheriff, who dubbed himself “America’s toughest sheriff.” Arpaio, one of the first local sheriffs who took it upon himself to enforce federal immigration law, was also a flamboyantly authoritarian figure who drew national attention for requiring his inmates to wear pink underwear, work on chain gangs and live outdoors in tents where temperatures reached 130 degrees. At the Justice Department, Kobach had promoted an effort to deputize local police departments with immigration-enforcement authority from Immigration and Customs Enforcement. In 2007, Arpaio received such a deputization, and his office within two years had arrested 33,000 undocumented immigrants, many of them in highly publicized “crime suppression” sweeps.

In 2009, after Barack Obama took office, the Department of Homeland Security rescinded Arpaio’s immigration-enforcement powers. That same year, the Justice Department began an investigation into Arpaio’s “discriminatory police practices and unconstitutional searches and seizures.” Not long after that, Arpaio hired Kobach to train all of his deputies on how to comply with federal immigration law. “I really want to applaud what Maricopa County is doing,” Kobach said in a video for the trainings, calling the county a model for the nation. Despite the federal government’s jurisdiction over immigration, Kobach told Arpaio’s deputies they had “inherent authority” to enforce immigration laws, based on a 2002 memo Kobach had requested from the Justice Department. He listed several of the dozens of federal crimes undocumented immigrants could be arrested for, including “failure to carry an alien registration card” and “failure to notify the federal government of a change of address.”
Kobach also helped State Senator Russell Pearce, the foremost opponent of undocumented immigration in the State Legislature, draft SB 1070, a 2010 bill that required the Arizona police to ask for citizenship papers from anyone they had “reasonable suspicion” of being in the state illegally.

Kobach counseled Pearce on how to make the bill even more sweeping. In an email to Pearce before the law’s final passage, Kobach said that a person’s violation of “any county or municipal ordinance” could lead to an immigration query: “This will allow police to use violations of property codes (i.e., cars on blocks in the yard) or rental codes (too many occupants of a rental accommodation) to initiate queries as well.” After filing a lawsuit against SB 1070, the A.C.L.U. referred to it on its website as the Show Me Your Papers law.

Arizona became the first state to act on another of Kobach’s theories: attrition through enforcement. Make life miserable enough for immigrants, and they will leave of their own volition. As Pearce told The Arizona Republic newspaper, “Disneyland taught us that if you shut down the rides, people leave the amusement park.” Mitt Romney was widely mocked when he used the word “self-deportation” during the 2012 election, but that was exactly what Kobach was trying to achieve in Arizona.

The Arizona experiment didn’t end well for the state or its principal actors. The interpretation of the “coyote law” that Kobach came to Arizona to defend was blocked in 2013. The Supreme Court struck down three of four sections of SB 1070 and narrowed enforcement of the “show me your papers” provision. The Justice Department sued Arpaio in 2012, and the following year a federal court ruled that his immigration stops violated federal law, including the Civil Rights Act of 1964, for discriminating against Latinos. Arpaio was ultimately charged with criminal contempt of court; he failed to be re-elected in November 2016. Andrew Thomas, the county attorney, was disbarred by the Arizona Supreme Court in 2012 for what it called an “unholy collaboration” with Arpaio. Russell Pearce was recalled from the Senate in 2011 and then resigned as vice chairman from the Arizona Republican Party after saying on his radio show that Medicaid recipients should be sterilized, which led to a public outcry.
But Kobach continued to thrive. In 2010, the same year SB 1070 passed in Arizona, he ran for secretary of state in Kansas. “My hope is that Kansas will be to stopping election fraud what Arizona is to stopping illegal immigration,” he told The Kansas City Star. The position of secretary of state was not an especially glamorous one, but it offered an enormous amount of power by virtue of its authority to enforce state voting laws, particularly as American elections were being decided by increasingly narrow margins. During the 2000 election in Florida and the 2004 election in Ohio, Republican secretaries of state were at the center of hotly disputed elections.

Kobach had not been a particularly popular figure in Kansas. When he was chairman of the Kansas Republican Party, he introduced what he described as a “loyalty rule” to expel moderate Republican party leaders, an episode The Kansas City Star likened to the “Kansas G.O.P.’s version of Stalin’s purges.” But Kobach also had a growing constituency. “He should be running for president,” Arpaio said when he came to Kansas to campaign for Kobach, “but we’ll take secretary of state.”

Just a few days before Election Day in 2010, Kobach held a news conference and announced that nearly 2,000 dead voters in the state were still registered to vote. “Every one of those 1,966 identities is an opportunity for voter fraud waiting to happen,” he said. Kobach singled out one name, Alfred K. Brewer, who was born in 1900 and died in 1996, but was in fact listed as having voted just that year. “An Alfred K. Brewer voted in the 2010 primary election,” Kobach said. “Is it the same one? We are still trying to achieve confirmation of this, but it certainly seems like a very real possibility.”

A reporter from The Wichita Eagle found Alfred K. Brewer very much alive; he was in his front yard doing chores. “I don’t think this is heaven, not when I’m raking leaves,” Brewer said. He was 78 and had been listed as being born in 1900 because Kansas didn’t record birth dates on voter registration forms back when he first registered. The date of death was his father’s, who had the same name but was born in 1904. Kobach could have avoided the embarrassing mix-up if he had called Brewer before singling him out.
But Kansas voters, in the age of Obama, demonstrated an appetite for Kobach’s nativist brew of anti-immigration sentiment and voting restrictions. He won handily and quickly set about turning a once-sleepy office into a kind of laboratory for limiting access to the ballot.

In 2005, Kansas joined with three other Midwestern states in a regional compact called the Interstate Voter Registration Crosscheck Program. The program compared state records to find people registered to vote in more than one place. On taking office, Kobach, recognizing the program’s potential, championed it to election officials around the country, rapidly expanding its reach. The program now includes more than 30 states.

Crosscheck appeared to offer an appealing scientific certainty to the hunt for fraud. But it could also be used to suppress the vote. The program searches for double registrations using only voters’ first and last names and date of birth, and it generates thousands of false matches — John Smith in Kansas can easily be confused with John Smith in Iowa. These false matches have in several instances led to people being wrongly removed from voter rolls. In 2013, after Virginia joined Crosscheck, and in the midst of a hotly contested governor’s race, the state board of elections sent counties a list of more than 57,000 voters to purge because they were supposedly registered in other states. The data was littered with errors: Lawrence Haake, then the registrar in Chesterfield County, told The Richmond Times-Dispatch, “We do need an interstate checking mechanism, but I’m not real impressed with this one.”

Crosscheck has led to outrageous headlines that make double voting seem far more common than it is. In 2014, after North Carolina joined Crosscheck, the head of the state board of elections reported that in the 2012 general election, there were 35,750 voters in the state whose first and last names and dates of birth matched those of individuals who voted in the same election in a different state. Republican leaders of the North Carolina Legislature called it “alarming evidence of voter fraud,” and the conservative political strategist Dick Morris told Sean Hannity on Fox News, “It’s the most important data I’ve read in a year,” adding that it was “the first concrete evidence we’ve ever had of massive voter fraud.” But when North Carolina investigated the numbers using additional data like the last four digits of voters’
Social Security numbers, eight cases of potential double voting were referred to prosecutors and two people were convicted.

Some states, including Florida and Oregon, have withdrawn from Crosscheck over concerns about its accuracy. In a 2016 paper, researchers at Stanford, Harvard, Yale and the University of Pennsylvania analyzed the lists of potential duplicate voter registrations that Crosscheck sent to the state of Iowa before the 2012 and 2014 elections and found that “200 legitimate voters may be impeded from voting for every double vote stopped.”

Kobach’s other major project was making the SAFE Act into a sustainable model of election legislation, one that would stand up to scrutiny in the courts. When it was made into law in April 2011, Kobach compared it to the 19th Amendment, which gave women the right to vote. But the A.C.L.U. immediately began to file legal challenges claiming that rather than expand access to the ballot, the law was making it harder to vote.

One of the most significant challenges to the SAFE Act came from a lawsuit in a different state. In June 2013, the Supreme Court ruled that Arizona could not require proof of citizenship for those who registered to vote using a federal registration form, which had the effect of nullifying part of the SAFE Act. Justice Antonin Scalia, however, in writing the majority opinion, noted that states like Arizona and Kansas that wanted to implement proof-of-citizenship laws could petition the Election Assistance Commission, which is a little-known federal agency created after the 2000 presidential-election recount. Its approval, he said, would be sufficient to make the laws constitutional. Kobach, who filed just such a petition in 2012, promptly sent another request two months later, but the acting executive director of the E.A.C. denied it.

A finalist for the permanent position of executive director at the E.A.C. happened to be one of Kobach’s own election commissioners in Kansas, Brian Newby of Johnson County. Kobach was informed in April 2015 by staff at the Johnson County Election Office that Newby was being audited for misusing county funds, but instead of admonishing Newby, Kobach recommended him for a top federal job. The E.A.C., which was made up of three commissioners, two of whom
were Republicans, took Kobach’s advice, and Newby got the job in November 2015. Three months after Newby took office, he unexpectedly changed the E.A.C.’s rules in Kobach’s favor.

The League of Women Voters sued the E.A.C. two weeks later. “If the Newby decision stands, then every state in the nation will be able to require documentary proof of citizenship,” the group’s advocacy director, Lloyd Leonard, told The New York Times. “Citizenship documents,” like birth certificates and passports, are not things most Americans carry around with them. That makes it impossible for groups like the League of Women Voters to register voters at farmers markets or public marches and demonstrations. When the SAFE Act went into effect, eight of nine chapters of the Kansas League of Women Voters suspended voter-registration activities; the Wichita chapter went from registering 4,000 voters in 2012 to just 465 in 2014.

The Obama Justice Department took the extraordinary step of refusing to defend Newby’s directive in federal court, so Kobach defended it himself. The 10th Circuit Court of Appeals ruled against him, finding that Newby, as executive director, did not have the authority to make the decision without the consent of his commissioners.

In 2015, Kobach persuaded the Kansas Legislature to make him the only secretary of state in the country with the power to independently prosecute voter-fraud cases. He told The Kansas City Star that this was “the final piece in the puzzle in terms of preventing voter fraud.” Betty and Steven Gaedtke were two of the first people Kobach charged. After retiring, the Gaedtkes left Olathe, Kan., to build their dream house in the woods of the Arkansas Ozarks. Betty is a member of the Quapaw Tribe of Oklahoma, which was based in Arkansas before being forcefully relocated to Oklahoma in the 1800s, and she felt as if she were returning home. She was elected to the tribal council and became an advocate against sexual assault. “She’s very, very civic-minded,” her lawyer, Trey Pettlon, said.

Betty became an Arkansas resident and voted there in 2010. Her husband moved down after her and, before he left, filled out absentee ballots for each of them in Kansas. Then he settled in Arkansas before the 2010 election and voted there too,
believing he had lawfully established residency. County attorneys in Kansas declined to prosecute the Gaedtkes, seeing the double voting as an honest mistake. But in October 2015, a month before the five-year statute of limitations expired, Kobach charged them each with three misdemeanor counts of “voting without being qualified.” The evidence was “very strong that the individuals in question intentionally voted multiple times in the same election,” he said.

“If I was convicted of that, I would’ve had to step down from my tribe,” Betty recalls. “The whole experience was such a nightmare.” Five days before the trial was set to begin, Kobach’s office dropped the charges against Betty. Steven pleaded guilty to one of the misdemeanors and received a $500 fine. “I didn’t even get to tell him: ‘This is what I look like. I’m a good person,’ ” Betty says of Kobach. “I feel like I was just a pawn for him.”

Though Kobach received the authority to prosecute fraud cases after warning that voting by “aliens” was rampant, the nine convictions he has won since 2015 have primarily been citizens 60 and over who own property in two states and were confused about voting requirements. Only one noncitizen has been convicted. A state representative, John Carmichael, a Democrat from Wichita, told me these cases were “show trials to try and justify his prosecutorial authority,” and he has introduced a bill to repeal Kobach’s prosecutorial power.

While Kobach searched for fraud cases, his SAFE Act had blocked the registrations of 35,000 Kansans by September 2015. Then Kobach started removing anyone from the rolls who didn’t provide citizenship documents within 90 days. “It’s no big deal,” he told Fox News. “Nobody’s being disenfranchised.” In February 2016, the A.C.L.U. sued Kobach on behalf of more than 18,000 Kansas voters who had unsuccessfully tried to register at the Department of Motor Vehicles. A federal court found that the SAFE Act violated the 1993 National Voter Registration Act, which allowed voters to register at many government agencies. In response, Kobach had an administrative rule passed which said that any Kansan who registered at the D.M.V. but didn’t show proof of citizenship could vote in federal but not state elections. In July 2016, while Kobach was at the Republican National Convention helping to draft the G.O.P. platform, the A.C.L.U. sued him again. “It seemed bonkers that someone
would be able to vote for president but not school board or City Council or secretary of state,” said Dale Ho, director of the A.C.L.U.’s Voting Rights Project.

Marvin Brown, a 91-year-old World War II veteran, became the lead plaintiff. Brown was the first person Kobach ever met who had paid a poll tax. He paid $2 to register on his 21st birthday in Arkansas in 1946, after returning from flying bomber planes over Germany during World War II. “I learned in civics it was your reasonable and honorable duty to vote,” he told me. He added that Sevier County was deciding whether to allow alcohol sales and “the main reason I registered was cause they were voting for the sale of beer.”

Brown moved to Kansas in 1948 and worked as an electrician, ran a marina in Arkansas and then moved back to the Kansas City suburbs to be closer to his family. In 2015, he went down to the county government building with his wife to register to vote in Kansas. “We did everything we did before,” he said. “Then we got this precious letter that said you have to prove your citizenship. I got a little upset.” Brown’s ancestors had fought for the Union in the Civil War and settled in Kansas afterward. He flew so many bombing missions in World War II that the Air Force lost count. “I grew up in this country,” he said. “I’m 91 years old, and this son of a buck is telling me I might not be a citizen. I told Kobach, ‘That hurts me inside real deep.’”

In court, Kobach questioned Brown’s citizenship and said he didn’t have standing to sue. “At this point, we don’t even know that these individuals are citizens,” he said. “We know that they are asserting that Mr. Brown fought in the war and, of course, even that doesn’t prove your citizenship.” A state court struck down the two-tiered election system 10 days after the case was filed. “The number of noncitizen registrations are minuscule,” the judge wrote, “compared to the number of voters that potentially will be unable to vote.”

“I won the popular vote if you deduct the millions of people who voted illegally,” Donald Trump tweeted on Nov. 27. When asked in an ABC interview where Trump got that information, the president-elect’s adviser Kellyanne Conway named Kobach as a source of the claim. Three days later, after Kobach certified the results of the 2016 election in Kansas at the Capitol in Topeka, he told reporters, “I
think the president-elect is absolutely correct when he says the number of illegal votes cast exceeds the popular-vote margin between him and Hillary Clinton.”

As evidence, Kobach pointed to a 2014 study whose lead author was an Old Dominion University political scientist, Jesse Richman. It estimated that “6.4 percent of noncitizens voted in 2008.” That finding was quickly picked up by Breitbart (“Study: Voting by Non-Citizens Tips Balance for Democrats”) and National Review (“Jaw-Dropping Study Claims Large Numbers of Non-Citizens Vote in U.S.”) and was also cited directly by Trump on the campaign trail.

Yet Richman’s study was soon contested by other political scientists. Richman had found 489 noncitizens in a much larger 2010 Harvard survey of 55,400 American adults called the Cooperative Congressional Election Study. In 2012, three political scientists who coordinated the original C.C.E.S. study went back and re-interviewed 19,000 of the respondents. They found only 85 who said they were noncitizens in the survey — and none of them could be matched to a valid voting record. “Thus the best estimate of the percentage of noncitizens who vote is zero,” they wrote.

In January 2017, nearly 200 leading political scientists signed an open letter criticizing Richman’s study. Kobach nevertheless recently retained Richman as an expert witness in his ongoing battle with the A.C.L.U., and Richman produced another eye-popping claim: 18,000 noncitizens were registered to vote in Kansas. To reach that number, Richman identified 37 noncitizens on a list of temporary driver’s licenses in Kansas and found six who, he wrote in an expert report that Kobach filed in court, “had either registered to vote or attempted to register to vote.” He then divided those six people, representing 16 percent of a total of 37 people, by Kansas’s estimated noncitizen population of 114,000 and concluded that “a very substantial number and portion of noncitizens in Kansas have registered to vote or attempted to register to vote — more than 18,000.”

Brian Schaffner, a professor of political science at the University of Massachusetts-Amherst who helped conduct the original C.C.E.S. study, said that going from six people who may have registered to 18,000 noncitizens actually registering or trying to register was a huge leap. “We don’t know that any of them
actually registered,” Schaffner told me. “None of them are matched to a valid vote record.” When Kobach told the Kansas Legislature in February that “18,000 aliens may be on the Kansas voting rolls,” the gallery erupted in laughter. Kobach threw up his hands, looked back directly at the chamber and said, “You can perhaps do your own statistical analysis and submit it to the court.”

Kobach’s chilling narrative of deceitful foreigners subverting democracy has served him well. Making people believe that voter fraud is rampant builds public support for policies that restrict access to the ballot. And claims of illegal voting by noncitizens help justify Kobach’s hard-line anti-immigration agenda. This has given Kobach a powerful political constituency, not least of which is the president himself. The story Kobach tells about voter fraud is what persuaded Trump to create a presidential commission on “election integrity” and name Kobach its vice chairman. “He’s stated his own view publicly, which is consistent with what he’s told me privately,” Kobach says of Trump’s views on voter fraud. “He believes that it’s a significant problem.”

The Trump commission marks a major step forward in Kobach’s efforts to nationalize his restrictions on voting. He’ll have a presidential bully pulpit and access to government resources that weren’t previously available, such as a nationwide database that includes noncitizens that could be run against state voter rolls to generate new allegations. But that Systematic Alien Verification for Entitlements database does not automatically reveal the status of immigrants who become U.S. citizens, which means thousands of noncitizens who are subsequently naturalized could mistakenly be tagged as illegal voters. The commission will also make policy recommendations at the federal and state level, which could include support for suppressive policies like strict voter-ID laws and voter-rolls purges.

Kobach says the National Voter Registration Act and the Voting Rights Act, the country’s cornerstone voting-rights laws, are being misinterpreted. “The N.V.R.A. has been abused by organizations like the A.C.L.U.,” Kobach told me. “They’ve twisted the words to try and say it prevents proof-of-citizenship laws.” The Voting Rights Act is also “being abused by the A.C.L.U.,” he says. “Now they’re trying to attack photo-ID laws using the Voting Rights Act by claiming, using very flimsy
evidence, that photo-ID laws disproportionately affect minority populations more than others.” Kobach wants proof-of-citizenship laws to be adopted in every state.

In 2006, when he was still a law professor, Kobach spoke at a candlelight gathering to oppose federal immigration reform, billed as a Vigil to Save the American Worker, in Kansas City. The event was sparsely attended, but Kobach spoke pessimistically to those who had come with passion. He cited a line often attributed to Winston Churchill. “He said that his definition of a fanatic is ‘someone who can’t change his mind and won’t change the subject,’” Kobach said, standing in the candlelight. “And friends, if that’s what a fanatic is, then I guess I’m a fanatic. Because, when it comes to restoring the rule of law, I can’t change my mind and I won’t change the subject.”

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