

January 8, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
Washington, DC 20528

Dear Secretary Nielsen:

We write to you regarding the personal voter data obtained by the Presidential Advisory Commission on Election Integrity. We represent the organizations that sued the Commission for various violations of federal law.

By Executive Order issued on January 3, 2018, the President revoked the authorities established by Executive Order 13799 and accordingly terminated the Presidential Advisory Commission on Election Integrity.

However, shortly after the issuance of the Executive Order, former Commission Vice Chair Kris Kobach told several news organizations that he intended to pursue the work of the Commission at the Department of Homeland Security (“DHS”).¹ Mr. Kobach also indicated that the personal data obtained by the Commission would be transferred to the DHS.²

We write to emphasize that neither Mr. Kobach nor the defunct Commission have authority to transfer the data obtained by it to any third party, including the DHS. The disposition of all materials obtained or created by the Commission is subject to multiple federal laws, including the Federal Advisory Committee Act, 5 U.S.C. app. 2, the Federal Records Act, 44 U.S.C. chs. 21, 29–33, and the Presidential Records Act, 44 U.S.C. §§ 2201–2207, under the direction of the Administrator of General Services. 41 C.F.R. pt. 102-3, subpt. D, app. A.

Moreover, accepting or maintaining personal voter file data from Mr. Kobach or the Commission would subject the DHS to obligations under the E-Government Act of 2002, 44 U.S.C. § 3501 note, the Privacy Act of 1974, 5 U.S.C. § 552a, and the Paperwork Reduction Act, 44 U.S.C. §§ 3507–3521.

¹ *Trump disbands Kobach-led voter fraud commission after resistance from states*, Kansas City Star (Jan. 3, 2018), <http://www.kansascity.com/news/politics-government/article192854444.html>; *Kobach says he will advise DHS after election panel’s demise*, Associated Press (Jan. 4, 2018), <http://ksnt.com/2018/01/04/kobach-says-he-will-advise-dhs-after-election-panels-demise/>.

² *Trump Disbands Commission on Voter Fraud*, N.Y. Times (Jan. 3, 2018), <https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html>; *Kris Kobach On What Led to The Disbandment Of Controversial Election Commission*, NPR All Things Considered (Jan. 4, 2018), <https://www.npr.org/2018/01/04/575774092/kris-kobach-on-what-led-to-the-disbandment-of-controversial-election-commission>.

We seek your prompt assurance that the Department of Homeland Security has no intention to accept or maintain any personal data from Mr. Kobach or the Presidential Advisory Commission on Election Integrity.

Sincerely,

Marc Rotenberg, President and Executive Director
ELECTRONIC PRIVACY INFORMATION CENTER

Dale Ho, Director, ACLU Voting Rights Project
AMERICAN CIVIL LIBERTIES UNION

Austin Evers, Executive Director
AMERICAN OVERSIGHT

Wendy Weiser, Democracy Program Director
BRENNAN CENTER FOR JUSTICE

Karen Hobert Flynn, President
COMMON CAUSE

Anne Harkavy, Executive Director
DEMOCRACY FORWARD³

Kristen Clarke, President and Executive Director
LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

Vanita Gupta, President and CEO
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

Sherrilyn Ifill, President and Director-Counsel
NAACP LEGAL DEFENSE FUND

Ian Bassin, Executive Director
PROTECT DEMOCRACY

Robert Weissman, President
PUBLIC CITIZEN

Cc: Administrator of General Services
Congressional Oversight Committees – Chairs and Ranking Members
State Secretaries
National Association of State Secretaries

³ "Democracy Forward represents a party that is adverse to DHS in *Common Cause v. Presidential Advisory Commission on Election Integrity*, No. 17-cv-1398 (D.D.C.)."