

## PRESS RELEASE

### Court Will Not Block Presidential Commission's Collection of State Voter Data

*After EPIC's Lawsuit Halted Transfer of Voter Records,  
Court Finds Commission's Actions Are Unreviewable on Current Facts*

#### FOR RELEASE

July 24, 2017, 2:30 PM EDT

#### CONTACT:

Marc Rotenberg, EPIC President ([rotenberg@epic.org](mailto:rotenberg@epic.org) @MarcRotenberg)  
Alan Butler, EPIC Senior Counsel ([butler@epic.org](mailto:butler@epic.org) @AlanInDC)

**WASHINGTON, DC** – A federal court today denied a motion in the case brought by the Electronic Privacy Information Center (EPIC) to prevent the Presidential Election Commission from gathering voter records from state election officials.

EPIC alleged that the Commission had failed to complete a privacy impact assessment and that the data collection program violated the constitutional right to privacy. Federal agencies are routinely required to conduct a privacy assessment prior to any new collection of personal data. EPIC also asserted that a military website initially designated to collect the voter data lacked a privacy assessment for collecting personal data.

The court held that EPIC had standing to bring the suit to obtain the privacy impact assessment. However, the court ruled that the White House Information Technology office, which is now managing the program, was not an “agency” and therefore could not be required to undertake a privacy assessment.

EPIC President Marc Rotenberg said “EPIC will push forward. The Commission cannot evade privacy obligations by playing a shell game with the nation’s voting records.”

EPIC Senior Counsel Alan Butler added “The Commission’s efforts to gather personal data should not escape judicial review. We will be looking closely to see what the Commission does next.”

In reaching her conclusion, Judge Kollar-Kotelly emphasized that the court would rely on the statements made by the Commission. The opinion states: “Defendants have represented that they are only collecting voter information that is already publicly available under the laws of the

states where the information resides; and Defendants have clarified that such information, to the extent it is made public, will be de-identified. All of these representations were made to the Court in sworn declarations, and needless to say, the Court expects that Defendants shall strictly abide by them.”

The judge also noted that “to the extent that factual circumstances change – for example, of the *de jure* or *de facto* powers of the Commission expand beyond those of a purely advisory body – this determination may need to be revisited.”

### Background

EPIC filed suit against the Commission—the first such lawsuit in the country—five days after the Commission demanded personal voter records from state election officials. A week later, the Commission announced that it would suspend the collection of voter data in response to EPIC’s lawsuit.

EPIC’s lawsuit has brought to light many alarming and illegal aspects of the Commission’s plan to collect voter data:

- The Commission has *already* received sensitive voter records from the State of Arkansas on a server that is not approved for storing the public’s personal data—a violation of both federal and state law.
- The Commission is putting at risk the privacy of millions of registered voters, including military families and victims of stalking, whose home addresses would be revealed.
- The Commission’s request for partial Social Security Numbers that are often used as default passwords for commercial services, coupled with the Commission’s plan to make voter records “publicly available,” is both without precedent and crazy.
- The Commission has ignored calls from state election officials, experts in election system security, 24 members of the United States Senate, and 73 members of Congress, to end the collection of personal voter data.

*EPIC v. Commission*, No. 17-1320, is before Judge Kollar-Kotelly of the U.S. District Court for the District of Columbia.

EPIC has fought the Commission’s collection of voter data on other fronts, as well. EPIC’s lawsuit followed a letter from 50 voting experts and 20 privacy organizations urging state election officials to oppose the Commission’s demand. And EPIC has submitted three urgent records requests for information about Arkansas’s production of voter data to the Commission.

EPIC has also launched [\*51 Reasons to End the Collection of State Voter Records by the Presidential Election Commission\*](#), a website with comments from state election officials, election integrity specialists, news organizations, voters, and public servants across the country.

## About EPIC

The Electronic Privacy Information Center (EPIC) is a non-partisan organization, established in 1994, to focus public attention on emerging privacy and civil liberties issues. The EPIC Advisory Board includes distinguished experts in law, technology, public policy and cyber security. EPIC has a long history of working to protect voter privacy and the security of election infrastructure.

## Links

Memorandum Opinion in *EPIC v. Commission*, No. 17-1320 (D.D.C. July 24, 2017)  
<https://epic.org/privacy/litigation/voter/epic-v-commission/epic-v-commission-memorandum-opinion-072417.pdf>

*EPIC v. Commission* Case Page  
<https://epic.org/privacy/litigation/voter/epic-v-commission/>

EPIC's Motion for a Preliminary Injunction  
<https://epic.org/privacy/litigation/voter/epic-v-commission/EPIC-v-Commission-amended-TRO-PI-motion-and-memorandum.pdf>

EPIC's Complaint  
<https://epic.org/privacy/litigation/voter/epic-v-commission/EPIC-v-Commission-second-amended-complaint.pdf>

The Commission's Suspension of Voter Data Collection in Response to EPIC's Lawsuit  
<https://epic.org/privacy/litigation/voter/epic-v-commission/EPIC-v-Commission-government-filing-on-DOD-database-exhibit-A.pdf>

Letter from EPIC, Voter Privacy Experts, and Other Privacy Organizations to the States  
<https://epic.org/privacy/voting/pacei/Voter-Privacy-letter-to-NASS-07032017.pdf>

*51 Reasons to End the Collection of State Voter Records by the Presidential Election Commission*  
<https://epic.org/voter-data/>