

ADVISORY

EPIC v. Commission and the Privacy of Voter Data

This Advisory follows a July 26, 2017 letter to state election officials from Kris Kobach, the Vice Chair of the Presidential Advisory Commission on Election Integrity.

The Electronic Privacy Information Center (EPIC) recommends that election officials oppose the request of Mr. Kobach for state voter data. The Presidential Commission has failed to take the steps necessary to collect and store personal information. The Commission has explicitly disavowed its responsibility to conduct a Privacy Impact Assessment prior to the proposed data collection. Moreover, the scope and sensitivity of the Commission's request implicates the constitutional privacy rights of registered voters across the United States.

In *EPIC v. Commission*, the court made a preliminary determination that the Commission, having moved the computer server to receive voter data from a federal agency to the White House, need not comply with important privacy laws that safeguard personal information. The Commission's scramble to do so after EPIC filed its case and uncovered vulnerabilities in the Commission's proposed handling of personal data indicates that the Commission has given little thought to the privacy and security interests of registered voters.

The Court made clear in *EPIC v. Commission* that the Commission's letter is simply a request – not a demand. State election officials are custodians of personal data provided by individuals to exercise their constitutional right to vote. State election officials must prevent the improper disclosure, and possible misuse, of sensitive personal information. The Commission has already made clear, in numerous ways, its inability to manage personal data.

EPIC v. Commission is now on appeal to the DC Circuit. EPIC would also like to call your attention to recent letters from members of the U.S. Senate and House to the Commission. These letters recommend that the Commission's effort to obtain state voter records be terminated. The letters from Congressional leaders also set out important questions that should be answered prior to any collection of state voter information. The Commission has ignored these requests. We advise you to wait for responses to the letters, as well as the resolution in *EPIC v. Commission*, before providing any voter data to the Commission.

REFERENCES

EPIC v. Commission, No. 17-1320 (D.D.C. July 24, 2017)

<https://epic.org/privacy/litigation/voter/epic-v-commission/epic-v-commission-memorandum-opinion-072417.pdf>

EPIC v. Commission (resource page)

<https://epic.org/privacy/litigation/voter/epic-v-commission/>

Voter Privacy and PACEI

<https://epic.org/privacy/voting/pacei/>

51 Reasons to End Data Collection

<https://epic.org/voter-data/>