

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION CENTER,

Plaintiff,

vs.

1:17-cv-1320

PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY; MICHAEL PENCE,  
in his official capacity as Chair of  
the Presidential Advisory Commission  
on Election Integrity; KRIS KOBACH,  
in his official capacity as Vice  
Chair of the Presidential Advisory  
Commission on Election Integrity;  
EXECUTIVE OFFICE OF THE PRESIDENT  
OF THE UNITED STATES; OFFICE OF THE  
VICE PRESIDENT OF THE UNITED STATES,

Defendants.

TRANSCRIPT OF TELEPHONIC SCHEDULING CONFERENCE

BEFORE THE HONORABLE COLLEEN KOLLAR-KOTELLY

UNITED STATES DISTRICT JUDGE

JULY 3, 2017

Court Reporter:

Richard D. Ehrlich, RMR, CRR

Official Court Reporter

United States District Court

333 Constitution Avenue, NW

Washington, DC 20001

(202) 354-3269

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## A P P E A R A N C E S

FOR THE PLAINTIFF:

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1 THE COURT: Good afternoon. This is Judge  
2 Kotelly. I have a court reporter here, so let  
3 me call the case and then ask you to identify  
4 yourselves.

5 This is the matter of Electronic Privacy  
6 Information Center as the plaintiff. The  
7 defendant is the Presidential Advisory  
8 Commission On Election Integrity, Michael Pence,  
9 Kris Kobach, the Executive Office of the  
10 President of the United States, the Office of  
11 the Vice President of the United States, and the  
12 General Services Administration. It's  
13 17-cv-1320.

14 If the Government counsel would identify  
15 themselves, please?

16 MS. SHAPIRO: Yes, Your Honor. This is  
17 Elizabeth J. Shapiro from the Department of  
18 Justice on behalf of the federal defendants.

19 THE COURT: Okay. And which section are  
20 you in in DOJ?

21 MS. SHAPIRO: In the Federal Programs  
22 Branch of the Civil Division.

23 THE COURT: Okay.

24 And plaintiff's counsel.

25 MR. ROTENBERG: Yes, Your Honor. This is

1 Marc Rotenberg, counsel for the Electronic  
2 Privacy Information Center.

3 THE COURT: Okay. Obviously, this came in  
4 very quickly, and I've had just a passing glance  
5 at it, but I thought I should set a schedule,  
6 particularly for briefing, so that we can move  
7 this along as quickly as possible.

8 As I understand it, the Commission has  
9 asked for voter registration information. Their  
10 expectation of the due date would be  
11 July 14<sup>th</sup>. I've seen information that would  
12 indicate -- at least to the newspapers, to the  
13 extent they're accurate -- that some have  
14 refused to produce it.

15 Has anybody actually produced it to date?  
16 If you can answer, Ms. Shapiro.

17 What I'm going to ask you to do is I'm  
18 going to ask some questions, set things out, and  
19 I'll call on you separately. At the end, I'll  
20 let each of you -- I'll call on you and let each  
21 of you make what comments you want. It's the  
22 only way to make sure everybody is not speaking  
23 at the same time.

24 Please listen to me. There may be  
25 occasions when I will stop you from talking

1 because we need to move on to something else,  
2 and I would expect you to be able to do that.

3 We do have a court reporter, so we will  
4 have a record.

5 So, Ms. Shapiro, has the Commission  
6 actually received any information? Do you know?

7 MS. SHAPIRO: Your Honor, I don't know the  
8 answer to that. We have not even been able to  
9 reach out to or find out whom to reach out to on  
10 the Commission. We just received this probably  
11 within the hour.

12 THE COURT: Okay.

13 Mr. Rotenberg, do you happen to know if  
14 anybody has actually submitted anything?

15 MR. ROTENBERG: Your Honor, we're  
16 maintaining a web page where we are posting  
17 information that has been provided by the  
18 Secretaries of State regarding their response to  
19 the request from the Commission. So to the  
20 extent that states have indicated that they are  
21 complying or not complying, we believe that that  
22 page will have current information provided by  
23 the states.

24 THE COURT: Okay. I was just trying to get  
25 a sense of, you know, whether somebody had

1 already, not just indicated they would or would  
2 not provide it, but actually provided it.

3 Okay. As I understand it, the plaintiffs  
4 have filed this under the APA predicated on the  
5 E-Government Act enacted in 2002, would set out  
6 procedures for Internet systems insuring the  
7 security of the information on them. You've  
8 also brought a constitutional privacy interest.

9 One of the claims -- or the claim is that  
10 the system that has been established, which is  
11 just requesting, as I understand it, the states  
12 to send it to an email, that the claim is that  
13 the system is unsecure and, therefore, violates  
14 the Act and the Individual Privacy Acts.

15 Is that in a nutshell what the case is  
16 about?

17 MR. ROTENBERG: Yes, Your Honor. Our view  
18 is that the Commission failed to undertake a  
19 Privacy Impact Assessment prior to the request  
20 for the collection of the personal data from the  
21 states; that they were also obligated to publish  
22 that impact assessment under the E-Government  
23 Act and under the FACA, and we do bring  
24 constitutional claims given the sensitivity  
25 scope of the data. And we point to certain

1 problems that have already arisen, the question  
2 stated by means of an unsecured email, and also  
3 by means of an unsecured website.

4 THE COURT: I'm sorry. I missed the last  
5 part. Unsecure email and --

6 MR. ROTENBERG: They've requested the data  
7 both by insecure email so that data could be  
8 attacked in that fashion and also through an  
9 insecure website, which, in fact, carries the  
10 notice that it's subject to attacks.

11 THE COURT: All right. So let me set a  
12 schedule.

13 Obviously, the turnaround date has to be  
14 very quick in terms of getting something out  
15 both in terms of, obviously, the dates that --  
16 the concern about the information already going  
17 or being sent. And the other thing, frankly, is  
18 a practical one from my perspective. Next  
19 Monday I'm doing jury selection in a two-month  
20 criminal trial. So I would like to get this  
21 briefed prior to that starting. I do have some  
22 proceedings related to the criminal case near  
23 the end of this week.

24 If I need a hearing, I will set one up.  
25 Sometimes I do; sometimes I don't. If I have

1 specific questions, I might actually do a  
2 telephone conference call. I'll do whatever I  
3 can to make this as expeditiously as possible.

4 What I would like -- and I'm sorry to do  
5 this to the Government. You're probably not  
6 going to get a July 4<sup>th</sup> out of this. But for  
7 me to be able to take a look at it, make sure I  
8 have the information I need, do the research and  
9 get something out and potentially have a  
10 hearing -- what I need is by Wednesday at noon,  
11 a response or opposition from the Government;  
12 and Thursday at 9:00 in the morning, a reply  
13 from the plaintiffs. By Thursday, I will then  
14 have it briefed. I can figure out if there's  
15 anything additional that I need. I can decide  
16 whether we need an actual hearing or not.

17 Is there anything additional from the  
18 plaintiff that I need to know?

19 MR. ROTENBERG: No, Your Honor. We can  
20 make the briefing deadline.

21 THE COURT: All right.

22 Ms. Shapiro, anything that I need to know  
23 from your end?

24 MS. SHAPIRO: Well, I think that -- I mean,  
25 it's a very difficult deadline from a practical



1 perspective, not because of us working on the  
2 Fourth of July, but being able to reach the  
3 people that we would need to reach.

4 I might propose that, you know, if the  
5 Government could file Thursday instead, I don't  
6 know that it's necessary for the plaintiff to  
7 have a reply.

8 THE COURT: I would do a reply. I'm sure  
9 that -- I don't know what your issues will be,  
10 but I'm not going to leave it that they're not  
11 going to have an opportunity to respond to  
12 something.

13 I don't know precisely what you're going to  
14 be raising unless you can tell me now what you  
15 think you're going to be raising. I'm assuming  
16 that, you know, they'll want to say something  
17 back.

18 That's too late. I think you need to put  
19 some calls in now and get these people  
20 available. I would've assumed that since the  
21 reaction was not a positive one by a lot of  
22 states, that they would've expected that there  
23 could be a lawsuit.

24 I'm not going to move this. If you move it  
25 to Thursday, I can't get it done. I need to

1 have this in so that I can look at it, get it  
2 ready, and work on it while I'm in trial.

3 So if you cannot absolutely get ahold of  
4 them -- and these are government people. I  
5 would expect people on the Commission -- you,  
6 obviously, are not going to be speaking to the  
7 Vice President. So it's going to be the people  
8 on the Commission. I'm assuming they have  
9 staff. So I would expect that you, as soon as  
10 you get off the phone, would reach out there.

11 I'm leaving the schedule as it is. You'll  
12 have to give me something further to indicate  
13 that you cannot reach any of these people for  
14 them to respond to this lawsuit.

15 MS. SHAPIRO: I understand, Your Honor.

16 Is there any chance of at least extending  
17 it to the close of business on Wednesday? That  
18 would help at least give us a few more hours.

19 THE COURT: If I extended it, when would  
20 you be able to get your reply in, Plaintiff?

21 MR. ROTENBERG: Your Honor, we would still  
22 meet the Thursday 9:00 a.m. deadline if filed by  
23 close of business Wednesday.

24 THE COURT: All right. If you could get it  
25 in. And Wednesday your response, opposition,

1 whatever, if you can get it in by -- how about  
2 3:00? So I can take a look at it.

3 MS. SHAPIRO: Okay. If that's Your Honor's  
4 preference, we'll try to do that. I mean, 4:00  
5 or 5:00 would be better. I'm just concerned  
6 about locating people on the Fourth and getting,  
7 you know --

8 THE COURT: You need to notify them now.  
9 It's 5 after 5:00. I hope somebody is over  
10 there, and they can reach out to whoever they  
11 are.

12 I mean, these are people at a high level.  
13 They must have emails and other kinds of things.  
14 Nobody is totally incommunicado when you're at  
15 this level of the government. So I would expect  
16 they would be able to do it. I'll make it 4:00,  
17 but that's it.

18 MS. SHAPIRO: Okay. Thank you.

19 THE COURT: Okay. So I can get a chance to  
20 look at it, they can, and then the reply would  
21 be done at 9:00.

22 Anything else, Ms. Shapiro?

23 MS. SHAPIRO: Nothing from our end.

24 THE COURT: Okay. If there's nothing else,  
25 then the parties are excused. You'll see a

1 minute entry. I don't believe they put it up.  
2 So just expect that, when they have actually  
3 docketed the material, the pleadings, that you  
4 will see then the minute entry.

5 Ms. Shapiro, have you entered an  
6 appearance?

7 MS. SHAPIRO: No. We couldn't find it on  
8 ECF.

9 THE COURT: It should be on ECF now. We  
10 just double-checked. If you can enter an  
11 appearance so you can actually start getting  
12 everything on ECF, that would be most helpful.

13 MS. SHAPIRO: We'll do that right away.

14 THE COURT: All right. The parties are  
15 excused. Thank you.

16 MS. SHAPIRO: Thank you.

17 (Telephonic scheduling conference  
18 concluded.)  
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## 1 CERTIFICATE OF REPORTER

2  
3 I, Richard D. Ehrlich, a Registered Merit  
4 Reporter and Certified Realtime Reporter,  
5 certify that the foregoing is a true, complete,  
6 and accurate transcript of the proceedings  
7 ordered to be transcribed in the above-entitled  
8 case before the Honorable Colleen  
9 Kollar-Kotelly, in Washington, DC, on July 3,  
10 2017.

11  
12 s/Richard D. Ehrlich July 5, 2017

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Richard D. Ehrlich, Official Court Reporter  
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