

Date of Hearing: September 14, 2017

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Marc Berman, Chair

SJR 11 (Stern) – As Introduced August 21, 2017

SENATE VOTE: 24-11

SUBJECT: Presidential Advisory Commission on Election Integrity: voter data protection.

SUMMARY: Urges each state's Secretary of State (SOS) and other relevant state elections officials to join California in refusing to provide their state voter data to the Presidential Advisory Commission on Election Integrity (Commission). Makes various findings and declarations, including the following:

- 1) Elections and cybersecurity experts across the country have warned that the Commission's request raises major privacy and security concerns.
- 2) The Commission already faces several pending lawsuits from national civil rights and voting rights groups.
- 3) Individuals associated with the Commission have a history of implementing and advocating for voter suppression policies and tactics.
- 4) Secretary of State Alex Padilla and the chief elections officials of numerous other states have refused to provide the Commission with the requested voter data due to concerns over its security and use.

EXISTING LAW:

- 1) Provides that the home address, telephone number, e-mail address, precinct number, or other number specified by the SOS for voter registration purposes, and prior registration information shown on the voter registration card for all registered voters is generally confidential and prohibits the disclosure to any person, except as specified.
 - a) Provides that the voter registration information specified above shall be confidential, and shall not appear on any computer terminal, list, affidavit, duplicate affidavit, or other medium routinely available to the public at the county elections official's office.
 - b) Prohibits the voter registration information specified above from being used for any personal, private, or commercial purpose, including, but not limited to the harassment of any voter or voter's household; the advertising, solicitation, sale, or marketing of products or services to any voter or voter's household; reproduction in print, broadcast visual or audio, or display on the Internet or any computer terminal.
 - c) Provides that the voter registration information specified above shall be provided with respect to any voter (except specified information thereon and for those voters granted a higher level of confidentiality as described below) to any candidate for federal, state, or local office, to any committee for or against any initiative or referendum measure for which legal publication is made, and to any person for election, scholarly, journalistic, or

political purposes, or for governmental purposes, as determined by the SOS.

- d) Provides for the home address or signature of a voter to be released whenever the person's vote is challenged pursuant to specified provisions of law. Permits the address or signature to be released only to the challenger, to elections officials, and to other persons as necessary to make, defend against, or adjudicate the challenge.
- 2) Provides that the California driver's license number, the California identification card number, the social security number, and any other unique identifier used by the State of California for purposes of voter identification shown on an affidavit of registration, or added to the voter registration records to comply with the requirements of the federal Help America Vote Act of 2002 (52 U.S.C. Sec. 20901 et seq.), are confidential and shall not be disclosed to any person.
- 3) Provides a higher level of confidentiality to voters who are victims of domestic abuse, sexual assault or stalking, reproductive health care workers and patients, public safety officers (including peace officers, correctional officers, judges, prosecutors, etc.), and any voter upon order of a superior court issued upon a showing of good cause that a life-threatening circumstance exists to the voter or a member of the voter's household. Requires the elections official, in producing any list, roster, or index, to exclude voters with this confidential voter status.

FISCAL EFFECT: None. This resolution is keyed non-fiscal by Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Resolution:** According to the author:

SJR 11 urges every state to join California's Secretary of State in refusing to provide our voters' private data to President Trump's so-called election integrity commission. Not only have cybersecurity experts raised major privacy and security concerns but the commission's motives are irrevocably tainted by its association with individuals who have a history of supporting partisan voter suppression efforts.

California is on the forefront of innovative efforts to conduct inclusive voter outreach and eliminating all barriers to civic participation. Cooperating with the commission makes us a party to promoting the myth of widespread voter fraud that will likely be used as the pretext for an attack on our precious and vulnerable voting rights.

- 2) **Presidential Advisory Commission on Election Integrity:** On May 11, 2017, President Trump issued an executive order establishing the Commission.

According to the order, the Commission is required, consistent with applicable law, to study the registration and voting processes used in Federal elections. The Commission is solely advisory and must 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.

The mission does not mention voter intimidation or suppression, voting technology, or foreign attempts to interfere in elections.

3) **Request for Voter Information:** On June 28, 2017, the Vice Chair of the Commission, Kris Kobach, sent a letter to election officials for all 50 states and the District of Columbia on behalf of the Commission. As per the letter sent to North Carolina Secretary of State Elaine Marshall, the letter requested that states provide the Commission with "publicly-available voter roll data" including any of the following that is publicly available under the laws of the responding state:

- a) The full first and last names of all registrants, middle names or initials if available;
- b) Registrants' addresses;
- c) Registrants' dates of birth;
- d) Registrants' political party (if recorded in the state);
- e) The last four digits of registrants' social security numbers, if available;
- f) Registrants' voter history (elections voted in) from 2006 onward;
- g) Registrants' active/inactive status, or cancelled status;
- h) Information regarding any felony convictions of registrants;
- i) Information regarding voter registration of registrants in another state;
- j) Information regarding registrants' military status; and,
- k) Overseas citizen information.

4) **Secretary of State's Response to Commission Request:** On June 29, 2017, California Secretary of State Alex Padilla released the following statement in response to Mr. Kobach's request for California's voter data:

The 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. I will not provide sensitive voter information to a commission that has already inaccurately passed judgment that millions of Californians voted illegally. California's participation would only serve to legitimize the false and already debunked claims of massive voter fraud made by

the President, the Vice President, and Mr. Kobach. The President's Commission is a waste of taxpayer money and a distraction from the real threats to the integrity of our elections today: aging voting systems and documented Russian interference in our elections.

The President's appointment of Kobach -- who has a long history of sponsoring discriminatory, anti-immigrant policies including voter suppression and racial profiling laws -- sends a clear and ominous message. His role as vice chair is proof that the ultimate goal of the commission is to enact policies that will result in the disenfranchisement of American citizens.

I will continue to defend the right of all eligible voters to cast their ballots free from discrimination, intimidation or unnecessary roadblocks.

- 5) **Confidentiality of Voter Registration Information:** Voter registration rolls are not available to the general public. However, California law allows certain voter information to be released to candidates, ballot measure committees, any person for election, scholarly, journalistic, or political purposes, or for governmental purposes. Even in these cases, a few items remain confidential and are never provided to any requestor including voters' social security numbers and driver's license numbers. Furthermore, certain voters, upon request, are provided a higher level of confidentiality including victims of domestic abuse, sexual assault or stalking, reproductive health care workers and patients, public safety officers, and any voter upon order of a superior court issued upon a showing of good cause that a life-threatening circumstance exists to the voter or a member of the voter's household. The elections official, in producing any list, roster, or index, excludes voters with this confidential voter status.

To the knowledge of committee staff, the Commission has not provided details on how it intends to maintain the confidentiality of voter records that it collects. Additionally, organizations focused on privacy rights have warned that the extensive personal information requested by the Commission threatens to violate individual privacy. According to the Electronic Privacy Information Center "The Commission has failed to conduct and release a Privacy Impact Assessment, required by Federal law, prior to collecting personal voter data (including SSNs, addresses, dates of birth and other identifying information). The Commission's demand for detailed voter histories also violates millions of Americans' constitutional right to privacy. The Commission had already committed egregious security blunders, including (1) directing state election officials to send voter records to an unsecure web site and (2) proposing to publish partial SSNs that would enable identity theft and financial fraud."

- 6) **Legal Challenges:** As of August 2017, there have been seventeen legal actions taken against the Commission, including challenges at the federal and state level. Civic groups across the country, including the ACLU, Common Cause, Electronic Privacy Information Center, Fair Elections Legal Network, Lawyers' Committee for Civil Rights, NAACP Legal Defense Fund, and Public Citizen, have filed legal challenges on a variety of transparency, privacy, and administrative policy grounds.
- 7) **Commission Appointees:** The Commission can have up to fourteen appointees in addition to a Chair and Vice Chair. Vice President Mike Pence currently serves as the Chair and Kansas

Secretary of State Kris Kobach as the Vice Chair. Unlike previous Commissions appointed to evaluate national elections, this Commission does not include any academics from research institutions who could add their scientific and fact-finding expertise to the investigation. It has also been criticized by the *Brennan Center for Justice* for not being truly bipartisan because “A bipartisan commission would be led by members of both parties, have an equal partisan split among commissioners, and capture a broad range of viewpoints. This Commission, in contrast, is led by two staunch Republicans, has a Republican majority, and counts some of the nation’s leading promoters of voting restrictions among its ranks.”

- 8) **Voter Fraud Allegations:** According to the New York Times, during his first official meetings with congressional leaders in January 2017, President Trump stated that between 3 and 5 million votes in the 2016 elections were cast fraudulently. To the knowledge of committee staff, these claims have not been substantiated by any investigative reports to date, and the President has not provided any documentation to corroborate those claims.

REGISTERED SUPPORT / OPPOSITION:

Support

Disability Rights California
League of Women Voters of California
Secretary of State Alex Padilla

Opposition

None on file.

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