



MATTHEW DUNLAP
SECRETARY OF STATE

STATE OF MAINE
OFFICE
OF THE
SECRETARY OF STATE

Friday, August 3, 2018

The Honorable Michael R. Pence
Vice President of the United States
Chair, Presidential Advisory Commission on Election Integrity
The White House
1600 Pennsylvania Ave.
Washington, DC

The Honorable Kris Kobach
Secretary of State of the State of Kansas
Vice Chair, Presidential Advisory Commission on Election Integrity
Memorial Hall, 1st Floor
120 SW 10th Avenue
Topeka, KS 66612

Dear Vice President Pence and Secretary Kobach:

I write to relay the preliminary results of my review of materials made available to me in my capacity as a member of the Presidential Advisory Commission on Election Integrity (“Commission”).

As you know, my opportunity to review this material was hard-won, resulting from litigation that I reluctantly brought to remedy my exclusion from Commission activities.

I request that you take steps to publish this letter and accompanying materials in the Federal Register.

I. Background

I joined the Commission out of a sense of duty as a citizen and as a Secretary of State. The integrity of our elections, the public’s faith in the same, and the ability of citizens to exercise their right to vote are critical to our democracy.

I also joined the Commission in good faith and with optimism that its members would conduct their inquiry without bias or preordained conclusions. Unfortunately, my experience on the Commission quickly caused me concern that its purpose was not to pursue the truth but rather to provide an official imprimatur of legitimacy on President Trump's assertions that millions of illegal votes were cast during the 2016 election and to pave the way for policy changes designed to undermine the right to vote.

Surprisingly, I and other commissioners were excluded from Commission deliberations and activities. I had little to no say in when or what or why we discussed any matter. It quickly became apparent that a small, select number of commissioners were quite active, selecting witnesses for public meetings and formulating the Commission's agenda. The message was clear: dissenting or even questioning voices were unwelcome.

My exclusion from meaningfully participating in the Commission's activities was wrong, as well as unlawful. The Federal Advisory Committee Act requires commissions to have balanced viewpoints and for members to participate as equals.

As a result, in November 2017, I reluctantly initiated litigation to vindicate my rights as a full and equal member of the Commission. I sought what I deserved: access to documents about Commission activities so that I could participate meaningfully in Commission business. In December, a court ruled in my favor but, rather than comply, the Commission disbanded and mounted an effort to make my exclusion permanent.

I did not give up. I kept pushing for access to Commission records. In June, I won again. The court ratified its previous decision and ordered the Commission to disclose materials to me by July 18.

II. Preliminary Findings

I was deeply troubled by my experience on the Commission and by the decision to disband it rather than comply with the law. However, those concerns paled in comparison to what followed the Commission's termination. In short order, both Vice Chair Kobach and the White House made public statements claiming that the Commission had uncovered widespread evidence of voter fraud.

The White House stated:

Despite substantial evidence of voter fraud, many states have refused to provide the Presidential Advisory Commission on Election Integrity with basic information relevant to its inquiry. Rather than engage in endless legal battles at taxpayer expense, today President Donald J. Trump signed an executive order to dissolve the Commission, and he has asked the Department of Homeland Security to review its initial findings and determine next courses of action.¹

Vice Chair Kobach stated that “the mission of the commission is being handed off to Homeland Security” and that he would “be working closely with the White House and DHS to ensure the investigations continue.” He added that the “investigation will continue... more efficiently and more effectively.”² The article in which he was quoted reported that “the voter fraud commission has revealed” 938 convictions for voter fraud since the year 2000 and that fewer than 1 in 100 cases ends in a conviction.

As a Secretary of State, I am deeply involved in election integrity issues. Yet neither through my work, nor my time on the Commission have I ever seen “substantial evidence of voter fraud.” Rather, these assertions appeared aimed at that pre-ordained objective: ratifying the President’s statements that millions of illegal votes were cast during the 2016 elections. Of course, having been excluded from the Commission’s work, it technically was possible that I was unaware of evidence or findings that had been hidden from me.

Now, however, after months of litigation that should not have been necessary, I can report that the statements by Vice Chair Kobach and the White House were, in fact, false. I have reviewed the Commission documents made available to me and they do not contain evidence of widespread voter fraud. Indeed, while staff prepared drafts of a report to be issued by the Commission, the sections on evidence of voter fraud are glaringly empty. That the Commission predicted it would find widespread evidence of fraud actually reveals a troubling bias. While

¹ Statement, The White House, Statement by the Press Secretary on the Presidential Advisory Commission on Election Integrity (Jan. 3, 2018)

² John Binder, *Exclusive – Kris Kobach: Voter Fraud Commission ‘Being Handed off’ to DHS, Will No Longer Be ‘Stonewalled’ by Dems*, Breitbart (Jan. 3, 2018), <https://www.breitbart.com/big-government/2018/01/03/exclusive-kris-kobach-voter-fraud-commission-being-handed-off-to-dhs-will-no-longer-be-stonewalled-by-dems/>

individual cases of improper or fraudulent voting occur infrequently, the instances of which I am aware do not provide any basis to extrapolate widespread or systemic problems. The plural of anecdote is not data.

I do not expect the public simply to accept my conclusions. I am, after all, attempting to prove a negative. There is no single document that reveals there is no widespread voter fraud.³ Instead, I rely on the lack of any evidence in the totality of what I have reviewed. Accordingly, after reviewing the material, I have concluded that my only recourse is to publish all of the documents made available to me, so Americans can conclude for themselves that evidence to support the statements of Vice Chair Kobach and the White House regarding the purported preliminary findings of the Commission does not exist.⁴

In addition to lacking any evidence of widespread voter fraud, the documents reveal the reasons why some Commissioners were intent on keeping the Commission's work secret.

For example, documents reveal that the Commission entertained demanding even more information than the large-scale voter data request it issued in June 2017 at the behest of Vice Chair Kobach. A plan existed to ask all federal court clerks to turn over lists of individuals deemed ineligible or excused from federal jury service due to death, relocation, convictions, or lack of citizenship. I have no way of knowing whether these requests were issued or, if not, why not, but Vice Chair Kobach's and certain commissioners' cavalier attitude towards vacuuming data is troubling. Further, it seems the Commission obtained and apparently planned to use the "Interstate Voter Registration Crosscheck Program" for identifying duplicate voter registrations, a plan not previously made public.

³ Notably, however, a recent decision in a federal court case undercuts the notion of widespread voter fraud. In a bench trial in Kansas, Secretary of State and Vice Chair Kobach defended a statute requiring those seeking to register to vote to show proof of citizenship. Mr. Kobach attempted to demonstrate the existence of widespread voter fraud as a justification for this statute, even calling former Commissioner Hans von Spakovsky as a witness. Judge Julie Robinson, an appointee of George W. Bush, gave "little weight to Mr. von Spakovsky's opinion and report because they are premised on several misleading and unsupported examples of noncitizen voter registration. . . ." *Fish v. Kobach*, Case No. 16-2105, 2018 U.S. Dist. LEXIS 101327 at *80 (D. Kan. June 18, 2018). After carefully considering all of the evidence, the court issued an opinion stating, "the court finds no credible evidence that a substantial number of noncitizens registered to vote . . ." *Id.* at *130.

⁴ The personal information of private citizens, including their names, addresses and cell phone numbers has been redacted as have the personal email addresses and cell phone numbers of the Commissioners and cell phone numbers of government officials.

These questionable activities exemplify why the law requires balance on official federal advisory committees like the Commission. Had I been aware of what the Commission was planning, I could have proposed ideas and witnesses to ensure our proceedings remained objective. Instead, a very few commissioners worked to buttress their pre-ordained conclusions shielded from dissent or dialogue from those commissioners not included in the discussions. This is not how any Commission should operate. The public deserves better.


As I said above, these are my preliminary findings. I will continue my review to determine what additional findings or conclusions are appropriate to draw from these materials. To the extent my review indicates that the Commission continues to withhold information improperly, I will consider my legal options to obtain it.

The integrity of our vote and our elections is no less important today than it was when I agreed to serve on the Commission. I made a commitment to focus on these issues when I accepted the President's invitation to join the Commission and I consider it an obligation to carry that commitment to conclusion.

III. Publication Demand

While the Commission did not vote to issue any official findings or an official report, Commission officials did make announcements about its purported findings and conclusions that received wide publicity. I am entitled to take similar action.⁵ Therefore, to ensure that my findings are disseminated as widely as the Vice Chair's and White House's comments to the press, I request this letter be published in the Federal Register and on the website containing the materials of the Commission. I will also publish it on the website of the Maine Secretary of State.

Sincerely,



Matthew Dunlap
Maine Secretary of State

⁵ In *Cummock v. Gore*, the Court of Appeals for the District of Columbia held that the remedy for a member of a commission who has been excluded is access to documents *and* to have the government “publish and distribute [the excluded member’s] dissent in the same places as it originally circulated the final report. . . .” *Cummock v. Gore*, 180 F.3d, 282 (1999).