

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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**LEAGUE OF WOMEN VOTERS OF THE  
UNITED STATES, LEAGUE OF WOMEN  
VOTERS OF ALABAMA, LEAGUE OF  
WOMEN VOTERS OF GEORGIA, LEAGUE  
OF WOMEN VOTERS OF KANSAS, GEORGIA  
STATE CONFERENCE OF THE NAACP,  
GEORGIA COALITION FOR THE PEOPLE'S  
AGENDA, MARVIN BROWN, and JOANN  
BROWN,**

*Plaintiffs,*

v.

**BRIAN D. NEWBY**, in his capacity as the Executive  
Director of the United States Election Assistance  
Commission; and **THE UNITED STATES  
ELECTION ASSISTANCE COMMISSION,**

*Defendants,*

and

**KRIS KOBACH**, in his official capacity as Kansas  
Secretary of State, and **PUBLIC INTEREST  
LEGAL FOUNDATION,**

*Defendant-Intervenors.*

Civ. No. 1:16-cv-00236

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**INTERVENOR-DEFENDANT PUBLIC INTEREST LEGAL FOUNDATION'S REPLY  
TO ITS SUPPLEMENTAL BRIEF IN SUPPORT OF ITS CROSS-MOTION FOR  
SUMMARY JUDGMENT AND OPPOSITION TO FEDERAL DEFENDANTS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT AND PLAINTIFFS' CROSS-MOTION FOR  
SUMMARY JUDGMENT AND OPPOSITION TO FEDERAL DEFENDANTS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

## ARGUMENT

The Public Interest Legal Foundation (the Foundation) herein briefly addresses the Plaintiffs' Supplemental Memorandum filed concurrently with the Foundation's Supplemental Memorandum on August 7, 2017.

Plaintiffs' Supplemental Brief focuses on the fact that the Election Assistance Commission's Interpretation Memo did not garner three votes, (Dkt. 146 at 1), and "should not be accorded any force." (Dkt. 146 at 4.) Plaintiffs ignore completely the areas of the Interpretation Memo in which all three Commissions *did* agree. Those areas where all of the Commissioners agreed undermine Plaintiffs' arguments.

For example, all Commissioners agreed that the Commission can delegate the authority to maintain the Federal Form. (Dkt. 141-1 at 10.) Further, all Commissioners agreed that the delegation of authority to maintain the Federal Form "included requests related to changes to the State Specific Instructions, the established practice of the Commission, and the FEC. It was delegated by the Commission to the previous Executive Director and to the Acting Executive Director previously, and that has not changed." (Dkt. 141-1 at 11.) This agreement of the Commissioners undermines a foundational argument that Plaintiffs have made throughout this litigation that any such delegation was "limited" and "expressly superseded" in 2015. (Dkt. 115 at 10; *see also*, Dkt. 102 at 3, 24.)

Further, while Commissioner Hicks disapproved of the Recommendation to adopt the Interpretation, he did "approve the submission of the tally vote and memo to the court." (Dkt. 141-1 at 4.) Notably, he provided a two-page statement "to explain [the] disapproval of *certain portions* of the interpretation." (Dkt. 141-1 at 5) (emphasis added). Plaintiffs acknowledge

Commissioner Hicks' statement, (Dkt. 146 at 2), but do not address those items in the Interpretation Memo to which Commissioner Hicks did not dissent.

### CONCLUSION

The Interpretation Memo from the Commission supports the positions taken by the Foundation. For these reasons and those stated in the Foundation's earlier briefing, the Foundation's Cross-Motion for Summary Judgment should be granted and both Department of Justice's Motion and the Plaintiffs' Cross-Motion should be denied.

Dated: August 28, 2017

Respectfully submitted,

/s/ Kaylan L. Phillips  
Kaylan L. Phillips (D.C. 1110583)  
PUBLIC INTEREST LEGAL FOUNDATION  
32 E. Washington St, Suite 1675  
Plainfield, Indiana 46168  
(317) 203-5599 (telephone)  
(888) 815-5641 (fax)  
kphillips@publicinterestlegal.org  
*Counsel for Defendant-Intervenor  
Public Interest Legal Foundation*

J. Christian Adams\*  
PUBLIC INTEREST LEGAL FOUNDATION  
300 N. Washington Street, Ste. 405  
Alexandria, Virginia 22314  
(703) 963-8611 (telephone)  
adams@publicinterestlegal.org  
*Counsel for Defendant-Intervenor  
Public Interest Legal Foundation*

\* *Admitted Pro Hac Vice*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 28, 2017, I caused the foregoing to be filed with the United States District Court for the District of Columbia via the Court's CM/ECF system, which will serve all registered users.

I further certify that I caused paper copies of the foregoing to be mailed via USPS to the following non-registered users.

Garrett R. Roe  
LAW OFFICE OF GARRETT R. ROE  
270 SW 10th Avenue  
Topeka, KS 66612

Robert Brent Ferguson  
BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW  
120 Broadway  
Suite 1750  
New York, NY 10271

Dated: August 28, 2017

/s/ Kaylan L. Phillips  
Kaylan L. Phillips (D.C. 1110583)  
kphillips@publicinterestlegal.org  
*Counsel for Defendant-Intervenor  
Public Interest Legal Foundation*