CHARTER

PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY

1. **Committee's Official Designation**. Presidential Advisory Commission on Election Integrity ("Commission").

2. **Authority**. The Commission is established in accordance with Executive Order 13799 of May 11, 2017, "Establishment of a Presidential Advisory Commission on Election Integrity," ("Order") and the provisions of the Federal Advisory Committee Act ("FACA"), as amended (5 U.S.C. App.).

3. **Objectives and Scope of Activities**. The Commission will, consistent with applicable law and the Order, study the registration and voting processes used in Federal elections. The Commission shall be solely advisory and shall submit a report to the President of the United States ("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 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.

4. **Description of Duties**. The Commission will function solely as an advisory body.

5. **Agency or Official to Whom the Committee Reports**. The Commission shall provide its advice and recommendations to the President.

6. **Agency Responsible for Providing Support**. The General Services Administration ("GSA") shall provide the Commission with such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission, to the extent permitted by law and on a reimbursable basis. However, the President's designee will be responsible for fulfilling the requirements of subsection 6(b) of the FACA.

7. **Estimated Annual Operating Costs and Staff Years**. The estimated annual costs to operate the Commission are approximately $250,000 in FY2017 and approximately $250,000 in FY2018, as needed, including approximately three full-time equivalent employees (FTEs) over the duration of the Commission.

8. **Designated Federal Officer**. Pursuant to 41 CFR § 102-3.105 and in consultation with the chair of the Commission, the GSA Administrator shall appoint a full-time or part-time federal employee as the Commission's Designated Federal Officer ("DFO"). The DFO will approve or

call all Commission meetings, prepare or approve all meeting agendas, attend all Commission meetings and any subcommittee meetings, and adjourn any meeting when the DFO determines adjournment to be in the public interest. In the DFO's discretion, the DFO may utilize other Federal employees as support staff to assist the DFO in fulfilling these responsibilities.

9. **Estimated Number and Frequency of Meetings**. Meetings shall occur as frequently as needed, called, and approved by the DFO. It is estimated the Commission will meet five times at a frequency of approximately 30-60 days between meetings, subject to members' schedules and other considerations.

10. **Duration and Termination**. The Commission shall terminate no more than two (2) years from the date of the Executive Order establishing the Commission, unless extended by the President, or thirty (30) days after it presents its final report to the President, whichever occurs first.

11. **Membership and Designation**.

    (a) The Vice President shall chair the Commission, which shall be composed of not more than fifteen (15) additional members.

    (b) Members shall be appointed by the President of the United States and shall include individuals with knowledge and experience in elections, election management, election fraud detection, and voter integrity efforts, and any other individuals with knowledge or experience determined by the President to be of value to the Commission. Members of the Commission may include both regular Government Employees and Special Government Employees.

    (c) The Vice President may select a Vice Chair from among those members appointed by the President, who may perform the duties of the chair if so directed by the Vice President. The Vice President may also select an executive director and any additional staff he determines necessary to support the Commission.

    (d) Members of the Commission will serve without additional compensation. Travel expenses will be allowed, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707), consistent with the availability of funds.

12. **Subcommittees**. The Chair of the Commission, in consultation with the DFO, is authorized to create subcommittees as necessary to support the Commission's work. Subcommittees may not incur costs or expenses without prior written approval of the Chair or the Chair's designee and the DFO. Subcommittees must report directly to the Commission, and must not provide advice or work products directly to the President, or any other official or agency.

13. **Recordkeeping**. The records of the Commission and any subcommittees shall be maintained pursuant to the Presidential Records Act of 1978 and FACA.

14. **Filing Date**. The filing date of this charter is June 23, 2017.

From:	(b)(6)
To:	
Subject:	FW: POLITICO's Morning Cybersecurity, presented by the Auto Alliance: Ramifications of the State Department cyber shakeup — Trump election commission considers cybersecurity — Two cyber-related bills get House action
Date:	2017/07/20 11:53:56
Priority:	Normal
Type:	Note

(b)(5)

From: Morning Cybersecurity [mailto:morningcybersecurity@politico.com]
Sent: Thursday, July 20, 2017 10:05 AM
To: (b)(6)
Subject: POLITICO's Morning Cybersecurity, presented by the Auto Alliance: Ramifications of the State Department cyber shakeup — Trump election commission considers cybersecurity — Two cyber-related bills get House action

By Tim Starks | 07/20/2017 10:00 AM EDT

With help from Eric Geller and Martin Matishak

THE STATE OF STATE - The State Department may be preparing to close its cyber office, but the White House expects the agency to continue its active international engagement on the issue. "I am certainly counting on [the] State Department to carry a lot of the mission forward in [negotiating] those norms and doing those international agreements," White House cyber coordinator Rob Joyce told reporters on Wednesday after delivering a keynote address at a USTelecom event. His comments came hours after Bloomberg reported that Secretary of State Rex Tillerson was planning to shutter the office and reassign its personnel, and one day after POLITICO first reported that Coordinator for Cyber Issues Christopher Painter was leaving the State Department at the end of July. "They understand how important cybersecurity is," Joyce said of Tillerson and his team. "I am confident that Secretary Tillerson is not going to impair cybersecurity."

Joyce declined to comment on State's cyber shakeup, which reportedly involves moving the cyber coordinator's team to the Economic Bureau, where State already has a telecommunications policy office. "As I understand, no final decisions about restructuring the shape of that department have been made," he told reporters, echoing the State Department's own denial that changes were locked in. But a person familiar with internal planning confirmed the personnel shuffle. "I think it's a done deal," the source said. According to this person, Deputy Coordinator for Cyber Issues Michele Markoff, a veteran cyber diplomat, will remain at State, though the office will be "trimmed." James Lewis, a cyber expert at the Center for Strategic and International Studies, said moving the cyber team to the Economic Bureau and downgrading the

coordinator is "a recipe for failure." "This is not an economic issue and none of the [cyber diplomats'] foreign counterparts come from economic agencies," he told MC.

Lawmakers aren't happy with Tillerson's decision. "Closing @StateDept cyber office weakens our ability to strengthen US cybersecurity & resolve conflicts in cyberspace," tweeted Sen. Gary Peters, a Michigan Democrat. In the State Department funding bill that it marked up on Wednesday, the House Appropriations Committee recommended keeping the cyber office and set aside $5.5 million for it. At the markup, Rep. Dutch Ruppersberger, a committee member and former ranking member of the House Intelligence Committee, blasted the Trump administration for planning to close the office. "I want to know why the administration wants to close or reorganize a front-burner mission like cybersecurity," he said. "Instead of closing this office and demoting its people, we should be elevating it and promoting them."

HAPPY THURSDAY and welcome to Morning Cybersecurity! Yikes. That's a lot of plastic. Send your thoughts, feedback and especially tips to tstarks@politico.com, and be sure to follow @timstarks, @POLITICOPro, and @MorningCybersec. Full team info below.

TRUMP ELECTION COMMISSION MIGHT CYBER IT UP - Donald Trump's Presidential Advisory Commission on Election Integrity held its first meeting Wednesday, and vice chairman Kris Kobach raised the possibility that the panel would go beyond scrutinizing voter fraud and into the cybersecurity of voter databases. One commission member, Indiana Secretary of State Connie Lawson - the new president of the National Association of Secretaries of State - said that the commission could help improve the relationship between election officials and the federal government when it comes to protecting election systems. She faulted the Homeland Security Department for not communicating adequately with states on cybersecurity.

"We continue to work with secretaries of state and other state and local election officials to improve our information sharing processes, based on ongoing dialogue and building trusted relationships," a DHS official said. "Earlier this month, acting deputy undersecretary Bob Kolasky met with NASS officials at their annual conference in Indianapolis to discuss ways to create a successful partnership, recognizing the critical role the election infrastructure subsector plays in our democracy and the important work being done by state and local officials."

MORE 'STATES LOVE DHS' - Homeland Security Secretary John Kelly said Wednesday evening that states are hurting themselves by pushing away the department on election security. "All of the input I get from all of the states are, we don't want you involved in our election process," he said at the Aspen Security Forum. But he thinks states should accept DHS's offer to help if requested. "I think they're nuts if they don't," he said. Otherwise, the federal role, according to Kelly, "is just watch these attacks, watch the activity, not only nation-states but other actors." Additionally, if any federal bureaucracy responsibility for overall cybersecurity is adjusted, "DHS should be in charge of defensive cyber and should be the coordinator," Kelly said.

SUBCOMMITTEE GIVES COMPUTERS THE WHEEL - A House Energy and Commerce subcommittee approved the first bill ever to promote self-driving cars. The measure, marked up by the Digital Commerce and Consumer Protection subpanel, included a key cybersecurity provision stipulating that any manufacturer entering the new marketplace must have digital

security practices in place before their vehicles can be sold. "There are potential benefits for safety in the deployment of self-driving cars," said Rep. Frank Pallone , the full committee's top Democrat, in a statement. "There are also challenges, such as increased cybersecurity and privacy exposure risks and safety issues regarding the interaction between human-operated and computer-operated vehicles." Despite the security-enhancing provisions, Pallone wants the bill to go even further on cybersecurity, and called for more funding to help the government address digital threats in automated vehicles. He vowed to work with Republicans to resolve the issues.

GRID SECURITY BILL MOVES - The House passed legislation this week that would allow the federal government to provide funding aid to states so they can implement, review or revise their energy to take cybersecurity threats into account. The bill (H.R. 3050), sponsored by Rep. Fred Upton , passed by voice vote. "Here in Michigan our energy infrastructure must be prepared for a wide variety of hazards including floods, tornadoes, storms, snow, fuel supply disruptions, physical and cyber threats, and other catastrophic events," Upton said. "It's been 25 years since we've properly addressed energy security planning and it's past time for a legislative update. Our common-sense, bipartisan solution will directly help states like Michigan deal with these ever-evolving threats."

** **A message from the Auto Alliance**: Who's watching out for auto cyber threats? The Auto-ISAC is. Automakers proactively joined together to establish an information sharing community to enhance cybersecurity awareness and collaboration across the global automotive industry. Find more here: http://bit.ly/2tZXzo2 **

MAYBE WE CAN HELP - Current and former business and government leaders on Wednesday launched a nonprofit group dedicated to helping small and medium-size businesses reduce their cyber risks. The Cyber Readiness Institute "will convene senior leaders of global companies from across sectors to develop best practices for managing the people, processes, and technology needed for effective cybersecurity," according to its mission statement. It will also address the workforce development challenges that exacerbate cyber risks. The institute's co-chairs are Sam Palmisano, the former IBM CEO who co-led former President Barack Obama's cybersecurity commission; Ajay Banga, the president and CEO of MasterCard; Satya Nadella, the CEO of Microsoft; and Penny Pritzker, who was Obama's third Commerce secretary. "By coming together, sharing best practices, developing practical resources and effectively distributing these resources throughout the value chain, we hope to enable companies of all sizes to be more strategic and resilient in managing cybersecurity risk," they said in a statement.

CYBER CRIME FIGHTING APP HITS THE MARKETPLACE - A private firm in Atlanta has become the first company to employ a government-developed app designed to help avoid cyberattacks. zSofTech Solutions, a small business that specializes in computing products, licensed the FLOWER software app, which was developed by the Energy Department's Pacific Northwest National Laboratory and transitioned for private-sector use by the Homeland Security Department's Science and Technology Directorate, the lab announced Tuesday. The app, which stands for Network FLOW AnalyzER, inspects networks and connections between computers and determines if there is any suspicious activity that requires greater scrutiny. "The licensing of FLOWER by a small business is a promising step in getting this much-needed technology adopted by enterprises seeking to increase their cybersecurity," said Nadia Carlsten, the

transition to practice program manager in S&T's Cyber Security Division, in a statement. FLOWER is the 10th cybersecurity technology licensed through the DHS effort.

IF YOU CAN'T JUST USE SIGNAL ... - Government agencies have a new option for encrypted voice and text conversations. BlackBerry today announced an end-to-end encrypted conversation platform called SecuSUITE for Government that works on iOS, Android and BlackBerry smartphones. SecuSUITE is certified by the NSA as part of its National Information Assurance Partnership program, and BlackBerry touted that it was the only certified platform supporting encrypted calls on all three mobile operating systems. To ensure that data cannot be intercepted, SecuSUITE runs on servers installed at an agency's facility. "It is highly reliable and delivers secure calls over carrier networks the same as secure calls over Wi-Fi," BlackBerry said in a statement, "and because it works across all networks, there is no need to lock an organization into a single carrier."

RECENTLY ON PRO CYBERSECURITY - Senior Trump adviser Jared Kushner will appear before the Senate Intelligence Committee next week as part of its Russia investigation. ... Donald Trump Jr. and former Trump campaign manager Paul Manafort will be called to testify before the Senate Judiciary Committee as part of its Russia probe. ... Robert Storch, Trump's nominee for NSA inspector general, told senators he would scrutinize the spy agency's procedures for vetting contractors. ... The White House is worried Moscow might retaliate after the General Services Administration made it harder for federal agencies to buy products from Russian cybersecurity company Kaspersky Lab.

TWEET OF THE DAY - Ah yes, the notorious "Swarming Orca" APT.

REPORT WATCH

- More than half of retailers surveyed have had a data breach in the past year, and nearly 20 percent of the respondents consider themselves "very" or "extremely" vulnerable, according to a new poll out today by Thales and 451 Research. Over the past year, 19 percent of retailers suffered a breach, the survey found, down from 22 percent last year, and less than other U.S. industries. "It's encouraging that yearly retail data breach rates have finally started to drop, but rates are still quite high," said Peter Galvin, vice president of strategy for Thales e-Security. "With tremendous sets of detailed customer behavior and personal information in their custody, retailers are a prime target for hackers so should look to invest more in data-centric protection."

PEOPLE ON THE MOVE

- Ken Gonzalez, a former senior executive at FireEye and McAfee, is joining Trident Capital Cybersecurity as a managing director.

QUICK BYTES

- Trump says he wouldn't have appointed Jeff Sessions as attorney general if he had known Sessions would recuse himself in the Russia investigation. The New York Times.

- A telecom lobbying group took issue with a DHS report on mobile security vulnerabilities. Motherboard.

- Deputy Attorney General Rod Rosenstein suggested he didn't approve of former FBI Director James Comey leaking accounts of his conversations with the president. The Washington Post.

- The Associated Press considers the dangers of cyberattacks that hit Ukraine clinics and pharmacies.

- Hackers made off with $32 million worth of a cryptocurrency. CyberScoop.

- Are movie studios cutting planned film depictions of Russian President Vladimir Putin because they're scared of getting hacked? Hollywood Reporter.

- Michael Sulmeyer on the Cyber Command/NSA split. War on the Rocks.

- Rep. Lou Correa introduced a resolution declaring that the United States should support programs that can help students prepare for cybersecurity careers and develop ethical hacking skills. Medium.

That's all for today. One word.

Stay in touch with the whole team: Cory Bennett (cbennett@politico.com, @Cory_Bennett); Bryan Bender (bbender@politico.com, @BryanDBender); Eric Geller (egeller@politico.com, @ericgeller); Martin Matishak (mmatishak@politico.com , @martinmatishak) and Tim Starks (tstarks@politico.com, @timstarks).

** **A message from the Auto Alliance:** Who's watching out for auto cyber threats? The Auto-ISAC is. Automakers proactively joined together and formed a global information sharing community - the Automotive Information Sharing and Analysis Center (Auto-ISAC)- to enhance cybersecurity awareness and collaboration across the global automotive industry. Today's vehicles are benefiting from a wave of technology innovation, making vehicle cybersecurity a critical focus for the future of the connected vehicle. Automakers, their suppliers and commercial vehicle companies are committed to strong cyber security protections, implementing security features in every stage of the design and manufacturing process, collaborating with public and private research groups to share solutions and participating in multiple cyber forums on emerging issues. Find more here: http://bit.ly/2tZXzo2 **

To view online:
http://www.politico.com/tipsheets/morning-cybersecurity/2017/07/20/ramifications-of-the-state-department-cyber-shakeup-221432

To change your alert settings, please go to https://secure.politico.com/settings

---

Image removed by sender.

This email was sent to (b)(6) by: POLITICO, LLC 1000 Wilson Blvd. Arlington, VA, 22209, USA

Image removed by sender.

Please click here and follow the steps to unsubscribe.

Image removed by sender.

Sender:	(b)(6)
Recipient:	
Sent Date:	2017/07/20 11:53:56

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

From:	(b)(6)
To:	"Nielsen, Kirstjen (b)(6) (b)(6)
CC:	
Subject:	Election Integrity Commission
Date:	2017/07/03 15:43:41
Priority:	Normal
Type:	Note

Here's an email to send to the VPOTUS's office – not sure whom we're sending this to, Josh is on the way out, right?

(b)(5)

Sender:	(b)(6)
Recipient:	"Nielsen, Kirstjen (b)(6) (b)(6)

	(b)(6)
Sent Date:	2017/07/03 15:43:39
Delivered Date:	2017/07/03 15:43:41

From:	(b)(6)
To:	
Subject:	FW: Question re DHS involvement
Date:	2017/05/16 18:39:05
Priority:	Normal
Type:	Note

(b)(6) - checked with NPPD OLA and OPA on the HSGAC minority staff inquiry below. Wanted to check with you before I respond (b)(5) (b)(5) Thanks much. (b)(6)

(b)(6)

From: (b)(6)

Sent: Tuesday, May 16, 2017 6:24:41 PM

To: Lapan, David; (b)(6)

Cc (b)(6) Corbin, Susan

Subject: RE: Question re DHS involvement

Just checked and it does not appear to be NPPD.

From: Lapan, David

Sent: Tuesday, May 16, 2017 4:35 PM

To (b)(6)

Cc (b)(6) Corbin, Susan
(b)(6)

Subject: RE: Question re DHS involvement

Adding (b)(6) from NPPD to check/address...

From: (b)(6)

Sent: Tuesday, May 16, 2017 4:34 PM

To: Lapan, David (b)(6)

Cc (b)(6); Corbin, Susan
(b)(6)

Subject: FW: Question re DHS involvement

Dave -- below from HSGAC minority staff director. Any press inquiries or messaging on this issue? Thx much. (b)(6)

(b)(6)

From: Daum, Margaret (HSGAC)

Sent: Tuesday, May 16, 2017 4:25:42 PM

To: (b)(6)

Subject: Question re DHS involvement

Hi (b)(6)

Hope all's well. We're trying to track down whether/how DHS is involved in the new Presidential Advisory Commission on Election Integrity. Last week

this article in the Kansas City Star quoted Kobach saying that the commission would be staffed full time by employees of the Office of the Vice President and DHS. When HSGAC staff asked Jay Harper on our call this
morning he said that he was not aware of DHS's involvement, but that, if they are involved, it would probably be through NPPD. Can you confirm whether DHS will be providing staffing for the Commission?

Thanks in advance,

Margaret

Margaret E. Daum

Minority Staff Director

Senator Claire McCaskill, Ranking Member

Senate Homeland Security &Governmental Affairs Committee

Sender:	(b)(6)
Recipient:	
Sent Date:	2017/05/16 18:39:05

From:	(b)(6)
To:	"Nielsen, Kirstjen (b)(6) (b)(6)
CC	
Subject:	RE: CK list
Date:	2017/05/11 23:13:21
Priority:	Normal
Type:	Note

Kobach:

- Vice Chair of the Commission on Election Integrity, signed out by EO today. VPOTUS is the Chair.
- 12 member commission, current and former secretaries of state to study voter fraud related issues.
    - Laws, rules, policies, activities, strategies, and practices that enhance confidence in integrity of voting processes
    - Laws….that undermine confidence in the integrity of voting processes
    - Vulnerabilities in systems that could lead to improper voting registrations and voting (I DO NOT read this as cyber-related)
- Report due in 2018, may include recommendations, but the commission is solely advisory and expires 30 days after report.
- Support to the Commission will be provided by GSA (I've seen reporting that DHS will provide support, but it's not in the EO).

NPPD Reorg

- House Homeland accepted our changes, though they don't like the name (b)(5) (b)(5)
- I'm going to meet w/ Senate HSGAC next Tuesday (along w/ a cpl NPPD reps – (b)(6) and likely (b)(6) to lay out basic vision. Apparently there's bipartisan/bicameral agreement on a bill. (b)(5) (b)(5)
- House will mark up on June 6th.

- Draft language TDA attached.
- We're working up a "what would NPPD look like" set of slides that'll cover budget, personnel, facilities, etc. Should have that Monday.
- Lots more to talk about here – I'll work w/ (b)(6) to find time next week to discuss.

HSGAC Hearing

- I have not seen a formal DHS readout, but I've spoken to (b)(6) Symantec and have a mail out to Chabinsky.
- Ultimately, the threat environment is scary, lots to do, need the EO, DHS is key, etc.
- Have requested a formal readout from OLA

90 Day Strategies

(b)(5)

-
-
-
-

Cyber Topics List

- Working on this with (b)(6) and (b)(6) have sent them a list of a dozen or so things, want them to add and will get back to you
- Will have something to you tomorrow

(b)(6)
Department of Homeland Security
(b)(6)

From: Nielsen, Kirstjen
Sent: Thursday, May 11, 2017 8:15 PM
To: (b)(6) [redacted]
Cc: [redacted]
Subject: CK list

--what is Kobach doing? Integrity of elections or ethics of elections or…?
--NPPD reorg update- do we have something I can read/review?
--hearing yesterday on cyber with McCaskill- what happened? Do we have a read out?
--what is status of the 90 day strategies? There were two right?
--need list of cyber topics. He wants briefs and paper to read. Send me list and let's triage

Kirstjen Nielsen
Chief of Staff
Department of Homeland Security
(b)(6) [redacted]

<p cla╛ ñ≡«▄ª╢ ╘≤ΘThis message and any attachments may contain agency deliberative communications, which may be privileged and not subject to disclosure outside the agency or to the public. Please consult with the Department of Homeland Security before disclosing any information contained in this email.

Sender:	(b)(6) [redacted]
Recipient:	"Nielsen, Kirstjen (b)(6) [redacted] (b)(6) [redacted]
Sent Date:	2017/05/11 23:13:20
Delivered Date:	2017/05/11 23:13:21

From:	(b)(6)
To:	"Daum, Margaret (HSGAC) (b)(6)
Subject:	RE: Question re DHS involvement
Date:	2017/05/16 16:31:38
Priority:	Normal
Type:	Note

Let me check, Margaret. Thanks much. Copying Susan for her awareness as well. Will be back in touch. (b)(6)

(b)(6)

(b)(6)

From: Daum, Margaret (HSGAC)

Sent: Tuesday, May 16, 2017 4:25:42 PM

To: (b)(6)

Subject: Question re DHS involvement

Hi (b)(6)

Hope all's well. We're trying to track down whether/how DHS is involved in the new Presidential Advisory Commission on Election Integrity. Last week

this article in the Kansas City Star quoted Kobach saying that the commission would be staffed full time by employees of the Office of the Vice President and DHS. When HSGAC staff asked Jay Harper on our call this morning he said that he was not aware of DHS's involvement, but that, if they are involved, it would probably be through NPPD. Can you confirm whether DHS will be providing staffing for the Commission?

Thanks in advance,

Margaret

Margaret E. Daum

Minority Staff Director

Senator Claire McCaskill, Ranking Member

Senate Homeland Security &Governmental Affairs Committee

Sender:	(b)(6)
Recipient:	"Daum, Margaret (HSGAC (b)(6)
Sent Date:	2017/05/16 16:31:37
Delivered Date:	2017/05/16 16:31:38

From:	(b)(6)
To:	"Nielsen, Kirstjen (b)(6) (b)(6)
CC:	(b)(6)
Subject:	RE: CK list
Date:	2017/05/11 23:32:46
Priority:	Normal
Type:	Note

I picked it apart this afternoon and didnt end up in cyber land. Will have time with (b)(6) in the am and will get his take.

(b)(6)
Department of Homeland Security
(b)(6)

From: Nielsen, Kirstjen
Sent: Thursday, May 11, 2017 11:17:37 PM
To: (b)(6)
Cc:
Subject: RE: CK list

(b)(6)
Thanks very helpful
One bold return
I will find time on Monday- (b)(6) need substantial time with (b)(6) will look

---

From: (b)(6)
Sent: Thursday, May 11, 2017 11:13 PM
To: Nielsen, Kirstjen (b)(6)
Cc: (b)(6)
Subject: RE: CK list

Kobach:

- Vice Chair of the Commission on Election Integrity, signed out by EO today. VPOTUS is the Chair.
- 12 member commission, current and former secretaries of state to study voter fraud related issues.
  - Laws, rules, policies, activities, strategies, and practices that enhance confidence in integrity of voting processes
  - Laws….that undermine confidence in the integrity of voting processes

- Vulnerabilities in systems that could lead to improper voting registrations and voting (I DO NOT read this as cyber-related)

- Report due in 2018, may include recommendations, but the commission is solely advisory and expires 30 days after report.
- Support to the Commission will be provided by GSA (I've seen reporting that DHS will provide support, but it's not in the EO).

S1 READS THIS AS CYBER AND CI- CAN WE VERIFY THEY AREN'T PICKED UP IN THIS… FRANKLY WOULD BE WEIRD IF IT DIDN'T

NPPD Reorg

- House Homeland accepted our changes, though they don't like the name (b)(5) (b)(5)
- I'm going to meet w/ Senate HSGAC next Tuesday (along w/ a cpl NPPD reps – (b)(6) and likely (b)(6) to lay out basic vision. Apparently there's bipartisan/bicameral agreement on a bill. (b)(5) (b)(5)
- House will mark up on June 6th.
- Draft language TDA attached.
- We're working up a "what would NPPD look like" set of slides that'll cover budget, personnel, facilities, etc. Should have that Monday.
- Lots more to talk about here – I'll work w/ Emily to find time next week to discuss.

HSGAC Hearing

- I have not seen a formal DHS readout, but I've spoken to Jeff Greene/Symantec and have a mail out to Chabinsky.
- Ultimately, the threat environment is scary, lots to do, need the EO, DHS is key, etc.
- Have requested a formal readout from OLA

90 Day Strategies

- (b)(5)
-
-
-

Cyber Topics List

- Working on this with (b)(6) and (b)(6) have sent them a list of a dozen or so things, want them to add and will get back to you
- Will have something to you tomorrow

(b)(6)

Department of Homeland Security
(b)(6)

From: Nielsen, Kirstjen
Sent: Thursday, May 11, 2017 8:15 PM
To: (b)(6)
Cc:
Subject: CK list

--what is Kobach doing? Integrity of elections or ethics of elections or...?
--NPPD reorg update- do we have something I can read/review?
--hearing yesterday on cyber with McCaskill- what happened? Do we have a read out?
--what is status of the 90 day strategies? There were two right?
--need list of cyber topics. He wants briefs and paper to read. Send me list and let's triage

Kirstjen Nielsen
Chief of Staff
Department of Homeland Security
(b)(6)

This message and any attachments may contain agency deliberative communications, which may be privileged and not subject to disclosure outside the agency or to the public. Please consult with the Department of Homeland Security before disclosing any information contained in this email.

Sender:	(b)(6)
Recipient:	"Nielsen, Kirstjen (b)(6) (b)(6)
Sent Date:	2017/05/11 23:32:45
Delivered Date:	2017/05/11 23:32:46

From:	Lapan, David (b)(6) (b)(6)
To:	"Hamilton, Gene (b)(6) (b)(6)"
CC:	(b)(6)
Subject:	RE: Draft RTQ for voter commission
Date:	2017/07/06 08:59:21
Priority:	Normal
Type:	Note

Agree.

(b)(5)

From: (b)(6)
Sent: Thursday, July 6, 2017 8:46 AM
To: Lapan, David (b)(6) Hamilton, Gene (b)(6)
Cc: (b)(6)
(b)(6)
Subject: RE: Draft RTQ for voter commission

This is actually a pretty good article and favorable to DHS:

http://www.politico.com/magazine/story/2017/07/03/what-is-kris-kobach-up-to-215332

(b)(6)
Department of Homeland Security
(b)(6)

From: Lapan, David
Sent: Thursday, July 06, 2017 7:44:52 AM
To: Hamilton, Gene; (b)(6)
Cc: (b)(6)
Subject: Draft RTQ for voter commission

The President's May 11, 2017 Executive Order on the Establishment of Presidential Advisory Commission on Election Integrity directed that "Relevant executive departments and agencies shall endeavor to cooperate with the Commission," and that the Executive Order "shall be implemented consistent with applicable law." When asked to provide the Presidential Advisory Commission on Election Integrity data for legal permanent residents and visa holders, USCIS will partner with data owners and comply with the request, within the bounds of law and federal regulation. Further, the National Voter Registration Act of 1993 (NVRA) requires that persons registering to vote in federal elections affirm they are United States Citizens.

IF ASKED:
Under U.S. law, it is a crime – punishable by a fine and up to one year in prison – for an alien to vote in a federal election. Any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.
In addition, any false statement concerning an applicant's citizenship status that is made on a registration form submitted to election authorities is a crime.

Background:
Pursuant to 18 U.S.C. § 611, it is a crime – punishable by a fine and up to one year in prison – for an alien to vote in a federal election.
Pursuant to 8 U.S.C. § 1227, any alien who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation is deportable.
Pursuant to 42 U.S.C. § 1973gg-10(2) any false statement concerning an applicant's citizenship status that is made on a registration form submitted to election authorities is a crime.
Pursuant to 18 U.S.C. § 911 knowing and willful false assertions of United States citizenship in order to vote are punishable by up to three years in prison.
Pursuant to 18 U.S.C. § 1015(f) it is a criminal offense for an individual to make a false statement or claim that he or she is a citizen of the United States in order to register or to vote.

David Lapan
Deputy Assistant Secretary for Media Operations/Press Secretary
Department of Homeland Security
(b)(6)

Sender:	Lapan, David (b)(6) (b)(6)
Recipient:	(b)(6) "Hamilton, Gene (b)(6) (b)(6)

	(b)(6)
Sent Date:	2017/07/06 08:59:20
Delivered Date:	2017/07/06 08:59:21

From:	OGC LCD Litigation (b)(6) (b)(6)
To:	"Palmer, David (b)(6) (b)(6) "Hamilton, Gene (b)(6) (b)(6) "Hoffman, Jonathan (b)(6) (b)(6) "Lapan, David (b)(6) (b)(6) "Corbin, Susan < (b)(6) (b)(6)
CC:	"OGC LCD Litigation (b)(6) (b)(6)
Subject:	Response Requested: Common Cause - (b)(5)
Date:	2017/08/08 15:37:51
Priority:	Normal
Type:	Note

Good afternoon,

(b)(5),(b)(6)

Thank you,

(b)(6)

Attorney-Advisor (Privacy)
Legal Counsel Division,
Office of the General Counsel

U.S. Department of Homeland Security
(b)(6) Office)
Mobile)
E-mail: (b)(6)

This communication, along with any attachments, may contain confidential and legally privileged information. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please reply to the sender and delete this message.

Sender:	OGC LCD Litigation (b)(6) (b)(6)
Recipient:	"Palmer, David (b)(6) (b)(6) "Hamilton, Gene (b)(6) (b)(6) "Hoffman, Jonathan (b)(6) (b)(6) "Lapan, David (b)(6) (b)(6) "Corbin, Susan (b)(6) (b)(6) "OGC LCD Litigation (b)(6) (b)(6)
Sent Date:	2017/08/08 15:37:50
Delivered Date:	2017/08/08 15:37:51

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

COMMON CAUSE 805 15th Street N.W. Washington, D.C. 20005, *Plaintiff*, vs. PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY The White House 1600 Pennsylvania Avenue, N.W. Washington, D.C. 20405, and U.S. DEPARTMENT OF HOMELAND SECURITY 245 Murray Lane, S.W. Washington, D.C. 20528, and U.S. SOCIAL SECURITY ADMINISTRATION 6401 Security Boulevard Baltimore, MD 21235, *Defendants*.	Case No.

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff, Common Cause, hereby sues Defendants, Presidential Advisory Commission on Election Integrity ("PACEI" or the "Commission"), the U.S. Department of Homeland Security ("DHS"), and the U.S. Social Security Administration ("SSA"), and alleges as follows.

Introduction

1. This is an action under the Privacy Act of 1974, 5 U.S.C. § 552a(e)(7), and the Administrative Procedure Act (APA), 5 U.S.C. § 706, to halt the unlawful collection,

maintenance, use, and dissemination of the sensitive and personal voting data of millions of Americans by the Commission.

2. In the wake of the Watergate scandal and revelations that the White House had compiled information on individuals with opposing political viewpoints, Congress passed the Privacy Act to regulate the collection, maintenance, use, and dissemination of sensitive personal information by federal agencies. Among other safeguards, the Act proscribes the collection of information that "describ[es] how any individual exercises rights guaranteed by the First Amendment." 5 U.S.C. § 552a(e)(7).

3. After campaigning on unsubstantiated claims of voter fraud and rigged elections, President Donald J. Trump asserted that he "won the popular vote if you deduct the millions of people who voted illegally." Within days of his inauguration, President Trump called for "a major investigation into VOTER FRAUD."

4. The Commission was created with the aim of examining this purported voter fraud and has opened a broad and unprecedented investigation into Americans' voting habits and political affiliations. The Commission's first project is to assemble a national voter file and compare this information to data sets maintained by other federal agencies (including the Department of Homeland Security and the Social Security Administration) in order to discover the names of individuals that it believes are ineligible to vote. To carry out this review, it initially gave all 50 states and the District of Columbia a deadline of July 14, 2017 to comply with a sweeping request for their residents' voting and other personal data, including information regarding the quintessentially First Amendment-protected activities of voting history and party affiliation.

5. The Commission initially sought to have states upload the voting data to a Department of Defense website, from which the data would then be transferred to White House computers. But after the Court in a separate lawsuit filed against the Commission inquired of the Government if the Department of Defense should be joined as a defendant, the Commission abruptly shifted course to "repurpos[e]" a computer system within the White House's Information Technology "enterprise" to collect, maintain, and use the data. *See Elect. Privacy Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, No. 1:17-cv-1320 (CKK) (D.D.C.) (EPIC lawsuit). And when asked by the Court to describe the involvement of other federal agencies in this enterprise, the Government stated that the "mechanics" of it were "something that may not be appropriate to say in a public setting." *See id.*

6. The Privacy Act's protections—designed to curb this very type of encroachment on citizens' First Amendment activities by an earlier White House—cannot be so circumvented. The Commission's collection, maintenance, and use of this data in cooperation with DHS and SSA, among other federal agencies either within or outside the White House,[1] violates both the Privacy Act and the APA. Plaintiff therefore seeks to enjoin Defendants from collecting, maintaining, using, or disseminating this data and to destroy or return any such data that has already been collected and is being maintained in violation of the law.

[1] Plaintiff intends to seek discovery from the federal defendants and third-parties, if necessary, to determine whether additional agencies should be added as defendants based on their activities with regard to the electronic databases described herein. *Bailey v. U.S. Marshal Serv.*, 584 F. Supp. 2d 128, 134 (D.D.C. 2008) ("[I]t is generally proper to allow discovery to determine the identity of unknown defendants.").

Parties

7. Plaintiff, Common Cause, is a nonprofit corporation organized and existing under the laws of the District of Columbia. Common Cause is one of the nation's leading democracy reform organizations and has over 900,000 members nationwide. Common Cause also has a strong presence in 30 states, with either staff or volunteer boards. Since its founding in 1970, Common Cause has been dedicated to the promotion and protection of the democratic process, such as the right of all citizens, including its eligible members, to be registered for and vote in fair, open, and honest elections. Common Cause brings this action on behalf of itself and its members.

8. Common Cause conducts significant nonpartisan voter-protection, advocacy, education, and outreach activities to ensure that voters are registered to vote and have their ballots counted as cast. Common Cause also advocates for policies, practices, and legislation – such as automatic and same-day registration – that facilitate voting for eligible voters and ensure against disenfranchisement. Common Cause opposes efforts that burden registration and/or voting, including restrictive voter identification laws, partisan gerrymandering, and any other effort that could potentially chill citizens' rights to register or stay registered. Common Cause advocates the safeguarding of personal information, in keeping with the dictates of both state and federal law.

9. Common Cause and its members have been and will be injured by the Defendants' activities, including the efforts to obtain personal and private information regarding voter affiliation, vote history, and other related details. Common Cause has already expended staff time and resources to engage in non-litigation related outreach and communications efforts to oppose the impermissible collection of voter information as

sought by the Commission, diverting resources from its core activities. These expenditures are aimed at counteracting the harm that the Commission's impermissible attempt to collect voter information will cause to Common Cause's mission of encouraging and facilitating voter participation and engagement.

10. The Commission's attempt to collect voter information will also harm Common Cause's and its members' efforts to encourage voter registration and participation. For voters and prospective voters facing political polarization, the threat that the federal government will monitor their electoral participation and even their party affiliations is deeply troubling and has deterred and will continue to deter the exercise of their First Amendment-protected rights to express their views through the ballot box. Further, the Commission's effort to collect voter information may cause registrants and voters, including Common Cause members, to cancel their registration status (as has already occurred in Florida and Colorado) or forgo registering and voting altogether. Such actions would directly undo the work to which Common Cause has devoted itself over the past few decades and would limit voter engagement and participation in our democracy.

11. Defendant PACEI is a federal agency within the meaning of 5 U.S.C. § 552a(a)(1) and 5 U.S.C. § 551(1) that is headquartered in Washington, D.C.

12. Defendant U.S. Department of Homeland Security is a federal agency within the meaning of 5 U.S.C. § 552a(a)(1) and 5 U.S.C. § 551(1) that is headquartered in Washington, D.C.

13. Defendant U.S. Social Security Administration is a federal agency within the meaning of 5 U.S.C. § 552a(a)(1) and 5 U.S.C. § 551(1) that is headquartered in Baltimore, MD.

Jurisdiction and Venue

14. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under federal law, specifically the Privacy Act, 5 U.S.C. § 552a(e)(7), and the APA, 5 U.S.C. §§ 701-706.

15. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e), because at least one of Defendants is headquartered in Washington, D.C. and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred here.

Factual Allegations

Candidate Donald J. Trump's Repeated, Unsubstantiated Claims of Voter Fraud

16. Prior to his election, then-presidential candidate Donald J. Trump repeatedly made unsubstantiated assertions of voter fraud.

17. On October 10, 2016, Candidate Trump tweeted that, "Of course there is large scale voter fraud happening on and before election day." @realDonaldTrump, Twitter (Oct. 10, 2016, 8:33 AM), *available at* https://twitter.com/realdonaldtrump/status/787995025527410688?lang=en.

18. On October 17, 2016, candidate Trump told supporters at a campaign rally in Wisconsin that "voter fraud is very, very common," including voting by "people that have died 10 years ago" and "illegal immigrants." C-SPAN, *Donald Trump Campaign Event in Green Bay, Wisconsin* (Oct. 17, 2016), *available at* https://www.c-span.org/video/?417019-1/donald-trump-campaigns-green-bay-wisconsin.

19. On November 8, 2016, Donald J. Trump was elected as the forty-fifth president of the United States.

20. On November 27, 2016, president-elect Trump tweeted that, "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." @realDonaldTrump, Twitter (Nov. 27, 2016, 3:30 PM), *available at* https://twitter.com/realdonaldtrump/status/802972944532209664.

21. Three days later, Kansas Secretary of State Kris W. Kobach echoed the president-elect's assertion, telling reporters that, "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." Hunter Woodall, *Kris Kobach Agrees With Donald Trump That 'Millions' Voted Illegally But Offers No Evidence*, Kansas City Star (Nov. 30, 2016), *available at* http://www.kansascity.com/news/politics-government/article117957143.html.

22. Asked in a televised interview on December 2, 2016 about president-elect Trump's claim that "millions of people voted illegally," Trump senior adviser Kellyanne Conway said that she has "been receiving information about the irregularities and about the illegal votes, particularly from sources, officials like Kris Kobach." Emily Shapiro, *Kellyanne Conway Dodges Question on Trump's Claim That 'Millions' Voted Illegally*, ABC News (Dec. 2, 2016), *available at* http://abcnews.go.com/Politics/kellyanne-conway-dodges-question-trumps-claim-millions-voted/story?id=43924056.

Creation of the Presidential Advisory Commission on Election Integrity

23. On January 20, 2017, Donald J. Trump was inaugurated as President of the United States.

24. Five days later, President Trump tweeted on his official Twitter account: "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!" @realDonaldTrump, Twitter (Jan. 25, 2017, 7:10 AM and 7:13 AM), *available at* https://twitter.com/realDonaldTrump/status/824227824903090176 and https://twitter.com/realdonaldtrump/status/824228768227217408?lang=en.

25. In a televised interview on January 25, 2017, President Trump reiterated his claims that allegedly fraudulent votes were cast for his opponent: "We're gonna launch an investigation to find out. And then the next time—and I will say this, of those votes cast, none of 'em come to me. None of 'em come to me. They would all be for the other side. None of 'em come to me. But when you look at the people that are registered: dead, illegal and two states and some cases maybe three states—we have a lot to look into." He vowed to "make sure it doesn't happen again." *TRANSCRIPT: ABC News anchor David Muir interviews President Trump,* ABC News (Jan. 25, 2017), *available at* http:// abcnews.go.com/Politics/transcript-abc-news-anchor-david-muir-interviews-president/story?id=45047602.

26. That same day, CNN reported that according to a senior administration official, "President Donald Trump could sign an executive order or presidential memorandum initiating an investigation into voter fraud as early as Thursday." Dan Merica, Eric Bradner, and Jim Acosta, *Trump considers executive order on voter fraud*, CNN (Jan. 25,

2017), *available at* http://www.cnn.com/2017/01/25/politics/trump-calls-for-major-investigation-into-voter-fraud/index.html. The official further informed CNN that "[t]he investigation would be carried out through the Department of Justice." *Id.*

27. On May 11, 2017, the White House issued Executive Order No. 13,799 establishing the Commission, which President Trump has described as a "Voter Fraud Panel." *See* Executive Order No. 13,799, 82 Fed. Reg. 22389 (May 11, 2017); @realDonaldTrump, Twitter (July 1, 2017, 9:07 AM) *available at* https://twitter.com/realdonaldtrump/status/881137079958241280.

28. The Commission's stated "mission" is studying, "consistent with applicable law," the "registration and voting processes used in Federal elections." *Id.*

29. The Commission is chaired by Vice President Michael Pence and is to be composed of up to 15 additional members having knowledge and experience in "elections, election management, election fraud detection and voter integrity efforts" or having "knowledge or experience that the President determines to be of value to the Commission." *Id.*

30. On the same day that the Commission was established, Kansas Secretary of State Kobach was appointed as a member and Vice Chair. Kobach is the only Secretary of State in the nation with the power to prosecute voter fraud directly. *See Interview of Kris W. Kobach on Fox News Channel* (May 11, 2017), *available at* https://www.youtube.com/watch?v=Fm0MjHmYSJU.

31. The Commission presently has ten additional members, consisting of a current member of the United States Elections Assistance Commission, present and former state

officials, and an employee of the Heritage Foundation. It will also have a staff of approximately three full-time equivalent employees.

32. The Executive Order directs "relevant" executive departments and agencies to "endeavor to cooperate with the Commission." Executive Order No. 13799, 82 Fed. Reg. 22389 (May 11, 2017).

33. The Commission's estimated annual operating costs for Fiscal Years 2017 and 2018 are approximately $250,000.

34. Consistent with President Trump's description of the Commission as a voter fraud panel, Kobach has described the Commission's focus as "voter fraud more broadly, all forms of it," *see* Gary Moore, *Tucker Carlson: Kris Kobach - Trump Executive Order Creates Voter Fraud Commission: 5/11/2017*, YouTube (May 11, 2017), *available at* https://www.youtube.com/watch?v=Fm0MjHmYSJU, and has explained that the Commission's "goal is to, for the first time, have a nationwide fact-finding effort, to see what evidence there is of different forms of voter fraud across the country." *See Transcript of Interview of Kris W. Kobach on New Day*, CNN (May 15, 2017), *available at* http://www.cnn.com/TRANSCRIPTS/1705/15/nday.06.html.

35. Asked how the Commission would prove President Trump's unsubstantiated claims of widespread voter fraud, Kobach explained that, "The federal government has a database of every known alien who has a greencard or a temporary visa. States have in the past asked, 'can we please run our voter rolls against that database, and see if any of those aliens are on our voter rolls?' The federal government has always said no. Well, now we're going to be able to run that database against one or two states and see how many people are known aliens residing in the United States and also on the voter rolls."

Gary Moore, *Tucker Carlson: Kris Kobach - Trump Executive Order Creates Voter Fraud Commission: 5/11/2017*, YouTube (May 11, 2017), *available at* https://www.youtube.com/watch?v=Fm0MjHmYSJU.

36. Describing in further detail which other agencies' data the Commission would be working with on its voter fraud investigation, Kobach explained that "what we'll be doing is for the first time in our country's history, we'll be gathering data from all 50 states and we'll be using the federal government's databases which can been very valuable. The Social Security Administration has data on people when they pass away. The Department of Homeland Security knows of the millions of aliens who are in the United States legally and that data that's never been bounced against the state's voter rolls to see whether these people are registered." *Kobach talks goals of new voter fraud commission*, Fox News, Sunday Morning Futures (May 14, 2017), *available at* http://www.foxnews.com/transcript/2017/05/14/kobach-talks-goals-new-voter-fraud-commission-commerce-secretary-on-nkorea-missile-test-china-trade-deal.html.

The Commission's Sweeping and Unprecedented Request for Personal and Voter Data

37. Despite the Executive Order's directive that the Commission hold public meetings, it convened as a group for the first time on June 28, 2017 without any prior public notice. A brief "readout" of the meeting supplied by the White House later that day stated Kobach had informed the other commissioners that a letter would be sent to all 50 states and the District of Columbia requesting data from state voter rolls. *See* Press Release, The White House, Readout of the Vice President's Call with the Presidential Advisory Commission on Election Integrity (June 28, 2017), *available at* https://

www.whitehouse.gov/the-press-office/2017/06/28/readout-vice-presidents-call-presidential-advisory-commission-election.

38. On June 28, 2017, Kobach "directed" that a letter be sent under his signature to the Secretaries of State or other election officials in all 50 states and the District of Columbia. Declaration of Kris W. Kobach ¶ 4 (July 5, 2017). The other commissioners neither reviewed nor vetted the actual language of the letter before it was sent. Sam Levine, *Trump Voter Fraud Commission Was Cautioned About Seeking Sensitive Voter Information*, Huffington Post (July 5, 2017), *available at* http://www.huffingtonpost.com/entry/trump-voter-fraud-commission_us_595d511fe4b02e9bdb0a073d; Celeste Katz, *Trump election integrity commission member: "We should have predicted" the backlash*, Mic (July 5, 2017), *available at* https://mic.com/articles/181510/trump-election-integrity-commission-member-we-should-have-predicted-the-backlash#.oeqOZx3hl.

39. Kobach's letter "invite[d]" state officials, among other things, to share "evidence or information . . . you have regarding instances of voter fraud or registration fraud in your state" and asked *how* the Commission could "support" state election officials "with regard to information technology security and vulnerabilities." *See, e.g.*, Letter from Kris W. Kobach, Vice Chair, PACEI to the Honorable Matt Dunlap Secretary of State of Maine, at 1 (June 28, 2017).

40. The letter requested that the recipients provide by July 14, 2017 "the publicly available voter roll data for [your state], including, if publicly available under the laws of your state, the 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." *Id.* at 1-2.

41. The letter instructed recipients to "submit your responses electronically to ElectionIntegrityStaff@ovp.eop.gov or by utilizing the Safe Access File Exchange ("SAFE"), which is a secure FTP site the federal government uses for transferring large data files. You can access the SAFE site at https://safe.amrdec.army.mil/safe/Welcome.aspx." *Id.* at 2.

42. The letter closed by warning that "any documents that are submitted to the full Commission will also be made available to the public." *Id.*

43. After reports indicated that certain state officials might decline to provide some or all of the personal and voter data requested by Kobach, President Trump tweeted: "Numerous states are refusing to give information to the very distinguished VOTER FRAUD PANEL. What are they trying to hide?" @realDonaldTrump, Twitter (July 1, 2017, 9:07 AM) *available at* https://twitter.com/realdonaldtrump/status/881137079958241280.

44. Kobach has stated that the purpose of his request is "to have the best data possible" to support the Commission's "purpose . . . to quantify different forms of voter fraud and registration fraud and offer solutions." Bryan Lowry, *Kris Kobach Wants Every U.S. Voter's Personal Information for Trump's Commission*, Kansas City Star (June 29, 2017), *available at* http://www.kansascity.com/news/politics-government/article158871959.html.

45. The Vice President's office has confirmed that the Commission intends to run the data it receives "through a number of different databases" to check for potential fraudulent registration. Jessica Huseman, *Election Experts See Flaws in Trump Voter Commission's Plan to Smoke Out Fraud*, ProPublica (July 6, 2017), *available at* https://www.propublica.org/article/election-experts-see-flaws-trump-voter-commissions-plan-to-smoke-out-fraud.

46. The same day that Kobach sent his letter, the Voting Section of the Civil Rights Division of the Department of Justice ("DOJ") sent its own letter to states requesting their procedures for complying with the statewide voter registration list maintenance provisions of the National Voter Registration Act. DOJ stated that under the NVRA states must make reasonable efforts to remove from voter rolls the names of voters who have become ineligible by reason of death or change of address. DOJ requested that states provide their policies for removing ineligible voters and identify the officials responsible for doing so. *See, e.g.*, Letter from DOJ to Hon. Kim Westbrook Strach, Executive Director, N.C. State Bd. of Elections (June 28, 2017).

The Commission Shifts Its Plans to House the Personal and Voting Data

47. In a declaration filed on July 5, 2017 in the EPIC lawsuit against the Commission for failure to comply with federal privacy laws, Kobach stated that he "intended" that only "narrative responses" provided in response to the letter be sent to the eop.gov email address in the letter and that "voter roll data" be uploaded onto the Safe Access File Exchange (SAFE), which he described as a "tested and reliable method of secure file transfer used routinely by the military for large, unclassified data sets" that "also supports encryption by individual users." Declaration of Kris W. Kobach ¶ 4.

48. The SAFE website is operated by the U.S. Army Aviation and Missile Research Development and Engineering Center, a component within the U.S. Army.

49. After the Court in the EPIC lawsuit inquired at a July 7, 2017 hearing if the Department of Defense, by virtue of its role in collecting and maintaining the data on the SAFE website, should be joined as a defendant the Commission changed course on its storage plans. In a subsequent declaration filed on July 10, 2017, Kobach stated that "[i]n order not to impact the ability of other customers to use" SAFE, the Director of White House Information Technology was "repurposing an existing system" to collect the information "within the White House Information Technology enterprise." Third Declaration of Kris W. Kobach ¶ 1.

50. Asked by the Court at the same July 7 hearing what other federal agencies support the White House's computer system, the Government stated that the "mechanics" of the White House's information technology program are "something that may not be appropriate to say in a public setting." Transcript, Temporary Restraining Order Hearing in *Elect. Privacy Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 1:17-cv-1320 (CKK) (D.D.C.) (July 7, 2017).

Several States Intend to Provide Voter History and Party Affiliation Data

51. As of July 5, 2017, "20 states have agreed to provide the publicly available information requested by the Commission and another 16 states are reviewing which information can be released under their state laws." Press Release, The White House, Statement from Kris Kobach, Kansas Secretary of State and Vice Chair of the Presidential Advisory Commission on Election Integrity (July 5, 2017) *available at*

https://www.whitehouse.gov/the-press-office/2017/07/05/statement-kris-kobach-kansas-secretary-state-and-vice-chair-presidential.

52. The State of Arkansas had provided the Commission voter history and party affiliation through the SAFE website. In light of the pending motion for a temporary restraining order in the EPIC lawsuit, the Commission advised the Court that the Arkansas data would not be downloaded to White House computers and would be deleted from the SAFE website.

53. Several states intend to provide the Commission with voter history and party affiliation data. This group includes Arkansas, Colorado, Florida, North Carolina, and Ohio. *See, e.g.*, "Arkansas to give partial voter information to Voter Integrity Commission," 40/29 NEWS (July 5, 2017), *available at* http://www.4029tv.com/article/arkansas-to-give-partial-voter-information-to-voter-integrity-commission/10261303; "News Release: Secretary Williams' Response to request for public voter files," COLORADO SECRETARY OF STATE (June 29, 2017), *available at* https://content.govdelivery.com/accounts/COSOS/bulletins/1a66cee; Ltr from Ken Detzner, Florida Secretary of State to Kris W. Kobach (July 6, 2017), *available at* http://www.politico.com/states/f/?id=0000015d-19cb-d1a7-a95d-5bcf970e0001; *Request Voter Registration Data*, SUPERVISOR OF ELECTIONS, BREVARD COUNTY *available at* http://www.votebrevard.com/statistics-and-data/request-voter-registration-data; North Carolina: *Q&A: Election Integrity Commission's Data Request*, NORTH CAROLINA STATE BOARD OF ELECTIONS AND ETHICS ENFORCEMENT (July 10, 2017), *available at* https://s3.amazonaws.com/dl.ncsbe.gov/Requests/QA_Election_Integrity_Commission_Request.pdf; *Statement from*

Secretary Husted, OHIO SECRETARY OF STATE (June 30, 2017), *available at* http://www.sos.state.oh.us/sos/mediaCenter/2017/2017-06-30-a.aspx; Dana Branham, "Ohio's Jon Husted to Trump election commission: We won't turn over confidential voter info," CINCINNATI.COM (June 30, 2017), *available at* http://www.cincinnati.com/story/news/2017/06/30/kentucky-refuses-federal-request-voter-roll-data-while-ohio-mulls-over/442492001/.

54. The Commission has directed states not to provide the requested voter data while the motion for a temporary restraining order is pending in the EPIC lawsuit.

The Privacy Act

55. The Privacy Act of 1974 regulates the government's collection, maintenance, use, and dissemination of sensitive personal information.

56. Congress, which passed the Act following revelations during Watergate that the White House had collected information on its political adversaries, was "concerned with curbing the illegal surveillance and investigation of individuals by federal agencies that had been exposed during the Watergate scandal." Department of Justice, Overview of the Privacy Act of 1974 (2015 edition), *available at* https://www.justice.gov/opcl/policy-objectives.

57. Section 552a(e)(7) of the Act provides that an agency shall "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity."

58. As the D.C. Circuit has explained: "The legislative history of the Act reveals Congress' own special concern for the protection of First Amendment rights, as borne out

by statements regarding 'the preferred status which the Committee intends managers of information technology to accord to information touching areas protected by the First Amendment of the Constitution.'" *Albright v. United States*, 631 F.2d 915, 919 (D.C. Cir. 1980) (citing S. Rep. No. 1183, 93d Cong., 2d Sess., reprinted in (1974) U.S. Code Cong. & Admin. News, pp. 6916, 6971.)). That same legislative history also "reveals a concern for unwarranted collection of information as a distinct harm in and of itself." *Id.* In particular, Congress directed Section 552a(e)(7) at "inquiries made for research or statistical purposes which, even though they may be accompanied by sincere pledges of confidentiality are, by the very fact that government make (sic) the inquiry, infringing on zones of personal privacy which should be exempted from unwarranted Federal inquiry." *Id.* (citing S. Rep. No. 1183, (1974) U.S. Code Cong. & Admin. News at 6971-72)).

59. The initial implementation guidelines for the Act promulgated by the Office of Management and Budget (OMB) underscore the special status accorded by the Act to records concerning individuals' First Amendment-protected activities. According to OMB's guidelines, Section 552a(e)(7) established a "rigorous standard governing the maintenance of records regarding the exercise of First Amendment rights," including "political beliefs" and "freedom of assembly," and asked agencies to "apply the broadest reasonable interpretation" in determining whether a particular activity is protected by Section 552a(e)(7). OMB, Responsibilities for the Maintenance of Records About Individuals by Federal Agencies, 40 Fed. Reg. 28,948, 28,965 (July 9, 1975).

60. Accordingly, the D.C. Circuit has held that an agency "may not so much as collect information about an individual's exercise of First Amendment rights except under very circumscribed conditions" and that Section 552a(e)(7) applies regardless

whether a record is maintained in an agency's system of records. *Albright*, 631 F.2d at 919.

61. The Privacy Act incorporates the definition of "agency" found in the Freedom of Information Act, *id.* § 552a(a)(1), which in turn defines "agency" as "any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency." *Id.* § 552(f).

62. The Commission is an agency. In cooperation with an as-yet-unknown number of other federal agencies, the Commission will function as a federal investigative body with a dedicated staff and budget to conduct a widescale and first-of-its-kind investigation into alleged voter fraud. Presently, the Commission is amassing the personal and voting data of millions of American citizens and will cross-check this information against databases maintained by other federal agencies, including the Department of Homeland Security and the Social Security Administration, to identify and ultimately have removed individuals whom it believes have fraudulently registered to vote.

63. The Commission's functions and actions therefore go well beyond solely advising and assisting the President, and its structure shows that it is self-contained, is not operationally close to the President, and exercises substantial independent authority.

Claims for Relief

Count One (Violation of 5 U.S.C. § 552a(e)(7))

64. Plaintiff hereby realleges all allegations in the above paragraphs as if fully set forth herein.

65. Section 552a(e)(7) of the Privacy Act provides that an agency shall "maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity."

66. The Privacy Act defines "maintain" to include "maintain, collect, use, or disseminate." 5 U.S.C. § 552a(a)(3).

67. Through the collection, maintenance, use, and/or dissemination of data on individuals' voter history and party affiliation, activity that is protected by the First Amendment, Defendants have violated, and will violate, Section 552a(e)(7).

68. The collection, maintenance, use, and/or dissemination of these records was not within the scope of a valid law enforcement activity.

69. Defendants' violation has caused and continues to cause ongoing harm to Plaintiff.

Count Two (Violation of APA – Arbitrary and Capricious Action)

70. Plaintiff hereby realleges all allegations in the above paragraphs as if fully set forth herein.

71. In collecting, maintaining, using, and/or disseminating data on individuals' voter history and party affiliation, activity that is protected by the First Amendment, in violation of 5 U.S.C. § 552a(e)(7), Defendants have acted arbitrarily, capriciously, in excess of statutory jurisdiction and authority, and otherwise contrary to law, in violation of the APA, 5 U.S.C. § 706.

Prayer for Relief

WHEREFORE, plaintiff pray that this Court:

1. Declare that Defendants' collection, maintenance, use, and dissemination of voter history and party affiliation data violates the Privacy Act and the APA;
2. Enjoin Defendants from the collection, maintenance, use, and dissemination of voter history and party affiliation data;
3. Order Defendants to provide an accounting of all voter history and party affiliation data in its custody, possession, or control; all copies that have been made of that data; all persons and agencies with whom Defendants have shared that data; and all uses that have been made of that data;
4. Order Defendants to return to any supplying State all voter history and party affiliation data received from that state or otherwise securely delete such data; and
5. Award Plaintiff its costs and reasonable attorneys' fees incurred in this action; and
6. Grant such other relief as the Court may deem just and proper.

Dated: July 14, 2017

Respectfully submitted,

/s/ *Javier Guzman*

Javier M. Guzman
(D.C. Bar No. 462679)
Karianne M. Jones (*pro hac vice motion to be filed*)*
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043
(202) 448-9090
jguzman@democracyforward.org
kjones@democracyforward.org

*Admitted in the State of Minnesota; practicing under the supervision of firm principals.

Question#:	13
Topic:	Voter Integrity Commission
Hearing:	The Department of Homeland Security Fiscal Year 2018 Budget Request
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Kansas Secretary of State Kris Kobach was quoted in The Kansas City Star on May 11, 2017 as saying that the Presidential Advisory Commission on Election Integrity, created by Executive Order 13799, would have full-time staff from the Office of the Vice President and the Department of Homeland Security.

Are you aware of any plans to staff the Presidential Advisory Commission on Election Integrity with DHS employees? If so, what office within DHS will staff the Commission, how many DHS employees will staff the Commission, and what is DHS's anticipated annual budget for the Commission?

Response: (b)(5)

(b)(5)

DRAFT