

WHEN PROTECTING VOTER RECORDS, STATE CONSTITUTIONS MATTER

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A federal court recently upheld Kentucky's refusal to turn over its voter data to the federal government, recognizing the state's authority to regulate its elections and protect its voters. This creates an exceptional opportunity for Kentucky to be the leader in strengthening voting rights by invoking the protections of the Commonwealth's own constitution. This idea would serve as a national precedent for protecting these and other human rights through the power of State Constitutions.

During the summer of 2025, the United States Department of Justice (DOJ) demanded unredacted federal election records from most states, including Kentucky. Citing federal election oversight authority, it sought not only the names of voters, but also their addresses, their dates of birth, and driver's license numbers or partial social security numbers.

Kentucky is one of the states that has challenged the Administration in federal district court, and the recent decision in the case of *US v Adams* was rendered in favor of the state's refusal to share that information. The US Department of Justice (DOJ) promptly indicated its plans to appeal.

Like each of the other states fighting the effort in federal court, Kentucky has, so far, addressed only the protections afforded voters under the US Constitution and federal statutes. Those arguments have prevailed in 18 consecutive rulings nationwide, including one appellate ruling.

But Kentucky's defendants, led by Secretary of State Michael Adams (who oversees the state's board of elections) will have a special opportunity, when they respond to the DOJ appeal, to assert that it is not just the US Constitution and federal law that protect the rights of Kentuckians. State Constitutions and state laws do as well, often—as in Kentucky—even more strongly.

The US Constitution, at Article I, Section 4, gives states primary authority to regulate the times, places and manner of elections, both federal and state. As recently as June 2023, in a relevant US Supreme Court decision (*Moore v Harper*), Chief Justice John Roberts noted that State Constitutions and state courts have an important role in determining the manner of conducting elections.

DOJ's demands for "federal election" records represent a major intrusion into the states' authority here because federal and state election records are one and the same set of

records. To receive federal records would mean undermining the state’s authority to protect state voter records.

Kentucky, like the other states fighting the DOJ demand, has a State Constitution that offers its citizens more rights than are protected under the US Constitution. Specifically, Kentuckians have a right, enumerated in their constitution, to “free and equal elections.” They also have strong privacy rights regarding information they provide to their state government. This right is not explicitly enumerated in the Constitution but is supported by an impressive network of legislation, Attorneys General opinions and judicial rulings.

Kentucky, in invoking these rights, would not be undermining the role of the US Constitution or the laws made under it. Instead, they would be harkening back to the original intent of the nation’s Founders who expected states to be primary protectors of human rights. The Founders set a floor for human rights, through the Bill of Rights, but they expected the states to enhance and expand upon those rights according to local values and circumstances. And the US Constitution’s mandate to manage elections makes the state’s obligation here especially strong.

Because Kentucky has already argued that complying with the DOJ demand would require officials to violate Kentucky law, they should explain, in replying to the DOJ appeal, why those laws exist—because they implement protections found in the Commonwealth's Constitution. This assertion, which would be both Originalist and novel, would invite other states, many of which have similar state constitutional rights, to offer state constitutional arguments regarding voting rights, and beyond.

Voting is a cornerstone of our democracy, and states and state laws are key to its preservation. Voting rights protected by State Constitutions are just as important to a state’s citizens as voting rights protected federally, and sometimes more so. That concept, we believe, established in the earliest days of our republic, should be central in the fight by thirty states and the District of Columbia against federal executive overreach. Kentucky should seize this opportunity to lead!

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