

August 17, 2018

Jennifer D. Ricketts  
Director, Federal Programs Branch  
Civil Division  
U.S. Department of Justice  
905 Pennsylvania Avenue, N.W.  
Washington, DC 20530

Re: Supplement to Request for Investigation of Kris W. Kobach

Dear Ms. Ricketts:

This letter supplements Citizens for Responsibility and Ethics in Washington's ("CREW") November 28, 2017 letter requesting that the Department of Justice investigate whether Kansas Secretary of State Kris W. Kobach, former Vice Chair of the Presidential Advisory Commission on Election Integrity ("Commission"), improperly participated in a matter in which he is believed to have a financial interest in violation of the federal conflict of interest statute, 18 U.S.C. § 208.<sup>1</sup>

Commission documents recently made publicly available reveal that Secretary Kobach sent drafts of *Breitbart News* columns concerning the Commission's work to the Office of the Vice President for prior review and approval, providing further evidence that Secretary Kobach participated as a government official in particular matters in which he has a financial interest.<sup>2</sup> CREW respectfully requests that you consider this additional information as part of our earlier request for an investigation into whether Secretary Kobach violated 18 U.S.C. § 208.

The criminal conflict of interest statute, 18 U.S.C. § 208, prohibits an executive branch employee from participating personally and substantially in any particular government matter that will have a direct and predictable effect on his financial interest or any financial interest imputed to him, including those of his spouse. The purpose of the statute is to prevent an employee from allowing personal interests to affect his or her official actions, and to protect governmental processes from actual or apparent conflicts of interest.<sup>3</sup>

As noted in our earlier letter, Secretary Kobach's financial interest arises out of his agreement to be paid for writing and delivering columns to *Breitbart News*,<sup>4</sup> including a

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<sup>1</sup> Letter to Jennifer D. Ricketts, Director, Federal Programs Branch, Civil Division, U.S. Department of Justice, from Noah Bookbinder, Executive Director, Citizens for Responsibility and Ethics in Washington ("CREW Letter"), Nov. 28, 2017, available at <https://bit.ly/2AjaLFy>.

<sup>2</sup> PACEI Docs Page, Maine Secretary of State Matthew Dunlap website, available at <http://paceidocs.sosonline.org/>.

<sup>3</sup> 5 C.F.R. § 2640.101.

<sup>4</sup> Bryan Lowry, [Kris Kobach's new job: Columnist for Breitbart](#), *Kansas City Star*, Aug. 31, 2017, available at <https://bit.ly/2KYNBYO>. While the details of Secretary Kobach's financial arrangements with *Breitbart News* still

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September 7, 2017 column seemingly written in his official capacity with the Commission that alleged serious voter fraud in New Hampshire.<sup>5</sup> Five days after its publication, Secretary Kobach incorporated that column into a New Hampshire meeting of the Commission.<sup>6</sup> Because Secretary Kobach agreed with *Breitbart News* to write a column for official Commission use, knowing he would be paid for the column, he appears to have participated in a particular matter in which he had a financial interest in violation of 18 U.S.C. § 208.

Newly-released Commission documents reveal an email exchange between Secretary Kobach and the Office of the Vice President about an earlier *Breitbart News* column, which also appears to have been written by Secretary Kobach in his official capacity. The July 3, 2017 column, entitled Kobach: Why States Need to Assist the Presidential Commission on Election Integrity, states:

*Last Thursday, the Presidential Commission on Election Integrity officially asked each state's chief election official for a copy of their state's publicly-available voter information, in order to better investigate voter fraud across the nation. I'm the Vice Chair of that Commission, and the letter went out under my signature. Immediately thereafter, several prominent Democrats declared that they would not comply with this request. . . . The Commission's primary objectives include measuring the amount of voter fraud and improper voter registration in the country. The voter rolls are the obvious starting point for the Commission's work.*<sup>7</sup>

Prior to its publication on July 3, Secretary Kobach emailed the Office of the Vice President a draft of the column to request comments from Associate Counsel Andrew Kossack (who also served as the Commission's Executive Director), Counsel Mark R. Paoletta and Press Secretary Marc E. Lotter.<sup>8</sup> Mr. Kossack replied by email as follows:

Defer to Mark and Marc, but this looks good to me overall.

One line that caught my attention was this one, only because the President's E.O. was broader in scope to include improper registrations, improper voting, etc: "The Commission's chief goal is to measure the amount of voter fraud in that country."

What about something like, "The Commission's objective is to identify policies and practices that either advance or undermine the American people's confidence

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are not publicly known, he has admitted he was paid to write and deliver columns, demonstrating an agreement or arrangement between the two parties.

<sup>5</sup> See CREW Letter.

<sup>6</sup> *Id.*

<sup>7</sup> Kris W. Kobach, Kobach: Why States Need to Assist the Presidential Commission on Election Integrity, *Breitbart News*, July 3, 2017 (emphasis added.), available at <https://bit.ly/2BfGknK>.

<sup>8</sup> Email from Kris Kobach, July 3, 2017, 5:02 PM, reprinted by Jessica Huseman, *Twitter*, Aug. 5, 2018, 10:42 AM, available at <https://twitter.com/JessicaHuseman/status/1026161432096845827/photo/1>.

in our elections processes, including any vulnerabilities that could lead to improper or fraudulent registrations and voting. *The voter rolls are the obvious starting point for the Commission's work.*"<sup>9</sup>

Secretary Kobach appears to have incorporated significant portions of Mr. Kossack's proposed edits in the final version of the article, including adopting one sentence in its entirety.

In addition to seeking comments from staff in the Office of the Vice President and adopting significant portions of their proposed edits, Secretary Kobach devoted the substance of the column to defending the Commission's request for a copy of voter information from each state's chief election official. Secretary Kobach defended the work of the Commission referring to it by name at least twenty times. He explicitly identified himself in the text of the column as the Commission's Vice Chair and as the author of the Commission letter requesting voter information from state election officials.

All of this suggests that on July 3, 2017, at a time when Secretary Kobach was apparently under a paid agreement with *Breitbart News*, he participated in writing and delivering a column for *Breitbart News* publication in his official capacity in furtherance of his work for the Commission. As a result of his agreement to write and deliver the *Breitbart News* column on the work of the Commission, and after it had been reviewed and approved by staff from Office of the Vice President, the column should be viewed as a particular matter in which Secretary Kobach participated personally and substantially in his official capacity in violation of 18 U.S.C. § 208.

There is also new evidence that Secretary Kobach may have engaged in this activity knowingly and willingly after having received ethics training as a Commission special government employee. The batch of newly-released documents reveals that written ethics guidance was provided by Mr. Kossack to Secretary Kobach and other Commission members by email dated June 27, 2017, and that this guidance was to be included on the agenda for a conference call Commission members participated in on June 28, 2017,<sup>10</sup> prior to the publication of Secretary Kobach's July 3, 2017 column. While the newly-released documents do not include copies of the ethics guidance provided to Commission members, there is a significant likelihood that the ethics guidance distributed to Commission members included a discussion of the primary conflict of interest statute 18 U.S.C. § 208.

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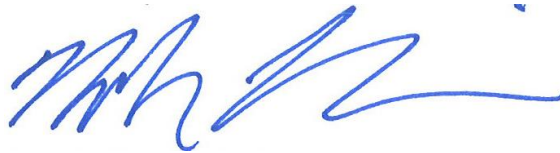
<sup>9</sup> Email from Andrew Kossack to Kris Kobach, July 3, 2017, 10:06:36 PM, cc:ing Mark R. Paoletta and Marc E. Lotter, *reprinted* by Jessica Huseman, *Twitter*, Aug. 5, 2018, 10:42 AM, *available at* <https://twitter.com/JessicaHuseman/status/1026161432096845827/photo/1>.

<sup>10</sup> Email from Andrew Kossack to Members, June 27, 2017, 7:46 PM, *available at* <https://docs.google.com/document/d/1P28oNKVPOESEfQ5bShvBrVgA36VeVsxOe7J092ATnLw/edit>, at 21. Subsequent in-person ethics training was provided to Commissions members on July 19, 2017. Email from Andrew Kossack to Members, July 11, 2017, 5:57 PM, *id.* at 42 (alerting members to arrive at 8:15 AM on July 19 for orientation and required ethics training and Federal Advisory Committee Act training). *See also* Email from Andrew Kossack to Members, Sept. 5, 2017 4:42 PM, *id.* at 40 (reminding Commission members of the ethics rules that govern teaching, speaking and writing while serving on the Commission).

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CREW respectfully requests that your office consider this newly released information in conjunction with our earlier request for an investigation into whether Secretary Kobach as Vice Chair of the Commission participated personally and substantially in a particular matter in which he had a financial interest in violation of 18 U.S.C. § 208.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Noah Bookbinder', with a long horizontal stroke extending to the right.

Noah Bookbinder  
Executive Director