

ORAL ARGUMENT NOT YET SCHEDULED

---

No. 17-5171

**IN THE UNITED STATES COURT OF APPEALS  
DISTRICT OF COLUMBIA CIRCUIT**

---

ELECTRONIC PRIVACY INFORMATION CENTER

*Plaintiff-Appellant,*

v.

PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY, *et al.*,

*Defendants-Appellees.*

---

**On Appeal from an Order of the  
U.S. District Court for the District of Columbia**

---

**APPELLANT'S EMERGENCY MOTION TO EXPEDITE**

---

MARC ROTENBERG

*Counsel of Record*

ALAN BUTLER

CAITRIONA FITZGERALD

JERAMIE SCOTT

JOHN DAVISSON

Electronic Privacy Information Center

1718 Connecticut Ave. NW

Suite 200

Washington, D.C. 20009

(202) 483-1140

*Counsel for Petitioner*

*Electronic Privacy Information Center*

## **CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES**

Pursuant to Circuit Rule 28(a)(1), undersigned counsel for Appellant hereby provides the following information:

### **I. PARTIES AND *AMICI* APPEARING BELOW**

The parties and amici who appeared before the U.S. District Court were:

1. Electronic Privacy Information Center, *Appellant*.
2. Presidential Advisory Commission on Election Integrity; Michael Pence, in his official capacity as Vice 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; Charles C. Herndon, in his official capacity as Director of White House Information Technology; Executive Office of the President of the United States; Office of the Vice President of the United States; General Services Administration; United States Department of Defense; United States Digital Service; Executive Committee for Presidential Information Technology, *Defendants*.

### **II. PARTIES AND *AMICI* APPEARING IN THIS COURT**

1. Electronic Privacy Information Center, *Appellant*.
2. Presidential Advisory Commission on Election Integrity; Michael Pence, in his official capacity as Vice 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; Charles C. Herndon, in his official capacity as Director of White House Information Technology; Executive Office of the President of the United States; Office of the Vice President of the United States; General Services Administration; United States Department of Defense; United States Digital Service; Executive Committee for Presidential Information Technology, *Defendants*.

### III. RULINGS UNDER REVIEW

The ruling under review in this case is United States District Court Judge Colleen Kollar-Kotelly’s July 24, 2017, Order and Memorandum Opinion denying Appellant’s Motion for a Temporary Restraining Order And Preliminary Injunction.

### IV. RELATED CASES

Apart from the proceedings in the court below—*EPIC v. Presidential Advisory Comm’n on Election Integrity et al.*, No. 17-1320 (D.D.C. filed July 3, 2017)—this case has not previously been filed with this Court or any other court. Counsel is aware of the following cases qualifying as “related” under Circuit Rule 28(a)(1)(C):

- *ACLU v. Trump*, No. 17-1351 (D.D.C. filed July 10, 2017)
- *Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Comm’n on Election Integrity*, No. 17-1354 (D.D.C. filed July 10, 2017)
- *Public Citizen v. Army*, No. 17-1355 (D.D.C. filed July 10, 2017)
- *Common Cause v. Presidential Advisory Comm’n on Election Integrity*, No. 17-1398 (D.D.C. filed July 14, 2017)
- *Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Comm’n on Election Integrity*, No. 17-5167 (D.C. Cir. filed July 21, 2017)

Respectfully Submitted,

/s/ Marc Rotenberg  
MARC ROTENBERG  
EPIC President and Executive Director

## TABLE OF CONTENTS

PRELIMINARY STATEMENT .....	1
BACKGROUND .....	2
ARGUMENT .....	8
I. Delay Will Cause Appellant Irreparable Injury.....	9
II. The District Court’s Opinion is Subject to Substantial Challenge.....	10
III. The Public has an Unusual Interest in Prompt Disposition.....	11
CONCLUSION.....	14

## TABLE OF AUTHORITIES

### Cases

<i>Armstrong v. Bush</i> , 924 F.2d 282 (D.C. Cir. 1991) .....	11
<i>Armstrong v. Exec. Office of the President</i> , 90 F.3d 553 (D.C. Cir. 1996) .....	10, 11
<i>Citizens for Responsibility &amp; Ethics in Washington v. Office of Admin.</i> , 566 F.3d 219 (D.C. Cir. 2009) .....	10
<i>Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity, et al.</i> , No. 17-1320 (D.D.C. July 24, 2017) .....	5
<i>Meyer v. Bush</i> , 981 F.2d 1288 (D.C. Cir. 1993) .....	10
<i>Pub. Citizen v. DOJ</i> , 491 U.S. 440, 447 (1989) .....	9
<i>Soucie v. David</i> , 448 F.2d 1067 (D.C. Cir. 1971) .....	10

### Statutes

28 U.S.C. § 1657(a) .....	8
Administrative Procedure Act, 5 U.S.C. § 551 <i>et seq.</i> .....	1, 11
E-Government Act of 2002, Pub. L. 107-347, 116 Stat. 2899 (codified as amended at 44 U.S.C. § 3501 note) .....	1, 2, 6, 7
Federal Advisory Committee Act, 5 U.S.C. app. 2 .....	1, 2, 7

### Other Authorities

Charter, Presidential Advisory Commission on Election Integrity .....	3, 4
E-mail from Andrew Kossack, Designated Federal Officer, PACEI, to state election officials (July 10, 2017, 9:40 AM) .....	5
Exec. Order No. 13,799, 82 Fed. Reg. 22,389 (May 11, 2017) .....	2, 3
<i>Forty-four States and DC Have Refused to Give Certain Voter Information to Trump Commission</i> , CNN (July 5, 2017) .....	12
Letter from Kris Kobach to Alex Padilla, California Secretary of State (July 26, 2017) .....	2, 6
Letter from Kris Kobach, Vice Chair, PACEI, to Elaine Marshall, Secretary of State, North Carolina (June 28, 2017) .....	4
Letter from Michele Reagan, Arizona Sec. of State, to Kris Kobach, Vice Chair, PACEI (July 3, 2017) .....	14
<i>Presidential Advisory Commission on Election Integrity Resources</i> , The White House .....	12
Press Release, Sec. Gale Issues Statement on Request for NE Voter Record Information (July 6, 2017) .....	13
Press Release, Secretary of State Alex Padilla Reaffirms California Will Not Comply with Kobach Commission Voter Data Request (July 25, 2017) .....	13
Press Release, Secretary of State Alex Padilla Responds to Presidential Election Commission Request for Personal Data of California Voters (June 29, 2017) .....	12

U.S. Court of Appeals for the D.C. Circuit, *Handbook of Practice and Internal Procedures* (Jan. 26, 2017)..... 9

## PRELIMINARY STATEMENT

Appellant respectfully moves for expedited briefing and oral argument in the above-captioned appeal. Fed. R. App. P. 27; D.C. Cir. Rule 27; 28 U.S.C. § 1657(a) (“[E]ach court of the United States shall expedite the consideration of any action . . . for temporary or preliminary injunctive relief.”). *EPIC v. Presidential Advisory Commission* presents the type of extraordinary circumstances that justify expedited consideration.

On July 3, 2017, EPIC sought a temporary restraining order and preliminary injunction to prevent the Presidential Advisory Commission on Election Integrity (“the Commission” or “PACEI”) from collecting and aggregating state voter data (1) prior to completing and publishing a Privacy Impact Assessment (“PIA”) as required by the E-Government Act of 2002, 44 U.S.C. § 3501 note, and the Federal Advisory Committee Act, 5 U.S.C. app. 2; and (2) prior to the resolution of EPIC’s constitutional privacy claims. EPIC later amended its Motion on July 13, 2017. On July 24, 2017, the District Court denied EPIC’s motion, concluding that “Defendants’ collection of voter roll information does not currently involve agency action” as necessary for judicial review under the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*; Mem. Op. 1, Ex. 1. Almost immediately following the District Court’s opinion in *EPIC v. Commission*, Commission Vice Chair Kris Kobach sent another letter to state election officials urging them to disclose personal voter data

to the Commission. Letter from Kris Kobach, Vice Chair, PACEI, to Alex Padilla, California Sec'y of State (July 26, 2017), Ex. 2. Absent expedited review of the District Court's Order, the Commission will be allowed to collect the personal data of the nation's voters without first conducting and publishing a Privacy Impact Assessment as required by law.

### **BACKGROUND**

Appellant EPIC seeks expedited review of its appeal from the U.S. District Court for the District of Columbia's denial of EPIC's Motion for a Temporary Restraining Order and Preliminary Injunction, in which EPIC asked the Court to block the Commission from collecting and aggregating state voter data (1) prior to completing and publishing a Privacy Impact Assessment as required by the E-Government Act of 2002, 44 U.S.C. § 3501 note, and the Federal Advisory Committee Act, 5 U.S.C. app. 2; and (2) prior to the resolution of EPIC's constitutional privacy claims.

The Presidential Advisory Commission on Election Integrity was established by executive order on May 11, 2017. Exec. Order No. 13,799, 82 Fed. Reg. 22,389 (May 11, 2017), Ex. 3. The Vice President is named as the Chair of the Commission, "which shall be composed of not more than 15 additional members." *Id.* Additional members are appointed by the President, and the Vice President may select a Vice Chair of the Commission from among the members. *Id.* Vice President



Pence has named Kansas Secretary of State Kris Kobach to serve as Vice Chair of the Commission.

The Commission was asked to “*study* the registration and voting processes used in Federal elections.” *Id.* (emphasis added). The Commission was further asked to identify “(a) those laws, rules, policies, activities, strategies, and practices that enhance the American people’s confidence in the integrity of the voting processes used in Federal elections; (b) those laws, rules, policies, activities, strategies, and practices that undermine the American people’s confidence in the integrity of the voting processes used in Federal elections; and (c) those vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.” *Id.*

Under the text of the Executive Order and the Charter of the Commission, the General Services Administration (“GSA”) is designated as the “Agency Responsible for Providing Support” to the Commission. *Id.* sec. 7(a); Charter, Presidential Advisory Commission on Election Integrity at sec. 6. The GSA was specifically tasked with providing the Commission, *inter alia*, “administrative services,” “facilities,” “equipment” and “other support services as may be necessary to carry out its mission . . .” *Id.* The only derogation from the assignments of these responsibilities to the GSA is a provision which states that “the President’s designee

will be responsible for fulfilling the requirements of subsection 6(b) of the FACA.”

*Id.*

There is no authority in the Executive Order or the Charter of the Commission to collect voter record information from state election officials.

Nonetheless, on June 28, 2017, Mr. Kobach undertook an unprecedented effort to collect detailed personal information on voters nationwide. He sent letters to election officials in all fifty states and the District of Columbia seeking:

the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.

*See, e.g.*, Letter from Kris Kobach, Vice Chair, PACEI, to Elaine Marshall, Secretary of State, North Carolina (June 28, 2017) at 1–2, Ex. 4 (“Commission Letter”). The Commission Letter said that state officials should provide only “publicly available” information, but no attempt was made by the Commission to determine which state data was in fact “publicly available” or to comply with the various other requirements that typically attach to a request for state voter information, such as the designation of files, the payment of fees, the completion of forms, and the use of secure techniques to permit the transfer of sensitive personal data.

Mr. Kobach stated that he expected a response from the states by July 14, 2017—approximately ten business days after the date of the initial request.

On July 3, 2017, EPIC filed suit in U.S. District Court for the District of Columbia. *Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity, et al.*, No. 17-1320 (D.D.C. July 24, 2017).

On July 7, 2017, a hearing was held before the District Court. *See* TRO Hr'g Tr., July 7, 2017, Ex. 5.

On July 10, 2017, the Commission suspended the data collection program. E-mail from Andrew Kossack, Designated Federal Officer, PACEI, to state election officials (July 10, 2017, 9:40 AM), Ex. 6. In a subsequent declaration from Kobach, the Commission stated (1) that it would suspend the data collection pending the Court's decision on this motion; (2) that the Commission had discontinued use of the military website to receive voter data; and (3) that the Commission would delete the data that had been received from the state of Arkansas. Third Kobach Decl., Ex. 7.

On July 13, 2017, pursuant to an Order of the District Court, EPIC filed an Amended Motion for a Temporary Restraining Order and Preliminary Injunction. Order, Ex. 8.

On July 24, 2017, the Opinion and Order of the District Court issued. Mem. Op., Ex. 1.

On July 26, 2017, Kobach sent another letter to the 50 states and the District of Columbia “to renew the June 28 request” and to urge state election officials to turn over state voter records to the Commission. *See, e.g.*, Letter from Kris Kobach, Vice Chair, PACEI, to Alex Padilla, Cal. Sec’y of State (July 26, 2017), Ex. 2. The July 26 letter raised new concerns about possible misuses of the personal data sought by the Commission, as well as uncertainty about the future handling of the data: “Once the Commission’s analysis is complete, the Commission will dispose of the data as permitted by federal law.” *Id.* at 2. For example, the July 26 letter does not indicate who will have access to the data collected, why the data is being collected, for what purposes the data will be used, how the data will be secured, whether a Privacy Act notice will be pursued, whether individuals will have the opportunity to “opt out” of the data collection, whether the data will be retained, or how any conclusions drawn from the “analysis” may be contested.

Such a collection of personal data by a federal agency is entirely contrary to the section 208 of the E-Government Act of 2002 which requires that any federal agency “initiating a new collection of information that (I) will be collected, maintained, or disseminated using information technology; and (II) includes any information in an identifiable form permitting the physical or online contacting of a specific individual” complete a Privacy Impact Assessment before initiating such collection. 44 U.S.C. § 3501 note.

The Privacy Impact Assessment would require the Commission to state:

- (I) what information is to be collected;
- (II) why the information is being collected;
- (III) the intended use of the agency of the information;
- (IV) with whom the information will be shared;
- (V) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared;
- (VI) how the information will be secured; and
- (VII) whether a system of records is being created under section 552a of title 5, United States Code, (commonly referred to as the “Privacy Act”).

*Id.* § 208 (b)(2)(B)(ii).

Given the sensitivity of voter data and the widely known fact that a foreign adversary targeted U.S. voter registration records, a Privacy Impact Assessment may have led to the conclusion that the Commission simply could not collect state voter record information as proposed. And a PIA would have triggered obligations under the federal Privacy Act that would have established procedural safeguards against adverse determinations arising from computer matching programs undertaken by a federal agency. Moreover, under the Federal Advisory Committee Act, the Appellees would have been required to make available the PIA to the public. 5 U.S.C. app. 2 § 10(b).

None of the Appellee agencies have conducted a Privacy Impact Assessment for the Commission’s proposed collection of state voter data. None of the Appellee

agencies have ensured review of a PIA by any Chief Information Officer or equivalent official. The Commission has not made any PIA available to the public.

### ARGUMENT

Appellant is entitled to expedited review as of right because the ruling under review is a denial of EPIC's motion for temporary and preliminary injunctions. 28 U.S.C. § 1657(a) (“[E]ach court of the United States shall expedite the consideration of any action . . . for temporary or preliminary injunctive relief.”); Circuit Rule 47.2(a) (“[I]n an action seeking temporary or preliminary injunctive relief” the clerk must “prepare an expedited schedule for briefing and argument.”). *Am. Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1084 n.8 (D.C. Cir. 2001) (“[U]nder 28 U.S.C. § 1657(a), the granting or denying of a preliminary injunction is the basis for an expedited appeal.”).

EPIC is also entitled to expedited review because “good cause” exists for such treatment. 28 U.S.C. § 1657(a). “‘Good cause’ is shown if a right under the Constitution of the United States or a Federal Statute would be maintained in a factual context that indicates that a request for expedited consideration has merit.” *Id.* To the extent that the Commission might evade the E-Government Act’s Privacy Impact Assessment requirement by using non-GSA facilities to collect voter data, EPIC would face certain informational injury due to the non-disclosure of a PIA. This Court also has the discretion to grant expedited review if “delay will cause

irreparable injury and . . . the decision under review is subject to substantial challenge” or if “the public generally, or . . . persons not before the Court, have an unusual interest in prompt disposition.” U.S. Court of Appeals for the D.C. Circuit, *Handbook of Practice and Internal Procedures* at 33 (Jan. 26, 2017).

This case presents the exactly the type of extraordinary circumstances that require expedited consideration. Absent expedited review, the Commission will be allowed to collect the nation’s voter records without first undertaking a Privacy Impact Assessment, an obligation that should certainly attach to the personal information necessary to sustain the country’s democratic institutions. Under 28 U.S.C. § 1657(a), this Court must expedite the review of Appellant’s appeal.

### **I. Delay Will Cause Appellant Irreparable Injury**

Any delay in resolution of this appeal will cause irreparable injury to EPIC. EPIC is entitled under the E-Government Act of 2002 to access, review, and disseminate a Privacy Impact Assessment prior to the Commission’s collection and creation of a new system to collect personal voter data. The District Court held that the failure to produce the Privacy Impact Assessment imposes on EPIC “the very injuries meant to be prevented by the disclosure of information pursuant to the E-Government Act—lack of transparency and the resulting lack of opportunity to hold the federal government to account.” Mem. Op. 16–17. *See also Pub. Citizen v. DOJ*, 491 U.S. 440, 447 (1989).

This injury is particular to EPIC because EPIC’s mission is to “focus public attention on emerging privacy and civil liberties issues and to protect privacy, freedom of expression, and democratic values in the information age.” Mem. Op. 17. Absent resolution of the claims under the APA, E-Government Act, and Federal Advisory Committee Act, EPIC will be unable to fully “carry out its mission to educate the public regarding privacy issues.” Mem. Op. 17. The Commission’s failure to produce a Privacy Impact Assessment impairs EPIC’s “programmatic activities—educating the public regarding privacy matters— . . . since those activities routinely rely upon access to information from the federal government.” Mem. Op. 26.

## **II. The District Court’s Opinion is Subject to Substantial Challenge**

EPIC’s appeal also presents a substantial challenge to the District Court’s decision. The District Court held that the Commission and the Director of White House Information Technology (“DWHIT”) were not “agencies,” Mem. Op. 27, 32, relying on the “substantial independent authority” test that controls in FOIA cases. *Soucie v. David*, 448 F.2d 1067, 1073 (D.C. Cir. 1971); *see also Citizens for Responsibility & Ethics in Washington v. Office of Admin.*, 566 F.3d 219, 222 (D.C. Cir. 2009); *Armstrong v. Exec. Office of the President*, 90 F.3d 553, 558 (D.C. Cir. 1996) (citing *Meyer v. Bush*, 981 F.2d 1288 (D.C. Cir. 1993)).



But the District Court was wrong to allow a FOIA test to govern the outcome of this case: this Circuit’s precedents demonstrate that the term “agency” carries distinct meanings under the APA and the FOIA. *Compare Armstrong v. Bush*, 924 F.2d 282, 291 (D.C. Cir. 1991) (applying the APA to the National Security Council (“NSC”) as an “agency”), *with Armstrong v. Exec. Office of the President*, 90 F.3d 553, 557–66 (D.C. Cir. 1996) (holding that the NSC is not an “agency” under the FOIA); *see id.* at 566 (The Court’s holding under FOIA still left “the question [of] whether the NSC is an ‘agency’ within the meaning of that term as it is used in the APA. *See* 5 U.S.C. § 551(1) (agency defined as ‘each authority of the Government of the United States’).”). Nor has this Court ever held that a Presidential Advisory Commission is not subject to the APA or that a Presidential Advisory Commission would not be subject to Section 208 of the E-Government Act of 2002. EPIC’s appeal thus represents a substantial challenge requiring the Court’s immediate attention.

### **III. The Public has an Unusual Interest in Prompt Disposition**

Finally, non-parties and the public generally also have an unusual and extraordinarily strong interest in a prompt disposition of this case. There are now 512 pages of public comments responding to the Commission’s attempt to file personal voter data, the vast majority of which are opposed to the Commission’s

proposed collection of state voter records. *See Presidential Advisory Commission on Election Integrity Resources*, The White House.<sup>1</sup>

The vast majority of states have also refused to turn over the voter data the Commission is seeking. *Forty-four States and DC Have Refused to Give Certain Voter Information to Trump Commission*, CNN (July 5, 2017).<sup>2</sup> California Secretary of State Alex Padilla stated on June 29, 2017, that “[t]he President’s commission has requested the personal data and the voting history of every American voter—including Californians. As Secretary of State, it is my duty to ensure the integrity of our elections and to protect the voting rights and privacy of our state’s voters.” Press Release, Secretary of State Alex Padilla Responds to Presidential Election Commission Request for Personal Data of California Voters (June 29, 2017).<sup>3</sup> On July 25, 2017, after the district court’s ruling, Secretary Padilla reaffirmed that he would not comply with the Commission’s request. Press Release, Secretary of State Alex Padilla Reaffirms California Will Not Comply with Kobach Commission

---

<sup>1</sup> <https://www.whitehouse.gov/presidential-advisory-commission-election-integrity-resources> (last visited July 27, 2017).

<sup>2</sup> <http://www.cnn.com/2017/07/03/politics/kris-kobach-letter-voter-fraud-commission-information/index.html>.

<sup>3</sup> <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/>.

Voter Data Request (July 25, 2017).<sup>4</sup> Nebraska Secretary of State John Gale stated on July 6, 2017 that “I also have a concern about data privacy. I have no clear assurances about the security that this national database will receive. In light of the domestic and foreign attacks in 2016 on state voter registration databases, the commission will need to assure my office of a high level of security.” Press Release, Sec. Gale Issues Statement on Request for NE Voter Record Information (July 6, 2017).<sup>5</sup> Arizona Secretary of State Michele Reagan said:

I share the concerns of many Arizona citizens that the Commission’s request implicates serious privacy concerns. [...] Since there is nothing in Executive Order 13799 (nor federal law) that gives the Commission authority to unilaterally acquire and disseminate such sensitive information, the Arizona Secretary of State’s Office is not in a position to fulfill your request.

[...]

Centralizing sensitive voter registration information from every U.S. state is a potential target for nefarious actors who may be intent on further undermining our electoral process. [...] Without any explanation how Arizona’s voter information would be safeguarded or what security protocols the Commission has put in place, I cannot in good conscience release Arizonans’ sensitive voter data for this hastily organized experiment.

---

<sup>4</sup> <http://www.sos.ca.gov/administration/news-releases-and-advisories/2017-news-releases-and-advisories/secretary-state-alex-padilla-reaffirms-california-will-not-comply-kobach-commission-voter-data-request/>.

<sup>5</sup> [http://www.sos.ne.gov/admin/press\\_releases/pdf-2017/nr-20170707.pdf](http://www.sos.ne.gov/admin/press_releases/pdf-2017/nr-20170707.pdf).

Letter from Michele Reagan, Arizona Sec. of State, to Kris Kobach, Vice Chair, PACEI (July 3, 2017).<sup>6</sup>

States are debating how to comply with the Commission's request while this appeal is pending. State election officials and their constituents have a strong, vested interest in the prompt resolution of this case so that the personal information of voters is protected.

Considering the need for the utmost expedition in this matter, Appellant proposes the following briefing schedule:

Appellant's Opening Brief	August 18, 2017
Appellees' Brief	September 15, 2017
Appellant's Reply Brief	September 22, 2017

Appellant has contacted Appellees' counsel, and they do not oppose this proposed briefing schedule.

### **CONCLUSION**

For the foregoing reasons, Appellant respectfully requests that consideration of this matter be expedited, that the Court issue an order setting the above briefing schedule, and that the Court direct the Clerk to schedule oral argument on the earliest available date following the completion of briefing.

---

<sup>6</sup> <https://assets.documentcloud.org/documents/3884344/Kobach-Response-Letter-DRAFT-1.pdf>.

Respectfully Submitted,

/s/ Marc Rotenberg

---

Marc Rotenberg,  
Alan Butler  
Caitriona Fitzgerald  
Jeramie D. Scott  
John Davisson  
ELECTRONIC PRIVACY  
INFORMATION CENTER  
1718 Connecticut Avenue, N.W.  
Suite 200  
Washington, D.C. 20009  
(202) 483-1140  
rotenberg@epic.org

*Attorneys for Appellant EPIC*

Dated: July 28, 2017

## CERTIFICATE OF SERVICE

I, Marc Rotenberg, hereby certify that on July 28, 2017, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. The following participants in the case who are registered CM/ECF users will be served by the CM/ECF system:

Daniel Tenny  
Email: daniel.tenny@usdoj.gov  
U.S. Department of Justice  
(DOJ) Civil Division, Appellate Staff  
Firm: 202-514-2000  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

Elizabeth J. Shapiro  
Direct: 202-514-5302  
Email: elizabeth.shapiro@usdoj.gov  
Fax: 202-616-8470  
U.S. Department of Justice  
(DOJ) Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, NW  
Washington, DC 20530

Mark B. Stern, Attorney  
Email: mark.stern@usdoj.gov  
U.S. Department of Justice  
(DOJ) Civil Division, Appellate Staff  
Firm: 202-514-2000  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

/s/ Marc Rotenberg  
MARC ROTENBERG

## CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6). The motion is composed in a 14-point proportional typeface, Times New Roman, and complies with the word limit of Fed. R. App. P. 27(d)(2)(A) and D.C. Circuit Rule 27(a)(2), because it contains 3,111 words.

/s/ Marc Rotenberg  
MARC ROTENBERG