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STATE OF ILLINOIS**

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MEMORANDUM

TO: Chairman Cadigan, Vice Chairman Keith, Members of the Board
Executive Director Steven S. Sandvoss

From: Kenneth R. Menzel, General Counsel

Re: Presidential Advisory Commission on Election Integrity

Date: August 17, 2017

As you will recall, on July 5, 2017 the Illinois Secretary of State received a letter dated June 28, 2017, from Kris W. Kobach, the Vice Chairman of the Presidential Advisory Commission on Election Integrity (“PACEI”), which was immediately forwarded to the State Board of Elections (“SBE”). This letter (the “First Request”) requested that SBE provide PACEI with a copy of the state’s publicly available voter database and answer several questions. My letter dated July 7, 2017 advised PACEI that Illinois does not have any publicly available voter data,¹ and that SBE would address the questions at a later date.

On July 27, 2017, SBE received a revised request from PACEI, dated July 26, 2017 (the “Revised Request”). The Revised Request seeks such information as would be provided to “political candidates, journalists, and other interested members of the public.” PACEI says that voter data provided by the states will not be released to the public, without giving any detail as to PACEI’s authority for withholding the same. The Revised Request is rather artlessly phrased, since we have already informed PACEI that such information is only available to political committees and governmental entities, and is not available to the general public. However, I believe it appropriate to treat the Revised Request as a request by a governmental entity for governmental purposes for the limited voter data set (the “Dissemination File”).²

The Revised Request did not include payment of the \$500.00 fee which SBE charges political committees and governmental entities for the Dissemination File.³

¹ My letter dated July 7 referred to the restrictions under 10 ILCS 5/1A-25, 4-8, 5-7 and 6-35, which protect the confidentiality and privacy of voter registration data, limiting its release to registered political committees for political purposes and to governmental entities for governmental purposes.

² The Dissemination File includes name, address, dates of birth and registration, political subdivision, voter status (active or inactive), sex, telephone number and email address (if provided by the voter), and voting history for the 15 most recent elections to the extent the data exists. The Dissemination File does not include the driver’s license number or any portion of the SSN.

³ It is likely PACEI is unaware of the fee or the amount of the same. To my knowledge, it has not been discussed with the commission.

Staff from the Illinois Attorney General's Public Interest Division has contacted me with concerns about the revised PACEI request, essentially raising two points. First, the AG staff believes that, contrary to PACEI's assertion, any information provided to the advisory commission would have to be made available to the public under the Federal Advisory Committee Act ("FACA") and the Federal Freedom of Information Act ("FOIA"). While it appears that there has not been a case directly on point as to the treatment of voter data under those acts, the AG staff relies on the strong, general requirements of public access in raising this concern.

Second, the AG staff questions whether PACEI is pursuing a proper governmental purpose, so as to qualify to receive voter data under the Illinois Election Code. I share the widespread concerns that any analysis of the limited items of voter data that PACEI would have to work with would generate at least a couple hundred (and potentially several hundred) false positives for every actual double registration or double vote that would be identified, and that a federal commission is not in a practical position to undertake the necessary follow up work to get to accurate final determinations. However, in the same way that federal agency officials should not generally insert themselves into concluding that state government is being unwise or inefficient in the conduct of state business, I don't believe it is the place of state agency officials to second guess the wisdom or efficiency of federal entity exercises of discretion.

Finally, the response to the original PACEI request indicated that we would answer the commission's set of seven questions at a later time. Staff has worked on a proposed narrative statement to address the items raised, which is attached hereto for the Board's consideration.

With regard to the Revised Request, it would be my recommendation that the SBE:

- (a) inform PACEI that governmental entities seeking the Dissemination File are required to tender the requisite fee of \$500,
- (b) advise PACEI that the Illinois AG does not believe that the voter data could be kept confidential under FACA and FOIA, and ask PACEI to provide its legal basis for claiming exemption from disclosure under those acts,
- (c) inquire as to precisely what PACEI will do with the data (e.g. what sort of statistical analysis will be done), what investigative work will be done to filter out false positives generated in the statistical analysis, and what details will be released to the public, and
- (d) transmit the narrative statement answering the First Request questions.

At such point as PACEI tenders payment for the Dissemination File and provides further information as to its legal authority to maintain the confidentiality of the voter data, a final decision may be made as to whether PACEI qualifies to receive Illinois voter data under 10 ILCS 5/1A-25, 4-8, 5-7 and 6-35.

Respectfully submitted,


Kenneth R. Menzel

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 of 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 election?
6. What recommendations do you have for preventing voter intimidation or disenfranchisement?
7. What other issues do you believe the Commission should consider?

Illinois elections appear to have a very low incidence of misconduct. We do not see a need to change federal laws in that regard.

We do note that the voting systems used throughout the state are mostly those purchased more than a decade ago with considerable federal funding assistance through HAVA grants. Those old voting systems are at, or beyond, their usual lifespans, and will need replacement in the very near future. The latest (2015) standards for voting systems include a number of security upgrades. It would be a tremendous (and much needed) help to all of the state and local election administrators if another round of HAVA funding would be made available to replace the old voting systems with new, more secure technology.

While ADA requirements generally allow for the “grandfathering” of noncompliant buildings based on the date of construction, no such provisions apply when the same building is used as a polling place. The DOJ has recently tightened handicapped accessibility standards for polling places; while the requirements for accessibility compliance continue to tighten, no additional resources have been provided to state and/or locals for improvements since the initial HAVA funding. As currently promulgated, the standards leave many jurisdictions with few or no fully-compliant polling place options. A greater degree of flexibility for using the best options, even where less than perfectly compliant, would be helpful to the County Clerks and the Boards of Election Commissioners.

Insofar as voter list maintenance is concerned, Illinois is a participant in both the Interstate Crosscheck and ERIC programs. Our experience in both indicates that the more robust data-matching done by ERIC gives much more accurate results, with far fewer false positive results and very sound data security. We would recommend that ERIC membership be encouraged, or even incentivized, for all states.

We would also acknowledge the help that the DHS has provided to Illinois over the last year in securing our statewide voter database; we would like to see that sort of voluntary help continued in the future, and made available (again, on a voluntary basis) to the 109 County Clerks and the Boards of Election Commissioners in Illinois who perform the majority of the election related functions.

Vote fraud and voter registration fraud are criminal violations, and as such, are prosecuted by the State's Attorneys offices in the 102 counties of Illinois. There is no central database of either prosecutions or convictions, so we are not in a position to provide figures on the same. The state does conduct regular cross checking of the statewide voter database to identify duplicate registrations and look for possible instances of double voting. Upon identification, the state provides that information to the County Clerks and the Boards of Election Commissioners so that they may reconcile duplicate registrations and further review any apparent instances of double voting (to filter out the common occurrences of data entry and/or poll worker error, which explain the great majority of these instances) and referral to prosecuting authorities where warranted. As far as we are aware, incidents of both vote fraud and registration fraud are very low in Illinois (on the order of scant thousandths of a single percent); we have not experienced anything close to the sort of rampant problem that has been publicly alleged by some.

Congress of the United States
Washington, DC 20515

August 2, 2017

The Honorable Steve Sandvoss
Executive Director of the State Board of Elections
2329 S. MacArthur Blvd.
Springfield, IL 62704

The Honorable Lisa Madigan
Illinois Attorney General
100 West Randolph Street
Chicago, IL 60601

Dear Executive Director Sandvoss and Attorney General Madigan:

In January, we sent your offices letters requesting information about any confirmed cases of individuals who may have cast votes in your state in the November 2016 presidential election when they were prohibited from doing so. If your state responded to our inquiry, we are enclosing that response for your reference.

Some states reported that investigations were still underway to determine whether or not allegations were substantiated, so we are writing again to request an update to determine whether you have become aware of any new or additional confirmed cases since your previous response.

Specifically, we request that you provide the names and other pertinent information relating to any individuals who cast votes in your state in the 2016 presidential election that have now been determined to have been prohibited through:

- criminal convictions (or plea agreements);
- civil penalties (or settlements)
- diversion programs directed by judges;
- judicial findings of voter fraud (including overturning election results); or
- any other official government findings.

We ask that you provide your updated response by August 18, 2017, to Jennifer Daehn of Ranking Member Cummings' staff at Jennifer.Daehn@mail.house.gov. If you have any questions about this request, please call (202) 225-4766. Thank you very much for your cooperation with this important inquiry.