



June 30, 2017

By Email

Attorney General Eric Schneiderman
Office of the Attorney General
The Capitol
Albany, NY 12224-0341
eric.schneiderman@ag.ny.gov

**RE: Information Request of Kris W. Kobach, Vice Chair, Presidential
Advisory Commission on Election Integrity**

Dear Attorney General Eric Schneiderman:

As President and Director-Counsel of the NAACP Legal Defense and Educational Fund (LDF),¹ I write with deep concern about a request that Kris Kobach, Vice Chair of the Presidential Advisory Commission on Election Integrity (“the Commission”) reportedly submitted to the Secretary of States of all 50 states, including New York’s, on June 28, 2017.² It is our understanding that Mr. Kobach has requested “publicly-available voter roll data,” including “the first full and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in [the] state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.”³ This sweeping and intrusive request risks creating a justification for voter intimidation and suppression, especially against communities of color.⁴ As an organization that since its founding in 1940 has worked

¹ LDF was incorporated in 1940 under the laws of New York State. Our national headquarters is located in New York City.

² Jessica Huseman, *Presidential Commission Demands Massive Amounts of State Voter Data*, PROPUBLICA (June 29, 2017), <https://www.propublica.org/article/presidential-commission-demands-massive-amounts-of-state-voter-data>.

³ See, e.g., Letter from Kris Kobach, Vice Chair, Presidential Advisory Comm’n on Election Integrity, to Denise Merrill, Conn. Sec’y of State (June 28, 2017), *available at* <https://www.washingtonpost.com/blogs/wonkblog/files/2017/06/PEIC-Letter-to-Connecticut-1.pdf>.

⁴ Sam Levine, *States Refuse to Cooperate with Trump Voter Fraud Probe*, HUFFPOST (June 29, 2017), http://www.huffingtonpost.com/entry/california-trump-voter-fraud-probe_us_5955683be4b0da2c7322389c.



to secure, protect, and advance voting rights for African-American and other communities of color, we *applaud* you for joining an ever-growing list of states including California, Connecticut, Indiana, Kentucky, Massachusetts, Virginia, and Wisconsin that are declining to provide this information or limiting in scope their response.⁵

First, the Commission, along with the request for voter data, is transparently intended to lay the groundwork for massive voter suppression efforts. The Commission itself is premised upon discredited claims of widespread voter fraud that have been repeatedly rejected by federal courts across the country. And no one

Indeed, New York can and should view any response to Mr. Kobach's request as voluntary, given our understanding that the Commission neither has the power to issue subpoenas or to commandeer state officials. *Presidential Executive Order on the Establishment of Presidential Advisory Commission on Election Integrity* (May 11, 2017), <https://www.whitehouse.gov/the-press-office/2017/05/11/presidential-executive-order-establishment-presidential-advisory>.

⁵ Tom Brune, *Cuomo: NY Won't Comply with Trump Panel's Voter Data Request*, NEWSDAY (June 30, 2017), <http://www.newsday.com/news/region-state/cuomo-ny-won-t-comply-with-trump-panel-s-voter-data-request-1.13775254>; Brennan Ctr. for Justice, *State Responses to Commission Requests*, <https://www.brennancenter.org/latest-updates-fraud-commission> (listing states declining or complying, in whole or in part, with the request); see also, e.g., Press Release, Alex Padilla, Ca. Sec'y of State, *Secretary of State Alex Padilla Responds to Presidential Election Commission Request for Personal Data of California Voters* (June 29, 2017), available at <http://www.sos.ca.gov/administration/news-releases-and-advisories/2017-news-releases-and-advisories/secretary-state-alex-padilla-responds-presidential-election-commission-request-personal-data-california-voters/>; Press Release, Denise Merrill, Conn. Sec'y of State, *Secretary Merrill on the Letter from the Kobach Commission* (June 29, 2017), available at http://www.ct.gov/sots/lib/sots/releases/2017/06-29-2017-kobach_commission.pdf; Press Release, Connie Lawson, Ind. Sec'y of State, *Secretary of State Connie Lawson's Statement Regarding the Request for Voter Information* (June 30, 2017), available at http://www.in.gov/activecalendar/EventList.aspx?view=EventDetails&eventidn=265820&information_id=270242&type=&syndicate=syndicate; Press Release, Alison Lundergan Grimes, Ky. Sec'y of State, *Secretary Grimes Statement on Presidential Election Commission's Request for Voters' Personal Information* (June 29, 2017), available at <http://kentucky.gov/Pages/Activity-stream.aspx?n=SOS&prId=129>; Shannon Young, *Secretary of Commonwealth William Galvin Rejects Trump Administration's Request for Voting Records*, MASS LIVE (June 30, 2017, 11:40 AM), http://www.masslive.com/politics/index.ssf/2017/06/secretary_of_commonwealth_bill.html; Press Release, Terry McAuliffe, Va. Governor, *Governor McAuliffe Statement on Request from Trump Elections Commission* (June 29, 2017), available at <https://governor.virginia.gov/newsroom/newsarticle?articleId=20595>; Press Release, Michael Haas, Adm'r, Wisc. Elections Comm'n, *Statement on Federal Request for Wisconsin Voter Information* (June 30, 2017), available at <http://elections.wi.gov/node/5135>.



seriously interested in protecting the integrity of our elections would appoint Kris Kobach, the Kansas Secretary of State, to lead the effort. As other states have recognized in rejecting his request for voter information, Kobach has a long history of advocating discriminatory policies that suppress votes and disenfranchise eligible voters,⁶ and was recently fined for misleading a court in litigation over voting restrictions in Kansas.⁷

Second, Mr. Kobach's request presents serious data privacy concerns. New Yorkers did not participate in elections with the knowledge that their personal information would be submitted to a federal commission with a vague mandate, slant in favor of manufacturing support for false claims of voter fraud, and questionable database security. While some data is publicly available, New York election law mandates that individuals submit Freedom of Information Law requests before receiving voter registration information.⁸

Third, in his letters, as you know, Mr. Kobach reportedly highlights "the importance of state-level authority in our federalist system"⁹ but practically seeks to undermine the ability of states to protect private personal information, manage their elections, and expand access to the ballot for their residents. Mr. Kobach also seeks to commandeer state officials, who would have to devote state resources to identify, collect, and provide state voter rolls to the Commission. Mr. Kobach's effort to create a national voter registration list is characteristic of a political career spent

⁶ See Ari Berman, *The Man Behind Trump's Voter Fraud Obsession*, N.Y. TIMES MAGAZINE (June 13, 2017), https://www.nytimes.com/2017/06/13/magazine/the-man-behind-trumps-voter-fraud-obsession.html?_r=0.

⁷ See Colleen Shalby, *Kris Kobach Fined for Misleading Court and Refusing to Produce Previously Exposed Trump Memo*, L.A. TIMES (June 23, 2017), <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-kris-kobach-fined-for-misleading-court-1498264754-htmlstory.html>.

⁸ See N.Y. Elec. Law § 3-103(5) ("The information transmitted between the statewide voter registration list and other databases . . . shall be limited to the information which is contained in a voter registration application and is necessary to verify a voter's identity. The information contained in the statewide voter registration list shall not be used for non-election purposes."); How to Request Voter Registration Data, Freedom of Information Requests (FOIL), N.Y. Bd. of Elections, <https://www.elections.ny.gov/FoilRequests.html> (last visited June 30, 2017).

⁹ See *supra* note 3.



suppressing votes and intimidating voters.¹⁰ And, that this request is being made in an atmosphere in which the President of our country repeatedly and unabashedly invokes the paper tiger of “millions of illegal voters” to justify a sham commission and collect the personal information of private citizens is federal overreach of a deeply concerning nature.¹¹

Finally, as the representative of the people of New York, we further urge you to pose the following questions to Mr. Kobach in response to his letter:

- Why is voter roll data necessary for the work of the Commission?
- For what purposes do you intend to use the data?
- Do you intend to use the data to identify individuals who you believe should be removed from the voter rolls?
- What steps will you take to ensure that the data is not used to intimidate or harass voters?
- Will voter roll data be sent to individuals not affiliated with the Commission? If so, who?

¹⁰ See Amrit Cheng, *If You Care About the Right to Vote, Here are Six Things You Need to Know About Kris Kobach*, ACLU (May 17, 2017), <https://www.aclu.org/blog/speak-freely/if-you-care-about-right-vote-here-are-six-things-you-need-know-about-kris-kobach>.

¹¹ Compare Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 27, 2016, 3:30 PM), <https://twitter.com/realdonaldtrump/status/802972944532209664> (“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.”), with Michael D. Shear & Emmarie Huettelman, *Trump Repeats Lie About Popular Vote in Meeting with Lawmakers*, N.Y. TIMES (Jan. 23, 2017), <https://www.nytimes.com/2017/01/23/us/politics/donald-trump-congress-democrats.html?mcubz=0> (noting “[t]he claim . . . made before on Twitter[] has been judged untrue by numerous fact-checkers”); Scott Wong, *Ryan: ‘No Evidence’ of Mass Voter Fraud as Trump Claimed*, THE HILL (Jan. 24, 2017, 11:17 AM), <http://thehill.com/homenews/house/315844-ryan-no-evidence-of-mass-voter-fraud-as-trump-claimed> (quoting House Speaker Paul Ryan (R-WI), “I’ve seen no evidence to that effect. I’ve made that very, very clear”); Amy Sherman, *Following Trump Voter Fraud Allegations Claim that 5.7 Million Noncitizens Voted Is Wrong*, POLITIFACT (June 22, 2017), <http://www.politifact.com/florida/statements/2017/jun/22/ainsley-earhardt/following-trump-voter-fraud-allegations-claim-57-m/>.



- What steps is the Commission taking to ensure that its actions, including its use of voter roll data, is consistent with state and federal law, including the Voting Rights Act, the National Voter Registration Act, the Help America Vote Act, and the Thirteenth, Fourteenth, and Fifteenth Amendments?¹²
- What security measures will the Commission put in place to ensure that voter roll data, and other Commission documents, are secure and not subject to hacking?
- Will the Commission address the threat to the security of state elections from hacking by Russia or by any other foreign or domestic actors?

Sincerely,

A handwritten signature in black ink that reads "Sherrilyn A. Ifill". The signature is written in a cursive, flowing style.

Sherrilyn A. Ifill
President & Director-Counsel
NAACP Legal Defense & Educational
Fund. Inc.

¹² See Justin Levitt, *All Your Voter Data Are Belong to Us*, TAKE CARE (June 30, 2017), <https://takecareblog.com/blog/all-your-voter-data-are-belong-to-us>.