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Class_10_Opp'n_National Association of Secretaries of State

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Comment

On behalf of the Executive Board of the National Association of Secretaries of State (NASS), the following comments in opposition to the class 10 petitions submitted by the Center for Democracy & Technology, Professor Ed Felten and Professor J. Alex Halderman, which propose to modify the good-faith security research exemption codified at 37 C.F.R. 201.40(b)(7).

Forty of our members serve as the Chief Election Official in their state, with oversight for the administration of elections. The current exemption under 37 C.F.R. 201.40(b)(7) includes voting machines among the devices or machines for which circumvention is permitted for the purpose of good-faith security research. Regrettably, neither NASS staff nor the individual Secretaries were aware of the decision to include voting systems in a category of consumer products that were covered by the 2015 exemption under 37 C.F.R. 201.40(b)(7). It is certainly a conversation state and local election officials should have been a part of, as access to voting systems falls under their responsibility.

On January 6, 2017, the U.S. Department of Homeland Security designated elections as part of the nation's critical infrastructure. It seems contrary to the purpose of the critical infrastructure designation to impose fewer restrictions on access to the election systems.

However, while we acknowledge there are some controls in the original exemption from 2015, the proposed modifications to 37 C.F.R. 201.40(b)(7), would remove many of the limitations and restrictions from the 2015 exemption. We are concerned about the potential implications of these modifications for election infrastructure.

The proposed modifications to 37 C.F.R. 201.40(b)(7) raise a number of questions with regard to the possible impact on election officials and election infrastructure, including: to what components of election infrastructure would researchers have access, and for what purposes; under what conditions would research activities be carried out on election infrastructure; and how would information derived from

research on election infrastructure be utilized?

As the new category of the country's critical infrastructure, we ascertain elections systems are unique from other types of infrastructure, and we believe adequate constraints are necessary for any research activities designed to circumvent access control on these systems. We are concerned the removal of the restrictions and limitations in C.F.R. 201.40(b)(7) would result in unfettered election hacking activities that could undermine public confidence in elections and create significant challenges for election officials.

Accordingly, we oppose the proposed modifications to C.F.R. 201.40(b)(7). The removal of these controls will unnecessarily threaten the cyber security of elections and the tools required to conduct them.

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