



Secretary of State  
State of Louisiana

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February 22, 2017

The Honorable John F. Kelly  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Kelly,

As the chief election officer for the state of Louisiana I was greatly dismayed by the unexpected news that you anticipate moving forward with the last minute designation of the Obama administration classifying the nations' voting systems as critical infrastructure. I believe this decision is ill-advised at best and was politically motivated by the previous administration to achieve a nationalization of our election system at worst. Given either option, I implore you to reconsider this decision with the upmost care and with ample input from those of us with hands-on experience running elections operations.

While on face value it may seem appropriate in the fight against voter fraud, I strongly contend that the designation is nothing more than a back door attempt via administrative policy to allow federal intrusion into State election processes. What's more, this power grab goes well beyond constitutional or statutory authority. Article I, Section 4 of the Constitution recognizes the States' authority to regulate the time, place, and manner of elections, subject to the laws of Congress. Without a clear declaration from Congress via passage of legislation that the Department of Homeland Security (DHS) may regulate election systems, there is no federal power to interfere with elections, even in the name of national security.

The Obama administration justification for designating elections as critical infrastructure was the perceived threat of foreign hacking. However, when I directly asked Department of Homeland Security Secretary Jeh Johnson on a phone conference before the election whether there was any evidence of a credible threat to voting systems, his answer was "no." Additionally, a declassified report released the day before Secretary Johnson announced the designation entitled, "Assessing Russian Activities and Intentions in Recent U.S. Elections" also outlined that while "Russian intelligence has *researched* U.S. electoral processes and related technology and equipment," it specifically stated **no vote tallying systems were targeted or compromised by Russian hacking**. That report's singular finding (which contained no evidentiary support for its conclusions) was that only the Democratic National Committee database was hacked, not state election systems. With all due respect, it is the

responsibility of the political parties to secure their own computer networks, not the government.

Despite this lack of evidence, Secretary Johnson took it upon himself to include not only elections information and technology systems, but also any physical, brick-and-mortar elements of the election process, like polling places and voting machine warehouses. In Louisiana alone, this would include 64 parish courthouses (comprising offices of local elected officials, such as Sheriffs, Clerks of Court, Assessors, Registrars of Voters, etc.), 64 warehouses and approximately 28 [other] early voting sites in addition to 2,067 Election Day polling locations across the state representing 3,904 precincts.

There are no “cyber” locks on the doors of voting machine warehouses. The Parish Boards of Election Supervisors are not live-tweeting as they count absentee ballots. The voting machines aren’t WiFi hotspots; they cannot virtually interact with each other, let alone with the internet. Clerks of Court do not email machine ballot results to the Secretary of State on election night. The voting machine cartridges are hand-delivered from the precincts by the Commissioners-in-Charge and the results are transmitted via closed networks on computers that have never been connected to the internet. In other words, *there is nothing to hack*. If the justification for the designation was “solely” based on cybersecurity issues, the decision to include physical locales and physical election systems that never touch the internet simply does not make sense.

Another area of concern involves who can enter a polling location. Without the critical infrastructure designation, the FBI and DHS have no legal right to access polling places, and currently Department of Justice (DOJ) election monitors may only enter polling places under very specific circumstances or by court order. With the critical infrastructure designation, DHS and DOJ may unconstitutionally grant themselves access to any aspect of our elections that they “deem” to be threatened, and could require Louisiana (or any other state) to change its procedures or voting systems regardless of whether they are counterproductive to the State’s current laws/procedures for conducting its elections or of any additional cost that could be incurred.

During the November 2016 Presidential Election, for example, the DOJ attempted, without notice to my office, to send the lead DOJ attorney in a case pending against this State to “monitor” polling places in Orleans Parish. Such “monitoring” was not permitted by statute, but the DOJ would have illegally entered the polling places anyway if I had not found out about the plan hours before the election. The designation that you plan to continue could result in a likewise illegal back door route into polling places for not only DOJ attorneys, but also the FBI and DHS personnel.

The continued designation of elections as critical infrastructure also causes very significant conflicts of interest within the federal government. For instance, the DOJ is currently suing the State of Louisiana and several state officials, including myself, over alleged violations of the National Voter Registration Act. In that lawsuit, the DOJ unsuccessfully attempted to gain

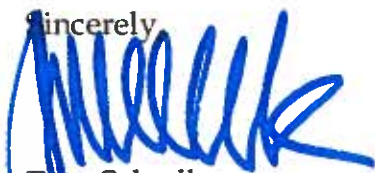
unfettered access to the Louisiana Electronic Registration Information Network (ERIN) database. Imagine, by simply raising the red flag of a potential breach, the designation of elections as critical infrastructure could potentially be used to now obtain what the previous administration could not – access to citizens private and protected information. There would be no need to show any proof of an actual threat, because information on critical infrastructures can be withheld from the public. Nothing could be worse for voter confidence in elections than for the processes and procedures to become secretive as would happen under the critical infrastructure designation.

Given all of the concerns outlined within this correspondence, as well as the formal resolution I authored and was adopted by the National Association of Secretaries of State (NASS) with bipartisan support, I formally ask that you reconsider this designation. Absent a review of this incredibly important designation and additional dialogue among the elected officials charged with perfecting elections across our country, this approach will irreparably damage the system of voting which I vowed to protect, as well as the confidence of voters.

In my opinion, this is only the tip of the iceberg in terms of the need to oppose this gargantuan power grab by the federal government. I strongly urge you to meet with Secretaries of State (Republican and Democrat) to understand our position on this issue. I expressed my grave concerns on this designation last week to House Majority Whip, Steve Scalise and I will be sending a letter to the President and Vice President requesting a meeting between them and Republican and Democrat Secretaries of State on this important issue. I never expected the Obama administration to give us a fair hearing due to their strict adherence to partisan political ideology at any cost; however, for the Trump administration to endorse this is simply beyond my comprehension.

I look forward to hearing from you and your staff.

Sincerely



Tom Schedler  
Secretary of State

TS/fa

Enclosure: NASS Resolution

cc: President Donald J. Trump  
Vice President Michael R. Pence



# NASS

National Association  
of Secretaries of State

## **NASS Resolution Opposing the Designation of Elections as Critical Infrastructure**

WHEREAS, the United States Constitution recognizes the authority of the legislatures of each State to regulate the times, places, and manner of holding federal elections; and

WHEREAS, the election infrastructure of the United States is utilized to conduct federal, state, and local elections alike; and

WHEREAS, on January 6, 2017, U.S. Homeland Security Secretary Jeh Johnson announced that he had designated election infrastructure as a subsector of the existing Government Facilities critical infrastructure sector; and

WHEREAS, Secretary Johnson's scope of the designation of elections as critical infrastructure includes physical elements, such as "storage facilities, polling places, and centralized vote tabulations locations," to which cybersecurity issues do not apply, "voter registration databases," of which redundant copies are separately stored, and "other systems to manage the election process and report and display results," which are not critical to the determination of official certified election results; and

WHEREAS, Section 1016(e) of the USA Patriot Act of 2001 (42 USC § 5195c(e), the "Critical Infrastructure Protection Act") defines critical infrastructure as, "systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters[.]" ; and

WHEREAS, the election infrastructure in the United States is highly decentralized and constitutionally under the purview and control of the states and their local jurisdictions; and

WHEREAS, the opposition to designating elections as critical infrastructure is bipartisan, as evidenced by a September 28, 2016, letter signed by Paul D. Ryan, Speaker of the United States House of Representatives, Nancy Pelosi, Democratic Leader of the United States House of Representatives, Mitch McConnell, Majority Leader of the United States Senate, and Harry Reid, Democratic Leader of the United States Senate, stating, "we would oppose any effort by the federal government to exercise any degree of control over the states' administration of elections by designating these systems as critical infrastructure[.]" ; and

WHEREAS, Secretary Johnson stated that he would not designate elections as critical infrastructure without a thorough discussion with members of this body; and

WHEREAS, questions submitted by numerous members of this body and other election officials remain unanswered; and

WHEREAS, numerous members of this body and other federal, state, and local election officials have publicly opposed the designation of elections as critical infrastructure; and

WHEREAS, several states have discovered attempted intrusions by the Department of Homeland Security under former Secretary Johnson, which need to be thoroughly investigated by the Department of Homeland Security's Inspector General, including regarding such attempted intrusions to the designation process; and

WHEREAS, on February 7, 2017, current U.S. Homeland Security Secretary John F. Kelly indicated during testimony before the U.S. House of Representatives' Homeland Security Committee that he intends to uphold the former secretary's designation of elections as critical infrastructure, and;

WHEREAS, the U.S. Department of Homeland Security has no authority to interfere with elections, even in the name of national security;

NOW THEREFORE BE IT RESOLVED that the National Association of Secretaries of State (NASS) opposes the designation of elections as critical infrastructure.

Adopted the 18th day of February 2017  
in Washington, DC

EXPIRES: Winter 2022