

NATIONAL REVIEW

Obama Is Using the Russians as an Excuse to Expand Federal Power over Elections

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The Obama Administration is leaving office much like the way it came in — by exploiting perceived crises.

“You never want a serious crisis to go to waste,” Rahm Emanuel, Obama’s just-named chief of staff, told a Wall Street Journal conference of top CEOs in November 2008 while his boss was still president-elect. Since then a slew of constitutionally dubious executive orders, presidential emergencies, and rushed legislation have characterized the Obama presidency. Now he is leaving office by issuing a blizzard of “midnight regulations” and edicts.

One of the most troublesome came last Friday and gave the federal government the power to begin centralizing our election systems. The Constitution explicitly gives states the power to set the “times, manner and places of holding elections.”

But Homeland Security Secretary Jeh Johnson used the excuse of Friday’s release of a report on Russian hacking of the Democratic National Committee to declare that state and local voting systems will be designated as “pieces of critical infrastructure” so that the U.S. Department of Homeland Security (DHS) can protect them from hackers.

His move — coming just 15 days before President Obama leaves office — led many experts to question both its wisdom and its constitutionality. “While the federal government has the general power to protect the nation’s cyber infrastructure, it cannot intrude into areas of state sovereignty without clear constitutional mandate,” John Yoo, a law professor at UC Berkeley, told CNSNews.com.

“There is no federal power to control or secure elections. Each state administers its own elections, restricted only by constitutional protections for voting rights,” agreed Illya Shapiro, senior fellow in constitutional studies at the Cato Institute. “It may make sense for states to request federal support here, but it would set a dangerous precedent for a federal agency to unilaterally take over state electoral processes.”

Secretary Johnson’s decision sparked outrage from many of those who are most knowledgeable about our election system — the 50 secretaries of state who, along with local officials, run the election process. Even Johnson admitted that “many of them are opposed to this designation.” And how.

Secretary of State Brian Kemp of Georgia, told me in an interview that Johnson's action "uses security as an excuse to subvert the Constitution and establish the basis for federal encroachment into election systems." Vermont Secretary of State Jim Candos, a Democrat, told *Politico* that such a move is "kind of the nose under the tent," adding:

What I think a lot of folks get concerned about [is] when the federal government says, "Well, look, we're not really interested in doing that, but we just want to give you this," and then all of a sudden this leads to something else.

The reason that state and local officials strongly oppose the Obama-Johnson power grab is that they know the decentralized U.S. election system makes large-scale hacking almost impossible. Secretary Johnson even conceded in a recent telephone conference call with state officials that there is no credible threat of a successful cyberattack on the voting and ballot-counting process, despite revelations about recent attacks on the voter-registration systems in Arizona and Illinois.

Those systems — maintained by states and county governments — are separate and distinct from the voting machines used on Election Day in nearly 200,000 precincts around the country. The same is true for the machines that count the ballots.

The hacks in Arizona and Illinois, in which voter-registration data were copied but not altered, illustrate the danger of online voter registration, but they are not an indication of the vulnerability of our ballot counting.

Rather than pursue more authority over election systems, the Obama administration should have been more worried that its director of the federal Office of Personnel Management (OPM) had to resign last July after hackers stole the personal data of *21.5 million* current and former federal employees. The stolen information included employees' addresses, Social Security numbers, financial and military records, and security clearances from OPM's data bases. No one else has been disciplined for that breach, even though OPM had for months ignored clear warnings about the agency's vulnerabilities.

So color me darkly suspicious that the Obama administration, in its very last days in office, has suddenly decided to shift into action on the alleged dangers of election hacking. It looks all too much like an excuse to seize more power from state authorities, and it resembles the administration's other moves on election law: filing lawsuits against popular voter-ID laws, blocking states from requiring a proof of citizenship when people register to vote, and refusing for eight years to enforce federal laws that require states to clean up their voter rolls if they accept federal money for their operations.