



Written by [Kurt Hyde](#) on January 30, 2017

Opposition Grows to Federal Elections Takeover

The Obama administration's DHS Secretary Jeh Johnson announced on January 6 that he had determined that U.S. elections "should be designated as a subsector of the existing Government Facilities [critical infrastructure sector](#)." Johnson's statement went on to say:

By "election infrastructure," we mean storage facilities, polling places, and centralized vote tabulations locations used to support the election process, and information and communications technology to include voter registration databases, voting machines, and other systems to manage the election process and report and display results on behalf of state and local governments.



In other words, DHS would assert its authority over virtually all aspects of elections. The memo also had assurances that this would not be a federal takeover, but the cosmetic assurances contradict the memo's wording, particularly the self-declared, open-ended definition of what would comprise the election infrastructure. Also fueling the fires of concern is the history of federal takeovers. Federal takeovers in the past have been replete with soothing statements saying they are not takeovers during the initial phases.

Within days, the National Association of Secretaries of State (NASS) [issued a statement](#) describing DHS's announcement as "legally and historically unprecedented, raising many questions and concerns." NASS's statement went on to say:

State and local autonomy over elections is our greatest asset against malicious cyberattacks and manipulation. Our decentralized, low-connectivity electoral process is inherently designed to withstand such threats.

Further reaction by state election officials has been overwhelmingly in opposition to this federal takeover. Numerous posts [on the website electionline.org](#) indicate widespread opposition by Secretaries of State and other voting officials, both Republican and Democrat.

The opposition to this attempted federal power grab is gratifying to those who oppose encroachment by the federal government into what is clearly the domain of the states. Particularly gratifying is the statement explaining that decentralization of the electoral processes and low levels of electronic connectivity are actually security strengths in our elections. These statements by NASS are a welcome dose of electoral sanity compared to recent advocacies for Internet voting and secure transmission of precinct vote counts, both of which increase centralization and electronic connectivity.

The New American has published numerous articles with criticisms of Internet voting and, in reporting from Iowa at last year's Republican presidential caucuses, [questioned the wisdom of secure transmission of precinct results](#):



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While no one should be upset with quick and accurate reporting, there is no reason given why this app should work “securely.” Why should publicly disseminated information be transmitted securely? If everyone has a right to know this information, why should it be secured? The answer is, it shouldn’t.

There is a possibility that this growing opposition may lead to a resolution against the power grab at next month’s NASS Winter Conference in Washington, D.C.

But one argument that is missing from the debate is constitutionality. This attempted federal action is blatantly unconstitutional. Apologists for federal intervention in state elections have quoted Article I, Section 4 of the U.S. Constitution, which says:

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 except for the Place of Chusing Senators.

Alexander Hamilton, in *The Federalist*, No. 59, addressed the intent of this provision in the U.S. Constitution. It does allow for Congress to alter state election laws, but as Hamilton explained, this was primarily to ensure the states would hold elections for federal offices thereby ensuring there would not be a coalition of states over-powering the Congress by failing to elect Congressmen :

But with regard to the federal House of Representatives, there is intended to be a general election of members once in two years. If the State legislatures were to be invested with an exclusive power of regulating these elections, every period of making them would be a delicate crisis in the national situation, which might issue in a dissolution of the Union, if the leaders of a few of the most important States should have entered into a previous conspiracy to prevent an election.

Hamilton further explained that the power to alter state election laws was not intended to allow the federal government to stretch it so far as to allow Congress to pass laws making the federal government the regulator of state elections:

Suppose an article had been introduced into the Constitution, empowering the United States to regulate the elections for the particular States, would any man have hesitated to condemn it, both as an unwarrantable transposition of power, and as a premeditated engine for the destruction of the State governments?

Hopefully, the opposition to this attempted federal takeover of elections will not only be stopped, but will lead to eventually dismantling such unconstitutional federal bureaucracies as the Federal Election Commission (FEC) and the U.S. Election Assistance Commission (EAC), which are currently assuming regulatory authority over state elections.



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