

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS

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EXECUTIVE DIRECTOR
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Charles W. Scholz
Casandra B. Watson

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: September 14, 2017

At the August 22, 2017 Board meeting, the Board considered and indicated concurrence with my recommendation as to responding to the letter (the "Revised Request") from Kris W. Kobach, the Vice Chairman of the Presidential Advisory Commission on Election Integrity ("PACEI"), revising the earlier PACEI request (the "Initial Request") for Illinois voter data and posing seven questions about the election process.

The Board directed me to prepare a response to the Revised Request in accordance with the recommendations in my memorandum dated August 17, 2017. Attached hereto is my draft response letter. The draft response includes the requested modifications which I have received to date from Board members relating to the narrative statement answering PACEI's seven questions.

After the response letter is sent, we would await tender of payment from PACEI for voter data, and its provision of further information as to its legal authority to maintain the confidentiality of the voter data, and at that point a final decision could be made as to whether PACEI qualifies to receive any Illinois voter data under 10 ILCS 5/1A-25, 4-8, 5-7 and 6-35.

Respectfully submitted,


Kenneth R. Menzel

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September 19, 2017

Hon. Kris W. Kobach
Vice Chair
Presidential Advisory Commission on Election Integrity
C/o ElectionIntegrityStaff@ovp.eop.gov

Re: Information Request of July 26, 2017

Vice Chair Kobach:

On July 27, 2017, the Illinois State Board of Elections (the "SBE") received your letter dated July 26, 2017 (the "Revised Request"), wherein the Presidential Advisory Commission on Election Integrity (the "Commission") followed up on your earlier letter dated June 28, 2017 (the "Initial Request"), seeking election related information, including voter data for the State of Illinois.

The Revised Request indicates that the Commission is asking for the voter "information that States regularly provide to political candidates, journalists, and other interested members of the public". The Revised Request further states that "[i]ndividuals' voter registration records will be kept confidential and secure" and will be will disposed of as permitted by federal law when the Commission has completed its work.

As I noted in my July 7, 2017 response to the Initial Request, Illinois does not make any voter data available to the general public. The Illinois Election Code, at 10 ILCS 5/1A-25, 4-8, 5-7 and 6-35, protects 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, both subject to the restriction that voter data not be released to the public. The SBE is treating the Revised Request as a "governmental entity" request; accordingly, a proper governmental purpose for the release should be clear.

Please note that there is a fee for voter data in Illinois, whether the requester is a political committee or a governmental entity.¹ The statewide data file costs \$500. I have enclosed the Request for Voter Information form for your convenience.

¹ The Illinois voter data files available to political committees and governmental entities include names, addresses, 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 files do not include driver's license numbers or any portion of the SSN.

Also, we must mention that the Illinois Attorney General has researched the issue, and advised us that the Commission does not appear to have the legal authority to keep the information provided to it confidential under the Federal Advisory Committee Act ("FACA") and/or the Federal Freedom of Information Act ("FOIA"). If and when you submit your completed Request for Voter Information and payment, please provide whatever legal support you have for the Commission's assertion that it may legally keep the voter information confidential.

The Illinois Attorney General raised further concern as to whether the information requested by the Commission is to be used in pursuing a proper governmental purpose. Please provide written detail as to the data analysis the Commission intends to undertake, along with the Commission's plans for the necessary follow up work that would be needed to draw any valid conclusions from the data.

As a final matter, Illinois' response to the Initial Request's series of seven questions is enclosed herewith.

If you have any questions or comments, please do not hesitate to contact me.

Respectfully submitted,



Kenneth R. Menzel
General Counsel,
Illinois State Board of Elections

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 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. It would also be helpful if the state could use HAVA funds (or other federal funds) for purposes of improving state's election related cybersecurity, both at the state level and through state administered grants to the County Clerks and the Boards of Election Commissioners.

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 monetarily subsidized, 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 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 precise figures on the same. However, 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. From that work, and from direct communications with the 109 Illinois election authorities, we can say that incidents of both vote fraud and registration fraud are very low in Illinois. At the 2016 General Election, 5,666,118 ballots were cast in Illinois. The State Board of Elections, working with the County Clerks and the Boards of Election Commissioners, identified fewer than 130 instances of suspected double voting. Only a handful of other instances of voter fraud (such as impersonation fraud or vote buying) were found. These matters have been referred to prosecutors for further action. The suspected instances we found equate to a fraud level of a couple thousandths of a single percent of the votes cast in the state. We have not experienced anything close to the sort of rampant problem that has been publicly alleged by some.