

TESTIMONY BEFORE THE ALASKA STATE SENATE JUDICIARY AND STATE AFFAIRS
COMMITTEES

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INNOVATION AND RESEARCH

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Chairs and members of the Senate Judiciary and State Affairs Committees,

I am David Becker, executive director and founder of the nonpartisan nonprofit Center for Election Innovation & Research. We work with election officials all over the nation, of both parties, to support them in managing elections voters should trust and do trust. I've personally worked in elections for nearly 30 years, including seven years serving as a trial attorney with the U.S. Department of Justice's Voting Section, under three Attorneys General – two Republican, one Democratic. My work at the DOJ, and in my current position, has afforded me opportunities to work with election officials of both parties, and independents, here in Alaska.

Over the past year, the DOJ has embarked on an unprecedented attempt to seize sensitive voter data on every single American voter. Through requests, pressure campaigns, and lawsuits, the DOJ has demanded states relinquish that sensitive data, including Social Security numbers, driver's license numbers, and dates of birth, often in violation of their own laws. Why does the DOJ want this data, what will they do with it, and how will they protect it? The DOJ won't say, or offers contradictory explanations.

But we do know this. Article I, Sec. 4 of the Constitution states that "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations." In other words, election policy is made in the states first, and then by Congress, but never by the executive branch.

There is no congressional authorization that can justify the DOJ's attempt to collect this data for any purpose. Even the DOJ seems to acknowledge this, as their legal justifications keep evolving. The DOJ claimed that the National Voter Registration Act and Help America Vote Act required the states to hand over sensitive information on their voters. A simple review of these laws demonstrates that not only do they NOT grant the federal government the power to seize this data, but these laws expressly recognize that the states have the sole authority to conduct voter list maintenance. The DOJ has also claimed that the Civil Rights Act of 1960— a law passed to prevent racial discrimination at a time long before statewide voter lists existed—required states to cede their list maintenance authority to the federal government.

But regardless of the shifting rationale, the courts have made clear that the DOJ's demands exceed their authority. To date, three federal courts have all agreed that the DOJ has no right to this sensitive data and affirmed states' sovereignty over their elections. Two of those federal courts—Oregon and California—are in the Ninth Judicial Circuit along with Alaska, and the third, Michigan, was decided by a judge appointed by the current president. As one of the courts put it:

“The DOJ cannot go beyond the boundaries provided by Congress and use these legislative tools in a manner that wholly disregards the separation of powers provided for in the Constitution. It is Congress' role to determine the purpose and use of legislation. Should Congress want to enable the Executive to centralize the private information of all Americans within the Executive Branch, Congress will have to clearly say so.”

And it's not only that federal law does not authorize the DOJ to collect this information. Courts confirm that Congress made it illegal for anyone in the federal government, including the DOJ, to amass data on American individuals in this way. In 1974, Congress passed the Privacy Act, restricting federal agencies from collecting and disseminating personal information without proper notice, purpose limitation, and safeguards. It is designed to prevent precisely what the states are now being pressured to facilitate: mass collection of personal data without clear statutory authority and without adequate guardrails.

As the California district court found:

“The Court is concerned that the very issues that animated Congress to pass the Privacy Act—threats to American democracy amidst erosion of public trust regarding the Executive's use of sensitive data—will play out again if the DOJ is given license to ignore the guardrails created by Congress in the Privacy Act. Congress passed the Privacy Act to prevent the creation of “formal or de facto national data banks” or “centralized Federal information systems” because of the risks posed to the privacy of individual Americans.... Now, the Executive stands at the precipice of making Congress' fears come to life. But the Privacy Act remains a protection for the American people.”

Those threats to the privacy and security of Americans are very real. The data the DOJ demands—Social Security numbers, drivers license numbers, and dates of birth—comprise the holy trinity of identity theft. If this data were leaked, the financial well-being of millions of Americans would be put at risk. That's why so many states have passed laws protecting this data and preventing its disclosure.

And concerns about the protection of sensitive data are amplified by the federal government's handling of such data. This past year, it was revealed that the federal government uploaded confidential data to a vulnerable server, and inadvertently released

the full nine-digit Social Security number of New Jersey's now-governor—a veteran—to her political opponent. The Brennan Center for Justice just released a report outlining the flawed data security practices used by the DOJ in these data collection efforts.¹ And in a recent filing in the United States District Court for the Eastern District of Virginia, the Department of Justice disclosed that it had shared sensitive voter data with what it described as a “political advocacy group.” House Democrats just sent a letter to a group demanding information about whether they received this protected data.

Think of that. Think of some outside political group with whom you might agree or disagree, and then imagine they obtain the Social Security numbers, drivers license numbers, and dates of birth for every voter in your state. Given that it's confirmed that Alaskans' sensitive data has already been sent to the DOJ, that may be the reality facing Alaskans today.

I have worked with election officials and Alaskans across the political spectrum. In almost every case, those officials act with integrity on behalf of their voters, regardless of partisanship. And Alaska's voters—Republicans, Democrats, independents, rural, urban, Native, military—do not expect their personal information to become collateral damage in national political battles.

What would have happened here if it was a president of a different party demanding this information? Would Alaskans' data have been shipped off to DC? What if a future administration of a different party demands this data, perhaps to automatically register all eligible voters, pursuant to that same National Voter Registration Act—will Alaska have any justification to resist?

State power and sovereignty over elections should not be negotiable, dependant upon the party identification of the person occupying the Oval Office. The protection of our citizens and voters should not shift with the partisan winds. And if a Democrat sits in the White House and makes the same demands in future years, I will come back and say the same thing.

The majority of states have recognized this. The DOJ is currently suing 29 states and DC, including many Republican-led states. Four of the last five states sued are led by Republicans. Election officials across the political spectrum stood up to protect state sovereignty and voters' security, regardless of partisanship. As the conservative Republican secretary of state of West Virginia has stated:

“My responsibility is first and foremost to the citizens of West Virginia.... The DOJ doesn't have authority to run a state's elections. I support efforts to strengthen

¹ <https://www.brennancenter.org/our-work/analysis-opinion/justice-departments-security-measures-collecting-voter-rolls-are>

election integrity, but I will not break the law, give up our State's rights, or compromise the privacy of our citizens.”

Unfortunately, Alaska currently finds itself in a different position than West Virginia, Oklahoma, Kentucky, Utah, and many other states. While courts confirm the DOJ has exceeded its authority and allows the states to protect their citizens' data, Alaska should mitigate the risk that's already occurred. The state can do this by demanding the DOJ return its data, destroy all copies, and transparently reveal all those inside and outside government who may have had access to that data.

Thank you, and I'm happy to answer any questions.