



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