



STATE OF MINNESOTA
Office of Minnesota Secretary of State
Steve Simon

August 22, 2017

The Honorable Kris W. Kobach
Presidential Advisory Commission on Election Integrity

Dear Secretary Kobach:

This is a response to your letters of June 28 and July 26, 2017, in which you requested extensive personal data on nearly four million registered voters in Minnesota, as well as views and recommendations on several topics.

A. The Data Request

As for the data request, Minnesota law is clear. My office has complete discretion to choose whether to produce to the Commission any data (including data that would otherwise be non-public) from the statewide voter registration system.¹ That discretion is a responsibility that I take seriously, and I interpret your request(s) as an invitation to produce all voter data that the law allows me to disclose.

As I've already announced, I will not be handing over Minnesota voters' personal information to the Commission. I don't think that any Minnesotan would ever have imagined when they registered to vote that such information would end up in some sort of ad hoc federal government database.

Just as importantly, I have serious doubts about the Commission's credibility and trustworthiness. Here's why:

1. The Commission arose out of President Trump's baseless and irresponsible claim of massive voter fraud. The Commission looks like a product of President Trump's post-election vow to substantiate his claim that between three million and five million people voted illegally in the 2016 election. Both you and Vice President Pence have repeatedly endorsed the President's claim, unsupported by

¹ Minn. Stat. § 201.091, subd. 4.

any credible facts, either by saying that such a scenario is possible or by saying that you are unsure about whether as many as five million people voted illegally last year.

2. The leadership of the Commission is unfairly slanted. Both you and Vice President Pence (as Vice Chair and Chair of the Commission, respectively) have been outspoken and articulate advocates for a distinct point of view about our election system, its challenges, and its best future course. You're entitled to your point of view, of course. But you're simply not objective. I have little faith that your direction of the Commission will produce analysis and conclusions that depart meaningfully from your longstanding views and preferences.
3. The membership of the Commission is not meaningfully bipartisan. People can easily spot political gamesmanship, and in this case the leadership of the Commission has done very little to hide it. There are time-honored ways to structure any commission in a bipartisan manner. Equal partisan or ideological representation is one obvious way to start. Another way would be to allow each political party to appoint its own members. You've declined both of those options, undercutting any plausible claim to true bipartisanship. That's a disappointment to me, and a missed opportunity for the Commission.
4. The Commission seems headed toward pre-determined outcomes. I have little faith in President Trump's words at the opening of the first Commission meeting, when he pledged that the work of the Commission will "fairly and objectively follow the facts wherever they lead." President Trump, for one, seems to have made up his mind a long time ago as to what the "facts" are. Without the benefit of a team of investigators, the Commission will have to rely on someone else's purported facts. Whose purported facts will they be? The Heritage Foundation's facts? The Justice Department's? Someone else's? There's even disagreement lately about what even constitutes a "fact," especially with respect to the President's allegation that at least three million people voted illegally in the U.S. last election. In any event, the Commission seems already to have decided what it wants to do.
5. The Commission seems poised to use sensitive voter data in methodologically unsound ways. The data request directed at the states, made before the Commission met even a single time publicly, seems like preparation to run voter information through some version of the "Interstate Crosscheck" (a.k.a. "Kansas Crosscheck") that your office administers. I assume that we'll have to agree to

disagree, but my assessment (based on evidence and statistical analysis) is that the Interstate Crosscheck is statistically flawed, and even dangerous – particularly because of its unacceptably high number of “false positives.” I won’t submit registered Minnesota voters to that kind of process.

6. The Commission is turning attention away from the cyber-security issues that are the biggest threat to election integrity. The Commission seems to be avoiding the most serious challenge to the integrity of our election system: The threat of cyber-attacks by outside forces, including foreign governments, who seek to disrupt and undermine our elections. Cyber-security is where we need to concentrate our attention and energy. Unfortunately, the Commission seems averse to discussing the issue meaningfully. At its first meeting, you yourself expressed a desire to leave that issue to congressional investigators and others. In my judgment, that’s a serious mistake. Cyber-security should be the focus of the Commission’s work. It’s the top threat to election integrity.

B. The Request for Views and Recommendations

In Minnesota, we’ve been fortunate. We have an election system that is clean, fair, open, honest, dependable, and accessible. It’s an election system that enjoys strong public confidence, which is one of the reasons that Minnesota returned to #1 in voter turnout in the U.S. this past election. We’re proud of that.

Our consistent record of success is based on laws, and on a culture, that reward and encourage voting. We were among the first states to adopt election-day voter registration. We’ve adopted online voter registration and no-excuses absentee voting. We consistently prize access to the ballot box, which is one reason that Minnesotans voted against a statewide constitutional ballot question in 2012 that would have imposed a restrictive photo ID requirement for voting.

One other notable feature of our system is a reliance on legislative bipartisanship. The past two governors of Minnesota (one Republican and one Democrat) have imposed a bipartisanship requirement for election-related legislation. No election bill will be signed into law unless it obtains some significant measure of support from legislators in both major parties. As a result, no single political party (even if it enjoys legislative majorities and a governor of the same party) can enact election-related legislation without forging some degree of bipartisan consensus.

From an administrative standpoint, our longstanding election safeguards have served us well. We have in place many procedures before, during, and after elections that help ensure clean and honest outcomes. We engage in continual data-matching of voter registrations against several state and federal databases. We

require multiple voter oaths to verify eligibility. We deploy election judges from all major political parties at each polling place. We perform post-election audits. As a result, we've maintained a high level of integrity.

Over the years, we have experienced very minimal instances of election-related misconduct. In Minnesota, our county attorneys are legally obligated to catalog various election-related investigations, even before any charging or conviction. Only a small fraction of the small number of reported misconduct constitutes possible fraud. "Fraud" means an intentional act of deception. Almost all of the reported cases of possible election-related misconduct stem from misunderstandings or human error – not any intentional act to deceive.

I welcome any federal help in maintaining the integrity of Minnesota's elections, and in particular a focus on the most significant threat to our election integrity: The prospect of cyber-attacks by outside forces, including foreign governments, who seek to disrupt and undermine our elections. That federal help could take several forms, such as:

- continuation by the Department of Homeland Security of the "critical infrastructure" designation for election systems
- continuation of the Election Assistance Commission (EAC) as a partner in identifying cyber-security best practices
- additional help by other federal agencies in assessing cyber-threats and solutions
- federal resources for state improvements to cyber-security
- federal assistance for the purchase of new election equipment by local governments.

The Commission could be helpful either by endorsing those approaches – or by simply declining to undermine them.

More broadly, I urge the Commission to look at, and defer to, the work of the Election Registration Information Center (ERIC). As you know, twenty states (including Minnesota) and the District of Columbia belong to the group. Using comparisons of anonymized data, ERIC has helped states to improve the accuracy of voter rolls. In particular, ERIC has helped states identify and correct instances of voter registrations in more than one jurisdiction. ERIC's methodology is much more comprehensive, fair, and effective than the methodology used by the Interstate Crosscheck. Moreover, the data that the Commission has requested (which I've declined to produce to the Commission on behalf of Minnesota) would provide no comparative advantage over ERIC. The data that ERIC employs provides better results, at less risk of identifying false positives, than the data the Commission is

demanding from the states. I hope that the Commission ceases any effort to gather personal data in an attempt to duplicate the work of ERIC.

I have one more broad challenge for the Commission: Prove me wrong about your intentions, your motives, your biases, your methodologies, and your pre-determined outcomes. Specifically:

- Add additional members from both political parties, giving authority to representatives of each party to appoint its members.
- Don't needlessly undermine faith in our election system by legitimizing (overtly or through your silence) unproven conspiracy theories - such as the President's baseless claim that three to five million people voted illegally in the last election.
- Don't play tricks with data by suggesting a high likelihood of misconduct that is a remote possibility.
- Beware the dangers of "false positives" that could misidentify individuals -- or distort views of entire populations.
- Don't use whatever conclusions you reach to push an agenda that restricts access for eligible voters.
- Always ask whether a proposed "cure" is worse than the "disease."

Whether the Commission can earn some small degree of credibility is up to you. Thanks for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Steve Simon". The signature is written in a cursive, slightly slanted style.

Steve Simon