

July 03, 2017

Nebraska Secretary of State John Gale
P.O. Box 94608
Lincoln, NE 68509-4608

Cc: Nebraskan State Senators; Members of the Media

Dear Secretary Gale:

The ACLU of Nebraska is a non-profit, non-partisan organization that works to defend and strengthen the individual rights and liberties guaranteed in the United States and Nebraska Constitutions through policy advocacy, litigation and education. We serve thousands of supporters throughout our great state and millions of Americans nationally.

The ACLU works to protect and expand American's freedom to vote. Voting is the cornerstone of our democracy and the fundamental right upon which all our civil liberties rest. There is nothing more fundamental to our democracy than the right to vote. The right to vote is constitutionally protected under the state and federal constitutions.

I am writing in regards to the recent and deeply concerning reports regarding requests to your office from the Presidential Commission on Election Integrity seeking an unprecedented disclosure of individual voter records and other deeply personal and private information of our Nebraska citizens. There is no credible evidence of voter impersonation fraud in Nebraska or across the United States. The true area of concern in our democracy is a lack of participation not voter fraud. We urge you to reject this naked effort to impugn the integrity of our electoral system that's risks Nebraskans' personal privacy and instead continue our work together to remove barriers to voting so more voices are heard.

Mr. Secretary, you have exhibited strong leadership for many years and know first-hand that Nebraskans can be proud of our free fair elections and hardworking county election officials. We urge you to follow the sound judgement of many of your peers—both Republicans and Democrats—to reject this troubling request with all deliberate speed to protect the integrity of our voter records and the personal privacy of countless Nebraska citizens.

As you know, even though the registration lists are public records, their inspection and distribution are tightly controlled. Neb.Rev.Stat. §32-330(1) provides that lists can be “examined” by anyone on site, but they can be copied only by a few categories of people, such as the election commissioner, county clerk, or law enforcement. This is to protect the privacy and personal information of the voters.

Additionally, while registration lists are available for purchase by entities, the purpose of their distribution is narrowly limited. Neb.Rev.Stat. §32-330(2) provides for the sale of registration lists, they can only be “used solely for purposes relating to election, political activities, voter registration, law enforcement, or jury selection.” None of these categories meets the Committee’s stated, or un-stated, purposes for requesting the information.

Finally, Nebraska law does not allow that the lists can simply be handed over after purchase. Neb.Rev.Stat. §32-330(3) requires any person who purchases a list to take and subscribe to an oath swearing that he or she will use the list only for the stated purpose or purposes and will not use or copy such list for any unauthorized purpose. The affiant taking the oath further acknowledges that election falsification is a Class IV felony. Even if the Commission's request met one of the narrow five categories of appropriate dissemination--which it does not--the lists cannot be provided until every person who acquires the list executes an appropriate oath satisfying Nebraska law.

Compliance with the Commission's request creates grave risks for your office and Nebraska voters. Compliance will nullify the protections that exist in Nebraska law for voters and their highly personal information. As you are aware, once the Commission obtains the lists, it could easily disseminate or share or use the information as it sees fit. The Legislature has charged your office and other officials with the trust that you will maintain the privacy and integrity of voters. If you provide the information requested to the Commission, you will surrender this trust.

However, if you are inclined to seriously consider divulging a plethora of Nebraskans private personal information we request that you first convene a dialogue with key state stakeholders to evaluate the legal policy and practical risks that are present. This prudent transparent approach would allow for a thorough review of Nebraska law, provide an opportunity for subject matter experts to weigh in, and allow for critical citizen input.

I thank you in advance for your time and ongoing service to our great state. I look forward to hearing from you soon and pledge to devote any time or resources we have available to assist you and your office as you work through this critical issue.

All our best,

Danielle Conrad, J.D.
Executive Director
ACLU of Nebraska

Bri McLarty, J.D.
Director of Voting Rights
Nebraskans for Civic Reform