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.¹

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.²

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.³

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

² 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).

³ All Your Voter Data Are Belong to Us, Take Care (June 30, 2017) (online at 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.⁴

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 11th cybersecurity executive order—which is focused on improving database safeguards.⁵ 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."

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.⁷

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

⁴ 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); 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).

⁵ 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).

⁶ *Id*.

⁷ 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. 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."

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." He also declared that "The Commission intends to maintain the data on the White House computer system." 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."

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,

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

⁸ 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).

⁹ 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).

¹⁰ 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).

¹¹ Id.

¹² 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/).

or if, it will protect private voter data.¹³ 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.¹⁴

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.¹⁵

FACA also requires the Commission to make its records available to the public.¹⁶ 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.¹⁷

¹³ Id.

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

¹⁵ 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).

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

¹⁷ 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).

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." 18

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. ¹⁹

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." 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.²¹ 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.

¹⁸ *Id*.

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

²⁰ Hatch Act, 5 U.S.C. § 7323.

²¹ 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.²²

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."²³

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."

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." ²⁵

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

²² 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/lawyerscommittee-civil-rights-law-files-hatch-act-complaint-kris-kobach/).

²³ 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).

²⁴ *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).

²⁵ 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*.²⁶ 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.²⁷ 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.²⁸

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."

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?

²⁶ 133 S. Ct. 2612 (2013).

²⁷ Brennan Center for Justice, Voting Laws Roundup 2017 (online at www.brennancenter.org/analysis/voting-laws-roundup-2017).

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

²⁹ 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).

- 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.

Vice President Michael Pence Page 11

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

Bennie G. Thompson Ranking Member

Committee on Homeland Security

John Conyers, Jr. Ranking Member

Committee on the Judiciary

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