

STATE OF NEW HAMPSHIRE  
HILLSBOROUGH COUNTY SUPERIOR COURT, SOUTHERN DIVISION  
Docket No. \_\_\_\_

BETTE R. LASKY  
15 Masefield Rd., Nashua, NH 03062

and

NEAL KURK  
RR 1, Weare, NH 03281

and

AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION  
18 Low Ave # 12, Concord, NH 03301

v.

THE STATE OF NEW HAMPSHIRE  
By its Secretary of State  
William Gardner  
(In his official capacity only)  
107 N Main St #112, State Office Building  
Concord, NH 03301

**PETITION FOR PRELIMINARY INJUNCTION, DECLARATORY JUDGMENT, AND FINAL  
INJUNCTIVE RELIEF**

**INTRODUCTION**

On Wednesday, June 28, 2017, the Vice Chair of the recently created Presidential Advisory Commission on Election Integrity (hereinafter, “the Commission”)—Kansas Secretary of State Kris Kobach—sent letters to all 50 states and the District of Columbia, including New Hampshire, requesting a list of all registered voters (first and last name and middle initial), the last four digits of their social security numbers, their addresses, dates of birth, political party affiliation, and voting history from 2006 onward, as well as any information regarding felony convictions, military status, overseas voting, and registration in another state. The Commission—of which Defendant New Hampshire Secretary of State

William Gardner is a member—acknowledged that any information sent to it would become public. The Commission requested a response by July 14, 2017.

On Friday, June 30, 2017, the New Hampshire Secretary of State agreed to produce to the Commission statewide voter information that is deemed “public” under RSA 654:31-a and RSA 654:25. This information consists of voters’ names, domicile address, mailing address, and party affiliation, if any. The Secretary of State did not say whether he would charge the Commission for the statewide public checklist, though (i) political parties and political committees currently pay in excess of \$8,000 for this statewide information under RSA 654:31(IV), and (ii) any member of the public would be charged for receiving the public checklist on a municipality-by-municipality basis under RSA 654:31(II).

The Secretary of State’s response ignored the requirements of RSA 654:31(II)–(III), which place strict and binding requirements on how the State is to produce this “public” voter information. These requirements allow requesters (i) only to view the statewide public checklist on the statewide centralized voter registration database at the state records and archives center during normal business hours where requesters are prohibited from printing, duplicating, transmitting, or altering the data and (ii) only to obtain hard copies of the public checklist from local municipalities on a town-by-town/ward-by-ward basis at a fee of at least \$25 per municipality or ward. *See* RSA 654:31(II)–(III). In short, the Secretary of State has no statutory authority to release a copy of the statewide public checklist to anyone other than a political party, political committee, or candidate for New Hampshire office. *See* RSA 654:31(IV).

These restrictions imposed by the legislature exist for good reason: to protect voter privacy by limiting the prospect of mass dissemination of this statewide voter information,

help ensure that voter information is only used for political purposes, and help prevent statewide information from ultimately being used for commercial purposes. RSA 654:31(VI)—consistent with New Hampshire’s “live free or die” libertarian streak—explicitly prohibits this information from being used for commercial purposes to protect voters’ privacy. Indeed, unlike RSA 654:45 which allows for sharing of voter data through secured channels between states for the limited purpose of eliminating duplicate registrations of voters, the Commission’s request contains no provision for a security protocol to be established *before* disclosure to protect the privacy interests of New Hampshire’s voters. In addition, the Commission’s request provides complying States with two methods of transmitting the data to the Commission, both of which have been criticized by cybersecurity experts as unsafe. *See* Eric Geller and Cory Bennett, *Trump Voter-fraud Panel’s Data Request a Gold Mine for Hackers, Experts Warn*, POLITICO (July 1, 2017), <http://www.politico.com/story/2017/07/01/trump-voter-fraud-panel-hackers-240168>. All of the provisions of RSA 654:31 and RSA 654:45 so carefully designed by the legislature to protect privacy would be rendered meaningless by the transfer of data to the Commission, which has announced its intention to post everything received online and make it available to all. *See* June 28, 2017, attached as *Exhibit 1*.

In sum, the Secretary of State’s willingness to disseminate this statewide information on over 984,000 registered voters (over 755,000 of whom voted during the 2016 election) to the Commission—and therefore make it public—outside the privacy protections of RSA 654:31(II)–(III) violates New Hampshire law. There is no statutory authority to, as the Secretary of State plans to do, simply transmit this information to the Commission without following RSA 654:31(II)–(III)’s strict and binding parameters. The

Commission is not entitled to special, unwritten exemptions from the Secretary of State that circumvent New Hampshire law. Rather, the Secretary of State must apply the law to the Commission no differently than he would apply the law to a regular member of the public seeking this information. Put another way, the Commission must follow the same rules that apply to members of the public. These statutory protections are especially important here where the Commission has acknowledged that the information it receives will become public. This dissemination could cause New Hampshire voter information to be used by others for commercial purposes contrary to the legislature's intent.

Because the Secretary of State has stated publicly that he will comply with the request to convey this information to the Commission by July 14, 2017, Petitioners seek a preliminary and permanent injunction barring the disclosure of this information absent the Secretary of State's full compliance with RSA 654:31(II)-(III). Without such an injunction barring disclosure in advance of this July 14, 2017 deadline, the public will be irreparably harmed upon unlawful disclosure to the Commission, as will Petitioners' right to have their voting information only conveyed consistent with New Hampshire law. Further, Petitioners seek a declaration ordering the Secretary of State to comply with RSA 654:31(II)-(III) if he produces any public voter information to the Commission.

### **PARTIES**

1. Petitioner Bette R. Lasky lives in Nashua, NH. She is a Democratic member of the New Hampshire Senate, where she represents District 13 (comprising Wards 3 through 9 in Nashua). She has served four terms in the Senate. While in the Senate for the 2008-2009 term, she chaired the Election Law and Veterans' Affairs Committee. Senator Lasky opposes the public dissemination of her voting information to the Commission in a manner

inconsistent with RSA 654:31(II)–(III), which would possibly allow others to use this information for commercial purposes.

2. Petitioner Neal Kurk lives in Weare, NH. He is a Republican member of the New Hampshire House of Representatives, where he represents Hillsborough County, District 2 (comprising Weare and Deering). He has served 16 terms in the New Hampshire House of Representatives. He is also Chairman of the House Finance Committee. In both his personal and professional capacity as an elected official, Chairman Kurk has been a staunch privacy advocate. He was involved in drafting privacy amendments to RSA 654:31. Consistent with New Hampshire law, Chairman Kurk opposes the public dissemination of his voting information to the Commission in a manner inconsistent with RSA 654:31(II)–(III), which would possibly allow others to use this information for commercial purposes contrary to the legislature’s intent.

3. Petitioner ACLU of New Hampshire Foundation (“ACLU-NH”)—which has hundreds of members in Hillsborough County—is the New Hampshire affiliate of the American Civil Liberties Union (“ACLU”). The ACLU is a nationwide, nonpartisan, public-interest organization with over 1.2 million members. This includes over 8,000 New Hampshire members. The ACLU-NH represents its members by engaging in litigation to encourage the protection of individual rights guaranteed under federal and state law, including the right to vote and the right to privacy. The ACLU-NH has appeared before federal and state courts on behalf of its clients in numerous voting cases. These cases include *Guare v. New Hampshire*, 167 N.H. 658 (2015) (striking down voter registration form language that would impose a chilling effect on the right to vote of those domiciled in New Hampshire) and *Saucedo v. New Hampshire*, No. 1:17-cv-00183 (D.N.H., filed May 10,

2017) (pending federal lawsuit challenging state law allowing election officials to invalidate absentee ballots based on “signature mismatch,” which disenfranchises voters, many of whom are disabled, without warning and due process). The ACLU-NH is also committed to the right to privacy. Many of the over 8,000 New Hampshire members of the ACLU have indicated that they wish to protect their voting information consistent with current New Hampshire law and do not want their personal information disseminated to the Commission in such a way that would possibly allow others to improperly use this information.

4. Defendant William Gardner is Secretary of State of the State of New Hampshire and, as such, is charged with overseeing the custody of the statewide voter database. He has limited authority to release certain categories of information in the database through methods that vary depending upon the nature of the requesting entity. He is also a member of the Presidential Advisory Commission on Election Integrity. He is joined solely in his official capacity as Secretary of State.

### **JURISDICTION**

5. This is an action by Petitioners seeking injunctive and declaratory relief pursuant to Superior Court Rule 48 and RSA 491:22(I). Petitioners seek an injunction barring the Secretary of State from disclosing voter information to the Commission in a manner inconsistent with RSA 654:31(II)–(III). Petitioners request a judicial declaration ordering the Secretary of State to comply with RSA 654:31(II)–(III) if he discloses any public voter information to the Commission. RSA 491:22(I) provides in part, “Any person claiming a present legal or equitable right or title may maintain a petition against any

person claiming adversely to such a right or title to determine the question as between the parties, and the court's judgment or decree thereon shall be conclusive."

6. The Court has personal jurisdiction over the Defendant, as he is responsible for overseeing the custody of the statewide voter database in New Hampshire.

7. The Court has subject matter jurisdiction pursuant to RSA 491:22 and Supreme Court Rule 48.

8. The venue in Hillsborough County Superior Court, Southern Division is proper because one of the parties is domiciled in this County, because the ACLU-NH has hundreds of members in this County, and because the violations complained of will, if unchecked, harm the voters domiciled in this County.

#### **STATEMENT OF FACTS**

9. On Wednesday, June 28, 2017, the Vice Chair of the recently created Presidential Advisory Commission on Election Integrity—Kansas Secretary of State Kris Kobach—sent letters to all 50 states and the District of Columbia, including New Hampshire, requesting a list of all registered voters (first and last name and middle initial), the last four digits of their social security numbers, their addresses, dates of birth, political party affiliation, and voting history from 2006 onward, as well as any information regarding felony convictions, military status, overseas voting, and registration in another state. *See* June 28, 2017, attached as Exhibit 1.

10. The Commission—of which New Hampshire Secretary of State William Gardner is a member—acknowledged that any information sent to it would become public, stating in the letter the following: "Please be aware that any documents that are submitted to the full Commission will also be made available to the public."

11. The Commission's June 28, 2017 letter also requested a response by July 14, 2017.

12. On Friday, June 30, 2017, the New Hampshire Secretary of State agreed to produce to the Commission statewide information concerning voters that is deemed "public" under RSA 654:31-a and RSA 654:25, which consists of voters' names, domicile address, mailing address, and party affiliation, if any. The Secretary of State also plans on producing "voter history" dating back to 2006.<sup>1</sup> See Kevin Landrigan, *Firestorm Over Call for Info on Elections*, UNION LEADER (July 1, 2017), <http://www.unionleader.com/Firestorm-over-call-for-info-on-elections> ("The information New Hampshire will give up is names, addresses, party affiliation and voting history dating back to 2006. Gardner said voting history includes whether a person voted in a general election and which party's ballot a voter took during a primary election .... Gardner said he hasn't decided whether to make the commission pay for the public records his office will produce."); John DiStaso, *Sununu, Gardner Say NH Will Turn Over Public Voter Information to Trump Election Commission*, WMUR (June 30, 2017), <http://www.wmur.com/article/sununu-gardner-say-nh-will-turn-over-public-voter-information-to-trump-election-commission/10246459>. ("New Hampshire will provide President Donald Trump's Commission on Election Integrity with the names, addresses and other public information about Granite Staters included on the voter rolls, Gov. Chris Sununu and Secretary of State William Gardner told WMUR on Friday."), Articles attached as Exhibits 3 A-C.

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<sup>1</sup> "Voting history" cannot be disclosed back to 2006 under New Hampshire law. Under RSA 654:31(IV), "voter history" means whether the person voted and, for primary elections, in which party's primary the person voted, in each state election for the preceding 2 years."



13. The Secretary of State did not say whether he would charge the Commission for the statewide public checklist, though (i) political parties and political committees currently pay in excess of \$8,000 for this statewide information under RSA 654:31(IV), and (ii) any member of the public would be charged for receiving the public checklist on a municipality-by-municipality basis under RSA 654:31(II).

14. The Secretary of State's response demonstrates a clear intent to violate the requirements of RSA 654:31(II)–(III), which place strict and binding requirements on how the State is to produce this “public” voter information. These requirements do not give any discretion to the Secretary of State to act in any way other than as authorized.

15. RSA 654:31(II)–(III) governs the disclosure of the information on the public voter checklist to members of the public who are not political parties, political committees, or political candidates. These provisions would apply to the Commission's request, as the Commission is neither a political party, political committee, nor political candidate under RSA 654:31(IV).<sup>2</sup> Indeed, the Secretary of State has no statutory authority to release a copy of the statewide public checklist to anyone other than a political party, political committee, or candidate for New Hampshire office. There are no exemptions from RSA 654:21(II)–(III)'s requirements that apply to the Commission's request.

16. RSA 654:31(II) states:

In towns and cities, the public checklist as corrected by the supervisors shall be open for the examination of any person at all times before the opening of a meeting or election at which the list is to be used. The supervisors of the checklist or city or town clerk shall furnish one or more copies of the most recent public checklist of their town or city to any person requesting such copies. The supervisors of the checklist or city or town clerk may only

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<sup>2</sup> RSA 654:31(IV) governs the disclosure of the public checklist, as well as voter history, to a “political party” or “political committee” or political candidate running for office. Under this provision, the checklist, along with “voter history” can be purchased directly from the Secretary of State.

provide checklist information for their town or city. The supervisors of the checklist or city or town clerk shall charge a fee of \$25 for each copy of the public checklist for a town or ward. For public checklists containing more than 2,500 names, the supervisors of the checklist or city or town clerk shall charge a fee of \$25, plus \$0.50 per thousand names or portion thereof in excess of 2,500, plus any shipping costs. The supervisors of the checklist or city or town clerk may provide public checklist information on paper, computer disk, computer tape, electronic transfer, or any other form.

17. RSA 654:31(III) states:

Any person may view the data that would be available on the public checklist, as corrected by the supervisors of the checklist, on the statewide centralized voter registration database maintained by the secretary of state at the state records and archives center during normal business hours, but the person viewing data at the state records and archives center may not print, duplicate, transmit, or alter the data.

18. In sum, these requirements allow requesters to (i) only view the statewide public checklist on the statewide centralized voter registration database at the state records and archives center during normal business hours where requesters are prohibited from printing, duplicating, transmitting, or altering the data and (ii) only obtain hard copies of the public checklist from local municipalities on a town-by-town/ward-by-ward basis at a fee of at least \$25 per municipality or ward. *See* RSA 654:31(II)–(III). Each municipality can only release data relating to its own voters. Thus, a member of the public cannot obtain a copy of the statewide public checklist from the Secretary of State's Office, and instead must make requests to individual towns and wards directly to obtain a copy of that town's or ward's public checklist.

19. These restrictions imposed by the legislature exist for good reason: to protect voter privacy by limiting the prospect of mass dissemination of statewide voter information, help ensure that voter information is only used for political purposes, and help prevent statewide information from ultimately being used for commercial purposes. RSA

654:31(VI) explicitly prohibits this information from being used for commercial purposes to protect voters' privacy. "Commercial purposes" means "knowingly using, selling, giving, or receiving the checklist information for the purpose of selling or offering for sale any property or service unrelated to an election or political campaign." *See* RSA 654:31(I)(b).

20. It is important to note that RSA 654:45—which authorizes the Secretary of State to enter into agreements to share voter information from the statewide centralized voter database for the purpose of comparing duplicate voter information "with other states or groups of states"—does not provide authority for the Secretary of State to convey this information to the Commission outside the clear and specific parameters of RSA 654:31(II)–(III). *See* HB 1482, 2016 Gen. Court., 164th Sess. (N.H. 2016), *available at* <http://www.gencourt.state.nh.us/bill/Status/billText.aspx?sy=2016&id=775&txtFormat=html>. RSA 654:45 prohibits the release of data from the statewide voter database and specifies that "[a]ny person who discloses information from the voter database in any manner not authorized by this section shall be guilty of a misdemeanor." RSA 654:45(VI). Disclosure to the Commission would circumvent this statute's plain terms. This is for several reasons.

21. First, RSA 654:45(VIII) only allows the Secretary of State to enter into agreements "with other states or groups of states" in order to compare duplicate information.<sup>3</sup> Here, the Commission is not a "group of states" for which the State of New Hampshire intends to engage to assess duplicate registrations. Rather, the Commission

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<sup>3</sup> RSA 654:45(VIII) states: "The secretary of state may enter into an agreement to share voter information or data from the statewide centralized voter registration database for the purpose of comparing duplicate voter information with other states or groups of states. The secretary of state shall only provide information that is necessary for matching duplicate voter information with other states and shall take precautions to make sure that information in the database is secure in a manner consistent with RSA 654:45, VI. The secretary of state may solicit input from the department of safety and the department of information technology and shall ensure that any information or data shared between the agencies that is of a confidential nature remains confidential."

consists of a group of “individuals with knowledge and experience in elections” tasked with studying “the registration and voting processes used in Federal elections.” *See* Exec. Order No. 13,799, 82 Fed. Reg. 2238 (May 11, 2017), attached as Exhibit 2.

22. Second, RSA 654:45(VIII) never contemplated public disclosure of voter information and, in fact, places strict limitations on what and how information is disclosed. This statute requires that the information the Secretary of State discloses as part of this program be “secure.” Indeed, RSA 654:45(VIII) limits the extent of the information that the Secretary of State can share (e.g., only information “necessary for matching duplicate voter information,” and only allows this information to be used for “the purpose of comparing duplicate voter information.” This statute also recognizes the risk of disclosure of confidential information by authorizing the Secretary of State to solicit input from the Department of Safety and the Department of Information Technology regarding how to keep confidential voter data confidential. Moreover, RSA 654:45(IV)(c) and (V) limit which officials may access the information, which highlights the sensitive nature of the data and the strict limits on access. Here, however, disclosure to the Commission would upend these protections. The Commission itself acknowledges that any information it obtains would be public and therefore, by definition, is not secure. Furthermore, prior to sharing any information with any other state under the crosscheck program authorized RSA 654:45, the Secretary of State is required to enter into a formal agreement that establishes a secure protocol for handling the information—precisely the antithesis of a completely accessible online database.

**COUNT I**  
**[VIOLATION OF RSA 654:31(II)–(III) and RSA 654:45]**

23. Petitioners adopt the allegations contained in the preceding paragraphs.

24. The Secretary of State's willingness to disseminate this statewide information to the Commission—and therefore make it public—outside the privacy protections of RSA 654:31(II)–(III) and RSA 654:45 violates New Hampshire law.

25. There is no statutory authority to, as the Secretary plans to do, simply transmit this information to the Commission without following RSA 654:31(II)–(III)'s strict and binding parameters.

26. The Commission is not entitled to special, unwritten exemptions from the Secretary of State that circumvent New Hampshire law.

27. Rather, the Secretary of State must apply the law to the Commission no differently than he would apply the law to a regular member of the public seeking this information. Put another way, the Commission must follow the same rules that apply to members of the public.

28. These statutory protections are especially important here where the Commission has acknowledged that the information it receives will become public. This dissemination could cause New Hampshire voter information to be used by others for commercial purposes contrary to the legislature's intent.

29. Because the Secretary of State has stated publicly that he will comply with the request to convey this information to the Commission by July 14, 2017, Petitioners seek a preliminary and permanent injunction barring the disclosure of this information absent the Secretary of State's compliance with RSA 654:31(II)–(III). Without such an injunction barring disclosure in advance of this July 14, 2017 deadline, the public will be irreparably harmed upon unlawful disclosure to the Commission, as will Petitioners' right to have their voting information only conveyed consistent with New Hampshire law.

30. Petitioners have no alternative adequate remedy at law if they are denied the requested relief.

31. Given the clarity of RSA 654:31(II)–(III) and the Secretary of State’s imminent violation of its terms, there is a substantial likelihood of success on the merits.

32. Further, Petitioners seek a declaration ordering the Secretary of State to comply with RSA 654:31(II)–(III) if he produces any public voter information to the Commission.

### **PRAYER FOR RELIEF**

WHEREFORE, Petitioners pray that:

1. Pending a final hearing on this matter, the Court schedule an immediate hearing given the parties’ need for an immediate resolution of the legal issues raised by Petitioners.
2. Following an immediate hearing, in light of the irreparable harm to Petitioners caused by the Secretary of State’s apparent decision to release voter information by July 14, 2017, Petitioners’ lack of an adequate remedy at law if the Secretary of State produces this information by July 14, 2017, and the substantial likelihood that Petitioners will succeed on the merits of their case, the Court issue a preliminary injunction barring, for the duration of this case, the Secretary of State from disclosing voter information to the Commission absent the Secretary of State’s compliance with RSA 654:31(II)–(III).
3. The Court schedule an expedited final hearing on this matter.
4. Following the final hearing, the Court issue a declaratory judgment ordering the Secretary of State to comply with RSA 654:31(II)–(III) if it discloses any voter information to the Commission.
5. Following the final hearing, and as a consequence of the above-requested declaratory relief, the Court issue a permanent injunction barring the Secretary of State from disclosing voter information to the Commission absent the Secretary of State’s compliance with RSA 654:31(II)–(III).
6. And for such other relief as may be just and proper.

Respectfully submitted,

Petitioners Bette R. Lasky, Neal Kurk, and the American  
Civil Liberties Union of New Hampshire Foundation,

By and through their attorneys in cooperation with the  
American Civil Liberties Union of New Hampshire  
Foundation,

*Paul Twomey for Gilles Bissonnette -*  
Gilles R. Bissonnette (N.H. Bar No. 265393) *signed with permission*  
Legal Director

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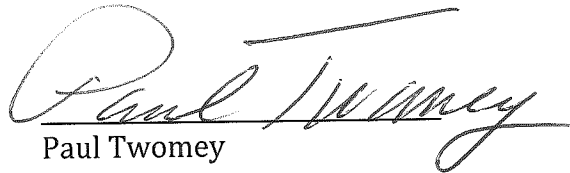
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July 6, 2017

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Petition for Preliminary Injunction, Declaratory Judgment, and Final Injunctive Relief has been hand-delivered to the New Hampshire Department of Justice and the Office of the Secretary of State on this date, July 6, 2017.

7/6/17  
Date

  
Paul Twomey



# **Exhibit 1**



## Presidential Advisory Commission on Election Integrity

June 28, 2017

The Honorable Bill Gardner  
Secretary of State  
State House, Rm 204  
Concord, NH 03301

Dear Secretary Gardner,

I serve as the Vice Chair for the Presidential Advisory Commission on Election Integrity ("Commission"), which was formed pursuant to Executive Order 13799 of May 11, 2017. The Commission is charged with studying the registration and voting processes used in federal elections and submitting a report to the President of the United States that identifies laws, rules, policies, activities, strategies, and practices that enhance or undermine the American people's confidence in the integrity of federal elections processes.

As the Commission begins its work, I invite you to contribute your views and recommendations throughout this process. In particular:

1. What changes, if any, to federal election laws would you recommend to enhance the integrity of federal elections?
2. How can the Commission support state and local election administrators with regard to information technology security and vulnerabilities?
3. What laws, policies, or other issues hinder your ability to ensure the integrity of elections you administer?
4. What evidence or information do you have regarding instances of voter fraud or registration fraud in your state?
5. What convictions for election-related crimes have occurred in your state since the November 2000 federal election?
6. What recommendations do you have for preventing voter intimidation or disenfranchisement?
7. What other issues do you believe the Commission should consider?

In addition, in order for the Commission to fully analyze vulnerabilities and issues related to voter registration and voting, I am requesting that you provide to the Commission the publicly-available voter roll data for New Hampshire, including, if publicly available under the laws of your state, 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.

You may submit your responses electronically to [ElectionIntegrityStaff@ovp.eop.gov](mailto:ElectionIntegrityStaff@ovp.eop.gov) or by utilizing the Safe Access File Exchange ("SAFE"), which is a secure FTP site the federal government uses for transferring large data files. You can access the SAFE site at <https://safe.amrdec.army.mil/safe/Welcome.aspx>. We would appreciate a response by July 14, 2017. Please be aware that any documents that are submitted to the full Commission will also be made available to the public. If you have any questions, please contact Commission staff at the same email address.

On behalf of my fellow commissioners, I also want to acknowledge your important leadership role in administering the elections within your state and the importance of state-level authority in our federalist system. It is crucial for the Commission to consider your input as it collects data and identifies areas of opportunity to increase the integrity of our election systems.

I look forward to hearing from you and working with you in the months ahead.

Sincerely,



Kris W. Kobach  
Vice Chair  
Presidential Advisory Commission on Election Integrity

## **Exhibit 2**

# Presidential Documents

## Title 3—

## Executive Order 13799 of May 11, 2017

## The President

## Establishment of Presidential Advisory Commission on Election Integrity

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote fair and honest Federal elections, it is hereby ordered as follows:

**Section 1. *Establishment.*** The Presidential Advisory Commission on Election Integrity (Commission) is hereby established.

**Sec. 2. *Membership.*** The Vice President shall chair the Commission, which shall be composed of not more than 15 additional members. The President shall appoint the additional members, who shall include individuals with knowledge and experience in elections, election management, election fraud detection, and voter integrity efforts, and any other individuals with knowledge or experience that the President determines to be of value to the Commission. The Vice President may select a Vice Chair of the Commission from among the members appointed by the President.

**Sec. 3. *Mission.*** The Commission shall, consistent with applicable law, study the registration and voting processes used in Federal elections. The Commission shall be solely advisory and shall submit a report to the President that identifies the following:

(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.

**Sec. 4. *Definitions.*** For purposes of this order:

(a) The term "improper voter registration" means any situation where an individual who does not possess the legal right to vote in a jurisdiction is included as an eligible voter on that jurisdiction's voter list, regardless of the state of mind or intent of such individual.

(b) The term "improper voting" means the act of an individual casting a non-provisional ballot in a jurisdiction in which that individual is ineligible to vote, or the act of an individual casting a ballot in multiple jurisdictions, regardless of the state of mind or intent of that individual.

(c) The term "fraudulent voter registration" means any situation where an individual knowingly and intentionally takes steps to add ineligible individuals to voter lists.

(d) The term "fraudulent voting" means the act of casting a non-provisional ballot or multiple ballots with knowledge that casting the ballot or ballots is illegal.

**Sec. 5. *Administration.*** The Commission shall hold public meetings and engage with Federal, State, and local officials, and election law experts, as necessary, to carry out its mission. The Commission shall be informed by, and shall strive to avoid duplicating, the efforts of existing government entities. The Commission shall have staff to provide support for its functions.

**Sec. 6. Termination.** The Commission shall terminate 30 days after it submits its report to the President.

**Sec. 7. General Provisions.** (a) 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.

(b) Relevant executive departments and agencies shall endeavor to cooperate with the Commission.

(c) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the “Act”), may apply to the Commission, any functions of the President under that Act, except for those in section 6 of the Act, shall be performed by the Administrator of General Services.

(d) Members of the Commission shall serve without any additional compensation for their work on the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

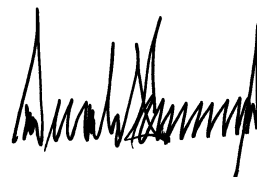
(e) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(g) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
May 11, 2017.

## **Exhibit 3-A**

## POLITICO



President Donald Trump launched the "election integrity" commission in May. | AP Photo

### **Trump voter-fraud panel's data request a gold mine for hackers, experts warn**

By **ERIC GELLER** and **CORY BENNETT** | 07/01/2017 01:00 PM EDT

Cybersecurity specialists are warning that President Donald Trump's voter-fraud commission may unintentionally expose voter data to even more hacking and digital manipulation.

Their concerns stem from a letter the commission sent to every state this week, asking for full voter rolls and vowing to make the information "available to the public." The requested information includes full names, addresses, birth dates, political party and, most notably, the last four digits of Social Security numbers. The



commission is also seeking data such as voter history, felony convictions and military service records.

Digital security experts say the commission's request would centralize and lay bare a valuable cache of information that cyber criminals could use for identity theft scams — or that foreign spies could leverage for disinformation schemes.

"It is beyond stupid," said Nicholas Weaver, a computer science professor at the University of California at Berkeley.

"The bigger the purse, the more effort folks would spend to get at it," said Joe Hall, chief technologist at the Center for Democracy and Technology, a digital advocacy group. "And in this case, this is such a high-profile and not-so-competent tech operation that we're likely to see the hacktivists and pranksters take shots at it."

Indeed, by Friday night, over 20 states — from California to Mississippi to Virginia — had indicated they would not comply with the request, with several citing privacy laws and expressing unease about aggregating voter data.

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"Mississippi residents should celebrate Independence Day and our state's right to protect the privacy of our citizens by conducting our own electoral processes," said Mississippi Secretary of State Delbert Hosemann, a Republican, in a statement.

Trump took to Twitter Saturday morning to bash the reticent states.

"Numerous states are refusing to give information to the very distinguished VOTER FRAUD PANEL. What are they trying to hide?" he wrote.

Trump launched the "election integrity" commission in May, tapping Kansas Secretary of State Kris Kobach to lead the charge. The commission's main task was to study voter fraud, a subject of interest to Trump, who has baselessly claimed that

millions of people voted illegally in the 2016 election.

White House officials also said the commission would recommend steps to help secure the “integrity” of the voting systems. In this vein, the letter asks how the commission can help local officials address “information technology security and vulnerabilities.”

But cyber specialists say the missive and its directions has the exact opposite effect. And the commission's request comes at a time when the Trump administration is already under fire from Democrats who say it is doing little to protect the electoral process from hackers.

Technical experts say the voter data that the commission wants to assemble would quickly become a single treasure trove for cyber criminals and foreign intelligence services. Identity thieves could use information such as addresses, birth dates and the last four digits of Social Security numbers for digital impersonations, and foreign spies could use it to fill out dossiers on Americans they hope to blackmail.

“This information is particularly sensitive because it can be matched up with other stolen or publicly available information to build a more complete profile for an individual and target them for fraud or other exploitation,” said Jason Straight, a data breach expert who serves as chief privacy officer at the business solutions firm UnitedLex.

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## **Trump questions why states refusing to give info to election panel**

By **REBECCA MORIN**

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Specifically, researchers have shown that voter rolls are “the most useful external source of data” when fraudsters hope to identify people in anonymized health or medical records, Hall said.

Security specialists told POLITICO they were especially perturbed about Kobach's claim that the commission would publish all the voter data it receives.

While much of the data the commission requested — including addresses and dates of birth — is already publicly available in states or from third-party vendors, states restrict access to that information in various ways.

If the commission publishes all the voter data it receives, it “could result in the commission making voter data more widely accessible than it otherwise would be from the state itself,” Straight said.

The White House pushed back on these fears.

“Information being requested is already publicly available according to state law from which it would be released,” noted Marc Lotter, a spokesman for Vice President Mike Pence, who is leading the panel with Kobach.

“The federal government takes cybersecurity very seriously,” he added. “No publicly identifiable information will be released to the public and the information will be managed consistent with federal security guidelines.”

Kobach's office did not respond to requests for comment.

Ways exist to secure large quantities of voter data — Hall pointed to the Electronic Registration Information Center, a state-run nonprofit that helps officials clean their voter rolls, as one example. But that organization uses strong encryption to protect its information, he noted.

“It's hard to imagine all the work that went into making that private and secure is happening in the week before the commission's first meeting,” said Hall.

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### **An inside view of the House Russia probe**

By **AUSTIN WRIGHT** and **MARTIN MATISHAK**

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Experts also criticized the commission's two options for states to submit their data: via a White House email address and a Pentagon-run file-hosting service.

“Email is the worst; it's like sending all your postal mail using postcards instead of letters in envelope,” Hall said. “It's one of the harder methods of communication to secure.”

The commission's alternative option, a file-hosting service run by a branch of the Army, isn't currently configured to properly encrypt web traffic, which Hall said was “a massive red flag for their ability to properly secure other forms of secure file transfer.”

The perceived digital security miscues left many specialists stunned.

“Nothing about this letter appears to take information security into account,” said Matthew Green, a computer science professor and cryptography expert at Johns Hopkins University. “If I didn't know this letter was real, I would assume it was a clever spearphishing campaign.”

## **Exhibit 3-B**

July 01. 2017 10:30PM

# Firestorm over call for info on elections

By KEVIN LANDRIGAN

New Hampshire Union Leader

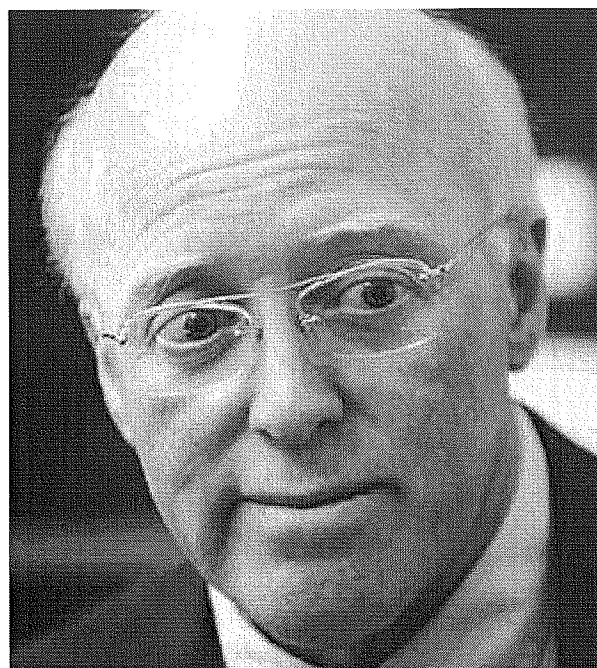
CONCORD - The sweeping demand from a new anti-voter fraud commission for state election officials to broadly turn over voter records has been met with bipartisan resistance while President Donald Trump doubled down Saturday on why he's asked for them in the first place.

Secretary of State Bill Gardner said voters have become so distrusting that many believe local officials have private information about them.

"The level of suspicion and downright cynicism seems to be at an all-time high," Gardner said. "We don't have boxes full of personal information about people in our archives. What we have is what we've publicly shared for decades."

But critics of Trump's Election Integrity Commission's broad request for extensive information about voters in all 50 states say the pushback is justified.

And it's bipartisan, as Democratic and Republican leaders from more than 20 states have rejected the



(/storyimage/UL/20170702/NEWS0621/170709943/AR/0/AR-170709943.jpg?q=100)

Gardner

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call, many citing their own state laws that prevent turning over the data.

[tightening-voter-registration-requirements-passes-in-the-House-06012017](#)

"This broad net the commission is throwing is all about trying to promote a narrative that's got no basis in reality, that there was rampant voter fraud in New Hampshire and other key states,"

[ACLU files Right-to-Know request with Secretary of State over election commission \(/politics/ACLU-files-Right-to-Know-request-with-Secretary-of-State-over-election-commission-05192017\)](#)

said Democratic National Committeeman Peter Burling of Cornish.

"Whatever happened to New Hampshire's tradition of Live Free or Die? Just say no, Mr. Gardner."

Gardner, a longtime Democrat, and Gov. Chris Sununu, a first-term Republican, aren't saying no and instead are complying with the spirit but not the letter of the commission's request made through Vice Chairman Kris Kobach, the Kansas secretary of state.

The information New Hampshire will give up is names, addresses, party affiliation and voting history dating back to 2006. Gardner said voting history includes whether a person voted in a general election and which party's ballot a voter took during a primary election.

"We fully intend to comply," Sununu said. "This is a bipartisan commission looking at integrity in the election process. That is something we take seriously here in the State of New Hampshire.

"All voter information in this state is public, and that's the information we'll be providing. Nothing else."

Gardner points out that private companies have been buying these voter information records for many election cycles at a cost of about \$8,300 for each election.

Kobach wanted much more than that in his request of all states, including the last four digits of Social Security numbers, the birth dates of all voters and any records on criminal convictions for election law violations.

This is what bothered many public officials and privacy advocates.

"I am very concerned that the requested information would be used to create a national voter database that can be used to disenfranchise voters," said U.S. Sen. Maggie Hassan, D-N.H.

U.S. Rep. Carol Shea-Porter, D-N.H., made a plea to Gardner and Sununu to take a principled

stand against the entire ask.

"In closing, I urge you to shield New Hampshire voters from this historic federal intrusion into law-abiding Americans' right to privacy whose only "offense" was exercising their Constitutional right to vote," Shea-Porter said in a statement.

"This could further dampen participation in our elections."

### Tradition of privacy

New Hampshire state law requires the state to update the checklist after every election. The checklist shows which people voted in each election and which party ballot was taken in a primary.

"We keep the older checklists in the archives in boxes, so those records going back to 2006 are easily available," Gardner said.

He added that many citizens don't realize New Hampshire has a long tradition of protecting personal privacy when it comes to voter records.

"Very few states have a Neal Kurk," Gardner quipped, referring to state Rep. Neal Kurk, R-Weare, who has led many legislative campaigns to prevent public disclosure of personal information whether it's on a driver's license, job application or voter files.

Gardner is a member of the integrity commission and took part in a conference call last week hosted by its chairman, Vice President Mike Pence.

The commission was formed last month after Trump claimed without any evidence that up to 3 million people voted fraudulently in the election. Trump asserted that "busloads from Massachusetts" came up to New Hampshire illegally to cast ballots, which narrowly gave Democrat Hillary Clinton the Granite State's four electoral votes.

During the 90-minute call, Pence spoke about the process the commission will follow to fulfill President Trump's mandate to determine whether more can be done to prevent voter fraud and increase public confidence in American elections, Gardner said.

"He said several times that we need to search for a common ground, it needs to be bipartisan, and I found that encouraging," Gardner said.

Sununu touched off sharp, partisan criticism Friday morning when he said on MSNBC that the state would honor the commission's request without qualifying it in any way. "Absolutely I think every state should comply. Any state not complying with this is simply playing politics," Sununu said.



## ACLU-NH takes offense

The New Hampshire Chapter of the American Civil Liberties Union said full compliance with this request would violate our state's laws governing the public disclosure of voter information.

"We expect that the secretary of state will not honor any request to produce information that is private and confidential. Any transfer of information must be in full compliance with all state disclosure laws. The Commission should not be able to obtain information that is unavailable to any ordinary member of the public," said Gilles Bissonnette, the group's legal director.

Within a few hours, Sununu clarified the state would only be releasing information it already gives to any member of the public that requests it for a fee.

"Governor Sununu only supports releasing information that is already publicly available. Period," said Benjamin Vihstadt, the governor's spokesman.

Gardner said he hasn't decided whether to make the commission pay for the public records his office will produce.

The governors or top election officials in New York, Virginia, California, Kentucky, Pennsylvania, Mississippi, Oklahoma and Massachusetts are among a number of states that have rejected outright the commission's request.

Ironically, the man who wrote the letter for the commission - Kansas Secretary of State Korbach - and another member from Illinois said their own state laws prevent them from turning over all the requested information about their voters.

President Trump himself tweeted Saturday morning about the reluctant response from so many states, "What are they trying to hide?"

The Mississippi secretary of state, Delbert Hosemann, a Republican, said Friday that he had not received a request from the commission, but colorfully suggested he would not honor one if it came.

"My reply would be: They can go jump in the Gulf of Mexico, and Mississippi is a great state to launch from," Hosemann said in a statement. "Mississippi residents should celebrate Independence Day and our state's right to protect the privacy of our citizens by conducting our own electoral processes."

The officials in many states have answered as Gardner and Sununu had, that they would only give the commission information that was public under state law.

Gardner said the first meeting of the commission will be July 19, five days after all the states are supposed to respond to the request.

The commission will have meetings on the road and there could be one in New Hampshire, Gardner added.

"Most of them will take place in D.C. I would urge people to keep an open mind on the group's work," Gardner said.

"One thing is pretty clear. The commission should get cooperation from the rest of the federal government. That's because the executive order for this commission makes it crystal clear when it asks questions, it has to be given answers."

klandrigan@unionleader.com.

The Washington Post contributed to this report.

## **Exhibit 3-C**

NOWCAST

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 SHOW TRANSCRIPT

## Updated: Sununu, Gardner say NH will turn over public voter information to Trump election commission

Governor backs complying with request to help ensure system has 'merit, integrity'

4979 Shares



Updated: 6:59 PM EDT Jun 30, 2017

**John DiStaso**   

Political Reporter

**CONCORD, N.H.** — New Hampshire will provide President Donald Trump's Commission on Election Integrity with the names, addresses and other public information about Granite Staters included on the voter rolls, Gov. Chris Sununu and Secretary of State William Gardner told WMUR on Friday.

But the two top state officials stressed in separate interviews that only public information will be provided.

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They responded to a request made to election officials of all 50 states by Kansas Secretary of State Kris W. Kobach, who is the vice chair of the controversial new election integrity panel.

A letter from Kobach arrived in New Hampshire on Thursday, said Gardner, who has been appointed by Trump to membership on the commission. Gardner said commission members discussed the request in general terms during a conference call on Wednesday, agreeing that the request would be limited to public information, which varies from state to state.

In his letter, Kobach asks for much more than what he'll get from New Hampshire.

Kobach asks for "publicly-available voter roll data for New Hampshire, including, if publicly available under the laws of your state, the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in you 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.”

The same request was made to election officials in the other 49 states. At last count, officials of 18 states, including Massachusetts, New York and California, have denied Kobach's request.

## Presidential Advisory Commission on Election Integrity

June 28, 2017

The Honorable Bill Gardner  
Secretary of State  
State House, Rm 204  
Concord, NH 03301

Dear Secretary Gardner,

I serve as the Vice Chair for the Presidential Advisory Commission on Election Integrity ("Commission"), which was formed pursuant to Executive Order 13799 of May 11, 2017. The Commission is charged with studying the registration and voting processes used in federal elections and submitting a report to the President of the United States that identifies laws, rules, policies, activities, strategies, and practices that enhance or undermine the American people's confidence in the integrity of federal elections processes.

As the Commission begins its work, I invite you to contribute your views and recommendations throughout this process. In particular:

1. What changes, if any, to federal election laws would you recommend to enhance the integrity of federal elections?
2. How can the Commission support state and local election administrators with regard to information technology security and vulnerabilities?
3. What laws, policies, or other issues hinder your ability to ensure the integrity of elections you administer?
4. What evidence or information do you have regarding instances of voter fraud or registration fraud in your state?
5. What convictions for election-related crimes have occurred in your state since the November 2000 federal election?
6. What recommendations do you have for preventing voter intimidation or disenfranchisement?
7. What other issues do you believe the Commission should consider?

In addition, in order for the Commission to fully analyze vulnerabilities and issues related to voter registration and voting, I am requesting that you provide to the Commission the publicly-available voter roll data for New Hampshire, including, if publicly available under the laws of your state, 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.

You may submit your responses electronically to [ElectionIntegrityStaff@ovp.eop.gov](mailto:ElectionIntegrityStaff@ovp.eop.gov) or by utilizing the Safe Access File Exchange ("SAFE"), which is a secure FTP site the federal government uses for transferring large data files. You can access the SAFE site at <https://safe.asurdec.army.mil/safe/Welcome.aspx>. We would appreciate a response by July 14, 2017. Please be aware that any documents that are submitted to the full Commission will also be made available to the public. If you have any questions, please contact Commission staff at the same email address.

On behalf of my fellow commissioners, I also want to acknowledge your important leadership role in administering the elections within your state and the importance of state-level authority in our federalist system. It is crucial for the Commission to consider your input as it collects data and identifies areas of opportunity to increase the integrity of our election systems.

I look forward to hearing from you and working with you in the months ahead.

Sincerely,



Kris W. Kobach  
Vice Chair  
Presidential Advisory Commission on Election Integrity



Gardner said that in New Hampshire, the only information about voters that is public -- and will be provided -- is voters' names, addresses, party affiliation and voting history dating back to 2006. He said voting history includes whether a person voted in a general election and which party's ballot a voter took during a primary election.

He said the information to be provided is the same information that is on each city and town's voter checklist, and he noted that before every election, the checklists must be posted publicly.

Gardner said the information is available on a statewide basis at the State Archives.



And, he said, candidates for office, political parties and political committees can purchase the entire file from the state his office. He said the current price is \$8,300.

He said he had yet to decide whether to charge the federal government a fee for the information.

“We fully intend to comply,” Sununu told WMUR. “This is a bipartisan commission looking at integrity in the election process. That is something we take seriously here in the State of New Hampshire.”

“All voter information in this state is public, and that’s the information we’ll be providing. Nothing else,” he said.

Gardner, a Democrat, endorsed the Kobach request as a way of crosschecking voters across the county to ensure that no one votes twice in future federal elections.

The Presidential Advisory Commission on Election Integrity was formed by a Trump executive order last month, after he complained that he lost the November general election popular vote because millions of people voted illegally. The president charged that he lost New Hampshire’s four electoral votes to Hillary Clinton because thousands of people were bused into the state from Massachusetts and voted illegally.

The president did not present any evidence to back up his claims.

Democrats have charged that the commission is a sham and a tool to manufacture a justification for Trump’s voter fraud claims.

Sununu, a Republican, rejected that contention.

“This is a bipartisan commission with some of the nation’s leading experts in this area,” he said. “This isn’t a bunch of political hacks being put up there. These are

authorities, secretaries of state from across the country, Republican and Democrat, who have stood up and said it's a good idea, it has merit and value.

"So, obviously, we fully intend to comply to make sure that our electoral process -- not just here in New Hampshire but in this country -- has merit and integrity," he said.

Sununu noted that Social Security numbers will not be provided because they are not part of the voter file in New Hampshire.

"Everything we're providing is public," he said.

He also said the voter information is a valuable tool for the commission.

"You have to have the voter file to make recommendations about how the system is working or not working," the governor said. "You have to understand who is voting, where they are, what the checks and balances of that process are.

"These are the nation's leading experts in this area and I' have full confidence that they'll make the right decisions and the right recommendations for the president," Sununu said.

In contrast, New York's Democratic governor, Andrew Cuomo, posted on Twitter: "NY refuses to perpetuate the myth voter fraud played a role in our election."

As Kansas' secretary of state, Kobach has championed some of the strictest voting laws in the country.

Kobach told the Kansas City Star on Thursday that the information provided by states would be hosted on a secure federal server and not disclosed to the public. He said that the request for the Social Security digits was meant "to prevent false positives," such as when two people share the same name and birthday.

“The idea is to have the best data possible,” Kobach told the Kansas City newspaper. “The purpose of the commission is to quantify different forms of voter fraud and registration fraud and offer solutions. And so you have to have this data in order to do any meaningful research.”

On Friday, however, Kobach told the Star he will not submit Kansans' Social Security information to the commission because it is not public information in his state.

Kobach and the commission generally have faced stiff criticism from liberal voting rights activists.

In New Hampshire, some Democrats have asked why Gardner would agree to serve, insisting that it will jeopardize his integrity.

Gardner told WMUR in May that the critics should “give it a chance.” He said he accepted the invitation to serve on the commission because he worries that nationally, voter confidence in elections is low and some action must be taken to bolster that confidence.

Gilles Bissonnette, legal director of the American Civil Liberties Union-New Hampshire, said Gardner should withhold any information “that is unavailable to the general public.”

“Unfortunately, this commission likely will be a pretext to enact new restrictions on the right to vote. Led by Mr. Kobach, it is based on the false premise that there was widespread voter fraud last November,” Bissonnette said.

New Hampshire Democratic Party Chairman Raymond Buckley said that it would be illegal for Gardner to provide private voter information under state law.

In a statement, Buckley implied that Sununu and Gardner will provide private information to the commission, saying, “It is disappointing that Gov. Sununu has

chosen the Trump administration's unwarranted request over the privacy of Granite Staters. He is once again falling in line behind President Trump and pledging to hand over our highly personal information to a federal government commission created at best to soothe the president's ego, and at worst, undermine the integrity of our elections and disenfranchise millions of voters."

State Republican Party spokesman Patrick Hynes responded, "Ray Buckley is a desperate buffoon."

"This guy has been wrong about every attack he's made at our popular, successful governor," Hynes said.

U.S. Rep. Carol Shea-Porter, a Democrat, urged Sununu and Gardner to deny the request, writing in a letter to them, "As you know, we Granite Staters greatly value our privacy rights. We are the 'Live Free or Die' state, and this request is undoubtedly an assault on our freedom. This request violates the privacy of our state's residents and represents an unprecedented intrusion by the federal government into our state's electoral data."

Gardner said he intends to attend the commission's first meeting, scheduled for July 19 in Washington, D.C.

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