

October 19, 2017

The Honorable Ron Johnson  
The Honorable Claire McCaskill  
Senate Committee on Homeland Security and Governmental Affairs  
340 Dirksen Senate Office Building  
Washington, DC 20510

## RE: GSA Supervision of the Presidential Election Commission and Voter Privacy

Dear Chairman Johnson and Ranking Member McCaskill:

We write to you regarding the recent hearing for Emily W. Murphy, nominee for Administrator of the General Services Administration. Our organization—EPIC—is in the midst of an important case concerning the privacy rights of American voters.<sup>1</sup> Central to *EPIC v. Commission* is the responsibility of the GSA to undertake a Privacy Impact Assessment prior to the collection of personal data by a federal agency.<sup>2</sup> However, the Presidential Advisory Commission on Election Integrity contends that it is not a federal agency and need not undertake a Privacy Impact Assessment before gathering state voter data.

The law is clear on this point. The Presidential Election Commission is part of the GSA and under the control of the GSA Administrator.<sup>3</sup> Ms. Murphy was asked about this issue prior to the hearing:

**10. On May 11, 2017, the President Issued a Presidential Executive Order on the Establishment of Presidential Advisory Commission on Election Integrity. The Executive Order states that "to the extent permitted by law, and subject to the availability of appropriations, the General Services Administration 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 on a reimbursable basis."**

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<sup>1</sup> *EPIC v. Commission*, No. 17-1320 (D.D.C. filed July 3, 2017). Briefs and related documents are available at <https://epic.org/privacy/litigation/voter/epic-v-commission/>.

<sup>2</sup> E-Government Act of 2002, Pub. L. 107-347, 116 Stat. 2899 (codified at 44 U.S.C. § 3501 note).

<sup>3</sup> Pl.'s Mot. for Leave to File Third Am. Compl. at ¶¶ 14–22, 34–41, *EPIC v. Commission*, No. 17-1320 (D.D.C. motion filed Oct. 12, 2017), available at <https://epic.org/privacy/litigation/voter/epic-v-commission/EPIC-v-Commission-motion-leave-third-amended-complaint-101217.pdf>.

**a. Please describe your role to date in supporting the Presidential Advisory Commission on Election Integrity?**

Personally, I have no role. As we do with many other board and commissions, GSA provides administrative support to the commission on a reimbursable basis.

**b. What is your understanding of the role of the GSA Administrator in supporting the Presidential Advisory Commission on Election Integrity?**

GSA provides administrative support to the commission. The GSA Administrator has no role in providing this support.<sup>4</sup>

The nominee is correct that the GSA routinely “provides administrative support to the commission” and other advisory committees.<sup>5</sup> And both the President’s Executive Order establishing the Commission and the Charter of the Commission make clear that the GSA has sole authority to manage the administrative activities of the Commission.<sup>6</sup> It is possible that in answering the question about the nominee’s specific role, there was some confusion regarding her personal role and the actual role of the GSA Administrator. In fact, the GSA Administrator has direct legal authority over the Commission’s work.<sup>7</sup>

The significance of this matter cannot be overstated. In the course of EPIC’s lawsuit against the Commission, it became clear that Commission has deliberately obscured its legal relationship with the GSA so as to evade its privacy obligations to the public. By operating outside the law and circumventing basic oversight, the Commission is also undermining the GSA’s authority. Most significantly, the Commission’s collection of voter data without the requisite Privacy Impact Assessment endangers the privacy of voters and jeopardizes the integrity of the U.S. election system.

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<sup>4</sup> Emily W. Murphy, *Pre-Hearing Questionnaire For the Nomination of Emily Murphy to be Administrator, General Services Administration* (Oct. 5, 2017), available at <http://www.hsgac.senate.gov/download/murphy-pre-hearing-questions-2017-10-18>.

<sup>5</sup> *Id.*

<sup>6</sup> Exec. Order No. 13,799, 82 Fed. Reg. 22,389 ¶ 7 (May 11, 2017), available at <https://www.gpo.gov/fdsys/pkg/FR-2017-05-16/pdf/2017-10003.pdf>; Charter, Presidential Advisory Commission on Election Integrity ¶ 6 (June 23, 2017), available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/docs/commission-charter.pdf>.

<sup>7</sup> See, e.g., *By-Laws and Operating Procedures*, Presidential Advisory Comm’n on Election Integrity (July 19, 2017) (stating that the “Designated Federal Officer (DFO)” of the Commission “will be a full-time officer or employee of the Federal Government *appointed by the GSA Administrator*, pursuant to 41 CFR § 102-3.105”); 41 C.F.R. § 102-3.105 (granting the power to appoint a DFO exclusively to “[t]he head of each agency that establishes or utilizes” an advisory committee).

We were very pleased to hear Members of the Senate Committee make clear in the course of the hearing the urgency of improving data protection across the federal government.<sup>8</sup> Federal employees, their families, and their friends are still living with the consequences of the 2015 OPM breach. The very last thing that the Senate Committee or the incoming GSA Administrator should tolerate is a federal entity that seeks to avoid legal obligations to protect the privacy of Americans. The nominee herself stressed “ethical leadership” and “transparency and accountability” as priorities for her agency.<sup>9</sup>

We urge you to ask the GSA Administrator to instruct the Presidential Advisory Commission on Election Integrity to suspend the collection of state voter until the completion and publication of a Privacy Impact Assessment.<sup>10</sup> On the issue of data protection, there is no higher priority for the GSA.

We look forward to working with the Committee Members and the GSA Administrator to ensure that the privacy interests of Americans are protected.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg  
EPIC President

/s/ John Davisson

John Davisson  
EPIC Counsel

/s/ Christine Bannan

Christine Bannan  
EPIC Policy Fellow

Cc: Chairman Trey Gowdy, House Committee on Oversight and Government Reform  
Ranking Member Elijah Cummings, House Committee on Oversight and  
Government Reform

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<sup>8</sup> *Nomination Hearing of Emily W. Murphy to be Administrator, General Services Administration, Before the S. Comm. on Homeland Sec. & Gov't Affairs*, 115th Cong. (Oct. 18, 2017).

<sup>9</sup> *Id.* (testimony of Emily W. Murphy, nominee for Administrator of the General Services Administration).

<sup>10</sup> See E-Government Act of 2002, Pub. L. 107-347, 116 Stat. 2899 (codified at 44 U.S.C. § 3501 note).