



Statement by Commissioner Christy McCormick

September 8, 2016

I want to thank you again for coming to this EAC public meeting. I want to take a few moments to speak on the issue at hand, the security of our elections. Particularly, I want to speak (at the risk of being political) on the issue of the Department of Homeland Security's potential declaration of election systems as critical infrastructure.

For those of you who do not know, in response to recent events, the Secretary of Homeland Security has entered into discussions in which it is considering whether or not to declare election systems "critical infrastructure." My fellow commissioners and I have been parties to many of these conversations, and I want to take this time to publically state my opinion on the issue. While it sounds like a good idea, I do not think that DHS should declare election systems to be critical infrastructure, and I believe that the discussions are a reaction to threats that we have yet to hear are currently or actually existing. Perhaps we might hear those actual threats, but we have yet to hear them. They have yet to be conveyed to us. I believe this is an important issue, and at this point in time, I don't support this path to declaring election systems as critical infrastructure. I have come to these conclusions based on five reasons:

- First, it is my opinion that the benefits the states may receive from DHS after such a proclamation can and should be provided without such a declaration, and in light of a less invasive alternative, the DHS should not proceed with the more invasive option. As I said, we have yet to hear of any actual additional benefits to the states with a declaration of voting systems as critical infrastructure.
- Second, I fear that this may be the first step towards creating a new federal security standard that could create new potential legal liabilities for state and local officials.
- Third, DHS's potential course of action may open up state databases such as the DMV and state public agencies' databases to the FBI and the federal government.
- Fourth, I worry that such a declaration and working relationship can create new avenues through which previously protected documents may become accessible to the general public by course of state freedom of information and sunshine acts.
- Lastly, my fellow commissioners and I have been told by officials at DHS, the White House, and the FBI that they have no information indicating a current, credible threat to the security of our elections. The Secretary of DHS has stated in recent days that our elections are secure and that it would be nearly impossible for there to be a wholesale threat to the integrity and results of the election. As such, a course of action based on non-existing threats, I think, is ill advised.

To elaborate on the issue, a declaration of election systems as critical infrastructure would have many effects, but the DHS claims that they will in-fact be helping the states. DHS tells us that if they declare election systems “critical infrastructure,” they will provide resources to the states such as cyber hygiene products, up-to-date information about potential threats as DHS receives it, cyber security research, and other cyber security tools. In return, Secretary Johnson asks that states provide information about election systems and their security to DHS.

To me, this is a plan with many flaws. First and foremost, it appears to me to be analogous to a quid pro quo in which the DHS will only provide these resources if they receive extra access to states through the declaration. If DHS were truly only concerned with the security of these elections, they would simply provide these resources without the declaration of election systems as critical infrastructure or requiring states to request help before information or resources will be shared. I am unconvinced that a declaration of critical infrastructure status is necessary for DHS to help further security efforts.

Second, we all know that the decentralized nature of our election system is one of its greatest security assets. We have more than fifty states and territories, and each has its own election system. Involving DHS, a federal executive agency, armed with the power of a declaration of critical infrastructure presents the potential for DHS to encourage states to move to a uniform system. If this happens, it would strike at the heart of the decentralization of our elections and may decrease the security of our elections. Election officials across this country have been ensuring the cyber security of their jurisdictions and the elections in them since we first started using electronic tools in our elections. That is why we here at the EAC lean so heavily on election officials’ advice

when crafting our Voluntary Voting System Guidelines and why we ensure that many different voting systems may be certified under the VVSG. It is my fear that the DHS would not take our approach.

Third, this course of action would give the FBI a tool to view state agency databases. They have increased access to DMVs, public assistance agencies, vital statistics bureaus and other agencies containing personal information that the FBI is not already provided.

Fourth, I worry about the security of documents pertaining to the cyber security of state election systems under a new system in which states are reporting critical security data to the federal government. This information is often not accessible to the public by means of a freedom of information act or sunshine act request, and it is protected for good cause. It helps keep our elections safe. This protection, however, was designed in a time when states were not compelled to report security data to the Department of Homeland Security. It is my fear that these documents and the correspondences concerning these documents may become accessible by the use of state freedom of information or sunshine acts. DHS tells us that they will work to ensure that this information is not accessible through use of the federal Freedom of Information Act. This, however, does not affect state laws, and it potentially creates vulnerability in the system.

Next, if I, as a commissioner of the U.S. Election Assistance Commission, am being assured that there are not any current, credible threats against American

elections, then I do not agree with further federal involvement in state elections. We should not pursue a path that is truly the response to a threat if the threat is not credible.

The constitution authorizes states to run elections, and I believe this is the way it should be. Secretary Johnson has said that the DHS's motivation is safeguarding American elections, but the states have already been doing this for years.

Of course, we are all concerned about the security and integrity of our elections. I believe that we should take every necessary step to ensure this integrity. What I do not believe is that we should take steps that are unnecessary, may create potential liability for the states, have the potential to create new vulnerabilities, and that are executed by an entity that does not have a good record of keeping data safe. Nor have they ever run elections.

On top of all of this, these discussions are happening too close to our elections. Election Day is two months away, and early voting and UOCAVA voting happen even sooner. In fact, we know that at least four people have voted in North Carolina at this point. If there is no threat to our elections, we do not need to have these conversations now. Voters should be confident in our elections, and absent a real reason to doubt our systems, we should not take actions that may shake the voters' confidence. I believe that the discussions over this have added to the concern by voters that the system might not be reliable or have integrity.

I call on Secretary Johnson to at the very least suspend these discussions and implications that the election system is not secure until we are presented with real information about actual threats to the election system or until after the election. If the

federal government has resources that could make our elections more secure, the federal government should provide these resources to the states regardless.

Let's let our local and state election officials do their job and run the elections. They have always done an excellent job, and I am confident that our elections are secure and in good hands when they are running them. I hope that voters also share my confidence, and I urge you to get to the polls this November.