

# United States Senate

WASHINGTON, DC 20510

June 29, 2017

The Honorable Mike Pence  
The Honorable Kris Kobach  
The Presidential Commission on Election Integrity  
c/o Office of the Vice President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Vice President Pence and Secretary Kobach:

On May 11, 2017, President Trump established the Presidential Commission on Election Integrity to “study vulnerabilities in voting systems used for federal elections that could lead to improper voter registrations, improper voting, fraudulent voter registrations, and fraudulent voting.”<sup>1</sup> The establishment of the Commission came after President Trump called into question the integrity of our country’s elections on multiple occasions.<sup>2</sup> In light of these allegations, we believe it is vital to ensure that the Commission complete its work in an independent and bipartisan manner that is transparent and accountable to the American people.

In order to help the American people best understand the Commission’s work and findings, we seek to ensure the Commission’s compliance with the Federal Advisory Commission Act (FACA), the law that governs the establishment of federal advisory commissions as well as a commission’s obligations under the law. The FACA was established to promote transparency and accountability in government and sets certain openness and transparency requirements that govern the Commission’s work. These requirements include holding meetings open to the public with timely advance notice; allowing interested persons to attend and file statements; maintaining minutes of any meetings; and making all records, drafts, and documents available to the public.<sup>34</sup>

FACA also imposes requirements related to the composition of the Commission to ensure objectivity. For example, the Commission must be fairly balanced in terms of the points of view represented and must take precautions to ensure that the advice and recommendations “will not be

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<sup>1</sup> Press Release, “President Announces Formation of Bipartisan Presidential Commission on Election Integrity,” The White House, (May 11, 2017), available at <https://www.whitehouse.gov/the-press-office/2017/05/11/president-announces-formation-bipartisan-presidential-commission>

<sup>2</sup> See Donald J. Trump, “In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally,” Twitter.com (Nov. 27, 2016); Donald J. Trump, “I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and.... even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!” Twitter.com (Jan. 25, 2017).

<sup>3</sup> 5 U.S.C.A. § App. 2 § 10(a). Moreover, “whenever practicable, parties [must] have access to ... relevant materials before or at [a] meeting at which the materials are used and discussed.” *Food Chem. News v. Dep’t of Health & Human Servs.*, 980 F.2d 1468, 1472 (D.C. Cir. 1992).

<sup>4</sup> 5 U.S.C.A. § App. 2 §§ 10(c), 11(a).

inappropriately influenced by the appointing authority or by special interest.”<sup>5</sup> In addition, certain advisory committee members must comply with federal conflict of interest statutes during and after their service.<sup>6</sup>

Compliance with FACA requires every presidential commission to establish procedures and protocols to ensure that the covered records are properly preserved and made accessible. Given the importance of ensuring the Commission operates within the scope of FACA, we ask you provide us with answers to the following questions:

1. How will you keep Congress informed of all steps you are taking to comply with FACA?
2. What policies and procedures will be implemented to ensure that all records and communications are properly preserved and made available to the public?
3. What policies and procedures will be implemented to regulate and prevent *ex parte* communications with interested parties outside of official public meetings of the Commission?
4. What policies and procedures will be implemented to ensure that all Commission meetings are open to the public and provide advanced notice?
5. What steps have you taken to ensure that the Commission itself is fairly balanced in terms of points of view represented and how will you ensure that this continues with regard to the Commission’s substantive work?
6. What steps are you taking to identify conflicts of interest for members of the Commission and to ensure that members comply with all federal conflict of interest requirements?

Please provide your responses to these questions in writing by July 14, 2017. Thank you for your attention to this matter.

Sincerely,

Amy Klobuchar  
United States Senator

Sheldon Whitehouse  
United States Senator

Dianne Feinstein  
United States Senator

Gary C. Peters  
United States Senator

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<sup>5</sup> 5 U.S.C.A. § App. 2 §§ 5(b)-(c); see also *Nat’l Anti-Hunger Coal. v. Exec. Comm. of the President’s Private Sector Survey on Cost Control*, 711 F.2d 1071, 1073 (D.C. Cir. 1983) (holding that FACA § 5(b) applies to all “advisory committees” as defined in the statute); *Cargill, Inc. v. United States*, 173 F.3d 323, 334 (5th Cir. 1999) (concluding that FACA’s “fair balance” requirement is justiciable).

<sup>6</sup> See Gen. Servs. Admin., *Federal Advisory Committee Act (FACA) Brochure* (Dec. 1, 2014).





Sherrod Brown  
United States Senator



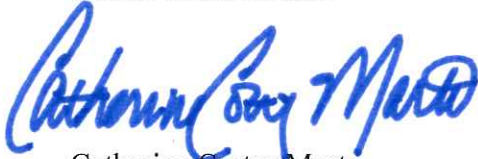
Edward J. Markey  
United States Senator



Patrick Leahy  
United States Senator




Tom Udall  
United States Senator



Catherine Cortez Masto  
United States Senator



Tom Carper  
United States Senator



Angus King  
United States Senator



Jack Reed  
United States Senator



Richard J. Durbin  
United States Senator



Al Franken  
United States Senator



Richard Blumenthal  
United States Senator



Ron Wyden  
United States Senator

cc: Ken Blackwell, Former Secretary of State of Ohio  
Louis Borunda, Deputy Secretary of State of Maryland  
Matthew Dunlap, Secretary of State of Maine  
David Dunn, Former Arkansas State Representative  
Bill Gardner, Secretary of State of New Hampshire  
Connie Lawson, Secretary of State of Indiana  
Christy McCormick, Commissioner, Election Assistance Commission  
Mark Rhodes, County Clerk, Wood County West Virginia

United States Senate  
WASHINGTON, DC 20510

July 6, 2017

The Honorable Mike Pence  
Chairman  
Presidential Advisory Commission on Election Integrity  
The White House  
1600 Pennsylvania Avenue NW  
Washington, DC

The Honorable Kris Kobach  
Vice Chairman  
Presidential Advisory Commission on Election Integrity  
120 S.W. 10<sup>th</sup> Ave  
Topeka, Kansas

Dear Chairman Pence and Vice-chairman Kobach:

We write with deep concerns regarding the June 28<sup>th</sup> request by Presidential Advisory Commission on Election Integrity ("the Commission") for state election officials to provide sensitive voter roll data and demand that the Commission rescind its request. If the Commission refuses to rescind the request, we ask that you provide information about how the Commission intends to use and protect the data.

In a letter, the Commission requests personal information of American voters that is generally unavailable to the public, including names, addresses, dates of birth, political parties, voter histories, and the last four digits of Americans' social security numbers. This request is unprecedented in scope and raises serious privacy concerns. The requested data is highly sensitive and after recent data breaches and cyber-attacks targeting our election infrastructure, we are deeply concerned about how the Commission will maintain the security and privacy of the data.

Election officials from forty-four states share our concern, including Republican officials from Mississippi, Tennessee, and Ohio.<sup>1</sup> Indiana Secretary of State Connie Lawson, a member of the Commission and the President of the National Association of Secretaries of State, noted that the Commission's request conflicts with state laws.<sup>2</sup>

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<sup>1</sup> Fessler, Pam. "State Officials of Both Parties Reject Requests for Voters' Identification Details." *NPR*. NPR, 30 June 2017.

<sup>2</sup> Cook, Tony, and Kaitlin L. Lange. "Lawson withholds info from Trump's voter fraud commission, even though she's a member." *Indianapolis Star*. IndyStar, 30 June 2017.



We are also concerned about why the Commission is requesting sensitive voting data and how it will be used. Leaders of the Commission said they intend to compare state voter information with federal databases in order to prevent voter fraud.<sup>3</sup> Experts have raised significant concern that false-positive results from such a cross-check will lead to the improper removal of eligible voters from voter registration lists. Improperly removing Americans from registration lists is a violation of the National Voter Registration Act and will hamper Americans' right to vote.<sup>4</sup>

Also troubling is the Commission's lack of focus on legitimate threats, such as foreign cyber-attacks on our election infrastructure. Therefore, we demand the Commission rescind its request for sensitive voter roll data and refrain from requesting such information in the future. If the Commission refuses to rescind its request, we ask that you provide the following information.

1. How do you intend to store and protect the data you receive from state election officials?
2. Which databases do you intend to use for cross-checking voter data and how will you work to ensure those databases are current?
3. What do you intend to do with the information obtained from cross-checking the data?
4. What communications have you had with the Department of Justice and the Department of Homeland Security regarding requests for voter information? Please provide records and details of any communication.
5. The Department of Homeland Security is charged with leading federal efforts to protect national critical infrastructure, including voter registration databases, against cyber threats. What communications have you had with the Department of Homeland Security regarding requests for voter information? Please provide records and details of any communication.
6. The Commission's letter requests election officials to send correspondence and data to [ElectionIntegrityStaff@ovp.eop.gov](mailto:ElectionIntegrityStaff@ovp.eop.gov). Who has access to this email account and what is being done to ensure it is secure? Please provide the names of all staff members who will have access to the data, including Administration officials and members of the Commission.
7. It was recently disclosed that more than 21 states were victims of attempted election hacks by Russia. As one of the major issues facing U.S. democracy today is the protection of our state election systems from cyber-attacks, why would the Commission think it prudent to collect state-by-state voter information? One of the best protections we have against foreign interference is the decentralized nature of our elections. Why does the Commission think centralizing this data is a good idea?

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<sup>3</sup> Wines, Michael. "Asked for Voters' Data, States Give Trump Panel a Bipartisan 'No'." *The New York Times*. The New York Times, 30 June 2017.

<sup>4</sup> "America scrubs millions from the voter rolls. Is it fair?" *Center for Public Integrity*. N.p., 12 Apr. 2017.

8. Much of the data the Commission collects will not be aggregated in a format ready for data analysis. Does the Commission intend on hiring objective data professionals to manage and standardize the data?
9. Many states have laws that prevent them from disclosing sensitive data that the Commission is requesting. Some state elected officials are particularly concerned about providing social security information. For example, Vice-chair Kobach has indicated that Kansas will not provide social security information to the Commission. How does the Commission plan to proceed if states do not submit the information they have requested?

We should be working to make it easier for Americans to vote, not harder. Please provide your responses to these questions in writing by July 12th, 2017. Thank you for your attention to this matter.


Sincerely,

  
Amy Klobuchar  
United States Senator


  
Jack Reed  
United States Senator

  
Dianne Feinstein  
United States Senator

  
Patrick Leahy  
United States Senator

  
Richard J. Durbin  
United States Senator

  
Sheldon Whitehouse  
United States Senator

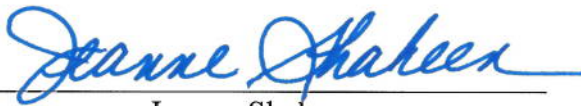
  
Richard Blumenthal  
United States Senator

  
Tim Kaine  
United States Senator

  
Al Franken  
United States Senator

  
Kirsten Gillibrand  
United States Senator

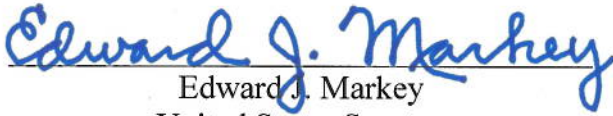




Jeanne Shaheen  
United States Senator



Chris Coons  
United States Senator



Edward J. Markey  
United States Senator



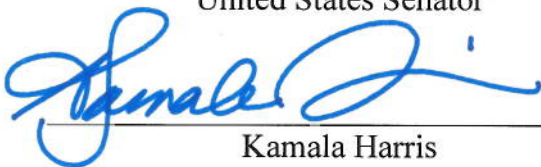
Tom Udall  
United States Senator



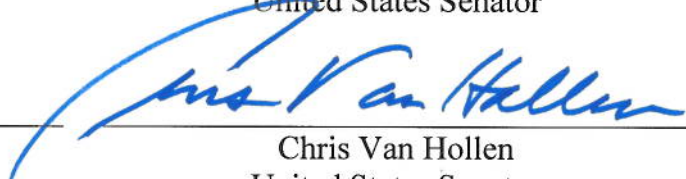
Tom Carper  
United States Senator



Margaret Wood Hassan  
United States Senator



Kamala Harris  
United States Senator



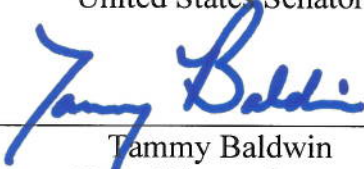
Chris Van Hollen  
United States Senator



Mazie Hirono  
United States Senator



Ron Wyden  
United States Senator



Tammy Baldwin  
United States Senator



Bernard Sanders  
United States Senator



Martin Heinrich  
United States Senator



Mark R. Warner  
United States Senator



Tammy Duckworth  
United States Senator

AUG 02 2017



July 11, 2017

Vice President Mike Pence  
The White House  
Office of the Vice President  
1600 Pennsylvania Avenue N.W.  
Washington, D.C 20500

Secretary of State Kris Kobach  
Kansas Secretary of State  
Memorial Hall, 1<sup>st</sup> Floor  
120 SW 10th Avenue  
Topeka, KS 66612

Dear Vice President Pence and Secretary of State Kobach:

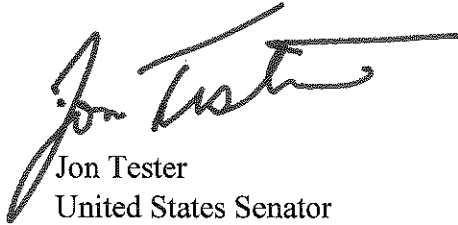
We are contacting you today with deep concerns regarding your broad request for sensitive information relating to individuals' Social Security Numbers and political party identifications. Frankly, Montanans do not take kindly to this type of federal government overreach. We respectfully ask that you rescind this request and urge you to publicly clarify that no state will be forced to provide information by your commission or any other federal entity.

We have heard from concerned, law-abiding Montanans that your commission is threatening their privacy. Based on your comments, Secretary of State Kobach, we are concerned that the U.S. Department of Justice might force states to provide personal information to your commission against their will. These threats only raise greater privacy concerns for those whom we serve.

Your blanket request for this data highlights a number of questions about the efficacy and real aims of the commission's work. We are perplexed that your commission would even seek this information given the fact that numerous states' laws preclude them from sharing it. Equally troubling is your request for party affiliations of every voter in states where that information is available. We must protect the right to vote of all eligible individuals whether they are Republicans, Libertarians, Democrats, Independents, or anyone in between. Collecting this data across the country will threaten the privacy, freedom and voting rights of thousands of Montanans and millions of Americans.




We all share an interest in ensuring our elections are free and fair. We urge you to work in a way that neither threatens the privacy of the American people nor undermines the confidence in our elections.



Jon Tester  
United States Senator

Respectfully,



Steve Bullock  
Montana Governor

**Congress of the United States**  
**Washington, DC 20515**

July 18, 2017

Vice President Michael Pence  
The White House  
1600 Pennsylvania Ave, N.W.  
Washington, D.C.

Dear Mr. Vice President:

As the ranking members of the House committees of jurisdiction, we write to you to express our grave concerns regarding the June 28, 2017, request by Kris Kobach, the Vice Chair of the Presidential Advisory Commission on Election Integrity (“Commission”) that all 50 States and the District of Columbia provide him with sensitive voter information. We also write to express our concerns with Mr. Kobach’s position on the Commission, his actions to date, and several conflicts of interest that should prevent him from serving as Vice Chair.

The clear majority of our state election administrators—including numerous Republican elected officials—oppose the Vice Chair’s request, which was made directly after a secret, unofficial meeting of the Commission’s members. The request failed to specify to the public how that information would be used, and provided no clear or sufficient safeguards to protect sensitive voter information. These actions openly flout federal privacy and transparency laws.

Furthermore, Mr. Kobach has repeatedly claimed, falsely, that widespread voter fraud exists and advertises his work on the Commission to promote his own campaign for governor of Kansas. These actions undermine the integrity of the Commission and raise significant concerns that the Commission will be used as a tool for voter suppression.

We understand that the Commission has asked states to “hold off” on submitting their voter information while a federal court considers a motion for a restraining order filed by the Electronic Privacy Information Center (“EPIC”). Any temporary halt is insufficient. We request that you rescind Mr. Kobach’s request for voter information, ask Mr. Kobach to step down from the Commission, and use the July 19 Commission meeting to announce these changes and explain, in a forthright manner, how the Commission intends to carry out its mission.

**The Mission of the Presidential Advisory Commission on Election Integrity (“PACEI”)**

Pursuant to Executive Order 13799, the mission of the Presidential Advisory Commission on Election Integrity (“PACEI”) is to “consistent with applicable law, study the registration and voting processes used in Federal elections.” E.O. 13799 requires the Commission to submit a report to the President that identifies the following:



- (a) those laws, rules, policies, activities, strategies, and practices that enhance the American people's confidence in the integrity of the voting processes used in Federal elections;
- (b) those laws, rules, policies, activities, strategies, and practices that undermine the American people's confidence in the integrity of the voting processes used in Federal elections; and
- (c) those vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.<sup>1</sup>

On June 28, 2017, Mr. Kobach requested detailed voter histories from the Secretary of State or the Chief Election Officer of all 50 states and the District of Columbia. He requested that they provide to the Commission publicly available voter roll information, including:

[T]he full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.<sup>2</sup>

Mr. Kobach's letter seeks to collect and aggregate the sensitive, personal information of voters across the country, in the span of two weeks. It did not provide any information about procedures in place to protect voter privacy or the security and integrity of state voter data.

This request is unprecedented. Never before has any federal official made such a sweeping request to state election officials for private, personal voter records.

Election officials in at least 45 states, including many Republican election officials, have refused to comply with the Vice Chair's request, either fully or in part, citing state privacy laws, federalism concerns, or serious doubts about the true motivation behind the Commission's intentions for the voter information. The request appears to violate numerous state laws regarding the privacy and collection of voter information. The former Deputy Assistant Attorney General of the Department of Justice's Civil Rights Division decried Mr. Kobach's actions, noting that Mr. Kobach's request is "massively irresponsible" and possibly illegal.<sup>3</sup>

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<sup>1</sup> Exec. Order No. 13799, "Establishment of Presidential Advisory Commission on Election Integrity," 82 Fed. Reg. 22389 (May 16, 2017).

<sup>2</sup> Letter from Kris W. Kobach, Vice Chair, PACEI, to the Honorable John Merrill, Secretary of State, Alabama (June 28, 2017) (online at [apps.npr.org/documents/document.html?id=3881818-SOS-Letter](https://apps.npr.org/documents/document.html?id=3881818-SOS-Letter)).

<sup>3</sup> *All Your Voter Data Are Belong to Us*, Take Care (June 30, 2017) (online at [takecareblog.com/blog/all-](https://takecareblog.com/blog/all-)

Mr. Kobach's request has also deeply alarmed voters, who are reportedly contacting election officials with fears about the Administration's intent and, of greatest worry, requests to cancel their voter registrations to protect private data.<sup>4</sup>

### Security Concerns

Mr. Kobach's request to state election officials raises serious and significant cybersecurity concerns. In fact, Michael Chertoff, Secretary of Homeland Security under President George W. Bush, has warned that the Vice Chair's plans to collect and aggregate sensitive voter information risks running afoul of the President's May 11<sup>th</sup> cybersecurity executive order—which is focused on improving database safeguards.<sup>5</sup> Specifically, in a recent op-ed in the *Washington Post*, former Secretary Chertoff warned that the personal identifying information would be a tempting target for identity theft and criminal activity, both domestic and foreign, and advised that, if the Commission proceeded with the collection of sensitive data, “the Administration should honor its own recent cybersecurity executive order and ensure that the data is not stolen by hackers or insiders.”<sup>6</sup>

Mr. Kobach's letter directs state officials to send sensitive personal information for hundreds of millions of voters to the Commission by highly insecure means—either to a government email address (ElectionIntegrityStaff@ovp.eop.gov), or to a file exchange system, Safe Access File Exchange (“SAFE”).

In his letter, Mr. Kobach stated that the SAFE system “is a secure FTP site the federal government uses for transferring large data files.” However, accessing the SAFE system through Google Chrome leads to a warning screen with a notification that the site is insecure. The SAFE website itself cautions that:

SAFE uses the TLS (Transport Layer Security) protocol when files are uploaded or downloaded. However, users should be aware that the limited use PIN employed to access a SAFE package, is sent via email. Therefore, the PIN is only as secure as the email system.<sup>7</sup>

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your-voter-data-are-belong-to-us).

<sup>4</sup> *Hundreds Withdraw Colorado Voter Registrations in Response to Compliance with Commission Request*, The Denver Channel, (July 7, 2017) (online at [www.thedenverchannel.com/news/politics/hundreds-withdraw-colorado-voter-registrations-in-response-to-compliance-with-commission-request](http://www.thedenverchannel.com/news/politics/hundreds-withdraw-colorado-voter-registrations-in-response-to-compliance-with-commission-request)); *Worried Voters Try to “Unregister” After Trump Voter-Roll Request*, The Orland Sentinel, (July 7, 2017) (online at [www.orlandosentinel.com/news/politics/political-pulse/os-florida-voter-rolls-data-20170707-story.html](http://www.orlandosentinel.com/news/politics/political-pulse/os-florida-voter-rolls-data-20170707-story.html)).

<sup>5</sup> Michael Chertoff, *Trump's voter data request poses an unnoticed danger*, The Washington Post (July 5, 2017) (online at [www.washingtonpost.com/opinions/trumps-voter-data-request-poses-an-unnoticed-danger-to-national-security/2017/07/05/470efce0-60c9-11e7-8adc-fea80e32bf47\\_story.html?utm\\_term=.3f7829cd24f2](http://www.washingtonpost.com/opinions/trumps-voter-data-request-poses-an-unnoticed-danger-to-national-security/2017/07/05/470efce0-60c9-11e7-8adc-fea80e32bf47_story.html?utm_term=.3f7829cd24f2)).

<sup>6</sup> *Id.*

<sup>7</sup> AMRDEC SAFE, Knowledge Base Page, “How secure is SAFE?” (online at

In addition to this specific concern about the means of data transmission, we are generally troubled by the attempt to amass extensive voter data in a single, centralized database. The Commission has not offered any plan to protect its proposed nation-wide voter database, even after federal officials have confirmed that voter databases in at least 21 states were hacked in last year's election by Russia. A January 2017 report by the Director of National Intelligence detailed Russia's brazen attacks on our nation's election systems and ominously warned that Russia will use what it learned in 2016 to meddle in future elections.<sup>8</sup> Instead of building a highly insecure nation-wide database, the Commission should focus its attention on providing guidance and best practices to secure America's election infrastructure from foreign interference.

Rather than taking steps to protect sensitive data, in his initial letter to states, Mr. Kobach stated that he planned to make the information that he collected public, stating: "Please be aware that any documents that are submitted to the full Commission will also be made available to the public."<sup>9</sup>

After facing a lawsuit, Mr. Kobach filed a declaration with the court, stating that: "For voter roll data, I intended that the states use the Safe Access File Exchange ("SAFE"), which is a secure method of transferring large files up to two gigabytes (GB) in size."<sup>10</sup> He also declared that "The Commission intends to maintain the data on the White House computer system."<sup>11</sup> Mr. Kobach later stated: "As this is a Presidential advisory commission, the White House is responsible for collecting and storing data for the Commission ... The Commission's Designated Federal Officer (an employee within the Office of the Vice President) will work with White House Information Technology staff to facilitate collection and storage."<sup>12</sup>

The Commission has also failed to follow best practices for protecting private information, as established in the E-Government Act. The Commission has refused to develop a Privacy Impact Statement to describe either how the Commission intends to use the information collected or how it will safeguard the sensitive private information of American voters. While White House lawyers have explained that the Commission is not legally required to file the Privacy Impact Statement because the Commission is not an "agency" under the E-Gov Act, this argument ignores the underlying issue—the Commission's refusal to disclose to the public how,

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<https://safe.amrdec.army.mil/safe/Help.aspx?Article=3>).

<sup>8</sup> Office of the Director of National Intelligence, *Assessing Russian Activities and Intentions in Recent U.S. Elections*, ii – iii (January 2017) (ICA 2017 – 01D), (online at [www.dni.gov/files/documents/ICA\\_2017\\_01.pdf](http://www.dni.gov/files/documents/ICA_2017_01.pdf)).

<sup>9</sup> Letter from Kris W. Kobach, Vice Chair, PACEI, to the Honorable John Merrill, Secretary of State, Alabama (June 28, 2017) (online at [apps.npr.org/documents/document.html?id=3881818-SOS-Letter](http://apps.npr.org/documents/document.html?id=3881818-SOS-Letter)).

<sup>10</sup> Declaration of Kris W. Kobach, 3 (July 5, 2017), *Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity, et al.*, D.D.C. (No. 1:17-cv-1320 (CKK)) (online at [epic.org/privacy/litigation/voter/epic-v-commission/EPIC-v-Commission-TRO-declaration-of-Kris-Kobach.pdf](http://epic.org/privacy/litigation/voter/epic-v-commission/EPIC-v-Commission-TRO-declaration-of-Kris-Kobach.pdf)).

<sup>11</sup> *Id.*

<sup>12</sup> *DOJ Says Lawsuit Over Collection of Voter Data Has No Legs, Promises to Secure Data*, CNN (July 6, 2017) (online at [www.cnn.com/2017/07/06/politics/justice-department-response-epic-lawsuit/](http://www.cnn.com/2017/07/06/politics/justice-department-response-epic-lawsuit/)).



or if, it will protect private voter data.<sup>13</sup> Such a disclosure is essential to imparting to the American public that you and the other members of the Commission are serious about avoiding actions that could undermine confidence in the integrity of the voting processes used in Federal elections.

### **Violation of Federal Advisory Committee Act**

Your initial, secret “organizational call with members of the Presidential Advisory Commission” appears to have violated the Federal Advisory Committee Act (FACA). FACA requires the Commission to provide “timely notice” of every meeting in the Federal Register and to open every meeting to the public.<sup>14</sup>

On June 28, 2017, the Office of the Vice President reported publicly that you had held a private phone call that morning with the members of the Commission. According to your office’s “readout” of the meeting:

Vice Chair of the Commission and Kansas Secretary of State Kris Kobach told members a letter will be sent today to the 50 states and District of Columbia on behalf of the Commission requesting publicly-available data from state voter rolls and feedback on how to improve election integrity.<sup>15</sup>

FACA also requires the Commission to make its records available to the public.<sup>16</sup> No such information or records have been made available to the public at this time.

### **Damaging False Statements and Violations of the Hatch Act**

We further demand that the Vice Chair of the Commission be removed from his position because of false public statements about voter fraud and his use of his official position to further his political campaign for governor of Kansas.

Mr. Kobach has repeatedly made false public statements about the existence of widespread voter fraud in our federal elections. For example, Mr. Kobach has repeatedly asserted in the past that voting by “aliens” is rampant. He is also reportedly the source of President Trump’s assertions that he believed he lost the popular voter because of voter fraud.<sup>17</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> Federal Advisory Committee Act §10(a)-(b), 5 U.S.C. app. II.

<sup>15</sup> The White House, *Readout of the Vice President’s Call with the Presidential Advisory Commission on Election Integrity* (June 28, 2017) (online at [www.whitehouse.gov/the-press-office/2017/06/28/readout-vice-presidents-call-presidential-advisory-commission-election](http://www.whitehouse.gov/the-press-office/2017/06/28/readout-vice-presidents-call-presidential-advisory-commission-election)).

<sup>16</sup> Federal Advisory Committee Act §10(b), 5 U.S.C. app. II.

<sup>17</sup> *The Man Behind Trump’s Voter-Fraud Obsession*, The New York Times, (June 13, 2017) (online at [www.nytimes.com/2017/06/13/magazine/the-man-behind-trumps-voter-fraud-obsession.html](http://www.nytimes.com/2017/06/13/magazine/the-man-behind-trumps-voter-fraud-obsession.html)).

After the November election, 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.”<sup>18</sup>

Those false and unsubstantiated statements undermine faith in our election system, which is counter to the mission of the Commission. In addition, a Kansas Judge recently sanctioned and fined Mr. Kobach \$1,000 in a voting rights case for making “patently misleading representations to the court” regarding the content of documents that were subject to discovery.<sup>19</sup>

Mr. Kobach also appears to have violated the Hatch Act by using his official Commission role to promote his 2018 gubernatorial candidacy and solicit campaign contributions.

The Hatch Act prohibits any executive branch employee from “using his official authority or influence for the purpose of interfering with or affecting the result of an election.”<sup>20</sup> As a special government employee (“SGE”), Mr. Kobach is subject to the Hatch Act because of his role with the PACEI. While a SGE can run for partisan political office (unlike full-time employees), he must maintain strict separation between his candidacy and federal government service.

Mr. Kobach appears not to have maintained that strict separation. The Hatch Act complaint filed by the Lawyers’ Committee for Civil Rights Under Law cites the following examples:

- On June 30, 2017, Mr. Kobach was interviewed by Fox News and MSNBC as an official representative of the PACEI.<sup>21</sup> He promoted these interviews in advance on his Twitter page (which is paid for by Kansas for Kobach), and the interviews were later posted on his Facebook and Twitter pages.
- The “About” page of his campaign website highlights Mr. Kobach’s role on the Commission, boasting: “He continues to work with the President on matters of election fraud, immigration, and national security. President Trump knows there is no greater leader on these issues, which is why he named Kris to serve as the Vice Chair of the Presidential Commission on Election Integrity.”
- The “News” page of his campaign website links to several stories that focus on Mr. Kobach’s work on the PACEI.

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<sup>18</sup> *Id.*

<sup>19</sup> *Fish v. Kobach*, No. 16-2105-JAR, 7 (D. Kan. June 23, 2017) (order imposing sanctions).

<sup>20</sup> Hatch Act, 5 U.S.C. § 7323.

<sup>21</sup> *MSNBC Live with Velsi and Ruhle*, MSNBC (June 30, 2017); *Tucker Carlson tonight*, Fox News (June 30, 2017).

- Mr. Kobach has also promoted his Commission role in campaign appearances. He appeared on local television for a “let’s have a beer and talk” the day he launched his campaign for governor, and discussed his role as Vice Chair of the Commission and the work he expected the Commission to perform.<sup>22</sup>

Mr. Kobach’s partisan activity and his recent sanctions for dishonesty before a court of law cast a shadow over the Commission and undermine its integrity. Mr. Kobach should step down as Vice-Chair and be replaced with an individual who can be trusted to ensure that the Commission operates in a bipartisan manner to protect voter information and to protect the right of Americans to vote.

### **Voter Suppression**

We have serious concerns that Mr. Kobach’s purpose in gathering state voter rolls is to conduct a data-matching project that matches each state voter list with other federal databases, in an attempt to discover and then potentially purge purported “fraudulent registrations.” Your own spokesman, Marc Lotter, confirmed to ProPublica that “the state voter information will be run ‘through a number of different databases, looking for the possibility for areas where voter rolls could be strengthened.’”<sup>23</sup>

The data the Commission seeks, however, is ill-suited to accurate matching. Election experts advise that using the data the Commission seeks will result in “thousands of false positives” that could “significantly overstate the amount of double voting and voting by non-citizens.”<sup>24</sup>

Mr. Kobach already runs a voter matching program, called the Interstate Voter Registration Crosscheck program, which is notorious for its high rate of errors. A recent Stanford University study found Crosscheck produced “200 false positives for every actual double registration.”<sup>25</sup>

In addition, on the same day that Mr. Kobach sent these letters to states, the Department of Justice sent a letter to 44 states demanding detailed information on their voter list maintenance procedures. The Justice Department letter did not request any information about state

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<sup>22</sup> Lawyers’ Committee for Civil Rights Under Law, *Lawyers’ Committee for Civil Rights Under Law Files Hatch Act Complaint Against Kris Kobach* (July 3, 2017) (online at [lawyerscommittee.org/press-release/lawyers-committee-civil-rights-law-files-hatch-act-complaint-kris-kobach/](http://lawyerscommittee.org/press-release/lawyers-committee-civil-rights-law-files-hatch-act-complaint-kris-kobach/)).

<sup>23</sup> *Election Experts See Flaws in Trump Voter Commission’s Plan to Smoke out Fraud*, ProPublica, (July 6, 2017) (online at [www.propublica.org/article/election-experts-see-flaws-trump-voter-commissions-plan-to-smoke-out-fraud](http://www.propublica.org/article/election-experts-see-flaws-trump-voter-commissions-plan-to-smoke-out-fraud)).

<sup>24</sup> *Id.*; see also *What is Kris Kobach Up To?*, Politico (July 3, 2017) (online at [www.politico.com/magazine/story/2017/07/03/what-is-kris-kobach-up-to-215332](http://www.politico.com/magazine/story/2017/07/03/what-is-kris-kobach-up-to-215332)).

<sup>25</sup> See *Election Experts See Flaws*.



compliance with the provision of the National Voter Registration Act, which requires that motor vehicle and public assistance agencies register new voters. We are concerned that the Department of Justice and the Commission will use inaccurate and false positive matches to inaccurately inflate estimates of voter fraud.

The Commission would better serve American voters if it focused on the growth of voter suppression laws that have spread since the Supreme Court undermined the protections of the Voting Rights Act in *Shelby County v. Holder*.<sup>26</sup> In 2017 alone, at least 99 bills restricting access to registration and voting have been introduced in 31 states, including bills making it more difficult for students and others to claim residency, and bills limiting absentee or early in-person voting.<sup>27</sup> During the 2016 general election, there were at least 868 fewer polling places in states that were previously “covered jurisdictions” under Section 5 of the Voting Rights Act, including Arizona, Texas and North Carolina.<sup>28</sup>

States continue to pursue imposing restrictive voter identification requirements, despite their known discriminatory impact on voters on the basis of race and other protected characteristics. In Texas, based on expert testimony and data analysis, the Fifth Circuit Court of Appeals upheld a lower court finding “that about 608,000 registered voters in Texas lacked the types of identification required by the law, with a disproportionate number being black or Hispanic.”<sup>29</sup>

The Commission should explore increasing access to voting, not perpetuating the false and damaging notion that massive voter fraud exists in our nation’s elections. We will fiercely oppose any attempt by this Administration to suppress the vote and undermine the protections guaranteed by the U.S. Constitution, the National Voter Registration Act, the Voting Rights Act, and other important voter protection laws.

### **Questions and Request for Documents**

We request that in your meeting on July 19, you address publicly the following questions:

1. How will the Commission ensure future compliance with all applicable laws, including privacy and transparency laws?

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<sup>26</sup> 133 S. Ct. 2612 (2013).

<sup>27</sup> Brennan Center for Justice, Voting Laws Roundup 2017 (online at [www.brennancenter.org/analysis/voting-laws-roundup-2017](http://www.brennancenter.org/analysis/voting-laws-roundup-2017)).

<sup>28</sup> The Leadership Conference Fund, *The Great Poll Closure*, 4 (Nov. 2016) (online at [civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf](http://civilrightsdocs.info/pdf/reports/2016/poll-closure-report-web.pdf)).

<sup>29</sup> *Federal Court Rules Texas' ID Law Violates Voting Rights Act*, The New York Times (July 20, 2016) (online at [www.nytimes.com/2016/07/21/us/federal-court-rules-texas-id-law-violates-voting-rights-act.html](http://www.nytimes.com/2016/07/21/us/federal-court-rules-texas-id-law-violates-voting-rights-act.html)).

2. Will the Commission produce and make public a Privacy Impact Statement prior to any future collection of information?
3. How does the Commission intend to protect any sensitive voter or voting information it receives?
4. In his Declaration to the D.C. District Court in the EPIC lawsuit, Mr. Kobach declares that “the Commission intends to maintain the data on the White House computer system.” For what purpose(s) will the White House use any collected data? Who will have access to it? What restrictions will be placed on its use?
5. Does the Commission intend to fully comply with Executive Order 13800, the President’s Executive Order on Strengthening the Cybersecurity of Federal Networks and Critical Infrastructures (dated May 11, 2017)?
6. The Department of Homeland Security has the responsibility to protect national critical infrastructure from cyber attacks. Has the Commission been in contact with or consulted with the Department of Homeland Security?
7. Did the Commission consult with the Department of Homeland Security or any experts inside or outside of the federal government regarding the decision to collect and aggregate sensitive voter information in one database?
8. Will the Commission hire professional, objective data professionals to manage and analyze any data collected? Will these professionals undergo a security background investigation prior to working with the data?
9. Has the Commission or any of its Members had any communication with any individual at the Voting Section of the Department of Justice regarding its June 28, 2017 request to 44 states for detailed information on voter maintenance procedures?
10. Has the Commission or any of its Members discussed the Commission and its work with any individual at the Department of Justice?
11. Is the Commission committed to examining acts of voter suppression and intimidation, and to make recommendations on protecting and expanding voter’s access to the polls and the ballot?
12. What steps will the Commission take to ensure that its Members do not engage in partisan political activity while serving on the Commission?

13. Please explain your decision not to join Mr. Kobach in sending letters to all 50 States and the District of Columbia requesting sensitive voter information.

In addition to responding to these questions, please provide to us the documents described below. For all communications requested, please include internal Commission communications as well as communications between the Commission (including members, staff, or other employees) and external parties, including federal or state government officials or employees, employees or other representatives of private organizations, or any other non-Commission persons.

1. All documents and communications regarding or relating to the purposes and goals of the Commission;
2. all documents and communications regarding or relating to Mr. Kobach's June 28, 2017, letter to all 50 States and the District of Columbia requesting sensitive voter data;
3. all documents and communications regarding or relating to Commission meetings, including all meeting agendas and meetings minutes or other memorialization of meeting topics and discussions;
4. all documents and communications regarding or relating to Commission discussions with individuals at the Department of Justice;
5. all documents and communications regarding or relating to Commission discussions with individuals at the Department of Homeland Security;
6. all documents and communications regarding or relating to procedures in place or plans to implement procedures to protect data in the Commission's possession;
7. all documents and communications regarding or relating to Commission policies for the use of state voter data;
8. all documents and communications regarding or relating to compliance with relevant federal and state statutes and regulations; and
9. all documents and communications regarding or relating to the duties, roles, or responsibilities of Commission members, including any restrictions on members' activities.

In addition to addressing the above questions in your upcoming meeting, please provide to us written responses by July 26, 2017, and please provide the requested documents by August 1, 2017.



The right to vote and right to participate in government are sacred and fundamental to the strength of our democracy. We must all collectively be engaged in protecting those rights. Thank you for your assistance.

Sincerely,



Elijah E. Cummings  
Ranking Member  
Committee on Oversight and  
Government Reform



John Conyers, Jr.  
Ranking Member  
Committee on the Judiciary



Bennie G. Thompson  
Ranking Member  
Committee on Homeland Security



Robert A. Brady  
Ranking Member  
Committee on House Administration

cc: Vice Chair Kris Kobach, PACEI  
cc: Indiana Secretary of State Connie Lawson  
cc: New Hampshire Secretary of State Bill Gardner  
cc: Maine Secretary of State Matthew Dunlop  
cc: Mr. Ken Blackwell  
cc: Ms. Christy McCormick, Commissioner, Election Assistance Commission  
cc: Mr. David Dunn  
cc: Mr. Mark Rhodes, Clerk, Woods County, West Virginia  
cc: Mr. Hans von Spakovsky  
cc: Mr. J. Christian Adams  
cc: Mr. Alan Lamar King  
cc: Chairman Trey Gowdy, House Committee on Oversight & Government Reform  
cc: Chairman Michael McCaul, House Committee on Homeland Security  
cc: Chairman Bob Goodlatte, House Committee on the Judiciary  
cc: Chairman Gregg Harper, Committee on House Administration

**Congress of the United States**  
**Washington, DC 20515**

July 18, 2017

The Honorable Kris W. Kobach, Vice Chair  
Presidential Advisory Commission on Election Integrity  
1600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20500

Dear Mr. Kobach,

We write to express our serious concerns with your June 28<sup>th</sup> request to the States for voter registration data because of the substantial risk it poses to the privacy and security of the personally identifiable information of the American people. At a time when the personally identifiable data of Americans is under constant attack from hackers and criminals seeking to engage in identity theft, the Commission's request to collect and centrally store the personal data of hundreds of millions of Americans poses risks that cannot be fully mitigated. For this reason, we urge you to withdraw your request for information immediately.

The threat of data breaches and theft of personal information is more serious than ever. In 2016, there were a record number of data breaches with the number of reported incidents increasing by 40 percent over 2015.<sup>1</sup>

Your letter requests personally identifiable information of all registered voters in the United States, including names, addresses, dates of birth, and the last four digits of Social Security numbers, among other information. According to the FBI, names, dates of birth, and Social Security numbers are among the most critical pieces of information criminals need to commit identity theft.<sup>2</sup> Other federal agencies have determined that even partial use of social security numbers, such as the last four digits, increases the risk of identity theft or fraud.<sup>3</sup> Your letter specifically asks for this information as well as additional information such as voter history to the extent that it is publicly available. It is worth noting that States take varying approaches as to how this information is shared with the public, with some imposing significant restrictions on its use and others imposing virtually no restrictions.<sup>4</sup>

We are also deeply concerned about the manner in which the Commission proposes States transmit this information to you. Your letter suggests that one option for States to send this information is by email. As reports have indicated, the email address you offer does not appear to use basic security protocols that would at least limit the ability of hackers to gain access to what

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<sup>1</sup> 2016 Was a Record Year for Data Breaches, Olga Khanf - <https://www.bloomberg.com/news/articles/2017-01-19/data-breaches-hit-record-in-2016-as-dnc-wendy-s-co-hacked>

<sup>2</sup> <https://www.fbi.gov/investigate/white-collar-crime/identity-theft>

<sup>3</sup> <https://oma.od.nih.gov/forms/Privacy%20Documents/Privacy%20Newsletters/2013/Privacy%20Pulse%20-%20June%202013%20SSN.pdf>

<sup>4</sup> National Conference of State Legislatures, 2016. *The Canvass, Issue 66*, pp. 1-3. Available at [http://www.ncsl.org/Documents/Elections/The\\_Canvass\\_February\\_2016\\_66.pdf](http://www.ncsl.org/Documents/Elections/The_Canvass_February_2016_66.pdf)



is transmitted.<sup>5</sup> This demonstrates a stunning disregard for the sensitivity of the information you are aiming to collect and unnecessarily puts hundreds of millions of Americans at risk.

Centralizing all this information in one location also raises serious security concerns. The U.S. Intelligence Community has concluded definitively that during the 2016 election, Russia actively attacked the U.S. in an effort to obtain access to voter registration information, targeting as many as 39 States.<sup>6</sup> Housing all of our country's voter registration information in one place creates a single point of attack for hackers, including foreign powers that may attempt to influence election outcomes. It is not at all clear what security measures you plan to put in place to protect the information you propose to collect and store, aside from your comments to the media that it will be stored on a secure server.<sup>7</sup> It is also not clear that it would be possible to fully protect this information once it is in the hands of the federal government. As the 2015 Office of Personnel Management data breach made clear, personally identifiable information stored by the federal government is not immune from attack.

The federal government has an obligation to protect the personally identifiable information of the American people. We believe your June 28<sup>th</sup> request to the States would do the opposite by ignoring the critical need for robust security protocols when transmitting and storing sensitive personally identifiable information and by centralizing it in one place. While more than half of the States in our country have indicated they will not comply and the request was recently put on hold pending a lawsuit, we nevertheless urge you to withdraw this overly broad request due to the risk it poses to the sensitive data of millions of Americans.

Thank you for your consideration of our request and we look forward to your timely response.

Sincerely,



Anna G. Eshoo  
Member of Congress

cc: The Honorable Mike Pence, Chair, Presidential Advisory Commission on Election Integrity

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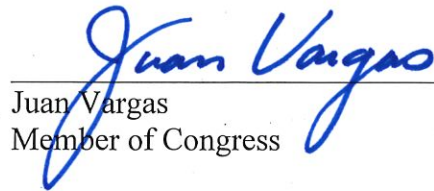
<sup>5</sup> *Trump's Election Fraud Commission Asked States to Send Sensitive Voter Information Over Insecure Email*, Dell Conger - <http://gizmodo.com/trumps-election-fraud-commission-asked-states-to-send-s-1796535568>

<sup>6</sup> *Russian Cyber Hacks on U.S. Electoral System Far Wider Than Previously Known*, Michael Riley-Jordan Robertson - <https://www.bloomberg.com/news/articles/2017-06-13/russian-breach-of-39-states-threatens-future-u-s-elections>

<sup>7</sup> *Kris Kobach Wants Every U.S. Voter's Personal Information for Trump's Commission*, Brian Lowry - <http://www.kansascity.com/news/politics-government/article158871959.html>



Doris O. Matsui  
Member of Congress



Juan Vargas  
Member of Congress



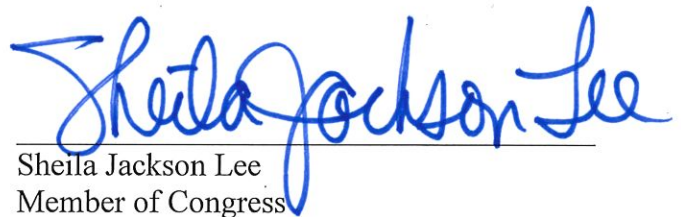
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Member of Congress



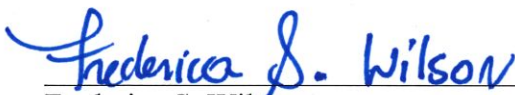
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Member of Congress



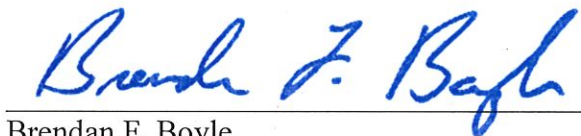
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Member of Congress



Sheila Jackson Lee  
Member of Congress



Frederica S. Wilson  
Member of Congress



Brendan F. Boyle  
Member of Congress



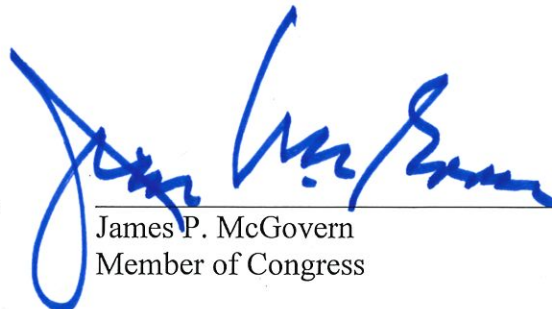
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Member of Congress



Tim Ryan  
Member of Congress



Jim Cooper  
Member of Congress

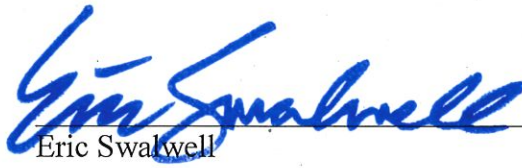


James P. McGovern  
Member of Congress





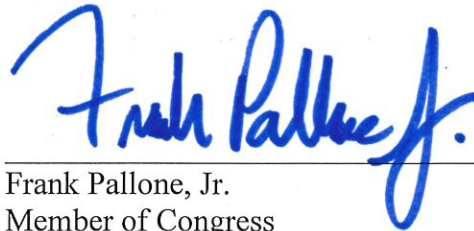
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Member of Congress



Eric Swalwell  
Member of Congress



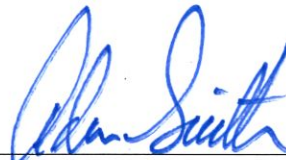
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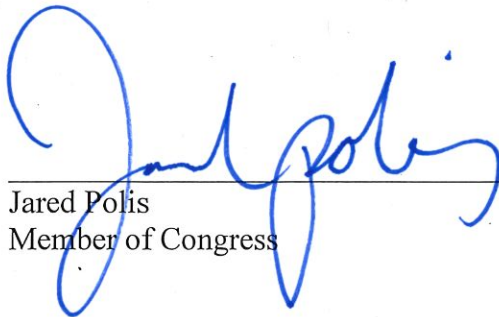
Frank Pallone, Jr.  
Member of Congress



Michelle Lujan Grisham  
Member of Congress



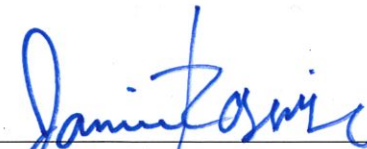
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Member of Congress



Jared Polis  
Member of Congress



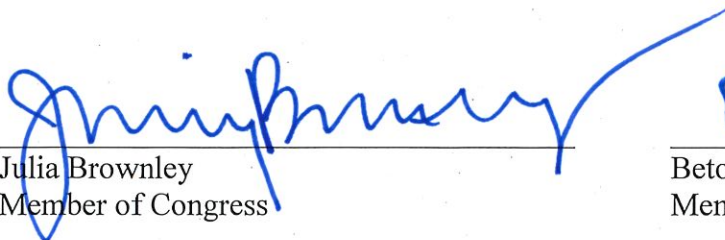
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Member of Congress



Jamie Raskin  
Member of Congress



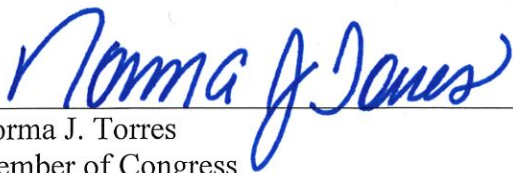
Ted Lieu  
Member of Congress



Julia Brownley  
Member of Congress



Beto O'Rourke  
Member of Congress



Norma J. Torres  
Member of Congress



Bobby L. Rush  
Member of Congress



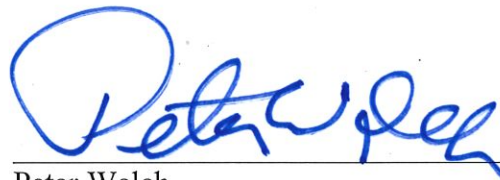
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Val Butler Demings  
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Niki Tsongas  
Member of Congress



Peter Welch  
Member of Congress



Dave Loebsack  
Member of Congress



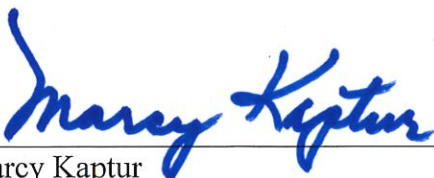
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Member of Congress



Suzanne Bonamici  
Member of Congress



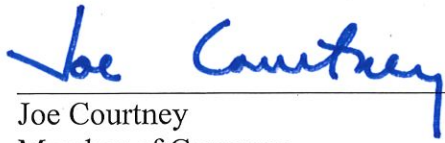
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Member of Congress



Marcy Kaptur  
Member of Congress



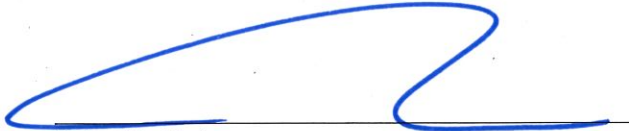
Dina Titus  
Member of Congress



Joe Courtney  
Member of Congress



Jacky Rosen  
Member of Congress



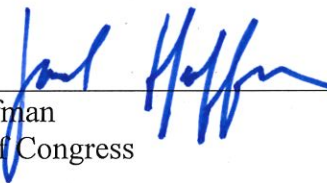
John K. Delaney  
Member of Congress



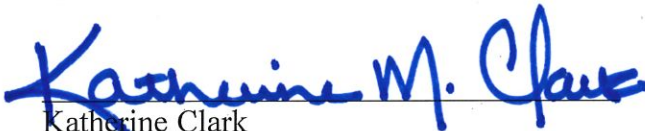
Alan Lowenthal  
Member of Congress



Luis V. Gutiérrez  
Member of Congress



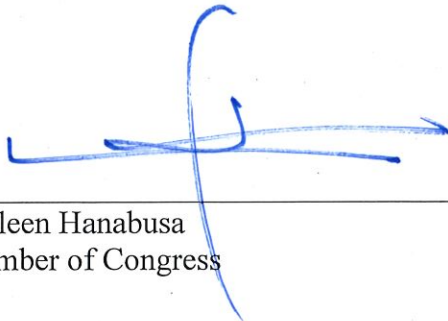
Jared Huffman  
Member of Congress



Katherine Clark  
Member of Congress



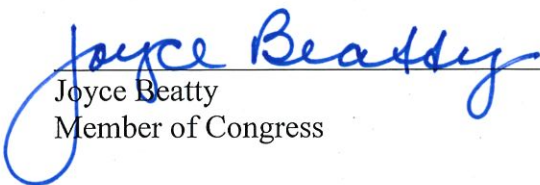
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Member of Congress



Colleen Hanabusa  
Member of Congress



Brenda L. Lawrence  
Member of Congress





Joyce Beatty  
Member of Congress




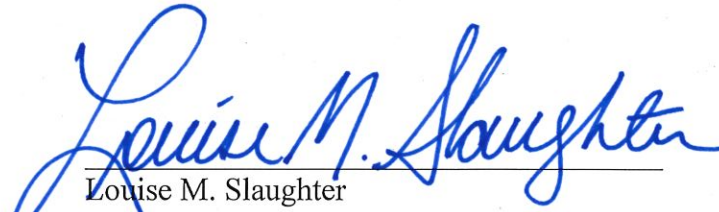
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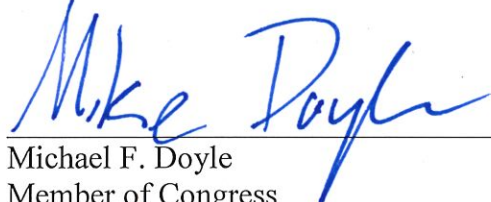


  
Timothy J. Walz  
Member of Congress

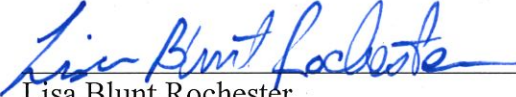
  
Ro Khanna  
Member of Congress


  
Barbara Lee  
Member of Congress

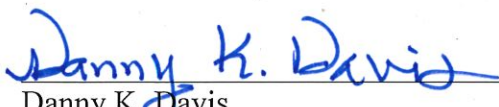
  
Louise M. Slaughter  
Member of Congress

  
Michael F. Doyle  
Member of Congress

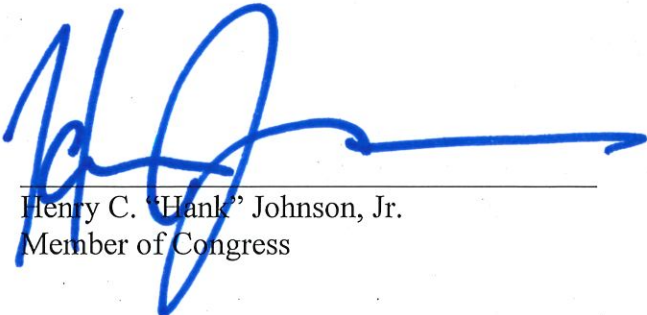
  
Eleanor Holmes Norton  
Member of Congress


  
Lisa Blunt Rochester  
Member of Congress

  
Tony Cárdenas  
Member of Congress

  
Danny K. Davis  
Member of Congress

  
Bonnie Watson Coleman  
Member of Congress

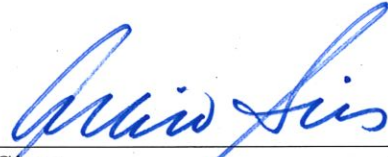
  
Henry C. "Hank" Johnson, Jr.  
Member of Congress

  
Nydia M. Velázquez  
Member of Congress





Robert C. "Bobby" Scott  
Member of Congress



Albio Sires  
Member of Congress



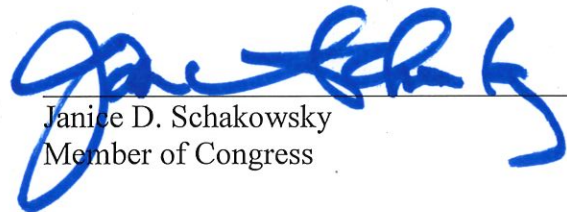
Betty McCollum  
Member of Congress



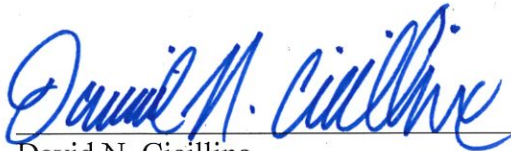
Diana DeGette  
Member of Congress



Alcee L. Hastings  
Member of Congress




Janice D. Schakowsky  
Member of Congress



David N. Cicilline  
Member of Congress



André Carson  
Member of Congress



Marc Veasey  
Member of Congress



Alma S. Adams  
Member of Congress



Ben Ray Luján  
Member of Congress



Jimmy Panetta  
Member of Congress

# United States Senate

WASHINGTON, DC 20510

September 12, 2017

The Presidential Commission on Election Integrity  
c/o Office of the Vice President  
The White House  
1600 Pennsylvania Avenue, NW  
Washington, DC 20500

Dear Commissioners:

We write to follow up on previous letters sent from several United States Senators to the Commission that have gone unanswered. To date, the Commission and the Administration has failed to respond to five congressional oversight requests seeking more information about the Commission's work. These letters include:

- A June 29, 2017, letter from 16 Senators to Vice President Mike Pence and Kansas Secretary of State Kris Kobach requesting details of the Commission's compliance with the Federal Advisory Commission Act and demanding transparency.
- A June 30, 2017, letter from Senator Klobuchar to Vice President Pence and Secretary Kobach voicing opposition to the Commission's broad request of American voters' sensitive personal information that is often not publicly available, including their names, addresses, dates of birth, political party, voting history, and the last four digits of their Social Security numbers.
- A July 6, 2017, letter from 25 Senators to Vice President Pence and Secretary Kobach demanding the Commission rescind its request that state election officials provide sensitive voter roll data.
- A July 11, 2017, letter from 11 Senators to Attorney General Jeff Sessions and Acting Assistant Attorney General Thomas Wheeler asking the U.S. Department of Justice whether the Commission has the legal authority to request sensitive voter information from states and requesting information about whether the Department of Justice and the Commission are coordinating efforts.
- A July 31, 2017, letter from Senators Feinstein, Brown, and Wyden to White House Counsel Don McGahn seeking answers from the White House on its decision to publish emails containing sensitive personal information from citizens sharing concerns about the Commission.


The Commission has not responded to a single letter from Senators with oversight jurisdiction over the Commission and continues to be rebuked for its questionable activities. For example, the Commission has renewed its highly controversial request for sensitive voter data. The Commission's initial request for the data was sent the same day that the Department of Justice issued a request to 44 states seeking information about state-level procedures for maintaining voter registration lists, suggesting possible coordination between the Commission and the Department of Justice. The Commission's requests for voter data received overwhelming bipartisan pushback from state election officials.

State election officials are not alone, and a federal court has also raised concern regarding the Commission's actions. Last month, the Justice Department was forced to apologize in court for the Commission's "chaotic start," and U.S. District Court Judge Colleen Kollar-Kotelly chastised the Commission for its failure to fulfill its promise to disclose relevant documents, calling it "incredible" that the panel failed to do so.<sup>[1]</sup>

The Commission has also been challenged for violating the Presidential Records Act for failing to ensure that Commissioners have secure forms of electronic communication.<sup>[2]</sup> The Presidential Records Act requires federal officials preserve and maintain secure communications.<sup>[3]</sup> The Commission's obligation to be fully transparent is critical to keeping both Congress and the American people apprised of the Commission's actions. Thus far the Senate has received no response regarding the Commission's plans to ensure transparency and its first meeting was closed to the public and made available only via webcast—an apparent lack of adherence to the Federal Advisory Commission Act.

As it prepares for its second meeting, it is clear the Commission is failing to comply with standards set forth by the laws that govern presidential advisory commissions. With so much real work that needs to be done to protect the integrity of our elections, the Commission's focus and behavior thus far are incomprehensible. We strongly urge the Commission to comply fully with the law and focus its attention on real threats to our election system like cyberattacks from foreign adversaries. Prior letters sent the Commission are enclosed here and we request a response to these inquiries by September 25.

Sincerely,

  
Amy Klobuchar  
United States Senator

  
Sheldon Whitehouse  
United States Senator

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<sup>[1]</sup> Hsu, Spencer S. "Trump voting panel apologizes after judge calls failure to disclose information 'incredible'." Aug. 30, 2017. Washington Post.

<sup>[2]</sup> Joint Status Report, 3 (Sept. 5, 2017), *Lawyers' Committee for Civil Rights v. Presidential Advisory Commission on Election Integrity*, D.D.C. (No. 1:17-cv-1354).

<sup>[3]</sup> 44 U.S.C. § 2209.

# United States Senate

WASHINGTON, DC 20510

**Statement by Senator Jeanne Shaheen  
Before the Presidential Advisory Commission on Election Integrity  
Manchester, NH  
September 12, 2017**

Vice Chair Kobach and members of the commission: With the Senate in session, I am unable to attend today's hearing, but I appreciate this opportunity to submit testimony for the record.

On February 9, President Trump asserted that he would have been victorious in the Granite State if not for thousands of people who were bussed into New Hampshire to vote illegally on Election Day. Two weeks earlier, the president said that he lost the popular vote because three to five million people voted illegally. He offered no evidence to support either of these very serious allegations; nor has anyone else. Nonetheless, the president used these claims to justify creating this commission, whose obvious purpose is to lay the groundwork for broad-scale voter suppression laws. Some legislators in Concord have used the same unsubstantiated claims to justify passing new laws making it more difficult to vote in New Hampshire.

Last Thursday, on the far-right website *Breitbart*, the vice chair of this commission used deceptive and irrelevant data to rehash the same false claims that have been debunked time and again by independent analyses and by members of both major parties here in the Granite State. Using slippery words like "it has been reported" and "anecdotally," the vice chair insinuates that thousands of same-day registrants used out-of-state driver's licenses to prove identity and vote illegally. I say "insinuates" because he offers no actual evidence – not a single confirmed case of fraudulent voting. He made no effort to contact voters who had cast ballots but held out-of-state driver's licenses.

The fact is that New Hampshire law clearly states that citizens who live in New Hampshire can vote without a New Hampshire ID. This includes long-time New Hampshire residents who don't drive and don't have a driver's license; it includes thousands of students from other states who live in New Hampshire while attending school; and it includes military personnel from other states who live in New Hampshire while on active duty.

Granite Staters are not gullible or naive, and we do not appreciate those who impugn the integrity of our state's voting systems based on unsubstantiated accusations. Indeed, the vice chair's accusations in *Breitbart* call into question the legitimacy of our elections in New Hampshire for every federal, state, and local office. This is reckless and irresponsible.

The truth is that, here in New Hampshire and across the nation, voter fraud is extremely rare. I am deeply concerned that falsehoods about illegal voting are being spread as a pretext for restricting access to the ballot box. This risks disenfranchising eligible voters and undermining faith in our democracy.

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There is zero evidence of significant voter fraud in the Granite State during the 2016 election. Senior Deputy Secretary of State David M. Scanlan, head of the Election Division, said: "There are some isolated instances of individual voters voting improperly. . . But we haven't had any complaints about widespread voter fraud taking place." Meanwhile, the nonpartisan Brennan Center for Justice has determined that voter fraud happens nationwide as little as 0.00004 percent of the time. A separate, multiyear study by Justice Department senior official Justin Levitt found only 31 credible allegations of voter fraud out of one billion votes cast between 2000 and 2014.

Granite Staters take pride in our state's brand of open and direct democracy, which encourages maximum participation, including by college students and active-duty members of the military who live in our state. It is not the New Hampshire way to make voting unnecessarily difficult or to target specific groups of voters with deliberately onerous ID laws.

I am very concerned that reckless accusations of widespread voter fraud and illegitimate elections in New Hampshire could jeopardize our state's first-in-the-nation presidential primary. Every four years, activists from other states attempt to take away our first-in-the-nation primary, and they will now quote the vice chair of this commission. This is deeply unfortunate and a disservice to the people of New Hampshire.

We must learn from ill-conceived voter ID laws in other states. Striking down the laws passed by the Republican majority in North Carolina's legislature, a unanimous federal court ruled that they "target African Americans with almost surgical precision" and "impose cures for problems that did not exist." Invalidating similar laws in Wisconsin, U.S. District Judge James Peterson wrote: "The Wisconsin experience demonstrates that a preoccupation with mostly phantom election fraud leads to real incidents of disenfranchisement, which undermine rather than enhance confidence in elections, particularly in minority communities."

When candidate Donald Trump claimed that the election would be "rigged," and when President Trump claimed that the electoral process has been massively corrupted by millions of illegal votes, these false assertions have real consequences. They undermine confidence in our elections and democracy, and create a dishonest rationale for voter-suppression laws targeting the poor, the young and minorities.

At the end of the Constitutional Convention in 1787, a citizen asked Benjamin Franklin: "Well, doctor, what have we got – a republic or a monarchy." He famously answered: "A republic, if you can keep it." Fortunately, the great majority of Americans reject falsehoods that discredit our democracy and disenfranchise voters. We still have a robustly democratic republic. And we intend to keep it.