

March 14, 2018

The Honorable Richard Burr, Chair
The Honorable Mark Warner, Ranking Member
U.S. Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Burr and Ranking Member Warner:

In advance of the hearing regarding the nomination of Lieutenant General Paul M. Nakasone to be the Director of the National Security Agency,¹ we write to you again regarding the need to protect democratic institutions against cyber attack by foreign adversaries.

The Electronic Privacy Information Center (“EPIC”) is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.² EPIC is a leading advocate for civil liberties and democratic values in the information age, and works closely with a distinguished Advisory Board, with specific expertise in cyber security and voting technology.³

After reports emerged about Russian interference with the 2016 election, EPIC launched a new project on Democracy and Cybersecurity.⁴ EPIC is currently pursuing four Freedom of Information Act matters to learn more about the Russian interference in the 2016 Presidential election.⁵ One of our cases *EPIC v. FBI*, revealed that the FBI failed to follow the “victim notification procedures” with both the DNC and the RNC.

The Russian attacks on democratic institutions are expected to continue.⁶ The U.S. Intelligence community has reportedly shared the classified ODNI report with European

¹ *Nomination of Lieutenant General Paul M. Nakasone to be the Director of the National Security Agency*, 115th Cong. (2018), S. Select Comm. on Intelligence, <https://www.intelligence.senate.gov/hearings/open-hearing-nomination-lieutenant-general-paul-m-nakasone-be-director-national-security> (Mar. 15, 2018).

² See EPIC, *About EPIC*, <https://epic.org/epic/about.html>.

³ See EPIC Advisory Board, https://epic.org/epic/advisory_board.html. See, e.g., Douglas Jones and Barbara Simons, *Broken Ballots: Will Your Vote Count?* (2012); Ron Rivest and Phil Stark, *Still Time for an Election Audit*, USA Today, Nov. 18, 2016.

⁴ See EPIC, *Democracy and Cybersecurity: Preserving Democratic Institutions*, <https://epic.org/democracy/>.

⁵ *EPIC v. ODNI*, No. 17-163 (D.D.C. filed Jan. 25, 2017); *EPIC v. FBI*, No. 17-121 (D.D.C. filed Jan. 18, 2017); *EPIC Seeks Release of FISA Order for Trump Tower*, EPIC (March 6, 2017), <https://epic.org/2017/03/epic-seeks-release-of-fisa-ord.html>; *EPIC v. IRS*, No. 17-670 (D.D.C. Aug. 18, 2017).

⁶ Declassified ODNI Assessment, *supra* note 7, at 5.

governments to help limit Russian interference with their elections.⁷ The public has “the right to know” the extent of Russian interference with democratic elections in the United States and the steps that are being taken to prevent future attacks.⁸ The need to understand Russian efforts to influence democratic elections cannot be overstated. Midterm election campaigns in the U.S. are underway and we have not taken adequate protections to ensure that Russia does not again interfere.

Cybersecurity must be a top priority for the United States. The National Security report states the “government must do a better job of protecting data to safeguard information and the privacy of the American people.”⁹ Strong encryption keeps the information of the American people secure, which by extension makes the nation secure. And perhaps it is a firewall and not a border wall that the United States needs to safeguard its national interests at this moment in time.¹⁰

EPIC urges the Committee to ask the nominee:

- ***Do you agree with the January 2017 assessment of the Intelligence Community that the Russians interfered with the 2016 Presidential election?***
- ***Do you believe that the United States has taken sufficient steps to prevent Russian meddling in the mid-term elections?***
- ***If confirmed, what actions will you take to protect the United States against future cyber attacks that could destabilize our democratic institutions?***
- ***Do you commit to the American people to be open and transparent about the work of the NSA?***

We ask that this Statement from EPIC be entered in the hearing record. EPIC will keep the Committee apprised of the documents we receive in our FOIA cases. We look forward to working with you on the cybersecurity risks to democratic institutions.

Sincerely,

/s/ Marc Rotenberg

Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald

Caitriona Fitzgerald
EPIC Policy Director

/s/ Jeramie Scott

Jeramie Scott
EPIC National Security Counsel

⁷ Martin Matishak, *U.S. shares hacking intel with Europe as Russia shifts focus*, POLITICO Pro (Feb. 6, 2017).

⁸ “A people who mean to be their own Governors must arm themselves with the power knowledge gives,” James Madison. *See generally* EPIC, *Open Government*, https://epic.org/open_gov/.

⁹ *Id.* at 13.

¹⁰ Garry Kasparov (@kasparov63), “If the US is serious about stopping a real danger from abroad, it should build a better firewall, not a bigger border wall.” (12:34 PM - 22 Jan 2018), <https://twitter.com/Kasparov63/status/955539139121819649>.