



February 14, 2018

Chairman Richard Shelby
United States Senate Committee
on Rules and Administration
304 Russell Senate Office Building
Washington, DC 20510

Ranking Member Amy Klobuchar
United States Senate Committee
on Rules and Administration
302 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Shelby and Ranking Member Klobuchar:

On behalf of the Lawyers Democracy Fund, a non-partisan, non-profit organization dedicated to promoting the role of ethics and legal professionalism in the electoral process, we write to express concerns about the Secure Elections Act (S. 2261), which was introduced on December 21, 2017, and referred to the Senate Committee on Rules and Administration.

The stated purpose of S. 2261 is to protect the administration of federal elections against cybersecurity threats. While it is a better attempt than some recent legislation introduced to improve security in elections, there are some significant problems with this legislation in its current form.

It was with good reason that our Founding Fathers were careful to limit the authority of the federal government in elections. The details of elections are best left to local election authorities who have the expertise and experience to decide the methods of voting and security best suited to the location and conditions.

With that background, we make three major comments about S. 2261. First, it imposes onerous reporting requirements on state and local election officials – a new federal mandate on those administering elections at the state and local level. Within three calendar days of discovering a possible cybersecurity event, election officials and their vendors must thoroughly analyze the potential cyber event, develop a plan to “respond to and recover from” the event, and report these items to the Department of Homeland Security (“DHS”) Secretary, an agency which has no history of dealing with elections or the election process.

Not only do states have to respond to this reporting regimen, but so do all election jurisdictions and local boards. While some large jurisdictions might have the manpower and resources to compile such a comprehensive report within three days, most would struggle to prepare it so quickly or to adequately respond. This requirement applies broadly to any information system used in any part of the election process. Some of these systems are interconnected with state and local information technology systems overseen by separate, non-election officials or commercial vendors, which further complicates the process and reduces the ability of election officials to respond within this expedited time period.

Second, it gives a tremendous amount of discretion to DHS to establish new, ostensibly voluntary guidelines regarding election systems that will become mandatory in effect. The

newly created advisory panel has broad discretion to establish standards that must be met by states before receiving grant funds under the Act. However, the DHS Secretary, a partisan appointee, can change any guidelines developed by the advisory panel before they are submitted to Congress.

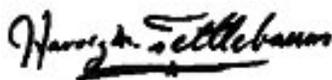
Currently vendors design and test systems to meet the bipartisan Election Assistance Commission (“EAC”) standards and guidelines, which were developed by election officials and subject matter experts in security and accessibility, in consultation with the National Institute of Standards and Technology and other organizations. This adds another advisory panel bureaucracy, complete with staff, when the EAC already has established advisory panels of experts working in this area who are more intimately familiar with elections and election processes. Because the new standards will be required for states to receive funding necessary to purchase new equipment or services, vendors will be required to meet the standards in their election administration products and services, thus making the voluntary standards mandatory in practice.

Finally, we emphasize it opens the door to control of election administration by one political party or interest group. Political appointees at DHS will control the advisory panel and standards process, enabling control by one political party. Under current federal law, the existing agency designed to develop new guidelines and administer federal grants, the EAC, requires bipartisan consensus for any official action, ensuring the political interests of one party do not control important election administration decisions.

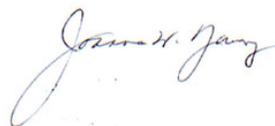
The advisory panel is designed to be controlled by cybersecurity experts, to the exclusion of election experts. The nine-member panel is controlled by the DHS Secretary, who can appoint five of its members. All five of the DHS appointees must be cybersecurity experts, while the remaining four must be either cybersecurity, election law, or election administration experts. The technology and security community has, to date, shown little interest in the concerns and requirements of the election community and little desire to learn or accommodate the underlying election administration issues that impact any security questions.

Thank you for your consideration of these concerns regarding the Secure Elections Act (S. 2261).

Sincerely,



Harvey Tettlebaum
President, Lawyers Democracy Fund



Joanne Young
Director, Lawyers Democracy Fund