

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER; MIKE SUAREZ;  
JOSHUA A. SIMMONS; BRENDA  
SHAPIRO; LUIS MEURICE; THE  
AMERICAN CIVIL LIBERTIES UNION  
OF FLORIDA, INC.; FLORIDA  
IMMIGRANT COALITION, INC.,**

**Plaintiffs,**

**vs.**

**PRESIDENTIAL ADVISORY  
COMMISSION ON ELECTION  
INTEGRITY; MICHAEL PENCE, in his  
official capacity as Chair of the Presidential  
Advisory Commission on Election Integrity;  
KRIS KOBACH, in his official capacity as  
Vice Chair of the Presidential Advisory  
Commission on Election Integrity;  
EXECUTIVE OFFICE OF THE  
PRESIDENT OF THE UNITED  
STATES; EXECUTIVE OFFICE OF  
THE VICE PRESIDENT OF THE  
UNITED STATES; TIM HORNE, in his  
official capacity as Administrator of the  
General Services Administration; MICK  
MULVANEY, in his official capacity as  
Director, Office of Management and  
Budget; KEN DETZNER, in his official  
capacity as Florida Secretary of State,**

**Defendants.**

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**PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY  
RESTRAINING ORDER AND PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF AS MAY BE APPROPRIATE**

Plaintiffs, pursuant to Fed. R. Civ. P. 7 and 65, seek an emergency temporary restraining order and/or a preliminary injunctive and/or other appropriate injunctive relief prohibiting Defendants from misappropriating, disseminating, selling, assigning, conveying, transferring, hypothecating, or utilizing, in any way, any private voter data or any other information collected or otherwise obtained by the Presidential Advisory Commission on Election Integrity (the “Commission”), and ordering the Florida Secretary of State to remain bound by this Court’s July 20, 2017 Order [ECF No. 31] and to continue to comport with all protections governed by Florida law, pending further order of Court.

New, disturbing developments have arisen, requiring emergency Court intervention. On January 3, 2018, the President executed an Executive Order, terminating the Commission. Within hours, Kansas Secretary of State Kris Kobach, the Commission’s Vice Chair and notorious vote suppressor, gave statements to the media that he and the White House are working together to transfer private, protected voter data to Immigration and Customs Enforcement (“ICE”) so that Secretary Kobach, the White House, and ICE can work together to purge voter rolls. Secretary Kobach called this a “tactical shift, ” saying “[t]he investigations will continue now, but they won’t be able to stall [it] through litigation.” Using Commission data, the Federal Defendants seek to “Stop Aliens From Voting,” without complying with FACA and other laws.

Injunctive relief is appropriate to compel government compliance with FACA. “[T]o allow the government to use the product of a tainted procedure would circumvent the very policy that serves as the foundation of the Act.” *Ala.-Tombigbee Rivers Coal. v. Dep’t of Interior*, 26 F.3d 1103, 1107 (11th Cir. 1994).

### **I. RELEVANT FACTS AND PROCEDURAL HISTORY**

1. Throughout the 2016 presidential election campaign, now-President Trump

spread numerous baseless conspiracy theories about voter fraud. Details are provided in greater detail in Plaintiffs' initial Complaint [ECF No. 1] and First Amended Complaint [ECF No. 65].

2. One of President Trump's biggest campaign surrogates during the 2016 election was Kansas Secretary of State Kris Kobach. Secretary Kobach has a long history of suppressing the fundamental right to vote. *See League of Women Voters v. Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016) (reversing denial of motion for preliminary injunction, noting "precious little record evidence" of Kobach's assertions of fraudulent voter registration by non-citizens); *Fish v. Kobach*, 840 F.3d 710, 747, 755 (10th Cir. 2016) (Kobach's disenfranchisement of voters is a "mass denial of a fundamental constitutional right;" his "assertion that the 'number of aliens on the voter rolls is likely to be in the hundreds, if not thousands' is pure speculation").

3. Within one day of President Trump's election, Secretary Kobach drafted "amendments to the NVRA [National Voter Registration Act] to make clear that proof of citizenship requirements are permitted." (**Exhibit "A,"** November 9, 2016 Email from Kris Kobach to Gene Hamilton). He informed Gene Hamilton, who became one of the Trump Administration's top immigration policy staff members at the Department of Homeland Security ("DHS") after the President took office.

4. While much of what Secretary Kobach was referring to as his proposed edits to the NVRA in November 2016 is unavailable to the public, a small portion was unsealed in *Fish v. Kobach*, Case No. 16-cv-02105 (D. Kan.), which addresses Secretary Kobach's extensive efforts to suppress the right to vote in Kansas. The unredacted portion of Secretary Kobach's draft amendments to the NVRA makes it clear that Secretary Kobach would expressly allow states to require documentary proof of citizenship of voter registration applicants, and also that he wanted to permit states to "require any information" from voter registration applicants.

(**Exhibit “B,”** Document titled “Amendments to the National Voter Registration Act”).

5. Shortly after President Trump’s election, Secretary Kobach also created for DHS, a “KOBACH STRATEGIC PLAN FOR FIRST 365 DAYS” (the “Strategic Plan”), filed in *Fish v. Kobach*. Of the 23 items on the Strategic Plan, only the last item is unredacted. It states: “V. Stop Aliens From Voting: . . . 23. Draft Amendments to the National Voter Registration Act to promote proof-of-citizenship requirements.” (**Exhibit “C”**). (emphasis in original).

6. On January 25, 2017, the President tweeted his intention to create what would later become the Presidential Advisory Commission on Election Integrity (“Commission”): “I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and....<sup>1</sup> even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!”<sup>2</sup>

7. The primary reason for the creation of the Commission was the President’s baseless argument that “[i]n addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally.”<sup>3</sup> ABC News declared this statement “False,” because there is “no proof to back up this claim.”<sup>4</sup> This statement was in addition to others made by or on behalf of the President that made it clear that this Administration wants to suppress the right to vote based upon unfounded, spurious accusations of voter fraud. A non-exhaustive compilation of statements by or on behalf of the President

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<sup>1</sup> See **Composite Exhibit “S,”** see also Donald J. Trump (@realDonaldTrump), Twitter (Jan. 25, 2017, 7:10 am), <https://twitter.com/realDonaldTrump/status/824227824903090176>.

<sup>2</sup> See **Composite Exhibit “S,”** see also Donald J. Trump (@realDonaldTrump), Twitter (Jan. 25, 2017, 7:13 am), <https://twitter.com/realDonaldTrump/status/824228768227217408>.

<sup>3</sup> See **Composite Exhibit “S,”** see also Donald J. Trump (@realDonaldTrump), Twitter (Nov. 27, 2016, 3:30 p.m.), <https://twitter.com/realDonaldTrump/status/802972944532209664>.

<sup>4</sup> Lauren Pearle, *Fact-Checking Trump's Claims About 'Serious Voter Fraud,'* ABC News (Nov. 28, 2016), <http://abcnews.go.com/Politics/fact-checking-trumps-claims-voter-fraud/story?id=43820475>.

concerning voter fraud in the 2016 election is filed in the record at ECF No. 65-1, pp. 5-13.

8. Secretary Kobach falsely stated after the 2016 election, “I think the president-elect is absolutely correct when he says the number of illegal votes cast exceeds the popular vote margin[.]” Mr. Kobach “had no tangible evidence to support that statement.”<sup>5</sup>

9. Presidential Counselor Kellyanne Conway said the President “bases his information” about voter fraud on Secretary Kobach.<sup>6</sup>

10. On May 11, 2017, the President executed Executive Order 13799, 82 Fed. Reg. at 22,389 (“Executive Order 1”) (**Exhibit “D”**), leading to the Commission’s creation. Vice President Michael Pence was named Chair. Secretary Kobach – the President’s ally and chosen agent to work to suppress the right to vote – was named the Vice Chair. A Charter for the Commission was subsequently also prepared. (**Exhibit “E”**).

11. Executive Order 1 instructs the Commission to “study the registration and voting processes used in Federal elections.” Executive Order 1 does not contain any authority to collect personal voter data, to initiate investigations, or to seek the disclosure of state voter data.

12. Yet, on June 28, 2017, before the Commission’s members were all appointed and sworn in and before any noticed meetings, Secretary Kobach stated during a telephonic meeting, led by the Vice President, that “a letter w[ould] be sent today to the 50 States and District of Columbia on behalf of the Commission requesting publicly-available data from state voter rolls. . . .” (“Request Letters”). (**Exhibit “F”**).

13. Maine Secretary of State, and Commission member, Matthew Dunlap, stated:

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<sup>5</sup> Bryan Lowry, *Kobach backs Trump’s unsupported claim of millions illegally voting*, The Wichita Eagle (Nov. 30, 2016), <http://www.kansas.com/news/politics-government/election/article117933098.html>.

<sup>6</sup> Andrew Kaczynski, *Vice chair of ‘Election Integrity’ group repeatedly backed Trump’s unfounded claim that millions voted illegally*, CNN.com (May 12, 2017), <http://www.cnn.com/2017/05/12/politics/kfile-kobach-voter-fraud-claim/index.html>.

On that call, Vice-Chair Kobach informed the other commissioners and me that the Commission planned to send letters to all 50 states and the District of Columbia asking that they provide the Commission with information from the states' voter rolls. I was not given the requests in advance of this phone call; this phone call was the first time I had heard of these letters. The commissioners were not given the opportunity to vote on whether to send the letters, which were sent later the same day. I did not have time to review the letters, to consult with other commissioners regarding the letters, or to consider or object to the letters. If I had been given a meaningful opportunity to discuss this matter, I might have opposed the decision to send these letters, or proposed alternative strategies for gathering voting-related information.

(**Exhibit "G,"** November 16, 2017 Decl. of Matthew Dunlap at ¶ 5).

14. All the Request Letters, including the one to Florida Secretary of State Ken Detzner, (**Exhibit "H"**), request voter identifying information, including the:

full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.

15. The Request Letters also seek "[w]hat evidence or information [the state had] regarding instances of voter fraud or registration fraud" and "[w]hat convictions for election related crimes ha[d] occurred in [the] state since the November 2000 federal election." According to the Commission, "any documents that are submitted to the full Commission w[ould] also be made available to the public." The states' responses to the Commission were stated to be due by July 14, 201, before any public meeting of the Commission was ever held. *Id.*

16. The Request Letters did not list the Commission's physical address. The URL (<https://safe.amrdec.army.mil/safe/Welcome.aspx>) to transfer voter information was not secure. (**Exhibit "I,"** Screenshot of website, dated 7/10/17). Visitors to the URL were told the "connection is not secure" and were warned of "your information . . . being stolen." *Id.*

17. The Commission's requests for voter data violated federal law in numerous

regards, including, among other things, the Federal Advisory Committee Act (“FACA”) (5 U.S.C. app.), E-Government Act of 2002 (44 U.S.C. § 3501 note), the Paperwork Reduction Act (“PRA”) (44 U.S.C. § 3501), and the U.S. Constitution. Additionally, the Request Letter sent to Florida Secretary of State Ken Detzner sought protected information about Florida voters in violation of Fla. Stat. § 97.0585 and Florida’s Right to Privacy.

18. The instant lawsuit was filed on July 10, 2017. The Defendants’ violations are more fully set out in the Complaint [ECF No. 1] and the First Amended Complaint [ECF No. 65].<sup>7</sup> Plaintiffs also previously sought a motion for temporary restraining order. [ECF No. 6].

19. On July 18, 2017, the Court held a hearing in this matter. At the same time, the court in *Lawyers’ Committee for Civil Rights Under Law v. Presidential Advisory Comm’n on Election Integrity*, 265 F. Supp. 3d 54 (D.D.C. 2017) (“*Lawyers’ Committee*”), denied preliminary injunctive relief, without prejudice, in another case against the Commission.

20. Deferring to the *Lawyers’ Committee* court’s ruling at that time, this Court denied Plaintiffs’ motion for a temporary restraining order without prejudice. *Joyner v. Presidential Advisory Comm’n on Election Integrity*, 17-22568-CIV, 2017 WL 3113486, at \*1 (S.D. Fla. July 20, 2017); *see also* ECF No. 31. However, the Court required the Florida Secretary of State to limit Florida’s response to the Commission to the information allowed by Florida law. *Id.*

21. Subsequent to this Court’s ruling, the Florida Secretary of State provided certain voter data and information to the Commission. According to news reports, numerous other states have also provided voter data and information to the Commission.

22. After extensive negative publicity surrounding the Commission’s requests, the Commission announced in July 2017 that it “no longer intend[ed] to use the DOD SAFE system

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<sup>7</sup> The Complaint and First Amended Complaint and their respective exhibits are incorporated by reference.

[the website referenced in the Request Letters] to receive information from the states, and instead intends to use alternative means to receiving the information requested in the June 28, 2017, letter.” (**Exhibit “J,”** July 10, 2017 Decl. of Kris W. Kobach). According to Secretary Kobach at that time, “the Director of White House Information Technology is repurposing an existing system that regularly accepts personally identifiable information through a secure, encrypted computer application within the White House Information Technology enterprise.” *Id.*

23. According to Andrew J. Kossack, the Commission’s Executive Director and Designated Federal Officer, the Commission decided whether to make documents public. One category of documents not made public was the individualized state voter data the Commission had collected (presumably including Florida’s). To wit, Mr. Kossack has stated that:

The state voting registration data has not been provided to the Commission members, but states submitted their data to the Commission as an entity and the data is intended to inform the Commission’s work as an advisory body. In my judgment it is therefore subject to section 10(b) [of the Federal Advisory Committee Act, requiring public disclosure]. The data will not be made public, however, because it is exempt from disclosure under 5 U.S.C. § 552(b)(6) to protect personal privacy.

(**Exhibit “K,”** September 29, 2017 Third Decl. of Andrew J. Kossack at ¶ 11).

24. In November 2017, Secretary Dunlap, a Commission member, sued the Commission for violating FACA because, among other things, the Commission refused to give him access to documents or involve him in Commission activities in any meaningful way. (November 16, 2017 Decl. of Matthew Dunlap). On December 22, 2017, a preliminary injunction was entered, ordering the Commission to give Secretary Dunlap access to numerous categories of documents. (**Exhibit “L”**).<sup>8</sup>

25. On January 3, 2017, the DOJ provided notice that the President executed a new

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<sup>8</sup> Memorandum Op. in *Dunlap v. Presidential Advisory Commission on Election Integrity*, Case No. 17-2361 (CKK) at Docket Entry 33 (D.D.C. Dec. 22, 2017)).



Executive Order that same day (“Executive Order 2”). Executive Order 2 revoked Executive Order 1. [ECF No. 68]. The DOJ explained that Executive Order 2 terminated the Commission.

26. Contemporaneous with the signing of Executive Order 2, the White House released a press release, stating:

Despite substantial evidence of voter fraud, many states have refused to provide the Presidential Advisory Commission on Election Integrity with basic information relevant to its inquiry. Rather than engage in endless legal battles at taxpayer expense, today President Donald J. Trump signed an executive order to dissolve the Commission, and he has asked the Department of Homeland Security to review its initial findings and determine next courses of action.

(**Exhibit “M”**).<sup>9</sup>

27. The White House’s press release undermines all of the Administration’s statements that the Commission was bipartisan and not pretextual, and only confirms that the President formed the Commission with the intention of suppressing the right to vote based upon unfounded, spurious accusations of voter fraud.

28. Even more troublesome, within hours of the President signing Executive Order 2, news reports indicated Secretary Kobach would continue to run the White House’s investigation into “voter fraud” along with DHS Immigration and Customs Enforcement (“ICE”).

29. On January 3, 2018, Secretary Kobach told Breitbart News, “What’s happening is a tactical shift where the mission of the commission is being handed off to Homeland Security without the stonewalling by Democrats.” (**Exhibit “N”**)<sup>10</sup>

30. Secretary Kobach made clear he would continue to work on the investigation into

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<sup>9</sup> *Statement by the Press Secretary on the Presidential Advisory Commission on Election Integrity*, (Jan. 3, 2018); see also <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-presidential-advisory-commission-election-integrity/>.

<sup>10</sup> John Binder, *Exclusive—Kris Kobach: Voter Fraud Commission ‘Being Handed Off’ to DHS, Will No Longer Be ‘Stonewalled’ by Dems*, (Jan. 3, 2018), <http://www.breitbart.com/big-government/2018/01/03/exclusive-kris-kobach-voter-fraud-commission-being-handed-off-to-dhs-will-no-longer-be-stonewalled-by-dems/>.

“voter fraud” with the White House and DHS, specifically to evade pending litigation:

*“I’ll be working closely with the White House and DHS to ensure the investigations continue,” Kobach continued.*

\* \* \*

*“The investigations will continue now, but they won’t be able to stall if through litigation,” Kobach told Breitbart News.*

*“The investigation will continue. And it will continue more efficiently and more effectively,” Kobach said. “By throwing their food in the air, they just lost their seat at the table.”*

*Id.* (emphasis added).

31. “Kobach said he intends to work closely with DHS and the White House, and expects the bulk of the DHS investigation to be done by midsummer.” (Exhibit “O”).<sup>11</sup>

32. Also on January 3, 2018, news reports indicated that the state voter data would be turned over to ICE, where that agency would “take over the commission’s work and begin efforts to match state voter rolls to federal databases of noncitizens”:

*The Kansas official said he expects officials from Immigration and Customs Enforcement and political appointees overseeing that agency to take over the commission’s work and begin efforts to match state voter rolls to federal databases of noncitizens.* He insisted he was not disappointed with the president’s decision.

“It’s the right move,” Kobach said. “It’s a shifting in tactics from having the investigation be done by a federal commission to having it be done by a federal agency. The agency has a greater ability to move quickly to get the investigation done.”

(Exhibit “P”).<sup>12</sup> (emphasis added).

33. That same night, Secretary Dunlap “said Kobach and his allies ‘were the ones that were stonewalling,’ saying they had *‘very definite ideas of what they wanted this commission to*

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<sup>11</sup> Colvin & Hanna, *Trump Signs Order Disbanding Voter Fraud Commission*, Associated Press, (Jan. 3, 2018), <https://www.usnews.com/news/politics/articles/2018-01-03/trump-signs-order-disbanding-voter-fraud-commission>.

<sup>12</sup> Gerstein & Nusbaum, *Trump disbands voter fraud commission: Kobach says Homeland Security immigration officials will take over probe*, POLITICO (Jan. 3, 2018), <https://www.politico.com/story/2018/01/03/trump-disbands-voter-fraud-commission-322621>.

*come up with.” Secretary Dunlap also “questioned if the plan all along was for the commission to be disbanded. ‘They’re going to abandon the public process and they’re going to do it behind the scenes.’ “‘Much more efficiently means no more public input.’” Colvin & Hanna, *supra* (emphasis added). Secretary Dunlap also said the “White House’s decision to move the inquiry to the Department of Homeland Security was ‘**utterly alarming**’” and that “[a]ny chance of having this investigation done in a public forum is now lost, and I think people should be, frankly, **frightened** by that.” (Exhibit “Q”)<sup>13</sup> (emphasis added).*

34. All but confirming that Secretary Dunlap was correct, early in the morning on January 4, 2018, the President tweeted, making it clear that the Commission, which he called the “Commission On Voter Fraud,” was always pretextual. The Commission’s purpose was always to “find” that steps must be taken to restrict voting rights, based upon purported “voter fraud”:

Many mostly Democrat States refused to hand over data from the 2016 Election to the Commission On Voter Fraud. They fought hard that the Commission not see their records or methods because they know that many people are voting illegally. System is rigged, must go to Voter I.D.<sup>14</sup>

As Americans, you need identification, sometimes in a very strong and accurate form, for almost everything you do.....except when it comes to the most important thing, VOTING for the people that run your country. Push hard for Voter Identification!<sup>15</sup>

35. On January 4, 2018, the White House Press Secretary said “we are going to send the preliminary findings from the Commission to the Department of Homeland Security and make determinations on the best way forward from that point” because “that was the agency best determined by the Administration and we are moving forward in letting them take over the

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<sup>13</sup> Tackett & Wines, *Trump Disbands Commission on Voter Fraud*, N.Y. Times (Jan. 3, 2018), <https://www.nytimes.com/2018/01/03/us/politics/trump-voter-fraud-commission.html>.

<sup>14</sup> See **Composite Exhibit “S,”** see also Donald J. Trump (@realDonaldTrump), Twitter (Jan. 4, 2018, 3:02 am), <https://twitter.com/realDonaldTrump/status/948872192284155904>.

<sup>15</sup> See **Composite Exhibit “S,”** see also Donald J. Trump (@realDonaldTrump), Twitter (Jan. 4, 2018, 3:11 am), <https://twitter.com/realDonaldTrump/status/948874586006925313>.

process.” The White House, *Press Briefing with Press Secretary Sarah Sanders*, YouTube (Jan. 4, 2018), <https://youtu.be/mHDHfUhEkrw?t=5127>, beginning at 1:25:27.

36. Almost immediately after the 2016 election, Secretary Kobach was communicating with immigration officials about revisions to the NVRA to “promote proof-of-citizenship requirements” in order to “Stop Aliens From Voting.” This was part of Secretary Kobach’s “KOBACH STRATEGIC PLAN FOR FIRST 365 DAYS” of the Trump Administration’s DHS. Now, almost 365 days into the President’s term, Secretary Kobach, the White House and DHS, will be taking over the Commission’s work and “begin efforts to match state voter rolls to federal databases of noncitizens.” This is a scheme.

37. Stated another way, the evidence is already overwhelming that the President and Secretary Kobach, among others, have enacted a scheme to (a) collect protected, private voter data under the ruse of a FACA commission, (b) hide pertinent information about the Commission’s activities to the public and even the Commission’s own members, (c) store private voter data on White House computers, which was wrongfully obtained under the pretext of a bipartisan FACA commission, (d) terminate the Commission, and (e) turn the private voter data over to ICE and Secretary Kobach, so they can, at a minimum, “Stop Aliens From Voting.”

38. The danger to Americans, in Florida and elsewhere, is immense and imminent. The public has no idea the scope of the information being kept by the Federal Defendants and what is being done with it. It is abundantly clear that the Federal Defendants, apparently led by the Executive Office of the President, Secretary Kobach and their cohorts, plan to disseminate the state voter data for their own ends as they please, and may have even done so already.

39. It is January 2018. If Secretary Kobach “expects the bulk of the DHS investigation to be done by midsummer,” that leaves just a few months for the investigation to

conclude. The only conclusion to be drawn is that the Federal Defendants have either already utilized the state voter data for means not authorized by FACA, the PRA, or any other authority governing the Commission; or will be doing so very, very soon.<sup>16</sup>

## **II. ARGUMENT**

40. The United States Supreme Court has explained, in *U.S. Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487, 500 (1994) that “[a]n individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.”

41. Fed. R. Civ. P. 65 provides for TROs and preliminary injunctions. The movant must establish: “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest.” *Schiavo ex rel. Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005).

### **A. Plaintiffs Are Likely to Succeed on the Merits.**

42. The showing of a substantial likelihood of success on the merits is generally the most important prerequisite to obtaining temporary injunctive relief and only requires a showing of *likely* or probable, rather than *certain*, success. *Schiavo*, 403 F.3d at 1232. A movant must

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<sup>16</sup> The Federal Defendants’ counsel, citing a July 17, 2017 Declaration of Charles C. Herndon, the Director of White House Information Technology, stated that “no other entity or persons beyond a limited number of [Director Herndon’s] technical staff have access” to the “data submitted by the States,” and that “the data will not be transferred or utilized; thus, there is no basis for emergency injunctive relief.” However, the White House’s and Secretary Kobach’s actions and statements are in direct conflict with those representations. Mr. Herndon’s July 17, 2017 Declaration (**Exhibit “U”**) explicitly states that “[a]uthorized members of the Commission will be given access to the file directory identified to house the uploaded information,” and that “[t]he Commission will receive dedicated laptops, which can access the data provided by states . . . .” Therefore, Secretary Kobach and others have been able to access the data. Finally, Mr. Herndon’s Declaration is 6 months old, and was executed well before this week’s events.

only show a substantial likelihood of success on one of its claims to obtain relief. *See id.* “Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction” as it is inappropriate “to allow the government to use the product of a tainted procedure.” *Tombigbee*, 26 F.3d at 1107 .

43. Plaintiffs and the public will be harmed. Plaintiffs oppose the dissemination, collection, and potential distribution of their voter and identity information, and they are concerned about the potential distribution of their voting history and personal voter information, and the potential for misuse of that information. (**Exhibit “R,”** Affidavits, also at ECF No. 6-10).

### **1. Federal Advisory Committee Act**

44. The Commission was created under FACA, and now its data is being misappropriated to suppress the right to vote. Although Executive Order 2 purports to “terminate” the Commission, the Commission still possesses incredible amounts of public, private voter data amounting to an unlawful federal, centralized voter database. The Defendants, Commission members, and others should not be permitted to utilize the data and information as they wish, which in this case is to “Stop Aliens From Voting.”

45. The Defendants’ conduct here is even more brazen than that of another FACA committee previously enjoined in this circuit, in *Alabama-Tombigbee Rivers Coalition v. Department of Interior*, 26 F.3d 1103 (11th Cir. 1994) (“*Tombigbee*”). There, the Alabama-Tombigbee Rivers Coalition (an organization comprised of local businesses and organizations in Alabama and Mississippi), challenged the release, use of, or reliance upon a scientific committee report prepared by a panel governed by FACA within the Fish and Wildlife Service (“FWS”). *Id.* at 1104. The FWS panel’s report was prepared as support for the Department of the Interior’s listing of the Alabama Sturgeon as an endangered species under the Endangered Species Act. *Id.*

46. However, *Tombigbee* explains, concerns had been raised “regarding the objectivity of the panel.” *Id.* The panel members were originally tasked with issuing individual reports, but “shortly before the ‘panel’ was to convene to relay their individual reports, FWS substantially changed the structure of the ‘panel.’ The modified structure was for the scientists to meet and compile a single collective report. *Id.* at 1105. The Coalition filed suit and sought a TRO, preliminary and permanent injunction “against the release, use of, and reliance upon the scientific committee report.” *Id.* That same day, “FWS expeditiously announced in a press release that the scientists’ summary findings supported the listing of the Alabama Sturgeon as an endangered species.” *Id.* As explained in *Tombigbee, id.* at 1106:

The Federal Advisory Committee Act requires, *inter alia*: (1) a written charter that explains the “mission” of the committee; (2) timely notice of committee meetings in the Federal Register; (3) fair and balanced composition of the committee; (4) government submission of a plan to the committee to ensure that the same is not “inappropriately influenced” by the appointing authority; (5) that the committee meetings be open to the public; (6) that the government prepare and provide detailed minutes of the committee meetings; (7) that the information upon which the committee relies in its determination be made available for public inspection. *See* 5 U.S.C. App. § 5 *et seq.*

47. “As a result of FWS’ FACA violations, the district court permanently enjoined the defendants from ‘publishing, employing and relying upon the Advisory Committee report which is the primary subject of the above entitled cause, for any purpose whatsoever, directly or indirectly, in the process of determining whether or not to list the Alabama sturgeon as an endangered species.’” *Id.* at 1105. On appeal, the court held that injunctions are an available remedy under FACA, and that an injunction prohibiting the use of an advisory committee report was appropriately granted where the committee process did not comply with FACA. *Id.*

48. “[T]o allow the government to use the product of a tainted procedure would circumvent the very policy that serves as the foundation of the Act.” *Id.* at 1106 (emphasis

added). “FACA’s dictates emphasize the importance of openness and debate. . . . If public commentary is limited to retrospective scrutiny, the Act is rendered meaningless.” *Id.*

49. According to the Eleventh Circuit, “injunctive relief [is] the only vehicle that carries the sufficient remedial effect to ensure future compliance with FACA’s clear requirements,” even where there are “minor transgressions,” “the subject matter is serious,” and “the objective is worthy.” “Because the matters are so serious and of such great concern to so many with differing interests, it is absolutely necessary that the procedures established by Congress be followed to the letter.” *Id.* at 1107 & n.9.

50. In this case, the Federal Defendants have conducted extensive business in violation of FACA, including but not limited to obtaining personal, private data about voters in Florida and across the country without even conferring with the Commission’s members, much less the public; and then storing it at the White House, to be distributed by Secretary Kobach, the White House, ICE, and maybe others, with no public discussion or approval. Even assuming, for the sake of argument, that the Presidential Advisory Commission on Election Integrity were ever a legitimate and bipartisan commission (which it never was), there was certainly no provision in the law allowing the data it collected to be hidden from public and then disseminated to others within and not within the federal government for their own means.

51. Just like in *Tombigbee*, the Defendants are wrongfully utilizing the Commission’s data at this time in order to avoid the repercussions of litigation.

52. As in *Tombigbee*, the instant Defendants violate FACA’s requirements that the Commission’s ultimate work product be “fair and balanced composition of the committee” and that the Commission and its ultimate work product not be “‘inappropriately influenced’ by the appointing authority.” *See* 5 U.S.C. App. § 5 *et seq.*; *Tombigbee*, 26 F.3d at 1106.



53. Defendants also violate FACA by not providing reasonable public participation in activities. 41 C.F.R. § 101-6.1009(h), which the Vice President, as Chair must follow per 41 C.F.R § 101-6.1011(b), provides that he “shall ensure: . . . [t]he opportunity for reasonable public participation in advisory committee activities.” “Public observation and comment must be contemporaneous to the advisory committee process itself.” *See Tombigbee*, 26 F.3d at 1106. The Commission’s actions violate FACA as the public cannot participate.

54. The Defendants also violate 5 U.S.C. app. 2 § 10(b), which requires:

the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

55. There is vast evidence that Defendants have violated, and will continue to violate, FACA, including through their stated intentions to disseminate protected information to third parties, whether within or not within the federal government, for their own use, and in other ways not yet known. Plaintiffs have established a likelihood of success on the merits.

## **2. Violations of Florida Privacy Laws**

56. Art. I, § 23, Fla. Const. guarantees the right of privacy, and Fla. Stat. § 97.0585, mandates confidentiality of certain voter information data. Subsequent to this Court ordering the Florida Secretary of State to comply with Florida privacy laws in its submission of voter data to the Commission, *Joyner*, 2017 WL 3113486, at \*1, *see also* ECF No. 31, Florida submitted voter data to the Commission. What has become of that data is shrouded in secrecy.

57. For that reason, the Defendants should be enjoined from violating any Florida privacy laws. Further, the Florida Secretary of State must remain bound by this Court’s Order of July 20, 2017 [ECF No. 31], including the representations contained in his July 6, 2017 letter

(**Exhibit “T”**), and he must continue to comport with all protections governed by Florida Law.

**B. Plaintiffs Will Suffer Irreparable Harm.**

58. Unless a TRO is granted, Plaintiffs, their members, and the public face imminent threat of their private, personal data – which was obtained under the facade of a FACA commission – being transferred to ICE and other persons, many of whom may not yet be known, to suppress the right to vote and other reasons not yet known. The Defendants’ activity is not authorized by any statute or Executive Order, is in violation of FACA, and seeks to disseminate protected, private information. The Commission’s activities are of great public importance and concern, especially as this unlawful dissemination will touch upon the fundamental right to vote.

59. The Federal Defendants have provided no assurances that they will protect the private data collected by the Commission. In fact, the President’s termination of the Commission, which appears to have been done in concert with Secretary Kobach so that Secretary Kobach, the White House, and others can continue the Commission’s work without having to comply with FACA and other federal law, creates imminent threat of harm. *See Does v. Univ. of Wash.*, 2016 WL 4147307, at \*2 (W.D. Wash. Aug. 3, 2016) (entering TRO to prevent disclosure of personal identifying information, including phone numbers and email addresses). “In the age of the internet, when information is made public quickly and without borders, it is nearly impossible to contain an impermissible disclosure after the fact, as information can live on in perpetuity in the ether to be shared for any number of deviant purposes.” *Wilcox v. Bastiste*, 2017 WL 2525309, at \*3 (E.D. Wash. June 9, 2017) (preliminary injunction entered where release of personal DMV information would cause irreparable harm).

60. Now that the Commission has the private data it sought and the President has terminated the Commission, there is no way to know the extent to which Secretary Kobach and

the White House will work together to suppress the right to vote. It is impossible to know the full extent of the Defendants' violations. "If public commentary is limited to retrospective scrutiny, the Act is rendered meaningless." See *Tombigbee*, 26 F.3d at 1106. Absent injunctive relief, irreparable harm to Plaintiffs and the public is imminent.

61. "The right to vote is a 'precious' and 'fundamental' right." "Voting is, indisputably, a right 'of the most fundamental significance under our constitutional structure.'" *Fla. Democratic Party v. Scott*, 215 F. Supp. 3d 1250, 1256 (N.D. Fla. 2016) (citing sources). As explained by the Eleventh Circuit, when it comes to FACA, "[b]ecause the matters are so serious and of such great concern to so many with differing interests, it is absolutely necessary that the procedures established by Congress be followed to the letter." *Tombigbee*, 26 F.3d at 1107 n.9. Thus, what the Defendants are doing – perpetrating an all-out assault on the right to vote, with Secretary Kobach making it clear he is working with the White House to "Stop Aliens From Voting" using the Commission's data for their own means in violation of FACA – is much, much worse than when the FWS panel in *Tombigbee* ignored FACA's openness and fairness requirements to work to make the Alabama Sturgeon an endangered species. The extent of the harm to Plaintiffs and the public in this case is immense.

### **C. The Balance of Harm Supports Entry of Injunctive Relief**

62. The balance of harm supports injunctive relief as Plaintiffs and the public will be imminently harmed if their information is disclosed by Defendants, who have violated numerous laws. This outweighs any delay Defendants could endure from the injunctive relief, since it will simply restrain Defendants to follow the law. See generally *Gates v. Schlesinger*, 366 F. Supp. 797, 801 (D.D.C. 1973) ("The Court finds no injury to Defendants in being obliged to conform to the open meeting requirement imposed by [FACA]"). The Commission has no reasonable or

legitimate use for the data now that it has been disbanded, and its disbanding does not mean there is a legitimate public purpose or interest in simply passing that data off to another agency.

63. Any non-trivial interest against disclosure warrants non-disclosure of personal identifying information where there is no public interest in the disclosure. *U.S. Dept. of Def.*, 510 U.S. at 500; *Fed. Labor Relations Auth.*, 977 F.2d at 549. Thus, the harm from improper data disclosure outweighs any harm to Defendants, which is none. *See U.S. Dept. of Def.*, 510 U.S. at 500–01. There is no public interest in creating an illegal federal database of all American voters’ personal information, and then disseminating that information with no oversight.

#### **D. Entry of the Relief Would Serve the Public Interest**

64. A TRO serves the public interest since Defendants will have to comply with law. “There is generally no public interest in the perpetuation of unlawful agency action. . . . To the contrary, there is a substantial public interest ‘in having governmental agencies abide by the federal laws that govern their existence and operations.’” *League of Women Voters*, 838 F.3d at 12; *accord United States v. Ala.*, 691 F.3d 1269, 1301 (11th Cir. 2012) (“Frustration of federal statutes and prerogatives are not in the public interest[.]”). Moreover, “FACA’s principal purpose was to enhance the public accountability of advisory committees established by the Executive Branch and to reduce wasteful expenditures on them.” *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 459 (1989); *Gates*, 366 F. Supp. at 801 (D.D.C. 1973) (“public interest will be best served by requiring strict compliance with the letter and spirit of [FACA]”).

65. Next, the public interest is to prevent the transfer of private, protected voter data to others who are not affiliated with the Commission for illegitimate, non-Commission purposes. The Commission is disbanded and passing the data collected to other sources is in direct conflict with the public’s interest. While “publicly available [information is in] voter registration lists, . . .

[a]n individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form." *U.S. Dept. of Def.*, 510 U.S. at 500–01. Absent injunctive relief, the Defendants will disseminate an unauthorized federal database of Americans' personal information, without privacy protections or explanations how the data will be used. Secretary Kobach's plan to work with DHS, ICE, and the White House to "Stop Aliens From Voting," based upon an unsubstantiated voter fraud myth, weighs in favor of a TRO and a preliminary injunction.

### III. CONCLUSION

Plaintiffs respectfully request a TRO and/or preliminary or other injunctive relief prohibiting the Defendants from misappropriating, disseminating, selling, assigning, conveying, transferring, hypothecating, or utilizing, in any way, any private voter data or any other information collected or otherwise obtained by the Commission, and ordering the Florida Secretary of State to remain bound by this Court's Order of July 20, 2017 [ECF No. 31], and more specifically, remain bound by the representations contained in his July 6, 2017 letter, to continue to comport with all protections governed by Florida law, pending further order of Court. Plaintiffs also request any other relief that is just and proper.

Dated: January 5, 2018

*S/ H.K. Skip Pita*

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 5, 2018, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

*S/ Marc A. Burton*  
**MARC A. BURTON**  
Florida Bar No. 95318



**CERTIFICATE OF GOOD FAITH CONFERRAL  
WITH FLORIDA SECRETARY OF STATE**

I HEREBY CERTIFY that on January 5, 2018, Plaintiffs' counsel conferred with counsel for the Florida Secretary of State regarding this matter. At 11:08 am on January 5, 2018, Plaintiffs' counsel emailed counsel for all Defendants a nearly final, working draft of this Motion, and requested the Defendants' positions on the relief sought herein. During the afternoon of January 5, 2018, two of Plaintiffs' attorneys, Marc A. Burton and H.K. Skip Pita, both had telephone discussions with David Fugett, Esq., counsel for the Florida Secretary of State, which were followed up with email correspondence. Mr. Fugett represented in writing that "the Secretary will not object to a proposed order as long as the portion of the proposed order that is directed to the Secretary comports with the wording in the July 20, 2017 Order (DE 31)."

The contents of Mr. Fugett's email to Plaintiffs' counsel, which contains this language, is reproduced as follows:

Skip:

Thanks for your time this evening spent discussing the proposed order on your draft emergency motion. As we discussed, the Secretary will not object to a proposed order as long as the portion of the proposed order that is directed to the Secretary comports with the wording in the July 20, 2017 Order (DE 31).

Examples of acceptable wording:

- "[t]he Defendants will be enjoined from violating any Florida privacy laws. Further, the Florida Secretary of State will remain bound by this Court's Order of July 20, 2017. [DE 31] More specifically, the [Secretary] will remain bound by the representations contained in his July 6, 2017 letter, and the [Secretary] will continue to comport with all protections governed by Florida law."
- "[t]he [Secretary] remains bound by the representations contained in his July 6, 2017 letter, pending further order of Court. By this ruling, the [Secretary] will continue to comport with all protections governed by Florida law."

The second example is more preferable as it more closely resembles the Court's earlier Order which addresses the same issue as to the Secretary.

As to the portion of the proposed order that is not directed to the Secretary, we have not reviewed it and take no position as to that portion of any proposed order.

Thanks again for your time. If you need to discuss the above with me, feel free to contact me at any time on my cell phone at: [REDACTED].

Regards,

David A. Fugett

*S/ Marc A. Burton*

**MARC A. BURTON**

Florida Bar No. 95318

**CERTIFICATE OF GOOD FAITH CONFERRAL  
WITH THE FEDERAL GOVERNMENT DEFENDANTS**

I HEREBY CERTIFY that on January 5, 2018, Plaintiffs' counsel conferred with counsel for the Federal Government Defendants regarding this matter. At 11:08 am on January 5, 2018, Plaintiffs' counsel emailed counsel for all Defendants a nearly final, working draft of this Motion, and requested the Defendants' positions on the relief sought herein. During the afternoon of January 5, 2018, Plaintiffs' attorney, Marc A. Burton, had a telephone discussion with Carol Federighi, Esq. and Joseph Borson, Esq., counsel for the Federal Government Defendants, which was followed up with email correspondence. Mr. Borson represented in writing that "[w]e oppose your proposed emergency motion . . . ."

The contents of Mr. Borson's email to Plaintiffs' counsel, which contains this language, is reproduced as follows:

Mr. Burton,

We are in receipt of your proposed emergency motion for temporary restraining order and preliminary injunction, and/or other emergency injunctive relief as may be warranted. We oppose your proposed emergency motion on two primary grounds.

First, as you know, the Director of White House Information Technology ("DWHIT") is maintaining the data submitted by the States, and has made clear that no other entity or persons beyond a limited number of his technical staff have access to it. *See* Decl. of Charles Christopher Herndon, submitted in *Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity*, No. 17-cv-1320 (D.D.C.), ECF No. 38-1. We have additionally been authorized to represent that the data will not be transferred or utilized; thus, there is no basis for emergency injunctive relief.

Second, given the threshold issues that defendants raised in their motion to dismiss plaintiffs' original complaint – issues that have not been cured by plaintiffs' amended complaint – the Court does not have jurisdiction to consider plaintiffs' proposed emergency motion. Even if the Court were to determine it did have jurisdiction, plaintiffs' amended complaint fails to state a claim for which emergency relief may be granted.

Should plaintiffs proceed with filing their proposed motion, the federal defendants request that you publish this response in the motion.

All my best,

Joey Borson

*S/ Marc A. Burton*

**MARC A. BURTON**

Florida Bar No. 95318

**CERTIFICATE OF COMPLIANCE WITH EMERGENCY  
PROCEDURES PURSUANT TO LOCAL RULES**

I HEREBY CERTIFY that on January 5, 2018, Plaintiff's counsel executed a "Certification of Emergency," which was filed contemporaneously with this Motion. The emergency nature of this Motion stems from the Federal Government's statements and actions indicating that it intends to imminently transfer, to third parties, private voter data and other information obtained and produced by the Presidential Advisory Commission on Election Integrity, including to the Department of Homeland Security, Immigration and Customs Enforcement, and possibly others.

*S/ Marc A. Burton*  
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Florida Secretary of State*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 17-22568 CV/OR COOKE/GOODMAN
(Judge's Last Name/Magistrate's Last Name)

ARTHENIA JOYNER, et al. / Plaintiff(s)
(Full Name of Plaintiff/s)

v.

PRESIDENTIAL ADVISORY COMMISSION
ON ELECTION INTEGRITY, et al. / Defendant(s)
(Full Name of Defendant/s)

CERTIFICATION OF EMERGENCY

I hereby certify that, as a member of the Bar of this Court, I have carefully examined this matter and it is a true emergency.

I further certify that the necessity for this emergency hearing has not been caused by a lack of due diligence on my part, but has been brought about only by the circumstances of this case. The issues presented by this matter have not been submitted to the Judge assigned to this case or any other Judge or Magistrate Judge of the Southern District of Florida prior hereto.

I further certify that I have made a bona fide effort to resolve this matter without the necessity of emergency action.

Dated this 5th day of January, 2018.

Signature: [Handwritten Signature]

Printed Name: Marc A. Burton

Florida Bar Number: 95318

Telephone Number: (305) 705-0888

FOR CLERK'S OFFICE USE ONLY

I hereby certify that the Judge assigned to this case is unavailable for this emergency. (A copy of notification to the Clerk is on file). In accordance with the Court's Internal Operating Procedures, the matter has been assigned to the Honorable [Name] through a blind random assignment process. The assignment of this emergency matter shall be of temporary duration, limited only to the immediate relief sought and the case for all other purposes or proceedings shall remain on the docket of the Judge to whom it was originally assigned.

[If Applicable] I hereby certify that the above Judge randomly assigned to this emergency is unavailable. (A copy of notification to the Clerk is on file). Therefore, in accordance with the Court's Internal Operating Procedures, the Honorable [Name] has subsequently been assigned to the matter through a blind random assignment procedure. The assignment of this emergency matter shall be of temporary duration, limited only to the immediate relief sought and the case for all other purposes or proceedings shall remain on the docket of the Judge to whom it was originally assigned.

Dated this \_\_\_ day of \_\_\_, 20\_\_.

STEVEN M. LARIMORE
Court Administrator · Clerk of Court

By: \_\_\_\_\_, Deputy Clerk



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "A"**

EXHIBIT T

**Taliaferro, Desiree [KSOS]**

---

**From:** Kris Kobach <kkobach@gmail.com>  
**Sent:** Monday, July 3, 2017 12:56 PM  
**To:** Taliaferro, Desiree [KSOS]  
**Subject:** FW: Day One Book

---

**From:** Gene Hamilton [mailto:gene.p.hamilton@ptt.gov]  
**Sent:** Thursday, November 10, 2016 9:36 AM  
**To:** Kris Kobach <kkobach@gmail.com>  
**Subject:** Re: Day One Book

Thanks so much, Kris. Yes, we'll need to do that also. Things are in a bit of a state of flux at the moment, but I think it would be better to get the drafts together sooner than later. It may be best to get a package of things together to try to push - and while we have a number of those ready right now in other contexts (interior enforcement, etc.) - I don't have anything on hand for either of those two issues.

On Wed, Nov 9, 2016 at 4:10 PM, Kris Kobach <kkobach@gmail.com> wrote:

Gene,

Thanks. Cindy mentioned that we will also be putting together information on legislation drafts for submission to Congress early in the administration. I have some already started regarding amendments to the NVRA to make clear that proof of citizenship requirements are permitted (based on my ongoing litigation with the ACLU over this), as well as legislation to stop the dozen states that are providing instate tuition to illegal aliens in violation of 8 USC 1623. When the time comes to put those drafts together, please let me know.

Kris

**From:** Gene Hamilton [mailto:gene.p.hamilton@ptt.gov]  
**Sent:** Wednesday, November 09, 2016 3:06 PM  
**To:** Kris Kobach <kkobach@gmail.com>  
**Subject:** Day One Book

Good afternoon, Kris,

I hope that you are doing well. Please see the attached documents, which are drafts of our Day One immigration policy action items.

Happy to answer any questions you may have.

Thank you!

---

**Gene Hamilton**

Trump for America, Inc.

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
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**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "B"**

## EXHIBIT S

Amendments to the National Voter Registration Act:

1. Delete 52 U.S.C. § 20504(c)(2)(A).
2. In 52 U.S.C. § 20504(c)(2)(B): delete “may require only the minimum amount of information necessary to—” and replace with “may require any information that the State deems necessary to—”
3. Add new subsection 52 U.S.C. § 20504(f): “Nothing in this section shall be construed to prevent a state from requiring documentary proof of citizenship from any applicant.”

4. [REDACTED]

5. [REDACTED]

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "C"**



EXHIBIT U

**DEPARTMENT OF HOMELAND SECURITY  
KOBACH STRATEGIC PLAN FOR FIRST 365 DAYS**

**I.** [REDACTED]

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]

**II.** [REDACTED]

4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]

**III.** [REDACTED]

8. [REDACTED]
9. [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. [REDACTED]

**IV.** [REDACTED]

13. [REDACTED]
14. [REDACTED]
15. [REDACTED]
16. [REDACTED]
17. [REDACTED]
18. [REDACTED]
19. [REDACTED]
20. [REDACTED]

**V. Stop Aliens From Voting**

21. [REDACTED]
22. [REDACTED]
23. Draft Amendments to National Voter Registration Act to promote proof-of-citizenship requirements.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT “D”**

Federal Register

Vol. 82, No. 93

Tuesday, May 16, 2017

# Presidential Documents

Title 3—

Executive Order 13799 of May 11, 2017

The President

## Establishment of Presidential Advisory Commission on Election Integrity

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote fair and honest Federal elections, it is hereby ordered as follows:

**Section 1. *Establishment.*** The Presidential Advisory Commission on Election Integrity (Commission) is hereby established.

**Sec. 2. *Membership.*** The Vice President shall chair the Commission, which shall be composed of not more than 15 additional members. The President shall appoint the additional members, who shall include individuals with knowledge and experience in elections, election management, election fraud detection, and voter integrity efforts, and any other individuals with knowledge or experience that the President determines to be of value to the Commission. The Vice President may select a Vice Chair of the Commission from among the members appointed by the President.

**Sec. 3. *Mission.*** The Commission shall, consistent with applicable law, study the registration and voting processes used in Federal elections. The Commission shall be solely advisory and shall submit a report to the President that identifies the following:

(a) those laws, rules, policies, activities, strategies, and practices that enhance the American people's confidence in the integrity of the voting processes used in Federal elections;

(b) those laws, rules, policies, activities, strategies, and practices that undermine the American people's confidence in the integrity of the voting processes used in Federal elections; and

(c) those vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.

**Sec. 4. *Definitions.*** For purposes of this order:

(a) The term "improper voter registration" means any situation where an individual who does not possess the legal right to vote in a jurisdiction is included as an eligible voter on that jurisdiction's voter list, regardless of the state of mind or intent of such individual.

(b) The term "improper voting" means the act of an individual casting a non-provisional ballot in a jurisdiction in which that individual is ineligible to vote, or the act of an individual casting a ballot in multiple jurisdictions, regardless of the state of mind or intent of that individual.

(c) The term "fraudulent voter registration" means any situation where an individual knowingly and intentionally takes steps to add ineligible individuals to voter lists.

(d) The term "fraudulent voting" means the act of casting a non-provisional ballot or multiple ballots with knowledge that casting the ballot or ballots is illegal.

**Sec. 5. *Administration.*** The Commission shall hold public meetings and engage with Federal, State, and local officials, and election law experts, as necessary, to carry out its mission. The Commission shall be informed by, and shall strive to avoid duplicating, the efforts of existing government entities. The Commission shall have staff to provide support for its functions.

**Sec. 6. Termination.** The Commission shall terminate 30 days after it submits its report to the President.

**Sec. 7. General Provisions.** (a) To the extent permitted by law, and subject to the availability of appropriations, the General Services Administration shall provide the Commission with such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission on a reimbursable basis.

(b) Relevant executive departments and agencies shall endeavor to cooperate with the Commission.

(c) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the "Act"), may apply to the Commission, any functions of the President under that Act, except for those in section 6 of the Act, shall be performed by the Administrator of General Services.

(d) Members of the Commission shall serve without any additional compensation for their work on the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

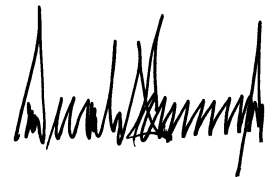
(e) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(g) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
May 11, 2017.

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "E"**

## CHARTER

### PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY

1. **Committee's Official Designation.** Presidential Advisory Commission on Election Integrity ("Commission").
2. **Authority.** The Commission is established in accordance with Executive Order 13799 of May 11, 2017, "Establishment of a Presidential Advisory Commission on Election Integrity," ("Order") and the provisions of the Federal Advisory Committee Act ("FACA"), as amended (5 U.S.C. App.).
3. **Objectives and Scope of Activities.** The Commission will, consistent with applicable law and the Order, study the registration and voting processes used in Federal elections. The Commission shall be solely advisory and shall submit a report to the President of the United States ("President") that identifies the following:
  - a. those laws, rules, policies, activities, strategies, and practices that enhance the American people's confidence in the integrity of the voting processes used in Federal elections;
  - b. those laws, rules, policies, activities, strategies, and practices that undermine the American people's confidence in the integrity of voting processes used in Federal elections; and
  - c. those vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.
4. **Description of Duties.** The Commission will function solely as an advisory body.
5. **Agency or Official to Whom the Committee Reports.** The Commission shall provide its advice and recommendations to the President.
6. **Agency Responsible for Providing Support.** The General Services Administration ("GSA") shall provide the Commission with such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission, to the extent permitted by law and on a reimbursable basis. However, the President's designee will be responsible for fulfilling the requirements of subsection 6(b) of the FACA.
7. **Estimated Annual Operating Costs and Staff Years.** The estimated annual costs to operate the Commission are approximately \$250,000 in FY2017 and approximately \$250,000 in FY2018, as needed, including approximately three full-time equivalent employees (FTEs) over the duration of the Commission.
8. **Designated Federal Officer.** Pursuant to 41 CFR § 102-3.105 and in consultation with the chair of the Commission, the GSA Administrator shall appoint a full-time or part-time federal employee as the Commission's Designated Federal Officer ("DFO"). The DFO will approve or

call all Commission meetings, prepare or approve all meeting agendas, attend all Commission meetings and any subcommittee meetings, and adjourn any meeting when the DFO determines adjournment to be in the public interest. In the DFO's discretion, the DFO may utilize other Federal employees as support staff to assist the DFO in fulfilling these responsibilities.

9. **Estimated Number and Frequency of Meetings.** Meetings shall occur as frequently as needed, called, and approved by the DFO. It is estimated the Commission will meet five times at a frequency of approximately 30-60 days between meetings, subject to members' schedules and other considerations.
10. **Duration and Termination.** The Commission shall terminate no more than two (2) years from the date of the Executive Order establishing the Commission, unless extended by the President, or thirty (30) days after it presents its final report to the President, whichever occurs first.
11. **Membership and Designation.**
  - (a) The Vice President shall chair the Commission, which shall be composed of not more than fifteen (15) additional members.
  - (b) Members shall be appointed by the President of the United States and shall include individuals with knowledge and experience in elections, election management, election fraud detection, and voter integrity efforts, and any other individuals with knowledge or experience determined by the President to be of value to the Commission. Members of the Commission may include both regular Government Employees and Special Government Employees.
  - (c) The Vice President may select a Vice Chair from among those members appointed by the President, who may perform the duties of the chair if so directed by the Vice President. The Vice President may also select an executive director and any additional staff he determines necessary to support the Commission.
  - (d) Members of the Commission will serve without additional compensation. Travel expenses will be allowed, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701-5707), consistent with the availability of funds.
12. **Subcommittees.** The Chair of the Commission, in consultation with the DFO, is authorized to create subcommittees as necessary to support the Commission's work. Subcommittees may not incur costs or expenses without prior written approval of the Chair or the Chair's designee and the DFO. Subcommittees must report directly to the Commission, and must not provide advice or work products directly to the President, or any other official or agency.
13. **Recordkeeping.** The records of the Commission and any subcommittees shall be maintained pursuant to the Presidential Records Act of 1978 and FACA.
14. **Filing Date.** The filing date of this charter is June 23, 2017.



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

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TEMPORARY RESTRAINING ORDER AND  
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EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT “F”**

the WHITE HOUSE



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[Press Briefings](#)

**[Statements & Releases](#)**

[Nominations & Appointments](#)

[Presidential Actions](#)

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## The White House

Office of the Vice President

For Immediate Release

June 28, 2017

# Readout of the Vice President's Call with the Presidential Advisory Commission on Election Integrity

This morning, Vice President Mike Pence held an organizational call with members of the Presidential Advisory Commission on Election Integrity. The Vice President reiterated President Trump's charge to the commission with producing a set of recommendations to increase the American people's confidence in the integrity of our election systems.

"The integrity of the vote is a foundation of our democracy; this bipartisan commission will review ways to strengthen that integrity in order to protect and preserve the principle of one person, one vote," the Vice President told commission members today.

The commission set July 19 as its first meeting, which will take place in Washington, D.C.

Vice Chair of the Commission and Kansas Secretary of State Kris Kobach told members a letter will be sent today to the 50 states and District of Columbia on behalf of the Commission requesting publicly-available data from state voter rolls and feedback on how to improve election integrity.



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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "G"**

**UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF COLUMBIA**

MATTHEW DUNLAP,

Plaintiff,

- versus -

PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY; MICHAEL R. PENCE, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY; KRIS W. KOBACH, IN HIS OFFICIAL CAPACITY AS VICE CHAIR OF THE PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY; ANDREW KOSSACK, IN HIS OFFICIAL CAPACITY AS DESIGNATED FEDERAL OFFICER FOR THE PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY; GENERAL SERVICES ADMINISTRATION; TIMOTHY R. HORNE, IN HIS OFFICIAL CAPACITY AS ACTING ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION; EXECUTIVE OFFICE OF THE PRESIDENT; OFFICE OF THE VICE PRESIDENT; OFFICE OF ADMINISTRATION; MARCIA L. KELLY, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE OFFICE OF ADMINISTRATION,

Defendants.

Civil Action No. 17-cv-2361-CKK

**DECLARATION OF MATTHEW DUNLAP**

I, Matthew Dunlap, declare as follows:

1. I am the Secretary of State of the State of Maine. I served as Secretary of State from 2005 through 2010 and was reelected Secretary of State by the Maine legislature in 2013. As Secretary of State, I oversee the Bureau of Corporations, Elections and Commissions, which has oversight of state elections in Maine. I was appointed to the Presidential Advisory Commission on Election Integrity (the "Commission") on May 11, 2017. I submit this declaration in support of my motion for a preliminary injunction.

2. In 2013, in my capacity of Secretary of State, I received the recommendations of the 2012 Maine Elections Commission (the “2012 Commission”), a commission of five Maine citizens that studied and offered strategies to improve Maine’s election system. The 2012 Commission met five times, held eight public hearings throughout the state of Maine, received written testimonial submissions, and held three deliberative meetings. Based on this process, the 2012 Commission made several unanimous recommendations, including to maintain same-day voter registration and to institute early voting. The 2012 Commission also determined, by a 4-1 vote, that the negative aspects of a Voter ID law outweighed its potential benefits. The 2012 Commission’s report, together with a cover letter from me to the Maine Legislature, is attached to this declaration as Exhibit 1.

3. I believe that it is firmly my role as Secretary of State to facilitate the exercise of the right of American citizens to vote, not to discourage its exercise. There are few rights more important than the sovereign right of a citizen to exercise the franchise of self-governance by voting.

4. I agreed to join the Commission because I believed that my experience and perspective on election issues would be helpful to the issues the Commission planned to study. I believed, and continue to believe, that I can use my position as Commissioner to shape the Commission’s report and recommendations to the President.

5. On June 28, 2017, I participated in a conference call with the other commissioners, including Vice President Mike Pence (the Commission’s chair), and Vice-Chair Kris Kobach. On that call, Vice-Chair Kobach informed the other commissioners and me that the Commission planned to send letters to all 50 states and the District of Columbia asking that they provide the Commission with information from the states’ voter rolls. I was not given the requests in advance of this phone call; this phone call was the first time I had heard of these

letters. The commissioners were not given the opportunity to vote on whether to send the letters, which were sent later that same day. I did not have time to review the letters, to consult with other commissioners regarding the letters, or to consider or object to the letters. If I had been given a meaningful opportunity to discuss this matter, I might have opposed the decision to send these letters, or proposed alternative strategies for gathering voting-related information.

6. The Commission held its first public meeting on July 19, 2017 in Washington, D.C. I received only four documents in advance of the July 19 meeting: the Commission's charter, the Commission's by-laws, the executive order establishing the Commission, and a meeting agenda. I was not consulted or otherwise involved in the creation of the agenda for the July meeting. I was not asked my opinion on possible topics for discussion at the meeting and I was not asked to provide the names of any speakers or witnesses that should be invited to the meeting.

7. Several commissioners, including Mr. Kobach, Hans von Spakovsky, Christy McCormick, and J. Kenneth Blackwell, brought documents to the July 19 meeting that were discussed at that meeting. Although I was provided with these documents at the meeting, I did not receive them in advance. I therefore did not have time to review the documents, formulate questions about them, or engage with my fellow commissioners on those topics at the July 19 meeting.

8. The Commission held its second public meeting on September 12, 2017. I was provided with a meeting agenda several days before the September 12 meeting. I was not consulted or otherwise involved in the creation of the agenda. I was not asked my opinion on possible topics for discussion at the meeting and I was not asked to provide the names of any speakers or witnesses that should be invited to the meeting.

9. Between September 12 and November 12, I received no substantive information

or communications regarding the Commission's work. I have not been informed of the Commission's plans to hold another public meeting, nor have I been consulted about topics for discussion or involved in discussions with other commissioners.

10. I have similarly been left uninformed about the Commission's staff. For example, staff member Ronald Williams was arrested and charged with possession and distribution of child pornography on October 13, 2017. I was informed of the arrest from a journalist, not by the Commission. And I still have not been told whether Mr. Williams has been fired, even after inquiries to Andrew Kossack, the Commission's Designated Federal Officer.

11. On October 17, 2017, I wrote a letter to Mr. Kossack. That letter is attached to this declaration as Exhibit 2. I requested "copies of any and all correspondence between Commission members in the possession of the Commission dating from the signing of the Executive Order on May 11th, 2017 until the receipt of this request." I specifically requested "communications between Commissioners themselves, between Commissioners and/or staff and other Federal agencies, communications used in the development of public documents, and any ongoing discourse between Commissioners and staff about the development of policies and/or policy proposals that may be offered to policymakers as either a component of any report or under separate cover." In my letter, I explained to Mr. Kossack that without the information I requested, I could not competently carry out my duties as a commissioner.

12. On October 19, 2017, the Minnesota Voters Alliance ("MVA"), a group dedicated to preventing voter fraud, sent a fundraising appeal stating that MVA "was invited to speak at the December 2017 meeting of the" Commission. The fundraising email is attached to this declaration as Exhibit 3.

13. On October 25, 2017, I received a response from Mr. Kossack. That email is attached to this declaration as Exhibit 4. He did not provide me with the documents I had



requested. Instead, he wrote that he was “consulting with counsel” regarding my request and that he would be in touch soon.

14. Later on October 25, 2017, I wrote back asking Mr. Kossack to shed light on the Commission’s work plan and communications. My email is attached to this declaration as Exhibit 5. I asked Mr. Kossack to confirm reports that the Commission’s work was “on hold,” that the Commission had scheduled a meeting for December 2017, and that the Commission had invited the MVA to speak at the December meeting.

15. On October 27, 2017, Mr. Kossack responded. Mr. Kossack’s email is attached to this declaration as Exhibit 6. Mr. Kossack wrote that he had not spoken to the MVA and that no meeting was scheduled for December 2017. He did not address whether any commissioner had spoken to the MVA and invited them to a Commission meeting. Mr. Kossack did not confirm that the Commission’s work was on hold, stating only that he “had no prior communication with Secretary Lawson about her statements” that the Commission’s work was on hold. Mr. Kossack provided no information regarding my pending request for Commission documents.

16. On November 1, 2017, I wrote to Mr. Kossack asking for an update on my request for Commission documents. This email is attached to this declaration as Exhibit 7. I stated that I did not know how the agenda for the September meeting was developed and did not even know what the goal was for that meeting. Again, I explained that I needed information in order to fully participate as a commissioner.

17. I have not received any response to my November 1, 2017 email and still have not received any substantive response to my October 17, 2017 request for documents. Nor has Mr. Kossack or any other commissioner provided me with any Commission documents in response to my request.

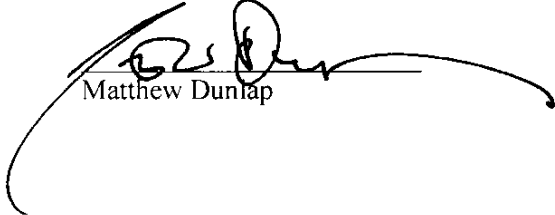
18. The Commission’s failure to include me in its work or discussions has rendered

me unable to fulfill my responsibilities as commissioner. I am eager to contribute to the work of the Commission but I am unable to participate in a meaningful fashion because the Commission has not shared any documents or communications about the Commission's work and has refused to involve me in investigations or deliberations.

19. If the Commission is not compelled to provide me the documents I requested and to involve me in its work and deliberations, I fear that I will be unable to participate fully in future meetings, I will be unable to contribute to the report and recommendations to the President, and I will be unable to draft a concurrence or a dissent if I disagree with any of the Commission's findings.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this <sup>16<sup>th</sup></sup> day of November, 2017.

  
Matthew Dunlap

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
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**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
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AS MAY BE APPROPRIATE**

**EXHIBIT "H"**



**Presidential Advisory Commission on Election Integrity**

June 28, 2017

The Honorable Ken Detzner  
Secretary of State  
R.A. Gray Bldg., 500 S. Bronough, Ste. 100  
Tallahassee, FL 32399

Dear Secretary Detzner,

I serve as the Vice Chair for the Presidential Advisory Commission on Election Integrity (“Commission”), which was formed pursuant to Executive Order 13799 of May 11, 2017. The Commission is charged with studying the registration and voting processes used in federal elections and submitting a report to the President of the United States that identifies laws, rules, policies, activities, strategies, and practices that enhance or undermine the American people’s confidence in the integrity of federal elections processes.

As the Commission begins its work, I invite you to contribute your views and recommendations throughout this process. In particular:

1. What changes, if any, to federal election laws would you recommend to enhance the integrity of federal elections?
2. How can the Commission support state and local election administrators with regard to information technology security and vulnerabilities?
3. What laws, policies, or other issues hinder your ability to ensure the integrity of elections you administer?
4. What evidence or information do you have regarding instances of voter fraud or registration fraud in your state?
5. What convictions for election-related crimes have occurred in your state since the November 2000 federal election?
6. What recommendations do you have for preventing voter intimidation or disenfranchisement?
7. What other issues do you believe the Commission should consider?

In addition, in order for the Commission to fully analyze vulnerabilities and issues related to voter registration and voting, I am requesting that you provide to the Commission the publicly-available voter roll data for Florida, including, if publicly available under the laws of your state, the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number

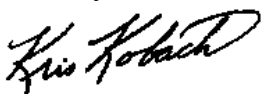
if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.

You may submit your responses electronically to [ElectionIntegrityStaff@ovp.eop.gov](mailto:ElectionIntegrityStaff@ovp.eop.gov) or by utilizing the Safe Access File Exchange (“SAFE”), which is a secure FTP site the federal government uses for transferring large data files. You can access the SAFE site at <https://safe.amrdec.army.mil/safe/Welcome.aspx>. We would appreciate a response by July 14, 2017. Please be aware that any documents that are submitted to the full Commission will also be made available to the public. If you have any questions, please contact Commission staff at the same email address.

On behalf of my fellow commissioners, I also want to acknowledge your important leadership role in administering the elections within your state and the importance of state-level authority in our federalist system. It is crucial for the Commission to consider your input as it collects data and identifies areas of opportunity to increase the integrity of our election systems.

I look forward to hearing from you and working with you in the months ahead.

Sincerely,

A handwritten signature in black ink that reads "Kris Kobach". The signature is written in a cursive style with a large, stylized "K" and "C".

Kris W. Kobach  
Vice Chair  
Presidential Advisory Commission on Election Integrity

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
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**PLAINTIFFS' EMERGENCY MOTION FOR  
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AS MAY BE APPROPRIATE**

**EXHIBIT "I"**

Firefox File Edit View History Insecure Connection x +  
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

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AS MAY BE APPROPRIATE**

**EXHIBIT “J”**



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION  
CENTER,

Plaintiff,

v.

PRESIDENTIAL ADVISORY  
COMMISSION ON ELECTION  
INTEGRITY, *et al.*,

Defendants.

Civil Action No. 1:17-cv-1320 (CKK)

**THIRD DECLARATION OF KRIS W. KOBACH**

I, Kris W. Kobach, declare as follows:

As described in my declaration of July 5, 2017, I am the Vice Chair of the Presidential Advisory Commission on Election Integrity (“Commission”). I submit this third declaration in support of Defendant’s supplemental brief regarding the addition of the Department of Defense (“DOD”) as a defendant in plaintiff’s Amended Complaint. This declaration is based on my personal knowledge and upon information provided to me in my official capacity as Vice Chair of the Commission.

1. In order not to impact the ability of other customers to use the DOD Safe Access File Exchange (“SAFE”) site, the Commission has decided to use alternative means for transmitting the requested data. The Commission no longer intends to use the DOD SAFE system to receive information from the states, and instead intends to use alternative means of receiving the information requested in the June 28, 2017, letter. Specifically, the Director of White House Information Technology is repurposing an existing system that regularly accepts

personally identifiable information through a secure, encrypted computer application within the White House Information Technology enterprise. We anticipate this system will be fully functional by 6:00 p.m. Eastern today.

2. Today, the Commission sent the states a follow-up communication requesting the states not submit any data until this Court rules on this TRO motion. A copy of this communication is attached hereto as Exhibit A. The Commission will not send further instructions about how to use the new system pending this Court's resolution of this TRO motion.

3. The Commission will not download the data that Arkansas already transmitted to SAFE and this data will be deleted from the site.

4. Additionally, I anticipate that the President will today announce the appointment of two new members of the Commission, one Democrat and one Republican.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

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Executed this 10th day of July 2017.



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Kris W. Kobach

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "K"**

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

LAWYERS' COMMITTEE FOR CIVIL  
RIGHTS UNDER LAW,

Plaintiff,

v.

PRESIDENTIAL ADVISORY  
COMMISSION ON ELECTION  
INTEGRITY, *et al.*,

Defendants.

Civil Action No. 1:17-cv-1354 (CKK)

**THIRD DECLARATION OF ANDREW J. KOSSACK**

I, Andrew J. Kossack, declare as follows:

1. As stated in my prior declarations, ECF Nos. 15-1 & 23-1, I am the Executive Director and Designated Federal Officer for the Presidential Advisory Commission on Election Integrity ("Commission"), and a full-time government employee in the Office of the Vice President. My duties include providing administrative and staff support to the Commission and its members, approving or calling meetings of the Commission, attending meetings, and related responsibilities. I submit this declaration in response to the Court's Order of August 30, 2017 (ECF No. 28), directing submission of a declaration "detailing [d]efendants' position on what categories of documents are appropriately included in the universe of documents potentially subject to disclosure pursuant to FACA section 10(b), and what categories of documents are not subject to disclosure." This declaration is based on my personal knowledge and upon

information provided to me in my official capacity as the Commission's Designated Federal Officer responsible for the administration of the Commission.

2. Section 10(b) of the Federal Advisory Committee Act ("FACA"), as amended, (Public Law No. 92-463, 5 U.S.C. App.) provides as follows:

Subject to section 552 of title 5, United States Code, the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying at a single location in the offices of the advisory committee or the agency to which the advisory committee reports until the advisory committee ceases to exist.

5 U.S.C. app. 2 § 10(b). Section 10(b) does not require that every document connected with every advisory committee be disclosed. As the text indicates, materials only need to be disclosed under section 10(b) if they were made available to, or prepared for, the advisory committee as a whole. The reference to documents that "were made available to" or "prepared for" an advisory committee necessarily implies that the relevant materials were actually presented to or otherwise accessible (or intended to be so) to the committee itself.

3. My understanding of section 10(b) is informed by legal advice, including from the General Services Administration ("GSA"), the agency charged with interpreting FACA, and an opinion from the Office of Legal Counsel ("OLC") at the Department of Justice. In a published opinion, OLC has advised that "FACA compels disclosure [only] of a limited subset of information, namely material used by the advisory committee." *Disclosure of Advisory Committee Deliberative Materials*, 12 U.S. Op. Off. Legal Counsel 73, 76 (1988). As OLC explained in that opinion, materials used in earlier stages of the advisory committee process, including by individuals or entities that "did not provide advice directly to the President," do not fall within section 10(b). *See id.* Because individual members do not advise the President directly – that prerogative belongs only to the "committee as a whole," *id.* at 75, – any materials

individual members create do not constitute documents covered by section 10(b) unless and until those materials are shared with the committee. Thus, documents created by staff members, or even by subcommittees chaired by committee members, need not be disclosed. *Id.* at 75; *see also id.* (“The courts and this Office have construed the concept of advisory committees established or utilized by the President or an agency to preclude section 10(b)’s application to the work prepared by a staff member of an advisory committee . . . or a subcommittee of the advisory committee that is not itself utilized by the President . . . so long as the material was not used by the committee as a whole.”); *Nat’l Anti-Hunger Coal. v. Exec. Comm. of President’s Private Sector Survey on Cost Control*, 557 F. Supp. 524, 529 (D.D.C. 1983) (rejecting the application of section 10(b) to entities “performing staff functions,” and concluding that FACA’s disclosure requirements applied only to the entity that “provide[s] advice directly to the President,” and further noting that “surely Congress did not contemplate that interested parties like the plaintiffs should have access to every paper through which recommendations are evolved . . . .”), *aff’d*, 711 F.2d 1071 (D.C. Cir. 1983).

4. Consistent with the foregoing authorities and reasoning, section 10(b) does not apply to documents authored or received by individual Commission members which are not shared with their colleagues or intended for the committee’s consideration.<sup>1</sup> Neither does section 10(b) apply to Commission staff documents that were not shared with the Commission as a whole. This would include working drafts of documents prepared by Commission staff where

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<sup>1</sup> The Court suggested in its August 30, 2017 Order that “the prepared for” clause of section 10(b) was one of “intentionality,” such that a document intended to be shared with an advisory committee could be subject to section 10(b) even if it was never actually shared with or considered by the Committee. *See* Order, Aug. 30, 2017, at 2. Even accepting the Court’s view on intentionality, however, none of the documents that I have determined fall outside of section 10(b) were intended to be shared with or used by the Commission. *See* ¶ 12 (a)-(x), *infra*.

only the final document (which itself could be a draft) is provided to the Commission. For example, drafts of the Commission by-laws written by Commission staff are not subject to section 10(b) because they are staff work product. Only the version of the by-laws provided to the Commission for its consideration (even though that version was itself a draft) is subject to section 10(b). The earlier versions of these documents – which are intended only for Commission staff or an individual member – would not be subject to disclosure.

5. The reference to “drafts” in the statute does not say otherwise. All of the types of documents described in section 10(b) are only subject to disclosure or public inspection if they are “made available to or prepared for or by” the committee. Staff work product is not generally made available to, or prepared for or by, the Commission. *See* 12 Op. Off. Legal Counsel at 75 (“preclud[ing] section 10(b)’s application to the work prepared by a staff member of an advisory committee”). A construction of “drafts” to mean all iterations of a document, even if not shared with the committee as a whole, would run contrary to the established principle that preparatory staff work is not subject to section 10(b).

6. This reasoning would apply to documents created by individual Commission members as well. Only the final version they intended to share would be covered by section 10(b); earlier iterative drafts they did not share with the full Commission would not be subject to disclosure. In this sense, an individual Commission member is serving as a “subcommittee of the advisory committee,” 12 Op. Off. Legal Counsel at 75, namely a subcommittee of one, and therefore the unshared material is exempt from disclosure.

7. Section 10(b) also does not apply to administrative material, *e.g.*, logistical emails, even if these documents are submitted to the entire Commission. Section 10(b) mentions “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or



other documents.” 5 U.S.C. app. 2 § 10(b). All of these refer to substantive documents designed to inform the advisory work of the committee, not procedural matters related to the operation of the Commission.

8. My understanding of section 10(b) is also informed by my review of how prior presidential advisory committees have been administered. I have endeavored to administer this Commission consistently with prior commissions, in particular the Presidential Commission on Election Administration (“PCEA”), established by Executive Order 13639 on March 28, 2013. That Commission (as well as others) would have been guided by the same legal principles and OLC opinion referenced above. The PCEA website is no longer active, but I have examined archived snapshots of the PCEA websites and it appears that PCEA interpreted the requirements of section 10(b) similarly. I have found no record of any documents posted on the PCEA site that were not documents shared with or prepared for or by the Commission as a whole. In particular, I have not found a single email or other communication posted on the PCEA site reflecting communication among Commission staff, or between Commission staff and individual Commission members, or, it appears, any email at all, other than perhaps from public commenters. Nor were iterative versions of every draft document posted. I have attached at Exhibit 1 a snapshot of the documents posted on the PCEA site as of February 15, 2015. Officials at GSA have confirmed that the PCEA did not make other documents or records available in a reading room or similar opportunity for public access; the materials on the website were all of the documents publicly released.

9. Similarly, the Interagency Task Force on Veterans Small Business Development (“Task Force”), which was established by Executive Order 13540 on April 21, 2010, is supported by staff at the Small Business Association (“SBA”) also does not post staff or Task

Force member emails on its website. SBA officials confirmed to me that the SBA does not have a reading room, so the only documents the Task Force proactively releases pursuant to section 10(b) are the documents posted to its website. I have attached at Exhibit 2 a snapshot of these documents. Another example is the White House Council on Community Solutions (“Council”), which was established by Executive Order 13560 on December 14, 2010, and staffed by the Corporation for National and Community Service. Like the PCEA and the Task Force, the Council also did not post any email communications among its council members or otherwise maintain a reading room where documents were publicly available. Attached at Exhibit 3 is a snapshot of the Council’s webpage.

10. Attached to this declaration is an index of documents prepared in compliance with the Court’s August 30, 2017, order requesting an index “detailing what specific documents have been collected with respect to the Commission to date, which of those have been disclosed, and if they have not been disclosed, on what basis.” This index sets forth which documents and categories of documents are subject to disclosure under section 10(b) and which are not subject to disclosure. The reasons for these conclusions are below.

**Materials Subject to Section 10(b)**

11. As indicated on the attached index, the following materials and categories of materials are subject to section 10(b), because they were provided to, or prepared for or by, the Commission as a whole. The state voting registration data has not been provided to the Commission members, but states submitted their data to the Commission as an entity and the data is intended to inform the Commission’s work as an advisory body. In my judgment it is therefore subject to section 10(b). The data will not be made public, however, because it is exempt from disclosure under 5 U.S.C. § 552(b)(6) to protect personal privacy. The other

documents listed below as subject to section 10(b) have been made public, either through publication on the Commission webpage, by making hard copies available on request at the offices of the General Services Administration, or, in some cases, by publication in a government publication such as Regulations.gov and the *Federal Register*:

- Foundational documents related to the establishment of the Commission (*i.e.*, the Executive Order and Charter);
- Documents adopted by or governing the Commission (*e.g.*, the by-laws);
- Substantive documents, related to the objective of the Commission, given to Commission members for purposes of discussion at a meeting (*e.g.*, presentations, materials distributed by one Commission member to the entire Commission, including written, prepared remarks distributed in that form to the Commission);
- Substantive documents memorializing Commission meetings (*i.e.*, transcripts, video recordings);
- Letters to States from the Commission Vice Chair related to data collection;
- Narrative responses from States to the Commission re: data collection;
- Data collected from States (subject to section 10(b), but exempt from disclosure pursuant to 5 U.S.C. § 552(b)(6));
- Substantive documents related to Commission work and shared with the full Commission outside of a meeting context;
- Public comments and correspondence submitted to the Commission as a whole.
- While the Commission has not yet prepared any draft reports, when draft reports are shared with the full membership, these reports will also be subject to section 10(b), as will future substantive documents that are similarly shared with the full membership.

**Materials Not Subject to Section 10(b)**

12. As indicated on the attached index, the following materials and categories of materials are not subject to 10(b), for the reasons indicated. The index contains a column labeled “Rationale for nondisclosure;” the letter in that column indicates which reason listed below (denoted by letters in boldface) applies to the nondisclosure of that document.

(a) Communications from the public containing only profanity and/or threats. *See, e.g.*, entry 122.

Rationale: These communications are not subject to section 10(b) because, unlike public comments discussed above, they contain no substance, other than profanity or threats, and were not shared with other members of the Commission.

(b) Administrative emails sent to the entire Commission (*e.g.*, explaining travel, providing logistical instructions, distributing meeting agendas and other materials, etc.). *See, e.g.*, entries 132-159.

Rationale: Administrative messages do not constitute the substantive work of the Commission, and as discussed above, are not encompassed within the scope of section 10(b). Even though these emails were sent to the entire Commission, they were administrative in nature and therefore not used or prepared for the Commission's substantive work of providing collective advice to the President.

(c) Administrative emails and documents between Commission staff and individual Commission members (*e.g.*, forwarding human resource-related forms to be completed by the Commission member, handling individual travel booking issues, inquiring about an individual member's availability). This includes administrative emails forwarded from Commission members to their individual staff. *See, e.g.*, entries 172, 176, 178-81, 188-92.

Rationale: Administrative messages do not constitute the substantive work of the Commission. Because these messages are administrative in nature, they are not used or prepared for the Commission's substantive work of providing collective advice to the President. Further, these messages were neither shared with nor used by the Commission as a whole.

(d) Administrative emails and documents among Commission staff (*e.g.*, selecting meeting rooms, addressing travel, uploading materials to the webpage, constructing the Commission's webpage, etc.). *See, e.g.*, entries 90, 762, 763, 766, 769, 802.

Rationale: Administrative messages do not constitute the substantive work of the Commission. Because the messages are administrative in nature, they are not used or prepared for the Commission's substantive work of providing collective advice to the President. These messages were neither shared with nor used by the Commission as a whole, and moreover, they constitute staff work not encompassed within the scope of section 10(b). *See e.g., Nat'l Anti-Hunger Coal.*, 557 F. Supp. at 529.

(e) Internal emails and documents never provided to the Commission members, including discussions about the direction and management of the Commission, deliberations over decisions affecting the Commission, litigation related discussions,

media and public relations discussions, etc. (“Internal” refers to communications among Commission staff, and/or Office of the Vice President (“OVP”) staff, and/or Executive Office of the President (“EOP”) staff). *See, e.g.*, entries 757-761, 755, 764-65.

Rationale: Internal material never provided to Commission members does not constitute material used or prepared for or by the Commission. *See Nat’l Anti-Hunger Coal*, 557 F. Supp. at 529; 12 U.S. Op. Off. Legal Counsel at 75. To the contrary, internal discussion is by definition not shared with the Commission members who are charged with providing collective advice to the President. In addition, these internal materials include communications protected under the deliberative process privilege and attorney client privilege, as well as the attorney work product doctrine.

**(f)** Emails and associated materials sent to or from one or more Commission members and/or to or from Commission staff, about suggestions for research and/or future activities of the Commission. *See, e.g.*, entries 165-66, 186, 352-53, 375, 383.

Rationale: These emails are not subject to 10(b) because individual suggestions are not used or prepared for or by the Commission as a whole, absent any indication of an intent to share suggestions with the full committee membership. These materials are therefore analogous to materials prepared by advisory subcommittees (which may include full committee members) which “do not [themselves] directly advise the President.” *See, e.g., Nat’l Anti-Hunger Coal.*, 557 F. Supp. 524 at 529.

**(g)** Emails and associated materials sent by individual Commission members discussing staffing and potential Commission members. *See, e.g.*, entries 162, 167, 357,361-62, 364.

Rationale: Suggestions about Commission membership are not subject to 10(b) because they (1) are not used or prepared for or by the Commission as a whole, and (2) are not substantive discussions about the activities or recommendations of the Commission itself, but rather about its composition. Similarly, discussions about Commission staffing are not used to inform the substantive deliberations of the Commission members who are charged with providing collective advice to the President.

**(h)** Emails sent by individual Commission members to Commission staff forwarding studies, news reports, and articles. *See, e.g.*, entries 161, 163-64, 168, 170-71, 177, 182-85.

Rationale: Communications forwarding substantive material are not subject to 10(b) because the communications themselves are “not used by the Commission as a whole,” absent any indication of an intent to share the underlying material with full committee membership. Instead, these materials assist staff in

“gathering information” on a preparatory basis. *See e.g., Nat’l Anti-Hunger Coal.*, 557 F. Supp. 524 at 529. To the extent any of the forwarded material is ultimately shared with the full Commission, it would then be subject to section 10(b).

**(i)** Emails between individual Commission members and Commission staff discussing potential third-party assistance with the Commission (*e.g.*, individuals who could potentially assist with data analysis). *See, e.g.*, entries 174, 388-89, 391, 470-71, 473, 542, 550, 554.

Rationale: These materials are not subject to section 10(b) because the material is not used by the Commission as a whole, and constitutes information gathered at the staff level that is not intended to be shared with the Commission.

**(j)** Emails to Commission staff or individual Commission members from reporters, other media representatives, or third-party organizations seeking comment or interviews (*i.e.*, interview request from EPIC to a Commission member, requests to Commission members for comment from CNN, ProPublica, and others), and responses and follow up discussions. *See, e.g.*, entries 200, 209, 216-17, 220, 222, 231-34, 237, 246, 253.

Rationale: These materials are not subject to section 10(b) because they are not intended to be used by the Commission as a whole, and do not constitute material used or prepared for the Commission’s activities. Instead, they are requests from outsiders for individual or staff comment about the Commission’s or Commission member’s activities.

**(k)** Handwritten notes taken by individual Commission members during meetings or in preparation for meetings for their own individual use. *See, e.g.*, entries 314, 507, 547, 567.

Rationale: These notes are not subject to section 10(b) because they are purely personal aides and reminders not intended to be used or shared with the Commission as a whole.

**(l)** Commission members’ personal notes and drafts of statements to be given at Commission meetings. *See, e.g.*, entries 263, 272-73, 311, 377, 396, 439, 518, 548.

Rationale: These notes are not subject to section 10(b) because they were not shared or intended to be shared with the Commission. The remarks actually delivered, if recorded, or if shared in written form with the Commission, do constitute 10(b) material, and any recording or transcript of those remarks would be posted subject to public disclosure, as has been done here. *See* entry 17.

**(m)** Material gathered or received by individual Commission members, either as part of their own research or sent to them by third parties, but not shared with other

Commission members or staff (*e.g.*, individual internet research). *See, e.g.*, entries 230, 264, 277, 281-83, 297-98, 313, 323-24, 330-33.

**Rationale:** This material, which was not shared with the Commission, is not subject to section 10(b) because it is part of the preliminary work of information gathering, and was not used by or prepared for the Commission as a whole. To the extent an individual Commission member shares such materials with the Commission as a whole or uses it at a meeting, it would then be subject to section 10(b).

**(n)** Emails and documents created not in an individual's capacity as a Commission member, but in the member's other professional capacity (*i.e.*, documents received or sent in a member's capacity as Secretary of State). *See, e.g.*, entries 210, 212-13, 215, 218-19, 221, 223-26.

**Rationale:** These documents are not subject to section 10(b) because they are not part of the work of the Commission, not part of the record relied upon by Commission, not prepared by or for the Commission, nor used by the Commission as a whole.

**(o)** Communications with the public received or sent by individual Commission members but not shared with the Commission. *See, e.g.*, entries 211, 227-29, 235, 248, 302-03, 316, 321-22.

**Rationale:** Comments from the public sent to individual Commission members and not otherwise shared with the Commission are not subject to section 10(b). These comments were directed at individual members, and included both substantive suggestions and "hate mail," but none were shared with the Commission as a whole. The Commission has provided instructions in its Federal Register notices and on its webpage for submitting public comments that are shared with the Commission as a whole and made available to the public, such as through its comment portal on the Regulations.gov website.

**(p)** Emails, including attachments, circulated among Commission staff and between one and three present or future Commission members commenting on draft documents that will eventually be provided to the full Commission (*i.e.*, emails between the Vice Chair and Commission staff discussing drafts of the by-laws). *See, e.g.*, entries 287, 295, 300, 304, 367, 376, 378, 380, 382.

**Rationale:** Drafts sent to the full Commission for their consideration are subject to section 10(b). However, initial or earlier draft versions of those "final" drafts are not subject to 10(b) unless the version at issue is or is intended to be shared with the full Commission; such drafts constitute preparatory activity and are not materials that are "used by the Commission as a whole." 12 U.S. Opp. Off Legal Counsel at 75. Here, while between one and three Commission members discussed the draft by-laws and other documents via email, their work is no different from the

work of a subcommittee, comprised of a portion of the Committee, tasked to draft such documents. Only the product of that subcommittee's drafting, once shared with the Commission, is subject to section 10(b). *See e.g., Nat'l Anti-Hunger Coal.*, 557 F. Supp. at 524.

**(q)** Non-substantive scheduling emails between Commission staff and employees of other federal agencies. (*i.e.*, requests for a convenient time by which to talk by telephone) *See, e.g.*, entries 365, 384, 445, 472, 475, 682, 687, 689.

Rationale: These emails contain no substance other than efforts to schedule telephone calls and meetings. The scheduling of staff discussions with certain federal agencies constitutes research or preparatory activity, and these administrative materials were neither shared with the Commission as a whole nor contain any substantive work relied upon by the Commission.

**(r)** Emails with panelists or potential panelists about their participation in the September 12 meeting. *See, e.g.*, entries 280, 312, 486, 601-02, 632-36, 638-79.

Rationale: These emails are not subject to Section 10(b) because they are either administrative emails providing logistical instructions to panelists, or are staff level exchanges with panelists that were not shared with the Commission as a whole, but rather constitute staff work to gather information in preparation for the September 12<sup>th</sup> meeting. Any material used or presented during the September 12<sup>th</sup> meeting, or shared with the Commission during the September 12 meeting, is subject to section 10(b) and has been publicly disclosed.

**(s)** Emails between Commission staff and other government agencies (*e.g.*, the General Services Administration) about the mechanics of operating a commission and compliance with procedural requirements (*e.g.*, emails about the process for filing a Federal Register notice). *See, e.g.*, entries 683-86, 688, 690-92, 694-700.

Rationale: These communications are not subject to section 10(b) because they relate to the procedural operation of the Commission and not the substantive subject matter of its work.

**(t)** Internal communications about operational issues, such as information technology ("IT") issues, and communications between Commission staff and other government entities about the same (*i.e.*, communications with EOP IT personnel regarding collecting and storing data, communications with the Department of Defense regarding SAFE). *See, e.g.*, entries 714, 718, 723, 756, 773.

Rationale: These communications are not subject to section 10(b) because they relate to technical capabilities and functions and not the substantive subject matter of the Commission's work. Further, these emails constitute administrative activities not intended to go to the Commission as a whole.



(u) Emails between Commission staff and State election administrators about the mechanics of providing election data (*e.g.*, email between Commission staff and State employees seeking guidance on how to provide data). *See, e.g.*, entries 712-13, 724, 753, 792, 805.

Rationale: These communications are not subject to section 10(b) because they relate to technical functions and are not the substantive subject matter of the Commission's work. Further, these emails constitute staff administrative activities in support of the Commission, and are not shared with the Commission as a whole.

(v) Litigation-related documents exchanged between named defendants and DOJ. *See, e.g.*, entries 343, 429, 450, 748, 778.

Rationale: Litigation-related communications are not subject to section 10(b) because they are subject to attorney-client privilege and the attorney work product doctrine, are not related to the substantive work of the Commission, and are not shared with the Commission as a whole.

(w) Emails and documents received from third parties volunteering to collaborate on Commission work and any associated responses or exchanges. *See, e.g.*, entries 424, 443, 555-60, 793-96, 803.

Rationale: These emails and documents are not subject to section 10(b) because they were not shared with the Commission as a whole. Rather, they constitute preliminary information gathering activities not subject to section 10(b), *see Nat'l Anti-Hunger Coal.*, 557 F. Supp. at 529, nor were they prepared with the intent of being distributed to the Commission as a whole. These emails were not solicited by the Commission nor used or prepared by Commissioners for the work of the Commission.

(x) Substantive communications between staff of government agencies and Commission staff. *See, e.g.*, entries 681, 705, 743, 747.

Rationale: These communications are part of the Commission staff's attempt to "gather information," and do not constitute materials intended for distribution to the Commission as a whole.

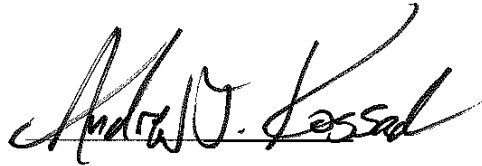
(y) Procedural communications between Commission staff and third parties regarding meeting logistics. *See, e.g.*, entries 587, 804, 807.

Rationale: These communications are not subject to section 10(b) because they relate to the procedural and logistical operation of the Commission and not the substantive subject matter of its work.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

\*\*\*

Executed this 29th day of September, 2017.

A handwritten signature in black ink, appearing to read "Andrew J. Kessel". The signature is written in a cursive style with a large initial 'A' and 'K'.

**EXHIBIT 1**



the Presidential Commission  
on Election Administration



- [The Commission](#)
- [News](#)
- [Events](#)
- [Materials & Research](#)
- [Public Comments](#)
- [Videos](#)

Contact | 

# Materials & Research Submissions

## Topics and Literature Relevant to Executive Order 13639

- **Absentee Ballots and Early Voting**
  - [Will Vote-by-Mail Elections Increase Turnout](#)
  - [Who Converts to Vote-By-Mail Evidence From a Field Experiment](#)
  - [Voting Early but Not Often](#)
  - [Voting by Mail and Turnout in Oregon Revisiting Southwell and Burchett](#)
  - [Political Analysis-2007-Kousser-428-45](#)
  - [Losing Votes by Mail](#)
  - [Identifying.the.effect.of.all.mail.elections.on.turnout](#)
  - [Paul Gronke-Convenience Voting 2008](#)
  - [An Examination of Efforts to Encourage the Incidence of Early In-Person Voting in Georgia 2008](#)
  - [Vote-by-Mail – Reform Memo](#)
- **Ballot Design**
  - [Better Ballots – Brennan Center](#)
  - [Field-Guide-Vol-01-20130620](#)
  - [Field-Guide-Vol-02-20130620](#)
  - [Field-Guide-Vol-03-20130620](#)
  - [NIST use of Language in Ballots](#)

- **Disability**

- [Disability and Voting Survey Report for 2012 Elections – Exec. Summary](#)
- [Disability and Voting White Paper for Presidential Commission \(Schur\).docx](#)
- [EAC Presentation – Polling Place Accessibility Report 2012](#)
- [GAO Testimony by Bovbjerg](#)
- [SSQ Article on Disability and Voter Turnout](#)
- [Thomas Summary of Disability Recommendations](#)
- [Tokaji and Colker 2007 on Absentee Voting](#)
- [Wisconsin – GAB – 2013 Accessibility Report](#)

- **Limited English Proficiency**

- [Delivering Political Power to Language Minorities](#)
- [English Proficiency and Latino Participation in U.S. Elections](#)
- [Language Challenges and Voting – Forbes and Shelly](#)
- [MPSA – Translating into Votes](#)
- [Public Participation in Election Management – The Case of Language Minority Voters](#)

- **Long Lines and Wait Times**

- [ABA 2012 Election Delays Report](#)
- [Loyola Law – Fixing That – Lines at the Polling Place – Levitt](#)
- [Waiting to Vote in 2012 – Stewart](#)
- [Waiting in Line to Vote – Slides – Stewart](#)
- [Waiting in Line to Vote – White Paper \(Stewart, Ansolabehere\)](#)

- **Military and Overseas**

- [2010 Overseas Voter Satisfaction \(Hall Smith\)](#)
- [2008 FVAP Report](#)
- [2010 Military Voting Project \(Eversole\)](#)
- [2012 FVAP Report](#)
- [2011 House Armed Services Hearing – Military Voting](#)
- [Brennan Center – 2009 Registering Military and Overseas Citizens to Vote](#)
- [CRS Report on UOCAVA](#)
- [CSSC Inprocessing Packet Sample \(Fort Hood\)](#)
- [Department of Defense Instruction Number 1000.04 September 13,2012 Outline \(Hartman\).docx](#)
- [DOD IG Report-Implementation of the Military and Overseas Voter Empowerment Act](#)
- [EAC UOCAVA Internet Voting Pilot Requirements](#)
- [FVAP 2010 Military Report](#)
- [FY10 Accessions by State](#)
- [Lessons From Improvements in Military and Overseas Voting](#)

- [Heritage Foundation – 2008 America’s Military Voter\(Re-enfranchising the Disenfranchised\)](#)
- [Military and Overseas Voter Empowerment “MOVE” Act](#)
- [Military Overseas Voting Key Issues](#)
- [Military Postal Service Agency – 2010 After Action Report](#)
- [Military Voters Disenfranchised Record Low 2012 Turnout Expected](#)
- [MILITARY VOTING AND THE LAW PROCEDURAL AND TECHNOLOGICAL SOLUTIONS TO THE BALLOT](#)
- [MOVE ACT Summary](#)
- [Operation Vote Report](#)
- [Overseas Vote and US Vote Foundations – 2012 Post Election Report](#)
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- **Commission Documents**

- [The Presidential Commission on Election Administration Charter](#) [PDF – 40Kb]
-



the Presidential Commission  
on Election Administration



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- Get more funding
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Apply for disaster assistance.

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- Procurement Center Representatives
- Certificates of Competency
- Report Fraud

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- Determine Your NAICS Code
- Make Sure You Meet SBA Size Standards
- Get a D-U-N-S Number
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▪ **Government Contracting Programs**

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## Office of Veterans Business Development | Resources

### Interagency Task Force on Veterans Small Business Development

The Interagency Task Force for Small Business Development (Task Force) was established February 14, 2008 by Public Law 110-186 and executed by Executive Order. The Task Force is chaired by the U.S. Small Business Administration (SBA) and is comprised of representatives appointed by SBA's Administrator from: SBA's Office of Veterans Business Development (OVBD), the Department of Defense (DoD), the Department of Labor (DOL), the Department of Treasury (Treasury), the Department of Veterans Affairs (DVA), the General Services Administration (GSA), the Office of Management and Budget (OMB), and four representatives from veterans service and military organizations: American Legion, Vietnam Veterans of America, StreetShares Foundation, and the Military Officers Association of America.

- [Interagency Task Force on Veterans Small Business Development Charter](#)

### Annual Task Force Reports

- [Fiscal Years 2014 & 2015: Task Force Combined Annual Report](#)
- [Fiscal Year 2013: Task Force Annual Report](#)
- [Fiscal Year 2012: Task Force Annual Report](#)
- [Fiscal Year 2011: Task Force Annual Report](#)

### Quarterly Task Force Meeting Minutes

#### FY 2017

- [September 6, 2017](#)
- [June 7, 2017](#)
- [March 8, 2017](#)
- [December 7, 2016](#)

#### FY 2016

- [September 15, 2016](#)
- [June 9, 2016](#)
- [March 10, 2016](#)
- [December 10, 2015](#)

#### FY 2015

- [September 10, 2015](#)
- [June 11, 2015](#)

**Leadership**



**Barbara E. Carson**  
*Associate Administrator*

Ms. Barbara Carson joined the U.S. Small Business Administration (SBA) in Washington, D.C. in June 2013. She is the Associate Administrator for the Office of Veterans Business Development (OVBD),...

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## THE WHITE HOUSE COUNCIL *for* COMMUNITY SOLUTIONS

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President Obama is calling on every one of us to work together to build healthy communities and to share the creative approaches already at work. Established in December 2010, the Council highlights local initiatives that are making great progress on our national priorities and promotes these models to help communities learn from their success.

### Resources

The White House Council for Community Solutions conducted extensive research and outreach to learn about community collaboration and pathways to employment for youth. In collaboration with our partners, the Council also created a series of tools and resources for community leaders and employers to support opportunity youth.

#### RESOURCES FOR COMMUNITIES

[COMMUNITY COLLABORATIVES TOOLBOX \(PDF\)](#)

[COMMUNITY COLLABORATIVES WHITE PAPER \(PDF\)](#)

[CASE STUDIES OF EFFECTIVE COLLABORATIVES \(PDF\)](#)

#### RESOURCES FOR EMPLOYERS

[A TOOLKIT FOR EMPLOYERS: CONNECTING YOUTH AND BUSINESS \(PDF\)](#)

#### RESEARCH REPORTS

[ECONOMIC VALUE OF OPPORTUNITY YOUTH \(PDF\)](#)

#### COUNCIL MEETING MATERIALS

##### FINAL REPORT

[Community Solutions for Opportunity Youth \(PDF\)](#)

[Recommendations Summary \(PDF\)](#)

#### RESOURCES FOR COMMUNITIES

To better understand what makes significant community-wide change happen, the Council conducted significant research including conversations with more than 50 experts and cross-sector leaders and an extensive review of approximately 100 collaborations. The Council's work was highlighted by the seminal article written by Foundation Strategy Group (FSG) and published in the [Stanford Social Innovation Review](#) in Winter 2011. The Council was seeking to identify communities that demonstrated needle-moving (+10%) change on a community-wide metric. Based on this research, the Council believes that long-term, cross-sector collaboratives that use data-driven decision making in aspiring to significant change on a community wide metric holds real promise in solving complex community challenges.

The Council has developed this [Community Collaboratives Toolbox](#) to guide communities in creating or improving their own needle-moving collaboratives. This Toolbox is geared toward:

### Latest Tweets

@ServeDotGov

RT @AmeriCorps: TONIGHT!

@AmeriCorps grantee @SBPUSA is on

@CNN talking about their service in

rebuilding a #vets home that was des...

<https://t.co/3lnL7gu82C> — 4 hours 14 min ago

@ServeDotGov

RT @AmeriCorps: Vote! Go to

<https://t.co/AHEnk2stYc> & cast your vote

for @SBPUSA very own Liz McCartney!

@AmeriCorps wants u to be...

<https://t.co/bV0I6c4zvE> — 4 hours 14 min ago

@ServeDotGov

RT @CNNHeroes: Who will be voted the

CNN SUPERHERO? Vote NOW at

<https://t.co/MkgzSomt7H> @SBPUSA

@dtckariton @BumiSehat...

<https://t.co/A3FHGGqbK8> — 4 hours 15 min ago

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- Intermediaries shaping and supporting collaboratives
- Partner organizations participating in collaboratives

The Community Collaboratives Toolbox includes a detailed guide of key activities and resources for each stage of a collaborative's "life cycle", as well as an assessment module to better understand whether a collaborative is prepared to move to the next stage. There are also tools on how to structure collaboratives most effectively and how to best generate meaningful community participation.

The Community Collaboratives Toolbox consists of four primary tools, each of which is filled with additional resources to move collaboratives toward success:

"Building or Improving a Community Collaborative – Guidance by Life Cycle Stage": Describes the five stages of a collaborative's life, including case studies, a checklist of key activities, and common roadblocks for each stage

"Community Collaborative Assessment – A Diagnostic of Success Readiness": Helps communities evaluate a collaborative's readiness to implement its action plan in the community

"Community Collaboratives Learning Examples: Capacity, Structure, Data and Funding": Provides examples from successful collaborative's on these four critical success factors.

"Community Collaboratives: The Next Generation of Community Participation": Describes how to generate meaningful community participation, a critical element to community collaborative success.

In addition to the Toolbox, the Council developed case studies of effective collaboratives and the impact achieved in their respective communities.

## RESOURCES FOR EMPLOYERS

Youth employment is a critical element of success for young people. Unfortunately, the recession has had a particularly hard impact on youth employment. Only 45 percent of youth between the ages of 16-24 were employed the end of August, including only 33.8 percent of African American youth. This is significantly lower than the 54.5 percent of youth who were employed five years ago and 56.1 percent of youth who were employed 10 years ago. Only 21 out of every 100 teens in low-income families had a job this past summer.

We believe every US company can play a part in creating pathways to employment for low-income and disconnected youth. The Council has identified three key ways for companies to help connect youth to a better future while simultaneously deriving benefits for their businesses, such as increased employee engagement, customer loyalty and employee retention.

- **Life Skills Development:** Provide youth work-related soft skills, such as communication, time management and teamwork, through coursework and/or experience. For example, your company could offer resume writing or interview workshops or provide employee mentors.
  - **Example of Employer Program:** *AT&T, Bank of America, Bloomingdale's, Comcast, Deloitte* have all accepted the Corporate Mentoring Challenge to either start or expand an existing mentoring program within their organization, or help a local mentoring organization expand their capacity and efficiency.
- **Work Skills Development:** Provide youth insight into the world of work to prepare for employment. For example, businesses can host job shadow days.
  - **Example of Employer Program:** *Southwire* (manufacturer of cables and wires) has employees work with the Carroll County Schools as mentors for young students and allows students to combine their studies with on-the-job training in its wire manufacturing plant.
- **Learn and Earn Opportunities:** Provide youth on-the-job skills in a learning environment while earning wages for their work. For example, businesses can offer paid internships, and/or offer permanent positions that provide on-the-job training. Business can also partner with schools and higher education institutions to give youth the opportunity both to strengthen their academic skills while working as well as to connect learning to the context of work.
  - **Example of Employer Program:** *CVS Caremark* partners with *WorkSource Partners* to source, train, and hire entry-level workers. The program helps untapped talent enter the industry and progress along the career path by offering innovative training, career mentoring and education support. Since program inception, the company has doubled its retention rate and has generated a 179 percent return on investment (return relative to costs on Work Opportunity Tax Credit). Additional benefits of lower turnover and higher consumer satisfaction generated by the training were also noted.

## TOOLS FOR EMPLOYER SUCCESS

the skills they need for employment and adulthood. Conveniently available in print and online, the toolkit will walk businesses through four key stages to identify and define a successful program.

1. **Assess and Select:** Employers take an assessment survey which guides them to select one of three engagement models (Life Skills, Work Skills or Learn & Earn).
2. **Define Scope:** Employers walk through an exercise to define the scope of their company's model.
3. **Plan and Pilot:** Users are guided through a plan to build their company's pilot program.
4. **Refine and Grow:** Employers set up for ongoing program development and refinement.

## RESEARCH REPORTS

Authored by researchers at the City University of New York and Columbia University on behalf of the Council and funded by the W.K. Kellogg Foundation, [The Economic Value of Opportunity Youth](#) describes the number of youth ages 16-24 who are out of school and work, highlights interesting disaggregated data about them, calculates the immediate and lifetime economic cost to the taxpayer and society of failing to reconnect them (and what could be gained by doing so), and provides some ideas for paths to re-engage them.

Hart research conducted a nationwide survey of disconnected youth for Civic Enterprises and America's Promise. The survey was fielded collaboration with the Bill & Melinda Gates Foundation, James Irvine Foundation & Annie E. Casey Foundation and in partnership with Forum for Youth Investment, Jobs for the Future, and YouthBuild USA. The following report, [Opportunity Road: The Promise and Challenge of America's Forgotten Youth](#), combines the findings of this national survey of disconnected youth (building on the Council's youth listening sessions), existing research on this population, uplifting case studies of individuals who were disconnected and institutions that have had success in reconnecting them to school and work, and a comprehensive policy and practice agenda that can further our conversation about what all sectors can do to help re-engage these youth. The report begins with an Open Letter to the American People from Colin and Alma Powell.

## COUNCIL MEETING MATERIALS

June 2011 Council Meeting PowerPoint Presentations:

- [From the Chair](#) (PDF)
- [Effectiveness Working Group](#) (PDF)
- [Capacity Working Group](#) (PDF)
- [Communications Working Group](#) (PDF)
- [Stakeholder Outreach Synthesis](#) (PDF)

## COUNCIL FINAL REPORT AND RECOMMENDATIONS

On [June 4, 2012](#) the Council presented its Final Report and Recommendations to the President.

- [Final Report: Community Solutions for Opportunity Youth](#)
- [Recommendations Summary](#)

During the White House Summit on Community Solutions for Disconnected Youth on June 4, 2012, Council members and leaders from a range of local and national non-profit, philanthropic, business, government, and national service organizations gathered to discuss the recommendations and learn about innovative community-wide initiatives connecting young people with critical education and employment opportunities.

## MATERIALS FROM THE FEBRUARY 4, 2011 COUNCIL MEETING

- [February 2011 Council Meeting PowerPoint Presentation](#) (PDF)
- [Community Solutions: Connecting Youth with Community and Careers, Goodwill Industries](#) (PDF)
- [Promoting Community Solutions and Civic Participation to Solve Pressing Social Needs, CNCS](#) (PDF)
- [Civic Engagement and Community Solutions: Facts and Figures Across the Sector, CNCS](#) (PDF)
- [Collective Impact, Stanford Social Innovation Review](#)
- [Pathways out of Poverty and into Opportunity, Philanthropy for Active Civic Engagement](#) (PDF)
- [Children Of the Great Recession. National Journal](#)

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## THE WHITE HOUSE COUNCIL *for* COMMUNITY SOLUTIONS

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The White House Council for Community Solutions is working to identify effective community solutions and leverage the best cross-sector resources to help our nation's young people succeed. By investing in what's working and spreading those innovative solutions to more communities, we can connect more youth to a brighter future.

### About Us

All across America, individuals and community groups are finding solutions to local problems. The White House Council highlighted local initiatives that are making great progress on our national priorities and promoted these models to help communities learn from their success. The White House Council focused especially on applying lessons learned to help communities address a critical national priority: our shared responsibility to support our nation's youth and young adults to live productive and prosperous lives.

#### DOCUMENTS

- [Executive Order](#) (PDF)
- [Charter](#) (PDF)
- [Factsheet: The White House Council for Community Solutions](#) (PDF)
- [White House Council for Community Solutions Launches National Effort to Put Disconnected Youth on Pathways to Education, Work & Service](#)
- [Council's Final Report Offers Recommendations for Expanding Cross-Sector Community Collaboratives to Solve Local Challenges](#)

#### EXTERNAL LINKS

- [The White House Office of Social Innovation and Civic Participation](#)
- [The Corporation for National and Community Service](#)
- [The Edward M. Kennedy Serve America Act](#)

### Contact Us

#### White House Council for Community Solutions

attn: Executive Director

Corporation for National and Community Service

1201 New York Avenue, NW

Washington, D.C. 20525

[WhiteHouseCouncil@cns.gov](mailto:WhiteHouseCouncil@cns.gov)

[www.nationalservice.gov](http://www.nationalservice.gov)

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The White House Council for Community Solutions met periodically to discuss ways to encourage the growth and maximize the impact of innovative community-developed solutions. The Council held public meetings, and regularly engaged with stakeholders.

### Council Meetings

A current schedule appears below and will be updated if schedule changes are necessary. Meetings will be streamed on this site.

2010

December

Executive Order Signed

[Read \(pdf\)](#)

2011

February 4th

Council Meeting

[Watch](#)

[Share Your Thoughts](#)

June 3rd

Council Meeting

Watch: [Part 1](#) | [Part 2](#) | [Part 3](#)

[Share Your Thoughts](#)

July 15

Council Meeting

[Meeting Materials](#) | [Listen](#)

October 14th

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February 3rd

Council Meeting

[Conference Call Information](#) (pdf)

[Economic Value of Opportunity Youth](#) (pdf)

May 9th

Council Meeting

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "L"**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MATTHEW DUNLAP,

*Plaintiff,*

v.

PRESIDENTIAL ADVISORY  
COMMISSION ON ELECTION  
INTEGRITY, *et al.*,

*Defendants.*

Civil Action No. 17-2361 (CKK)

**MEMORANDUM OPINION**

(December 22, 2017)

This case concerns the rights of a specific member of a specific presidential advisory commission governed by the Federal Advisory Committee Act (“FACA”) to receive documents that he has requested in order to facilitate his full participation. Since *Cummock v. Gore*, it has been clear in this circuit that “committee membership [under FACA] bestows both rights and obligations beyond those given to members of the general public.” 180 F.3d 282, 292 (D.C. Cir. 1999). Particularly with respect to accessing information about the commission’s work, a commission member has “an even greater right than a member of the public, because, as a Commission member, [he] is entitled to fully participate in its deliberations.” *Id.*

Plaintiff Matthew Dunlap, Secretary of State of Maine, alleges that he has not received documents associated with the Defendant Presidential Advisory Commission on Election Integrity (the “Commission”) that are necessary to inform his efforts to fully participate as a Commission member. In his Motion for a Preliminary Injunction, ECF No. 7 (“Motion”), he seeks, *inter alia*, an order that the Commission and co-defendant officials and entities “promptly . . . produce records requested by Secretary Dunlap,” and that Defendants “produce . . . all future documents made

available to or prepared for or by the Commission promptly and no later than two weeks in advance of any future Commission meeting.” Pl.’s Mot. for Prelim. Inj., ECF No. 7, at 1. The urgency of Plaintiff’s Motion, filed on November 16, 2017, was predicated on the belief that the Commission would convene another meeting soon, possibly in December. *See* Decl. of Kris W. Kobach, ECF No. 30-2, Ex. 2 ¶ 9 (“Kobach Decl.”) (“It is estimated the Commission will meet five times at a frequency of approximately 30-60 days between meetings, subject to members’ schedules and other considerations.”);<sup>1</sup> Pl.’s Mem. of Law in Supp. of Pl.’s Mot. for Prelim. Inj., ECF No. 7-13, at 19-20 (discussing same, and noting last meeting was September 12, 2017). Defendants’ counsel subsequently represented that no meeting would be held in December, which permitted this Court, with the parties’ consent, to entertain more substantial briefing than a preliminary injunction motion otherwise would permit. *See* Min. Order of Nov. 20, 2017.

Given the preliminary nature of the relief sought, the Court need not at this time decide conclusively whether Plaintiff is, or is not, ultimately entitled on the merits to all the relief he has claimed. Rather, relief may be granted if the Court finds that Plaintiff has a likelihood of succeeding on the merits, that he would suffer irreparable harm absent injunctive relief, and that other equitable factors—that is, questions of fairness, justice, and the public interest—warrant such relief.

Upon consideration of the pleadings,<sup>2</sup> the relevant legal authorities, and the record as a

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<sup>1</sup> Certain of Defendants’ declarations, including this one, were originally filed in one or more related cases. For ease of reference, the Court cites to them using the docket numbers under which they have been refiled in this case.

<sup>2</sup> The Court’s consideration has focused on the following documents:

- Pl.’s Mem. of Law in Supp. of Pl.’s Mot. for Prelim. Inj., ECF No. 7-13 (“Pl.’s Mem.”);
- Defs.’ Mem. in Opp’n to Pl.’s Mot. for Prelim. Inj., ECF No. 30 (Opp’n Mem.);

whole, the Court **GRANTS-IN-PART AND DENIES-IN-PART** Plaintiff’s Motion for a Preliminary Injunction, ECF No. 7. The scope of the Court’s consideration and decision today are narrow. The Court decides only Plaintiff’s above-described requests for past and future documents. The Court finds the other requests in Plaintiff’s Motion to be premature. Moreover, the Court expressly limits its decision to Plaintiff’s Motion; the Court does not rule on Plaintiff’s underlying Complaint, ECF No. 1, or any claim that other commissioners may assert against the Defendants.

## I. BACKGROUND

### A. Statutory Background

FACA imposes a number of procedural requirements on “advisory committees,” which are defined to include “any committee . . . which is . . . established or utilized by the President . . . in the interest of obtaining advice or recommendations for the President.” 5 U.S.C. app. 2 § 3(2) (2016). The statute exempts, *inter alia*, “any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government.” *Id.* FACA was enacted out of

a desire to assess the need for the numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government. . . . Its purpose was to ensure that new advisory committees be established only when essential and that their number be minimized; that they be terminated when they have outlived their usefulness; that their creation, operation, and duration be subject to uniform standards and procedures; that Congress and the public remain apprised of their existence, activities, and cost; and that their work be exclusively advisory in nature.

*Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 445-46 (1989) (internal quotation marks and citations omitted). Moreover, FACA is designed to prevent commissions from, *inter alia*,

- 
- Pl.’s Reply Mem. of Law in Supp. of Pl.’s Mot. for Prelim. Inj., ECF No. 31 (“Pl.’s Reply Mem.”).

convening a group of like-minded individuals, excluding duly appointed members with opposing viewpoints, and rubber-stamping the political agenda of the appointing authority. *See Cummock*, 180 F.3d at 287, 291-92 (citing Jay S. Bybee, *Advising the President: Separation of Powers and the Federal Advisory Committee Act*, 104 Yale L.J. 51, 58-59 (1994) (discussing the “outside, ‘neutral’ support” necessary to make “salable” the conclusion of an agency decisionmaker)).

To achieve those purposes, FACA requires that an advisory committee, *inter alia*, file a charter before meeting or taking any action, 5 U.S.C. app. 2 § 9(c) (2016), hold its meetings “open to the public,” *id.* § 10(a)(1), publish “timely notice” of each such meeting in the Federal Register, *id.* § 10(a)(2), keep minutes and other records of its meetings, *id.* § 10(c), and allow “[i]nterested persons . . . to attend, appear before, or file statements with” the committee, *id.* § 10(a)(3). FACA also mandates that, unless an exception applies under the Freedom of Information Act (“FOIA”), “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee shall be available for public inspection and copying.” *Id.* § 10(b). Finally, FACA requires that each advisory committee be “fairly balanced in terms of the points of view represented and the functions to be performed,” *id.* § 5(b)(2), and “not be inappropriately influenced by the appointing authority or by any special interest,” *id.* § 5(b)(3).

## **B. Factual Background**

The Commission was established by Executive Order on May 11, 2017. Executive Order No. 13,799, 82 Fed. Reg. 22,389 (May 11, 2017) (“Exec. Order”). According to the Executive Order, the Commission’s purpose is to “study the registration and voting processes used in Federal elections.” *Id.* § 3. The Executive Order states the Commission is “solely advisory,” and that it shall disband 30 days after submitting a report to the President on three areas related to “voting



processes” in Federal elections. *Id.* §§ 3, 6. The Vice President is the chair of the Commission, and the President may appoint 15 additional members. From this group, the Vice President is permitted to appoint a Vice Chair of the Commission. On the same day the Commission was established, the Vice President appointed Kris W. Kobach, Secretary of State for Kansas, to serve as the Vice Chair. Compl., ECF No. 1, ¶ 37; Kobach Decl. ¶ 1.

Apart from the Vice President and the Vice Chair, there are presently nine other members of the Commission, including Commissioner Christy McCormick of the Election Assistance Commission (the “EAC”), who is currently the only federal agency official serving on the Commission, and a number of state election officials, both Democratic and Republican, and a Senior Legal Fellow of the Heritage Foundation. *See* Decl. of Andrew J. Kossack (July 13, 2017), ECF No. 30-1, ¶ 1 (“July 13 Kossack Decl.”); Decl. of Andrew J. Kossack (Dec. 1, 2017), ECF No. 30-3, ¶ 1 (“Dec. 1 Kossack Decl.”). According to Defendant Kobach’s declaration in a related case, “McCormick is not serving in her official capacity as a member of the EAC.” Second Decl. of Kris W. Kobach at 2, *Elec. Privacy Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, No. 17-1320 (D.D.C. July 6, 2017), ECF No. 11-1. The Executive Order also provides that the General Services Administration (“GSA”), a federal agency, will “provide the Commission with such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission on a reimbursable basis,” and that other federal agencies “shall endeavor to cooperate with the Commission.” Exec. Order §§ 7(a), (b). Furthermore, the Administrator of General Services—the agency head of the GSA—is charged with performing “any functions of the President under [FACA], except for those in section 6,” to the extent that FACA applies to the Commission. *Id.* § 7(c). The Court previously has described in detail the roles of various Defendant entities in supporting the Commission. *See Elec. Privacy Info. Ctr. v.*

*Presidential Advisory Comm'n on Election Integrity*, No. 17-1320 (CKK), 2017 WL 3141907, at \*11-\*13 (D.D.C. July 24, 2017) [hereinafter *EPIC*].

The Commission filed a charter on June 23, 2017. Compl., ECF No. 1, ¶ 57; ECF No. 30-2, Ex. 2, at 10-11. In pertinent part, the Charter provides that the Commission “will function solely as an advisory body,” ECF No. 30-2, Ex. 2 ¶ 4; that the Commission is established in accordance with the Executive Order “and the provisions of the Federal Advisory Committee Act,” *id.* Ex. 2 ¶ 2; and that the GSA “shall provide the Commission with such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission,” *id.* Ex. 2 ¶ 6. Defendants represent that the Commission is voluntarily complying with FACA. July 13 Kossack Decl. ¶ 2.

On June 28, 2017, the Vice President held a teleconference with members of the Commission, during which the Vice Chair discussed his intention to send letters to state election officials requesting certain information on registered voters. Compl., ECF No. 1, ¶ 44. There is no evidence in the record that advance notice of this teleconference was provided by the Commission, or that it was accessible to the public. According to Defendants, the teleconference was merely a preliminary, organizational call, and members were expressly advised that the discussion “would be limited to preparatory and administrative work, and would not address matters on which the Commission was charged with advice and recommendations.” July 13 Kossack Decl. ¶ 4 (citing Exhibit A). Furthermore, although “[t]he Vice Chair and staff described the request, . . . members were not given a copy of any requests in advance of the call and did not see the request until shortly before it was sent to states.” *Id.* ¶ 5. Plaintiff indicates that he “was notified of the Commission’s decision to request voter data from the states mere hours before the letters were sent.” Pl.’s Mem. at 10. Plaintiff and others did, however, discuss the request for

several minutes on the call, and although the matter was not put to a vote by the members, the “request was modified in response to some of [their] comments.” July 13 Kossack Decl. ¶ 5; Dec. 1 Kossack Decl. ¶ 3.

Subsequently, the Vice Chair directed that identical letters dated June 28, 2017, “be sent to the secretaries of state or chief election officers of each of the fifty states and the District of Columbia.” Kobach Decl. ¶ 2. In addition to soliciting the views of state officials on certain election matters by way of seven broad policy questions, each of the letters requests that state officials provide the Commission with the “publicly available voter roll data” of their respective states, “including, if publicly available under the laws of [their] state, the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.” *Id.* Ex. 3 (June 28, 2017 Letter to the Honorable John Merrill, Secretary of State of Alabama). A substantial number of states have either fully or partially declined to comply with the Commission’s request for voter roll data—the exact number and the specific details of the states’ responses are unknown to the Court and are not relevant to the disposition of the pending motion. *See generally* Compl., ECF No. 1, ¶ 45. Without doubt, however, “substantial public attention has been focused on the Commission’s request” for voter roll information. *EPIC*, No. 17-1320 (CKK), 2017 WL 3141907, at \*1.

On July 19, 2017, the Commission held its first public meeting, which occurred in Washington, D.C. Decl. of Matthew Dunlap, ECF No. 7-1, ¶ 6; Dec. 1 Kossack Decl. ¶ 4. Other

decisions by this Court chronicle the circumstances leading up to this meeting. *See Am. Civil Liberties Union v. Trump*, No. 17-1351 (CKK), 2017 WL 3049418 (D.D.C. July 18, 2017) [hereinafter *ACLU*]; *Lawyers' Comm. for Civil Rights Under Law v. Presidential Advisory Comm'n on Election Integrity*, No. 17-1354 (CKK), 2017 WL 3028832 (D.D.C. July 18, 2017) [hereinafter *Lawyers' Comm.*]. What is common to those cases is their focus on the rights of the *public*, rather than Plaintiff as a commissioner, to engage with the Commission by receiving certain Commission documents and participating in its July 19 meeting. Of particular note here, in the days preceding the meeting the Commission sent to Plaintiff a small set of preparatory documents, namely a copy of the agenda on July 14 and the draft bylaws and a revised agenda on July 18. Dec. 1 Kossack Decl. ¶ 4. The Commission bylaws require that meeting agendas be shared with the public, and the bylaws also are available to the public via the Commission's website. Dec. 1 Kossack Decl. ¶ 6. Plaintiff alleges that he was not provided with other documents that Commission members simply introduced at the meeting, despite the Government's representations in related cases that, in effect, there would be no undisclosed documents used at the meeting. *See* Pl.'s Mem. at 19 (citing *Lawyers' Comm.*, No. 17-1354 (CKK), 2017 WL 3028832, at \*9 ("Defendants have represented that, with respect to the July 19 meeting of the Commission, they will disclose the materials that will be used at the meeting."); *ACLU*, No. 17-1351 (CKK), 2017 WL 3049418, at \*23 ("Documents 'prepared for or by the Commission' invariably must include documents that will be 'used and discussed' at the July 19 meeting. Accordingly, Defendants have satisfied their obligation . . . .")).

The Commission next met on September 12, 2017, in Manchester, New Hampshire. Again, Plaintiff received a small set of materials in advance of the meeting. *See* Opp'n Mem. at 6 (indicating a draft agenda on September 5, a revised agenda on September 6, and copies of

materials to be discussed at the meeting on September 8). Citing the *Vaughn*-type index in the *Lawyers' Committee* litigation, however, Plaintiff objects that he “was not treated on an equal basis as Commissioner Gardner” leading up to this meeting, because “Defendant Kobach and Commissioner Gardner ‘collaborated on a bipartisan agenda for the meeting.’” Pl.’s Reply Mem. at 12 (citing Dec. 1 Kossack Decl. ¶ 9). Defendants elaborate on their communication with certain commissioners in preparation for this meeting.

Hans von Spakovsky was a presenter at the September 12 meeting, and so Commission staff communicated individually with him in his capacity as a presenter. And Secretary William Gardner communicated individually with Commission staff and Vice Chair Kobach regarding his suggestion that the September 12 meeting be held in Manchester, New Hampshire. These communications included the suggestion of five of the ten panelists, collaboration on the meeting agenda, coordination of the voting machine demonstration, and his invitation to the former Governor of New Hampshire to make opening remarks.

Opp’n Mem. at 25 n.4 (citations omitted). Plaintiff, on the other hand, indicates that he was not “invited to suggest witnesses for the September 12, 2017 meeting or to comment on the agenda or other proposed witnesses for that meeting. Indeed, the timing of the sending of the agenda—only a week before the September meeting—made it impossible for Secretary Dunlap to invite witnesses.” Pl.’s Reply Mem. at 12.

Since the September 12 meeting, the Commission has not met again, despite the charter provision anticipating that subsequent meetings would be held. *See* Kobach Decl. Ex. 2 ¶ 9 (setting forth 30-60 day expectation). Nevertheless, several outside sources suggested to Plaintiff that Commission activity continued without his knowledge. First, a member of the media informed Plaintiff that Secretary Connie Lawson, one of the other commissioners, “told reporters that it was her understanding that the work of the election integrity commission had essentially been paused because of the lawsuits filed against the commission,” which was news to the Plaintiff. ECF No. 7-7, at 2. He asserts that he should be informed of such communications. *Id.* Second, Plaintiff

received an email from the Minnesota Voters Alliance announcing that the organization had been invited to the next Commission meeting, in December 2017. *Id.* at 2-3. That this organization had been invited to present, and indeed that any meeting had been scheduled, came as a surprise to Plaintiff. *Id.* at 2. He asserts that he should be informed and have the opportunity to participate in any such planning. *Id.* While Defendants briefly address Secretary Lawson's comment, Opp'n Mem. at 25-26 (indicating that Secretary Lawson's further reported comment that "she hasn't received any new information [about the Commission] since the last meeting and that she doesn't think members are emailing each other" indicates that other commissioners are not receiving this information either), Defendants do not address Plaintiff's news of the Minnesota Voters Alliance in their briefing. *But see* ECF No. 7-7, at 1 (attaching to Plaintiff's Motion a Commission staff email to Plaintiff indicating "[a]s to the Minnesota group, I have never communicated with this group, and no meeting is scheduled for December").

On October 17, 2017, Plaintiff submitted a request to Andrew Kossack, Designated Federal Officer of the Commission, for certain Commission records pursuant to section 10(b) of FACA. Pl.'s Mem. at 6. In particular, Plaintiff requested that the Commission produce "copies of any and all correspondence between Commission members in the possession of the Commission dating from the signing of the Executive Order on May 11<sup>th</sup>, 2017 until the receipt of this request," including

communications between Commissioners themselves, between Commissioners and/or staff and other Federal agencies, communications used in the development of public documents, and any ongoing discourse between Commissioners and staff about the development of policies and/or policy proposals that may be offered to policymakers as either a component of any report or under separate cover of which this Commissioner may be unaware.

ECF No. 7-3. Despite Kossack's acknowledgment, he never provided any documents in response to the request. Pl.'s Mem. at 6.

Since Plaintiff filed this litigation, Defendants have provided him with a limited amount of additional information, but only by way of oral representation of defense counsel or letters exchanged during briefing on the Motion. First, the Commission will not meet in December. Min. Order of Nov. 20, 2017; Dec. 1 Kossack Decl. ¶ 14. Second, Defendants offered to permit Plaintiff to inspect, in person, documents related to the September 12, 2017, meeting, but he would not be provided with copies, nor would he be permitted to take notes. ECF No. 30-7, at 2.

## II. LEGAL STANDARD

Preliminary injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Sherley v. Sebelius*, 644 F.3d 388, 392 (D.C. Cir. 2011) (quoting *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)); see also *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (“[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” (emphasis in original; quotation marks omitted)). A plaintiff seeking preliminary injunctive relief “must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.” *Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014) (quoting *Sherley*, 644 F.3d at 392 (quoting *Winter*, 555 U.S. at 20) (alteration in original; quotation marks omitted)). When seeking such relief, “the movant has the burden to show that all four factors, taken together, weigh in favor of the injunction.” *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014) (quoting *Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009)). “The four factors have typically been evaluated on a ‘sliding scale.’” *Davis*, 571 F.3d at 1291 (citation omitted). Under this sliding-scale framework, “[i]f the movant makes an unusually strong showing on one of the factors, then it does

not necessarily have to make as strong a showing on another factor.” *Id.* at 1291–92.

The Court notes that it is not clear whether this circuit’s sliding-scale approach to assessing the four preliminary injunction factors survives the Supreme Court’s decision in *Winter*. *See Save Jobs USA v. U.S. Dep’t of Homeland Sec.*, 105 F. Supp. 3d 108, 112 (D.D.C. 2015). Several judges on the United States Court of Appeals for the District of Columbia Circuit (“D.C. Circuit”) have “read *Winter* at least to suggest if not to hold ‘that a likelihood of success is an independent, free-standing requirement for a preliminary injunction.’” *Sherley*, 644 F.3d at 393 (quoting *Davis*, 571 F.3d at 1296 (concurring opinion)). However, the D.C. Circuit has yet to hold definitively that *Winter* has displaced the sliding-scale analysis. *See id.*; *see also Save Jobs USA*, 105 F. Supp. 3d at 112. In any event, this Court need not resolve the viability of the sliding-scale approach today, as it finds that Plaintiff has shown a likelihood of success on each of the four factors.

### III. DISCUSSION

The Court must assess its subject-matter jurisdiction with respect to a particular claim before ruling on the merits. *See Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 584 (1999). Plaintiff’s standing to pursue his claims is uncontested. *See also Cummock*, 180 F.3d at 290 (finding standing “readily” satisfied on facts similar in relevant respects). However, the parties disagree over whether this Court has jurisdiction to grant him relief under either the mandamus statute or the Administrative Procedure Act (“APA”).<sup>3</sup> Because this Court finds that Plaintiff is likely to succeed under the mandamus statute, the Court need not decide the availability of relief

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<sup>3</sup> This Court previously has recognized that “FACA does not provide for a private cause of action,” so “judicial review must be sought through some alternative route.” *Lawyers’ Comm.*, No. 17-1354 (CKK), 2017 WL 3028832, at \*7 (citing *Ctr. for Biological Diversity v. Tidwell*, 239 F. Supp. 3d 213, 221 (D.D.C. 2017)).



under the APA.<sup>4</sup>

Bound up with the Court's determination of its subject-matter jurisdiction will be the Court's assessment of the merits of Plaintiff's claim of rights under FACA. "[P]articularly in the context of a request for mandamus relief, the question of the Court's subject-matter jurisdiction sometimes converges with a consideration of the merits." *Bradley Memorial Hosp. v. Leavitt*, 599 F. Supp. 2d 6, 11 (D.D.C. 2009) (citing *In re Cheney*, 406 F.3d 723, 729 (D.C. Cir. 2005) (en banc) ("[I]f there is no clear and compelling duty under the statute as interpreted, the district court must dismiss the action. To this extent, mandamus jurisdiction under § 1361 merges with the merits.")). It is undisputed that the public is entitled to certain documents pertaining to the Commission's work under FACA § 10(b), *see, e.g.*, Opp'n Mem. at 23 (quoting Section 10(b) in pertinent part); the seminal question is what documents Plaintiff, as a commissioner, is entitled to receive.

#### **A. Likelihood of Success on the Merits**

##### *1. Mandamus Jurisdiction*

Plaintiff seeks relief pursuant to 28 U.S.C. § 1361 (2016), which provides that "district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." In this case, that relief would be an injunction in the form of mandamus requiring Defendants to comply with FACA.

Mandamus is a "drastic remedy, to be invoked only in extraordinary circumstances." *Fornaro v. James*, 416 F.3d 63, 69 (D.C. Cir. 2005) (internal quotation marks omitted; citing *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980)). "To show entitlement to mandamus,

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<sup>4</sup> The Court nevertheless shall address the APA briefly below as part of the mandamus requirement that there be "no adequate alternative remedy." *Am. Hosp. Ass'n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016).

plaintiffs must demonstrate (1) a clear and indisputable right to relief, (2) that the government agency or official is violating a clear duty to act, and (3) that no adequate alternative remedy exists.” *Am. Hosp. Ass’n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016). These requirements are jurisdictional. *Id.* Even when these requirements are met, however, “a court may grant relief only when it finds compelling equitable grounds. . . . The party seeking mandamus has the burden of showing that its right to issuance of the writ is clear and indisputable.” *Id.* (citing *Power v. Barnhart*, 292 F.3d 781, 784 (D.C. Cir. 2002)).

In this posture, the Court is not deciding in resolving this motion whether to issue mandamus. Rather, the Court must decide only whether Plaintiff is likely to succeed in obtaining mandamus relief.

2. “Clear and Indisputable Right” Under FACA

The D.C. Circuit’s ruling in *Cummock* establishes through its discussion of FACA § 10(b) that Plaintiff has a clear and indisputable right to further documents.

In *Cummock*, the widow of a flight disaster victim sought to faithfully perform her role as a member of the White House Commission on Aviation Safety and Security. M. Victoria Cummock was frustrated in doing so, however, by the repeated occasions on which she learned of, requested, and was refused, in whole or part, documents from commission staff. 180 F.3d at 287-88. The impression that Cummock was being sidelined was reinforced by the omission of her dissent from the final report delivered to the president, and the omission of her dissent’s supporting attachments from the published version of that report, which nevertheless included a “misleading editor’s note” about her contribution. *Id.* On appeal from this Court’s dismissal of her ensuing case, the D.C. Circuit noted that “the only claim before us warranting our attention is Cummock’s assertion that the Commission denied her access to relevant documents, and thereby thwarted her

dissenting voice.” *Id.* at 289. And the court concluded that Cummock had “a right to fully participate in the deliberations of the Commission,” a right that had been violated because she “was unlawfully denied the opportunity to review documents that were prepared for or relied upon by the Commission in formulating its recommendations, and to amend her dissent if necessary to reflect this information.” *Id.* at 284.

Like Cummock, Plaintiff has a right, as a commissioner, to “fully participate” in the proceedings of the Commission. In the Court’s view, his assertion that he will be unable to fully participate without the information contained in relevant documents that the Commission has not shared with the public has merit. *See* Pl.’s Mem. at 1-2, 16. He, like Cummock, has the right to receive more than the documents available to the public. *See Cummock*, 180 F.3d at 292. He has a right to access documents that the Commission is considering relying on in the course of developing its final recommendations. Without those documents, Plaintiff would be left in the same position as Cummock, whose best recourse after the fact was to receive the documents and amend her dissent, if necessary.

Defendants argue that Plaintiff is not entitled to all of the documents, but rather only those used by the Commission “as a whole.” Opp’n Mem. at 23 (“[S]ection 10(b) does not clearly require every document connected with every advisory committee be disclosed; instead, this provision only requires that materials that were actually accessible (or intended to be accessible) to the committee as a whole be disclosed.”); *id.* at 24 (“In other words, the D.C. Circuit held that a member could not be excluded from reviewing information that was used by *the Commission* in making its final recommendation.”). But Defendants have erected and attacked a straw man, and offered in its place an outdated and indefensible view of their own.

To their first point, nowhere does Plaintiff argue that he or someone similarly situated

should be entitled to “every document connected with every advisory committee.” Indeed, in a letter to Defendants during briefing on this Motion, he sensibly indicated a number of categories of documents that he does not seek, presumably because he does not think he would be entitled to them or he does not consider them relevant to his role as a commissioner. *See* ECF 30-6 App. A (indicating that Plaintiff does not seek, e.g., “Commission members’ personal notes and drafts of statements to be given at Commission meetings”).

As for their second point, Defendants argue that only material relied on by the Commission “as a whole” should be made available, yet they inexplicably rely primarily on pre-*Cummock* interpretations of Section 10(b). *See* Opp’n Mem. at 23 (citing 1980s Office of Legal Counsel guidance and district court decisions, one of which was affirmed, also pre-*Cummock*). And despite Defendants’ supporting argument based on *Cummock* language, *Cummock* does not make such a distinction. Accordingly, Defendants cannot deprive Plaintiff of the requested documents simply because they have not been provided to all commissioners. *See* Pl.’s Reply Mem. at 6-7. Like *Cummock* herself, Plaintiff is as much a part of the Commission as any other member. The likelihood of Plaintiff’s success in securing mandamus relief is attributable to his right to substantive material that would inform his full participation in the Commission and its development of recommendations to the President.

A thread running through Defendants’ argument is their distinction of the later posture of commission proceedings in *Cummock*. *See, e.g.*, Opp’n Mem. at 24. It is true that the White House Commission on Aviation Safety and Security, unlike the Commission in this case, had already made its final report when the case was filed. But *Cummock* is a case that never should have happened. If *Cummock* herself had received relevant documents along the way, then she would not have needed to file suit and ultimately obtain a D.C. Circuit decision that did the best it could

at that stage to address her rights as a commissioner, namely by finding that she should be permitted to review documents after the fact and consider whether to amend her dissent. This Court will find that a preliminary injunction is necessary in this case to prevent the Commission from reaching the level of dysfunction that precipitated *Cummock*. Plaintiff is entitled to substantive information so that he can contribute along the way in shaping the ultimate recommendations of the Commission; he need not wait to assert his rights under *Cummock* until after the fact—when a breach of his right to fully participate could not truly be redressed.

3. “*Clear Duty*” of the Commission

An advisory committee has a nondiscretionary duty to comply with the requirements of FACA § 10(b). *See* 5 U.S.C. app. 2 § 10(b) (2016) (“[T]he records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by each advisory committee *shall* be available for public inspection and copying . . . .” (emphasis added)); Pl.’s Mem. at 16 (discussing nondiscretionary duties under FACA and citing *Judicial Watch, Inc. v. U.S. Dep’t of Commerce*, 736 F. Supp. 2d 24, 31 (D.D.C. 2010) (“Section 10(b) contains unambiguous language that identifies certain materials, and describes in detail the methods and location by and at which the Government must make those materials available to the public.”)). By describing the rights of a commissioner under Section 10(b), *Cummock* makes clear that an advisory committee also has a nondiscretionary duty to comply with that section with respect to Plaintiff. *See Cummock*, 180 F.3d at 292 (“[P]rovided that *Cummock* was granted the requisite security clearance, the Commission could not deny her access to information that it reviewed and relied upon in formulating its recommendations—even if, for instance, that information might have been withheld from the public pursuant to a FOIA exemption.”). To be clear, the Commission’s duty to provide information pursuant to Section

10(b) and *Cummock* is, like Plaintiff's right to the same, applicable during the life of the Commission, not simply after it submits its final recommendations.

Turning to the scope of that duty, the Court has not considered line-by-line the documents requested by Plaintiff. *See* ECF No. 30-6 App. B (identifying series of entries from *Vaughn*-type index in *Lawyers' Committee*). The Court has not yet ruled in *Lawyers' Committee* on the sufficiency of the *Vaughn*-type index that Plaintiff references. Accordingly, it will suffice to give some examples, in light of the record, of substantive disclosures that Plaintiff should have received in the past and is entitled to receive in the future. First, sufficiently in advance of the June 28, 2017, teleconference, Plaintiff should have been informed about, received a draft of, and been given the opportunity to comment on the voter data request that the Vice Chair planned to send to states—which he ultimately did on Commission letterhead, discussing the Commission's work, and offering sentiments “[o]n behalf of [his] fellow commissioners.” *Kobach Decl. Ex. 3*. Second, sufficiently in advance of the September 12, 2017, meeting, Plaintiff should have been informed about, received a copy of, and been given the opportunity to comment on Secretary Gardner's proposals for location, content, and possible speakers at that meeting. *See* Pl.'s Reply Mem. at 12-13. Third, sufficiently in advance of any invitation being extended to the Minnesota Voters Alliance to speak at a December meeting, Pl.'s Mem. at 6, Plaintiff should have been informed of and been given the opportunity to comment on plans for the next meeting whenever it is held, the decision about whether or not to hold it in December, speaker possibilities for that meeting, and any proposal to invite this particular group.

The Court shall not monitor every document to be released to Plaintiff, but expects Defendants to comply with the guidance set forth in this decision. The Commission has a clear duty to provide Plaintiff with these documents and any similar documents that exist now or in the

future.

4. “*No Adequate Alternative*”

The Government argues that Plaintiff cannot recover under the APA. *See, e.g.*, Opp’n Mem. at 1. Accordingly, the Court shall treat as conceded any argument that the APA would be a sufficient alternative to preclude Plaintiff’s recourse to mandamus. *See also EPIC*, No. 17-1320 (CKK), 2017 WL 3141907, at \*13 (“Because there is no apparent agency involvement at this time, the Court concludes that APA review is presently unavailable in connection with the collection of voter roll information by the [Presidential Advisory Commission on Election Integrity].”); *Lawyers’ Comm.*, No. 17-1354 (CKK), 2017 WL 3028832, at \*7 (finding in context of this Commission that “even if APA review were available, Plaintiff has not demonstrated that it has a likelihood of success on the merits”).

The Government instead argues that the bylaws decide this question in at least three ways: 1) by according the Chair, and if so designated, Vice Chair, the right to prepare the agenda; 2) by permitting Plaintiff, as a commissioner, to provide input; and 3) by giving Plaintiff a mechanism for changing the bylaws if he and other commissioners are unhappy with the rule regarding the agenda. *See* Opp’n Mem. at 26-28. The Court rejects each prong. The Commission is not permitted to circumvent the FACA obligations recognized by *Cummock* simply by enshrining a particular view in the bylaws; if the converse were true, a commission established under FACA could agree in writing to eviscerate any of that statute’s strictures. *See Cummock*, 180 F.3d at 290-91; Pl.’s Reply Mem. at 12-13. Plaintiff’s right to change the bylaws in conjunction with other commissioners cannot compensate for a violation of rights protected in this circuit. Moreover, the record reflects that Plaintiff generally does take advantage of the opportunity to give input, but he makes the persuasive argument that he cannot meaningfully do so unless he is fully informed. *See,*

*e.g.*, Pl.’s Reply Mem. at 11-12.

\* \* \*

Based on Plaintiff’s likely success in establishing a clear right to substantive information in the Commission’s possession, the Government’s clear duty to provide Plaintiff with that information with sufficient notice to allow him to exercise his right to fully participate as a commissioner, and the inadequacy of alternatives under the APA or bylaws, the Court finds that mandamus is not only viable at this stage of this particular case, but that it likely should be granted on the basis of compelling equitable grounds. This is so even if, as Defendant maintains, the standard for an injunction that alters the status quo is higher than for one that does not. *See* Opp’n Mem. at 7 (citing, *e.g.*, *Tex. Children’s Hosp. v. Burwell*, 76 F. Supp. 3d 224, 246-47 (D.D.C. 2014)).

The Court is unpersuaded by the Government’s argument that, although Defendants “agreed voluntarily to abide by the provisions of FACA,” *see* Kobach Decl. Ex. 2 ¶¶ 2, 13, the Court nevertheless should not issue mandamus because “Defendants do not concede that FACA can be constitutionally applied to presidential advisory committees.” Opp’n Mem. at 37-38. The Court has found *Cummock* to be the applicable law in this circuit, and it has been so for nearly two decades. *Cummock* does not hesitate to apply FACA to a presidential advisory committee. While *Cummock* did not provide relief by mandamus, the Court is not doing so today either. The Court finds that the standard for today’s decision—likelihood of success on the merits—is satisfied in light of Section 10(b) and *Cummock*.

In addition to Plaintiff’s FACA § 10(b) requests for documents, past and future, Plaintiff’s Motion seeks several further types of relief, namely that Defendants be compelled “to permit Secretary Dunlap to fully participate [in Commission activities] on an equal basis as all other



commissioners,” and that the Commission be “enjoin[ed] . . . from releasing a final report until Secretary Dunlap has received all documents to which he is entitled and has had an opportunity to review them, has participated in the drafting of the report or, if necessary, has completed a concurrence or dissent to the report.” Pl.’s Mot. for Prelim. Inj., ECF No. 7, at 1-2.<sup>5</sup> The Court has already addressed Plaintiff’s right to fully participate in the Commission by requiring that Defendants supply certain documents to facilitate his informed participation. Any further order to permit participation on an “equal basis” would assume that he will not be treated equally even after the Government provides documents in compliance with today’s decision. The Court cannot reach that conclusion on this record. The request to temporarily enjoin the final report is similarly premature, insofar as it assumes that Defendants will not provide the required documents in a timely fashion. The present record does not warrant that conclusion as of yet.

#### **B. Irreparable Harm**

“Although the concept of irreparable harm does not readily lend itself to definition, the courts have developed several well known and indisputable principles to guide them in the determination of whether this requirement has been met.” *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). Chief among them is that “the injury must be both certain and great; it must be actual and not theoretical.” *Id.* District courts in this circuit have recognized that, where an obligation to disclose exists, plaintiffs may suffer irreparable harm if they are denied access to information that is highly relevant to an ongoing public debate. *See Washington Post v. Dep’t of Homeland Sec.*, 459 F. Supp. 2d 61, 75 (D.D.C. 2006) (“Because the urgency with which the

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<sup>5</sup> In his complaint, Plaintiff also seeks a ruling that certain alleged activities of the Commission prior to the filing of its charter constitute a violation of FACA § 9(c). *See* Compl., ECF No. 1, ¶¶ 94-101. While the parties have addressed this assertion in their preliminary injunction briefing, *see, e.g.*, Pl.’s Mem. at 12; Opp’n Mem. at 36-37, the Court shall not decide that issue at this time because Plaintiff does not specifically request this relief in his Motion.

plaintiff makes its FOIA request is predicated on a matter of current national debate, due to the impending election, a likelihood for irreparable harm exists if the plaintiff's FOIA request does not receive expedited treatment."); *Elec. Privacy Info. Ctr. v. Dep't of Justice*, 416 F. Supp. 2d 30, 41 (D.D.C. 2006) (finding that plaintiff would be irreparably harmed because it would be "precluded, absent a preliminary injunction, from obtaining in a timely fashion information vital to the current and ongoing debate surrounding the legality of the Administration's warrantless surveillance program").

In this case, the injunctive remedy is warranted to allay the same kind of irreparable harm to Plaintiff that Cummock herself suffered. Prevented from receiving key documents during the life of the White House Commission on Aviation Safety and Security, Cummock could only obtain from the D.C. Circuit an opportunity to review those documents and secure an equal place for her dissent in the final report. *See Cummock*, 180 F.3d at 292-93. On remand, this Court issued a broad order to that commission to disclose a variety of documents. *See* ECF No. 31-2 (citing Mem. Op. at 2, *Cummock v. Gore*, No. 97-981 (CKK) (D.D.C. June 23, 2000) ("In accordance with the Court of Appeals's holding, this Court issued a scheduling order directing the Defendants to 'disclose to Plaintiff all non-classified records or documents of any kind created by, made available to, or relied upon by the Commission.'" (citation omitted)). There is no way to tell whether Cummock's full participation in that commission along the way would have affected its final report. Perhaps it would have obviated the need for a dissent. Here, the Court finds that in the absence of being provided with past and future documents of the kinds described above, Plaintiff's right to fully participate in the Commission would be irreparably harmed.

### **C. Balance of the Equities and the Public Interest**

Plaintiff has been appointed to a presidential commission to address an important issue.

Denial of the requested injunction would frustrate his interest in contributing his unique perspective, as well as gaining the “recognition and even prestige,” *Cummock*, 180 F.3d at 292 (quoting *Ass’n of Am. Physicians and Surgeons, Inc. v. Clinton*, 997 F.2d 898, 914 (D.C. Cir. 1993) (internal quotation marks omitted)), of full participation in such a commission. *See* Pl.’s Mem. at 18.

From the Government’s perspective, there may be some hardship to providing all of the requested documents. However, several factors persuade the Court that this hardship is modest, at most. The Government already collected and categorized the documents to a degree sufficient to present the *Vaughn*-type index in the *Lawyers’ Committee* litigation. Moreover, the Government’s offer to permit Plaintiff to view the documents suggests that the Government has already contemplated how to physically furnish them—and has found it sufficiently possible that they have volunteered to do so. *See* ECF No. 30-7, at 2.

Accordingly, the Court concludes that, in balancing the equities and considering the public interest, this narrowly tailored preliminary injunction is appropriate. By withholding the substantive documents discussed in this opinion, the Commission ignores the strictures imposed by FACA to prevent unbalanced commissions, and ignores the rights and obligations required by *Cummock*, leaving the public to pay any concomitant price.

#### IV. OPPORTUNITY TO REVIEW DOCUMENTS

Apart from Plaintiff’s Motion, the Court separately considers Defendants’ offer to permit Plaintiff to review the requested documents, without receiving copies or taking notes. This is not a reasonable offer. If Defendants have decided that Plaintiff should be permitted to review documents, then he should be permitted to take notes and to make copies if he thinks that doing so would be useful.

**V. CONCLUSION**

For all of the foregoing reasons, the Court **GRANTS-IN-PART AND DENIES-IN-PART** Plaintiff's Motion for a Preliminary Injunction, ECF No. 7.

An appropriate Order accompanies this Memorandum Opinion.

Dated: December 22, 2017

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*/s/*  
**COLLEEN KOLLAR-KOTELLY**  
United States District Judge

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "M"**

THE WHITE HOUSE  
Office of the Press Secretary

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FOR IMMEDIATE RELEASE

January 3, 2018

**Statement by the Press Secretary on the Presidential Advisory Commission  
on Election Integrity**

“Despite substantial evidence of voter fraud, many states have refused to provide the Presidential Advisory Commission on Election Integrity with basic information relevant to its inquiry. Rather than engage in endless legal battles at taxpayer expense, today I signed an executive order to dissolve the Commission, and have asked the Department of Homeland Security to review these issues and determine next courses of action.”

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Statements & Releases

## Statement by the Press Secretary on the Presidential Advisory Commission on Election Integrity

Issued on: January 3, 2018

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Despite substantial evidence of voter fraud, many states have refused to provide the Presidential Advisory Commission on Election Integrity with basic information relevant to its inquiry. Rather than engage in endless legal battles at taxpayer expense, today President Donald J. Trump signed an executive order to dissolve the Commission, and he has asked the Department of Homeland Security to review its initial findings and determine next courses of action.



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EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "N"**

# Exclusive—Kris Kobach: Voter Fraud Commission ‘Being Handed Off’ to DHS, Will No Longer Be ‘Stonewalled’ by Dems

[John Binder](#) 3 Jan 2018



Eric Thayer/AFP/Getty

Washington, D.C. [1298](#)

In an interview with Breitbart News, Kobach said the news that President Trump is dissolving the voter fraud commission should not be grounds for leftist organizations and Democrats — who sought to stop the investigations into double voting and ballots cast by non-citizens — to celebrate, as the investigations will continue under DHS.

“What’s happening is a tactical shift where the mission of the commission is being handed off to Homeland Security without the stonewalling by Democrats,” Kobach told Breitbart News.

“I’ll be working closely with the White House and DHS to ensure the investigations continue,” Kobach continued.

Kobach, who served as vice chairman of the voter fraud commission, blasted organizations like the ACLU and NAACP, along with Democrats in Congress and on the commission who attempted to halt the panel in its tracks.

“They have absolutely no interest in stopping voter fraud,” Kobach said. “It’s truly extraordinary that one party in our system has made clear that they don’t care.”

“Some people on the Left were getting uncomfortable about how much we were finding out,” Kobach continued.

Thus far, the voter fraud commission has revealed:

- 938 convictions for voter fraud since the year 2000
- Fewer than 1 in 100 cases ends in a conviction
- In Kansas, alone, there are 127 known cases of non-citizen aliens registering to vote
- In 21 states, there were 8,471 cases of double voting discovered

The commission will now more soundly operate without hold-ups in courts,

lawsuits, and political battles, a move that Kobach says Democrats brought onto themselves.

“The investigations will continue now, but they won’t be able to stall if through litigation,” Kobach told Breitbart News.

“The investigation will continue. And it will continue more efficiently and more effectively,” Kobach said. “By throwing their food in the air, they just lost their seat at the table.”

***John Binder is a reporter for Breitbart News. Follow him on Twitter at [@JxhnBinder](https://twitter.com/JxhnBinder).***

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**EXHIBIT "O"**

# Trump Signs Order Disbanding Voter Fraud Commission

President Donald Trump has signed an executive order disbanding his voter fraud commission.



**AP**

By JILL COLVIN and JOHN HANNA, Associated Press

WASHINGTON (AP) — President Donald Trump signed an executive order Wednesday disbanding his controversial voter fraud commission amid infighting, lawsuits and state officials' refusal to cooperate.

Trump convened the commission to investigate the 2016 presidential election, after alleging repeatedly and without evidence that voting fraud cost him the popular vote. Trump won the electoral college.

The White House blamed the decision to end the panel on more than a dozen states that have refused to comply with the commission's demand for reams of personal voter data, including names, partial Social Security numbers, voting histories and party affiliations.

"Rather than engage in endless legal battles at taxpayer expense, today President Donald J. Trump signed an executive order to dissolve the Commission, and he has asked the Department of Homeland Security to review its initial findings and determine next courses of action," White House spokeswoman Sarah Huckabee Sanders said in a statement.

Critics saw the commission as part of a conservative campaign to make it harder for poor people and minority voters to access the ballot box, and to justify Trump's claims of voter fraud.

Trump has repeatedly alleged, without evidence, that 3 million to 5 million people voted illegally in the 2016 election, delivering the popular vote to his Democratic rival, Hillary Clinton. Clinton received 2.8 million more votes than Trump nationwide.

While there have been isolated cases of voter fraud in the U.S., past studies have found it to be exceptionally rare.

Critics also viewed the commission as part of an attempt to distract from the ongoing investigations into Russian election meddling and potential collusion between Moscow and Trump campaign aides. The intelligence community concluded that the Russian government mounted a campaign to help Trump win, hacking email accounts and spreading false stories.



Kansas Secretary of State Kris Kobach, the commission's vice chairman, characterized the decision to dissolve the bipartisan group as a "tactical change" and argued DHS can pursue an investigation of election fraud more quickly and efficiently.

"The Democrats, both on and off the commission, made very clear that they were not interested in determining the scope and extent of voter fraud and, indeed, they were trying to stop the commission in its tracks," Kobach said. "The Democrats lost their opportunity, lost their seat at the table, by stonewalling."

Kobach, a conservative Republican and vocal supporter of tough voter ID laws, alleged Democrats wanted no investigation. "Their motto is, 'Nothing to see here,'" he said.

One of the members of the commission, Maine Secretary of State Matthew Dunlap, sued the commission in federal court, alleging it had violated federal law by refusing to provide him documents available to other members, among other charges.

Dunlap on Wednesday said Kobach and his allies "were the ones that were stonewalling," saying they had "very definite ideas of what they wanted this commission to come up with."

Three Democratic senators — Michael Bennet of Colorado, Cory Booker of New Jersey and Amy Klobuchar of Minnesota — had also asked the U.S. Government Accountability Office to investigate the commission, which it agreed to do in October.

Kobach said he intends to work closely with DHS and the White House, and expects the bulk of the DHS investigation to be done by midsummer.

Dunlap questioned if the plan all along was for the commission to be disbanded. "They're going to abandon the public process and they're going to do it behind the scenes," he said. "Much more efficiently means no more public input."

More than a dozen states, as well as the District of Columbia, had rebuffed the commission's request for voter data, citing privacy concerns and a fear that complying would legitimize the idea that voter fraud is widespread.

While there have been isolated cases of people voting illegally, and many voter rolls contain outdated data, there is no evidence voter fraud is a widespread problem in the United States or has impacted election results.

A study by a Loyola Law School professor found that out of 1 billion votes cast in all American elections between 2000 and 2014, there were only 31 known cases of impersonation fraud.

During the commission's first meeting, Trump had questioned the motives of states that refused to comply with the commission's request, suggesting they had something to hide.

Voter advocacy groups and Democrats applauded Wednesday's decision.

"It is no surprise that a commission founded on a lie of widespread voter fraud proved to be a fraud itself," said California Secretary of State Alex Padilla, a Democrat, who had refused to comply with the commission's request for voter data. "No taxpayer dollars should have been wasted on Mr. Trump's voter suppression crusade."

Dale Ho, director of the American Civil Liberties Union Voting Rights Project, accused the commission of engaging in "a wild-goose chase for voter fraud, demonizing the very American voters whom we should all be helping to

participate — with the not-so-secret goal of making voting harder with unnecessary barriers.

"President Trump has tried and failed to spread his own fake news about voter fraud," Ho said.

—

Hanna reported from Topeka, Kansas. Associated Press writer Ken Thomas contributed to this report.

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

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AS MAY BE APPROPRIATE**

**EXHIBIT "P"**

# Trump disbands voter fraud commission

Kobach says Homeland Security immigration officials will take over probe

By [JOSH GERSTEIN](#) and [MATTHEW NUSSBAUM](#) 01/03/2018 06:52 PM EST



Prominent Democrats denounced the voter fraud commission as an attempt to give respectability to Donald Trump's assertion that 3 million to 5 million people voted illegally in 2016. | Evan Vucci/AP Photo

President Donald Trump is dumping a controversial commission that was charged with investigating his unsubstantiated claims of voter fraud during the 2016 election, the White House said Wednesday.

Trump asked the Department of Homeland Security to look into the issue instead.

“Despite substantial evidence of voter fraud, many states have refused to provide the Presidential Advisory Commission on Election Integrity with

basic information relevant to its inquiry,” a statement from the president said. “Rather than engage in endless legal battles at taxpayer expense, today I signed an executive order to dissolve the Commission.”

The commission was the focus of heated contention even before it was formally announced in May with Vice President Mike Pence as the chairman and Kansas Secretary of State Kris Kobach as vice chairman. Democrats urged Trump to abandon the idea altogether, but the president chose to press forward.

The White House struggled to find Democrats willing to give the effort a bipartisan patina after prominent party leaders denounced the effort as an attempt to give respectability to Trump’s assertion that 3 million to 5 million people voted illegally in 2016, a volume that the president suggested accounted for Hillary Clinton’s decisive win in the popular vote.

Democrats and liberal groups rejoiced over the commission's demise Wednesday, but in an interview with POLITICO Wednesday night, Kobach said that exuberance is misplaced.

"Anyone on the left needs to realize that by throwing the food in the air, they just lost a seat at the table," Kobach said.

The Kansas official said he expects officials from Immigration and Customs Enforcement and political appointees overseeing that agency to take over the commission's work and begin efforts to match state voter rolls to federal databases of noncitizens. He insisted he was not disappointed with the president's decision.

"It’s the right move," Kobach said. "It's a shifting in tactics from having the investigation be done by a federal commission to having it be done by a federal agency. The agency has a greater ability to move quickly to get the

investigation done."

Kobach acknowledged that ICE has little expertise in other types of potential voter fraud, such as multiple voting or voting by felons who've been disenfranchised, but he noted DHS has a broad mandate to address election security issues as critical U.S. infrastructure.

White House officials laid blame Wednesday less with Democrats than with the ex-colleague they said was responsible for its creation: former chief strategist Steve Bannon, who was slammed in a statement by Trump on Wednesday after accusing Donald Trump Jr. of treason.

Bannon insisted on the commission's creation, and pushed hard for it, one White House official said.

"This was his idea, and it was not a good one," the official said.

The commission was a "blundered Bannon rollout" and "should've never been in place," another person familiar with the effort said.

It was just hours after Trump said in a statement that Bannon had "lost his mind" that the White House announced that the commission would be no more.

"Steve Bannon was immensely focused on the voter fraud commission," a person familiar with the commission said. "It struck me as a strong signal to something he was very passionate about when he was in the White House."

The pro-Trump website Breitbart News, which was led by Bannon before he joined Trump's campaign and which he has since rejoined, has been vocal in pushing allegations of mass voter fraud. Kobach, who led the commission, had written paid columns for Breitbart.

Democrats expressed elation over the White House's decision to shutter the panel. Some even suggested it might set a precedent for turning back some of the Trump White House's initiatives.

"The commission never had anything to do with election integrity," Senate Minority Leader Chuck Schumer said in a statement. "It was instead a front to suppress the vote, perpetrate dangerous and baseless claims, and was ridiculed from one end of the country to the other. This shows that ill-founded proposals that just appeal to a narrow group of people won't work, and we hope they'll learn this lesson elsewhere."

Trump's statement on dissolving the commission alluded to a flood of litigation the panel was hit with early on, much of it triggered by a request that Kobach issued for all states to provide their voter rolls along with information on citizens' criminal convictions and even partial Social Security numbers. The White House stressed that it was seeking only publicly available records, but the broad call for data drew an angry reaction from some state officials and raised concerns about how the personal information would be stored and safeguarded.

"Our staff was spending more time dealing with lawsuits than doing the actual work of the commission," Kobach said. "The left didn't want the commission to find out anything."

The panel ultimately met in person only twice, in the White House complex in July and at a New Hampshire college in September. The latter meeting was overshadowed by a dispute between Kobach and another panel member who was hosting the session, New Hampshire Secretary of State Bill Gardner.

After Kobach suggested in a Breitbart column that illegal, out-of-state voters swung the close U.S. Senate race in New Hampshire to Democrat Maggie Hassan and away from Republican Sen. Kelly Ayotte, Gardner [insisted that](#)



Kobach had his facts wrong and should have done more research before leveling such a claim.

In November, the commission was sued by one of its own members — Maine Secretary of State Matt Dunlap — who alleged he was being frozen out of meeting planning and denied access to the panel's records.

Last month, a federal judge issued a preliminary injunction that found substance in Dunlap's claims and ordered that he be given information needed to participate fully in the group's deliberations.

The panel was also beset by other problems, including the arrest in October of one of its staff members, researcher Ronald Williams II, on child pornography charges. A few days later, one of the commission's members, former Democratic Arkansas state legislator David Dunn, 52, died unexpectedly after heart surgery.

Commission officials acknowledged that the setbacks and the litigation eventually ground the panel's work to a near-halt in recent months, making a target to release a report this spring unrealistic. However, as recently as last week, Kobach indicated publicly that he expected the group to meet again sometime this month.

Dunlap said he learned of the commission's dissolution Wednesday the same way reporters did: via a news release.

"There was no warning. They didn't give us a heads up that the president's considering shutting it down or anything like that," he told POLITICO.

However, the Maine official said he had a sense in recent weeks that the panel might have met for the last time.

"When we got that court ruling, I thought maybe they'll just throw the

commission in the of corner and take this on through some other tack," Dunlap said. He said he's concerned that moving the project to DHS could remove some the public and congressional oversight available through the commission.

Some Democrats criticized Dunlap for agreeing to join the panel last year, but he said he's still comfortable with the decision.

"It's been a strange ride, to say the least," he said, adding, "I don't have any regrets."

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AS MAY BE APPROPRIATE**

**EXHIBIT "Q"**

# Trump Disbands Commission on Voter Fraud

By MICHAEL TACKETT and [MICHAEL WINES](#) JAN. 3, 2018



President Trump in 2016 with Kris Kobach, the Kansas secretary of state who went on to become a member of the White House voter fraud commission. Carolyn Kaster/Associated Press

**WASHINGTON** — President Trump on Wednesday abruptly shut down a White House commission he had charged with investigating voter fraud, ending a brief quest for evidence of election theft that generated lawsuits, outrage and some scholarly testimony, but no real evidence that American elections are corrupt.

On Thursday, Mr. Trump called for requiring voter identification in [a pair of Twitter posts](#) because the voting system “is rigged.” “Push hard for Voter Identification!” [Mr. Trump wrote](#).

Mr. Trump did not acknowledge the commission’s inability to find evidence of fraud, but cast the closing as a result of continuing legal challenges.

“Despite substantial evidence of voter fraud, many states have refused to provide the Presidential Advisory Commission on Election Integrity with basic information relevant to its inquiry,” Mr. Trump said in a White House statement on Wednesday.

“Rather than engage in endless legal battles at taxpayer expense, today I signed an executive order to dissolve the commission, and have asked the Department of Homeland Security to review these issues and determine next courses of action,” he said.

In fact, no state has uncovered significant evidence to support the president’s claim, and election officials, including many Republicans, have strongly rejected it.

Mr. Trump established the commission after his repeated insistence, without credible evidence, that widespread voter fraud explained how Hillary Clinton received about 2.9 million more votes while he won the presidency in the Electoral College.

It is an issue that continues to resonate with his base voters, and Mr. Trump has mentioned it in recent rallies, but there have been few Republicans in Congress who have followed him.

The closing of the commission was a blow for Kris Kobach, the secretary of state of Kansas and the panel’s vice chairman. Mr. Kobach was one of a few

state officials to support Mr. Trump's contention of widespread fraud.

But Mr. Kobach insisted in an interview that the commission's work would not end but rather would be transferred to the Department of Homeland Security, one of the federal agencies charged with ensuring election integrity and one that he said critics would find more difficult to target.

As a White House commission, the voter-fraud panel was subject to public-disclosure requirements and other restrictions that Mr. Kobach said opponents of the inquiry had seized on in "a determined effort by the left" to hamstring its investigation. At last count, he said, the panel faced at least eight lawsuits accusing it of ignoring various federal requirements, including [one from a commission member](#), Matthew Dunlap, the Maine secretary of state, that claimed he had been illegally excluded from its deliberations.

"It got to the point where the staff of the commission was spending more time responding to litigation than doing an investigation," Mr. Kobach said. "Think of it as an option play; a decision was made in the middle of the day to pass the ball. The Department of Homeland Security is going to be able to move faster and more efficiently than a presidential advisory commission."

A spokesman for homeland security, Tyler Q. Houlton, said on Wednesday that "the department continues to focus our efforts on securing elections against those who seek to undermine the election system or its integrity."

"We will do this in support of state governments who are responsible for administering elections," he added.

But states may well not cooperate with the department any more than they did with the panel.

As a first step, Mr. Kobach, who said he would remain as an informal adviser

to homeland security, said the department would marshal its files on immigrants, legal and otherwise, so that they can be matched with lists of registered voters nationwide to detect foreign citizens who are illegally casting ballots in American elections. Both Mr. Trump and Mr. Kobach have insisted that voting by noncitizens is endemic — Mr. Trump falsely claimed that millions of illegal voters cost him a popular-vote victory in 2016 — but investigations, including ones by Mr. Kobach and the Justice Department under President George W. Bush, turned up scant evidence of fraud.

Many Democratic secretaries of state had said they believed the commission had a goal of laying the groundwork for restrictions that will mostly make it harder for traditional Democratic constituencies — minorities, young people and the poor — to cast ballots, which would benefit Republican candidates.

The commission had been seeking voluminous information on voters, including names, addresses, dates of birth, political affiliations and the last four digits of Social Security numbers, along with voting history. It also had requested records of felony convictions and whether voters are registered in other states.

But many states bar the release of even partial Social Security numbers or other personal information because that data can be used for identity theft.

The commission had faced a deadline days from now about how it would proceed. Vice President Mike Pence, who was tasked with running it, was never particularly excited about the idea, and several members of the commission had objected to working with Mr. Kobach, according to a White House official.

Another official said that the idea, which was supported by the president's former chief strategist, Stephen K. Bannon, was destined to be shoved off on an agency. And on a day when Mr. Bannon was already [under fire for](#)

disparaging comments he made in a new book about the presidency, aides put the blame for the existence of the commission on him and insisted he had supported it eagerly. As coverage of the book dominated headlines, the White House pushed out the news of the commission's closing.

Groups that opposed the commission said its real mission was voter suppression, in ways that would help Republicans, and they were quick to declare victory.

“The commission’s entire purpose was to legitimize voter suppression,” said Vanita Gupta, the president of the Leadership Conference on Civil and Human Rights and former head of the Justice Department’s Civil Rights Division.

“The abrupt abandonment of the commission makes clear that it had become a thoroughly discredited body that could not find evidence of mass voter fraud,” Ms. Gupta said. “The commission itself was unable to justify its existence as a result.”

In a telephone interview late Wednesday, Mr. Dunlap, a Democrat and a member of the panel who has consistently criticized the commission’s operations, said the White House’s decision to move the inquiry to the Department of Homeland Security was “utterly alarming.”

“Homeland security operates very much in the dark,” he said. “Any chance of having this investigation done in a public forum is now lost, and I think people should be, frankly, frightened by that.”

While the conduct of elections now rests with state officials, he said, “Secretary Kobach wants homeland security to make those decisions without public input. That’s the real threat from this decision.”



The Senate Democratic leader, Chuck Schumer of New York, said in a statement that “the commission never had anything to do with election integrity. It was instead a front to suppress the vote, perpetrate dangerous and baseless claims, and was ridiculed from one end of the country to the other.”

Richard L. Hasen, a law professor and election law scholar at the University of California, Irvine, was sharply critical of the commission in a blog post.

“The commission was poorly organized and conceived,” he wrote.

He added, “It made rookie, boneheaded mistakes about handling documents used by the commission, again in violation of federal law. It did not seem to have an endgame.”

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

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AS MAY BE APPROPRIATE**

**EXHIBIT "R"**

# **EXHIBIT J**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 2017-Cv-22568-COOKE/Goodman**

**ARTHENIA JOYNER; MIKE SUAREZ;  
JOSHUA A. SIMMONS; BRENDA SHAPIRO;  
LUIS MEURICE; THE AMERICAN CIVIL  
LIBERTIES UNION OF FLORIDA, INC.;  
FLORIDA IMMIGRANT COALITION, INC.,  
Plaintiffs,**

**versus**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY; MICHAEL  
PENCE, in his official capacity as Chair of the  
Presidential Advisory Commission on Election  
Integrity; KRIS KOBACH, in his official capacity  
as Vice Chair of the Presidential Advisory  
Commission on Election Integrity; EXECUTIVE  
OFFICE OF THE PRESIDENT OF THE  
UNITED STATES; EXECUTIVE OFFICE OF  
THE VICE PRESIDENT OF THE UNITED  
STATES; TIM HORNE, in his official capacity  
as Administrator of the General Services  
Administration; MICK MULVANEY, in his  
official capacity as Director, Office of  
Management and Budget; KEN DETZNER, in  
his official capacity as Florida Secretary of State,  
Defendants.**

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**DECLARATION OF MIKE SUAREZ FOR MOTION SEEKING  
TEMPORARY RESTRAINING ORDER**

I, Mike Suarez, am a resident and voter of Hillsborough County,

Florida. I execute this declaration as true under penalty of perjury:

1. I, Mike Suarez, am a resident and voter of Hillsborough County, Florida. I am a Councilman representing District 1 in the Tampa (Florida) City Council. I am the immediate past Chair of the Tampa City Council, having served in that position from 2016 through 2017. I am a third-generation Tampa resident. I am concerned about the protection of my personal voter and identification information and privacy rights for myself as a registered voter, and for my constituents throughout the City of Tampa.

2. I oppose the dissemination, collection, and potential distribution of my voter and identity information. I am concerned about the potential distribution of my voting history and personal voter information, and the potential for misuse of that information.

3. As a Florida resident and elector, I know about the Presidential Advisory Commission's request for my voter information. I object to the Secretary of State transmitting my personal and protected information.

4. If the duties of my public office permit, I intend to appear in my personal capacity at any meeting of the Presidential Advisory

Commission on Election Integrity to oppose the request for my voter information.

5. I am especially aware that Florida is a frequent locale for identity theft cases. I am concerned about being a victim of identity theft if my information is transmitted into a nation-wide publicly available database.

6. I am aware of the arguments being made in this case. I am confident they are sound and will result in favorable relief for me and the plaintiffs.

7. Should the information the Presidential Advisory Commission in question is seeking be transmitted, including my personal information, irreparable injury will occur to me. I am concerned about how the Presidential Advisory Commission plans to use my information.

8. The harm that will come to me far outweighs any burden on the Presidential Advisory Commission by waiting to ensure the secure transfer of any data, and to hear and address my objection and the objections of the rest of the public by way of the requirements under the Federal Advisory Committee Act and the Paper Reduction Act.

9. The entry of a temporary injunction would serve both my interest, and the public interest, by ensuring the protection of any personal information transmitted, as well as the following of all the rules set forth by Congress to ensure an open and transparent process.

10. I am over the age of eighteen years old and am of sound legal mind.

11. I affirm the statements herein of my own accord and I am not under the influence of any substance that might render my judgment questionable.

12. I execute this declaration under penalty of perjury.

Respectfully submitted,

*S/ Mike Suarez*

---

**MIKE SUAREZ**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 2017-Cv-22568-COOKE/Goodman**

**ARTHENIA JOYNER; MIKE SUAREZ;  
JOSHUA A. SIMMONS; BRENDA SHAPIRO;  
LUIS MEURICE; THE AMERICAN CIVIL  
LIBERTIES UNION OF FLORIDA, INC.;  
FLORIDA IMMIGRANT COALITION, INC.,  
Plaintiffs,**

**versus**

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PENCE, in his official capacity as Chair of the  
Presidential Advisory Commission on Election  
Integrity; KRIS KOBACH, in his official capacity  
as Vice Chair of the Presidential Advisory  
Commission on Election Integrity; EXECUTIVE  
OFFICE OF THE PRESIDENT OF THE  
UNITED STATES; EXECUTIVE OFFICE OF  
THE VICE PRESIDENT OF THE UNITED  
STATES; TIM HORNE, in his official capacity  
as Administrator of the General Services  
Administration; MICK MULVANEY, in his  
official capacity as Director, Office of  
Management and Budget; KEN DETZNER, in  
his official capacity as Florida Secretary of State,  
Defendants.**

---

**DECLARATION OF HOWARD SIMON AS EXECUTIVE  
DIRECTOR OF THE AMERICAN CIVIL LIBERTIES UNION  
OF FLORIDA, INC. SUPPORTING THE MOTION FOR A  
TEMPORARY RESTRAINING ORDER**



Plaintiff American Civil Liberties Union of Florida, Inc., through Howard Simon, Executive Director, is a Florida non-profit corporation headquartered in Florida and with membership within and outside the State of Florida. This declaration is true and signed under penalty of perjury:

1. The American Civil Liberties Union of Florida, Inc. (“ACLU of Florida” or “ACLU”) is a non-profit, §501(c)(3) membership organization. The ACLU is dedicated to the principles of liberty and equality embodied in the Constitution and our nation’s civil rights laws, including laws protecting access to the right to vote. Since 1965, the ACLU, through its Voting Rights Project, has litigated more than 300 voting rights cases and has a direct interest in ensuring that all eligible citizens are able to access the franchise and are not removed from voter rolls, and in empowering those targeted by vote suppression. The ACLU of Florida is a state affiliate of the national American Civil Liberties Union and is domiciled in the State of Florida, with its principal place of business in Miami-Dade County, Florida, within the Southern District of Florida. The ACLU of Florida has over 50,000 members and has litigated

numerous cases, either through direct representation or as amicus curiae, to protect the fundamental right to vote.

2. As Executive Director of the ACLU, I am aware of the Presidential Advisory Commission's request for Florida and other states' voter information. ACLU objects to the Secretary of State transmitting any personal and protected voter information, especially through an unsecured server.

3. If permitted, an ACLU representative intends to attend the publicly noticed meeting of the Presidential Advisory Commission on Election Integrity in order to oppose the request for voter information.

4. ACLU is aware of the fact that Florida is the epicenter for identity theft cases. The ACLU has grave concerns that personal information will not be protected, leaving the potential for voters to become identity theft victims within the State.

5. As a Plaintiff in this case, ACLU is aware of the arguments being made, and is confident in our likelihood of success on the merits of those claims.

6. Should the information the Presidential Advisory Commission in question is seeking be transmitted, including personal

and statutorily protected information, irreparable injury will occur to Florida and other voters. ACLU has concerns about how the Presidential Advisory Commission plans on using the information since they have not made public their intentions or to whom the information would be circulated.

7. The harm that will come to ACLU and Florida voters and voters elsewhere far outweighs any burden on the Presidential Advisory Commission by waiting to ensure the secure transfer of any data, and to hear and address the ACLU objections and the objections of the rest of the public by way of the requirements under the Federal Advisory Committee Act and the Paper Reduction Act.

8. The entry of a temporary injunction would serve both the ACLU's interest, and the public interest, by ensuring the protection of any personal information transmitted, as well as the following of all the rules set forth by Congress to ensure an open and transparent process.

9. I am over the age of eighteen years old and am of sound legal mind.

10. I affirm the statements herein of my own accord and I am not under the influence of any substance which would render my judgment questionable.

Respectfully submitted,



---

**HOWARD SIMON**

**Executive Director**

**American Civil Liberties**

**Union of Florida, Inc.**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 2017-Cv-22568-COOKE/Goodman**

**ARTHENIA JOYNER; MIKE SUAREZ;  
JOSHUA A. SIMMONS; BRENDA SHAPIRO;  
LUIS MEURICE; THE AMERICAN CIVIL  
LIBERTIES UNION OF FLORIDA, INC.;  
FLORIDA IMMIGRANT COALITION, INC.,  
Plaintiffs,**

**versus**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY; MICHAEL  
PENCE, in his official capacity as Chair of the  
Presidential Advisory Commission on Election  
Integrity; KRIS KOBACH, in his official capacity  
as Vice Chair of the Presidential Advisory  
Commission on Election Integrity; EXECUTIVE  
OFFICE OF THE PRESIDENT OF THE  
UNITED STATES; EXECUTIVE OFFICE OF  
THE VICE PRESIDENT OF THE UNITED  
STATES; TIM HORNE, in his official capacity  
as Administrator of the General Services  
Administration; MICK MULVANEY, in his  
official capacity as Director, Office of  
Management and Budget; KEN DETZNER, in  
his official capacity as Florida Secretary of State,  
Defendants.**

---

**DECLARATION OF FLORIDA IMMIGRATION COALITION,  
INC. SUPPORTING THE MOTION FOR A TEMPORARY  
RESTRAINING ORDER**

Plaintiff Florida Immigrant Coalition, Inc. is a Florida non-profit corporation headquartered in Florida and with membership within the State of Florida. This declaration is true and signed under penalty of perjury:

1. The Florida Immigrant Coalition, Inc. (“FLIC”) is a non-profit membership organization and coalition of more than 65 membership organizations and over 100 allies. FLIC was founded in 1998 and formally incorporated in 2004. More than an organization, “FLIC” is a strategic multi-racial, intergenerational social movement working for the fair treatment of all people, including immigrants. FLIC is domiciled in the State of Florida, with its principal place of business in Miami-Dade County, Florida, within the Southern District of Florida. Its members are residents of Florida.

2. I am authorized on behalf of FLIC to execute this declaration.

3. FLIC and its officers and personnel and members are aware of the Presidential Advisory Commission’s request for Florida and other states’ voter information. FLIC objects to the Secretary of State transmitting any personal and protected voter information, especially through an unsecured server.

4. If permitted, a FLIC representative intends to attend the publicly noticed meeting of the Presidential Advisory Commission on Election Integrity in order to oppose the request for voter information.

5. FLIC is aware of the fact that Florida is the epicenter for identity theft cases. FLIC has grave concerns that personal information will not be protected, leaving the potential for voters to become identity theft victims within the State.

6. As a Plaintiff in this case, FLIC is aware of the arguments being made, and is confident in our likelihood of success on the merits of those claims.

7. Should the information the Presidential Advisory Commission in question is seeking be transmitted, including personal and statutorily protected information, irreparable injury will occur to Florida and other voters. FLIC has concerns about how the Presidential Advisory Commission plans on using the information since they have not made public their intentions or to whom the information would be circulated.

8. The harm that will come to FLIC and Florida voters and voters elsewhere far outweighs any burden on the Presidential Advisory

Commission by waiting to ensure the secure transfer of any data, and to hear and address the FLIC objections and the objections of the rest of the public by way of the requirements under the Federal Advisory Committee Act and the Paper Reduction Act.

9. The entry of a temporary injunction would serve both FLIC's interest, and the public interest, by ensuring the protection of any personal information transmitted, as well as the following of all the rules set forth by Congress to ensure an open and transparent process.

10. I am over the age of eighteen years old and am of sound legal mind.

11. I affirm the statements herein of my own accord and I am not under the influence of any substance which would render my judgment questionable.

Respectfully submitted,

*S/ Maria Rodriguez*

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**MARIA RODRIGUEZ  
EXECUTIVE DIRECTOR  
FLORIDA IMMIGRANT  
COALITION**



**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.**

**vs.**

**PRESIDENTIAL ADVISORY COMMISSION  
ON ELECTION INTEGRITY, et al.**

**PLAINTIFFS' EMERGENCY MOTION FOR  
TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION, AND/OR OTHER  
EMERGENCY INJUNCTIVE RELIEF  
AS MAY BE APPROPRIATE**

**COMPOSITE  
EXHIBIT "S"**

1/5/2018 Donald J. Trump on Twitter: "In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted il..."

The screenshot shows a Twitter thread on a mobile device. At the top, the navigation bar includes Home, Moments, Notifications, Messages, and a search bar. The main tweet is from Donald J. Trump (@realDonaldTrump), posted at 12:30 PM on Nov 27, 2016. The text of the tweet reads: "In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally". It has 51,608 retweets and 157,134 likes. Below the tweet is a reply from Gregory Brothers (@gregorybrothers) asking to delete the tweet. Another reply from Lissette Angelique (@lissetthomas5) includes a meme of a man with the text "HE'S LOSING HIS MIND". A third reply from JennyQTa (@JennyQTa9) criticizes the tweet as a disgrace and includes a screenshot of the original tweet. The bottom of the thread shows another reply from JennyQTa with various hashtags and a small image of Hillary Clinton.

**Donald J. Trump** @realDonaldTrump  
12:30 PM - 27 Nov 2016  
51,608 Retweets 157,134 Likes

**Gregory Brothers** @gregorybrothers · 27 Nov 2016  
Replying to @realDonaldTrump  
pls delete this

**Lissette Angelique** @lissetthomas5 · 27 Nov 2016  
HE'S LOSING HIS MIND

**JennyQTa** @JennyQTa9 · 27 Nov 2016  
Replying to @realDonaldTrump  
.@realDonaldTrump Sounds so f\*\*king dumb by a president-elect! Such a disgrace 2 America!  
#notmypresident #recount16

**Donald J. Trump** @realDonaldTrump  
In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally

**JennyQTa** @JennyQTa9 · 27 Nov 2016  
.@realDonaldTrump  
#notmypresident #aDisgrace  
@HillaryClinton  
#ThePeoplesPresident  
#Recount2016 #recount16 #ElectoralCollege

1/5/2018 Donald J. Trump on Twitter: "I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illeg..."

The screenshot shows a Twitter thread. At the top is the navigation bar with Home, Moments, Notifications, Messages, and Search Twitter. The main tweet is from Donald J. Trump (@realDonaldTrump), posted at 4:10 AM on January 25, 2017. The text of the tweet reads: "I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and....". It has 25,722 retweets and 127,152 likes. Below the tweet is a reply from Florida Democrats (@FlaDems) dated January 25, 2017. The reply text is: "Replying to @realDonaldTrump we expect your investigation to begin with your Chief Strategist, who's registered in FL and NYC [nym.ag/2ktzfCJ](\"http://nym.ag/2ktzfCJ\")". This reply includes a video of Stephen Bannon. Below that is another reply from Florida Democrats (@FlaDems) dated January 25, 2017, with the text: "Will Trump begin his 'VOTER FRAUD' investigation within the White House? He should. [bit.ly/2k0IH17](\"http://bit.ly/2k0IH17\")". This reply includes a video of Stephen Bannon and Donald Trump. The final reply from Florida Democrats (@FlaDems) dated January 25, 2017, says: "Guess who else is registered to vote in two different states? Someone a lot closer to Trump than Stephen Bannon. [bit.ly/2ktNyXP](\"http://bit.ly/2ktNyXP\")".

1/5/2018 Donald J. Trump on Twitter: "even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting proced..."

The screenshot shows a Twitter interface with a tweet by Donald J. Trump (@realDonaldTrump) and a list of replies. The tweet text is: "even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!". The tweet has 18,593 retweets and 104,922 likes. The replies include:

- Linna @TickTalkPress** (26 Jan 2017): Replying to @realDonaldTrump. @TrueTheVote thanks to True the Vote to recount 137 million 2026 votes - Americans should have "1 person 1 vote" respect!
- True the Vote @TrueTheVote** (26 Jan 2017): Sidenote: we're not doing a recount. We're conducting an audit. We want to identify the problems and propose solutions.
- T Flaherty @chiefster16** (27 Jan 2017): Are you going to do an analysis of the effects of Cross-Check in the Southern and Rust Belt states?
- T Flaherty @chiefster16** (27 Jan 2017): @Greg\_Palast Hey Greg, maybe you can give this guy a call, compare notes, we need to get to the bottom of this.
- Made In America @Ready\_for\_us** (27 Jan 2017): Rust Belt, Southern States, fly over states need to be rep at Press conf @PressSec
- T Flaherty @chiefster16** (27 Jan 2017): First, EC fly over state votes are worth more than Coastal State votes.
- Tamie Eklund @tamie\_eklund** (27 Jan 2017): Replying to @realDonaldTrump. you whine that 3 mil voters didn't like you? Your just not popular. It's like weak kids following the school bully!
- Big O o o O @Ophelia\_808** (26 Jan 2017): Replying to @realDonaldTrump. OMG!! You won, stop already. I've never seen ANYONE win this poorly in my life.

1/5/2018 Donald J. Trump on Twitter: "Many mostly Democrat States refused to hand over data from the 2016 Election to the Commission On Voter Fraud. They fought h..."

Home Moments Notifications Messages Search Twitter Tweet

**Donald J. Trump** @realDonaldTrump  
3:02 AM - 4 Jan 2018  
28,247 Retweets 100,608 Likes

Many mostly Democrat States refused to hand over data from the 2016 Election to the Commission On Voter Fraud. They fought hard that the Commission not see their records or methods because they know that many people are voting illegally. System is rigged, must go to Voter I.D.

24K 28K 101K

Tweet your reply

**Joey Mannarino** @realjmannarino · Jan 4  
Replying to @realDonaldTrump  
They don't want to do the voter fraud commission because then Democrats have no chance. It's the way they win.  
149 99 720

**Joey Mannarino** @realjmannarino · Jan 4  
Democrat voter outreach is going to cemeteries and writing down names on voter rolls!  
96 72 449

**Joey Mannarino** @realjmannarino · Jan 4  
We need MANDATORY, 100% MANDATORY voter ID laws for EVERY SINGLE ELECTION! Every other country has it. We call it racist. How the hell is it racist?  
117 177 705

**Joey Mannarino** @realjmannarino · Jan 4  
There is such a racist undertone in claiming that minorities are too dumb to get an ID. Everyone I know has an ID. The Left seems to think they're too helpless to have IDs. That's because it's just a cover. Whenever the Left is against something they yell "RACIST!"  
79 88 402

**Megan** @writermegan · 20h  
To get my new ID, I took a day off work, drove a couple miles in blistering cold, waited in line, paid \$25. We take for granted how simple that sounds. It's not so simple for people lacking any combination of the things I had (car, income, vacation days...) that made it possible.  
58 14 255

**MAGA Deb F** @DebFerg9 · 19h  
Ohh PLEASE! Did you walk 10 miles to school. All uphill. In a snowstorm too? #SMH  
25 3 104

**Megan** @writermegan · 19h  
Uh I just said, it was easy for me to do those things. What, a tweet is too long for you to read?  
10 261

**MAGA Deb F** @DebFerg9 · 18h  
Anyway you look at it. Getting ID to be able to VOTE should still be the LAW! I like the finger print and social security numbers idea attached to it too! There

1/5/2018 Donald J. Trump on Twitter: "As Americans, you need identification, sometimes in a very strong and accurate form, for almost everything you do.....except when..."

Home Moments Notifications Messages Search Twitter Tweet

**Donald J. Trump** [@realDonaldTrump](#) [Follow](#)

As Americans, you need identification, sometimes in a very strong and accurate form, for almost everything you do.....except when it comes to the most important thing, VOTING for the people that run your country. Push hard for Voter Identification!

3:11 AM - 4 Jan 2018

36,228 Retweets 138,466 Likes

22K 36K 138K

Tweet your reply

**Ron D** [@ronalddk](#) · Jan 4  
Replying to [@realDonaldTrump](#)  
Now you can see how Clinton won the states she won -- No ID required

**States with voter ID laws**

- Photo ID required
- ID required, non-photo accepted
- ID requested but not required
- No document required
- Considering adopting voter ID law

Sources: National Conference of State Legislatures

BETO ALVAREZ UT

477 675 1.5K

**Newspeakisreal** [@Newspeakisreal](#) · Jan 4  
Except that map is a lie, I live in AL and you absolutely must show ID to vote.

131 46 1.6K

Tweet unavailable

**LMad0321** [@LMad0321](#) · Jan 4  
Replying to [@america\\_trust](#) [@Newspeakisreal](#) and 2 others  
THEY DIDN'T! It's amazing that trump and his followers call all MSM fake news and democrats are pushing lies, yet these are the kinds of things that you all tweet and talk about on Fox News!

44 16 592

Tweet unavailable

**Vice Admiral Holdo** [@NHRunningLady](#) · Jan 4  
Replying to [@america\\_trust](#) [@LMad0321](#) and 3 others  
Fox doesn't retract its lies

37 5 482

1 more reply

**Joey Mannarino** [@realjmannarino](#) · Jan 4  
Replying to [@realDonaldTrump](#)

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO. 17-22568-CIV-COOKE/GOODMAN**

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**PLAINTIFFS' EMERGENCY MOTION FOR  
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AS MAY BE APPROPRIATE**

**EXHIBIT "T"**



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

July 6, 2017

The Honorable Kris W. Kobach  
Secretary of State  
Memorial Hall, 1<sup>st</sup> Floor  
120 SW 10<sup>th</sup> Avenue  
Topeka, KS 66612-1594

Dear Secretary Kobach,

The right to vote is one of the most sacred rights available in the democratic process. Any efforts to dilute its importance cannot be taken lightly. As you know, people have died for the right to vote and we must ensure we preserve it. Of course, the responsibility for the accuracy and fairness of our election process in Florida lies on us, not with the federal government in Washington.

As Governor Scott often says, in Florida, our goal for each election is to have 100 percent participation of eligible voters with zero fraud. We take this mission extremely seriously and work each day to ensure that Floridians can participate in fair, honest elections. In fact, in 2016, we are proud that Florida had record turnout and a smooth, secure election which reflected the will of the people of Florida.

The Department of State constantly works with Florida's 67 independent Supervisors of Elections to increase access to voting for Floridians. This includes legislation in 2013 that gave Supervisors of Elections more flexibility in setting early voting hours and locations to fit their communities' needs and limiting the length of ballots in Florida to help prevent long lines at the polls.

On June 28, 2017, you requested certain voter roll information, much of which is publicly available to you under the Florida Public Records Law, Chapter 119 of Florida Statute. In fact, each year, our office already fulfills hundreds of public records requests for some of the same information that you have requested. We are glad to continue following Florida's Public Records Law by providing the requested information to you that is publicly available.

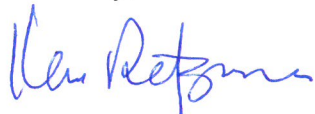


Page 2  
Secretary Kobach

Although most of the information you've requested is available to the public in Florida, we cannot fully comply with your entire request. Driver's license information and social security numbers are not, and cannot be provided under section 97.0585, Florida Statutes. We will also not release any information that is exempt or confidential under Florida law, including certain information regarding law enforcement officers, judges, prosecutors, and victims of stalking and domestic violence. Additionally, Florida's public record voter database does not capture information on felonies.

We are hopeful that the public information provided, in accordance with Florida law, will be useful to your efforts.

Sincerely,



Ken Detzner  
Florida Secretary of State

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

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AS MAY BE APPROPRIATE**

**EXHIBIT "U"**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELECTRONIC PRIVACY INFORMATION  
CENTER,

Plaintiff,

v.

PRESIDENTIAL ADVISORY  
COMMISSION ON ELECTION  
INTEGRITY, *et al.*,

Defendants.

Civil Action No. 1:17-cv-1320 (CKK)

**DECLARATION OF CHARLES CHRISTOPHER HERNDON**

I, Charles C. Herndon, declare as follows:

1. I am the Director of White House Information Technology (“WHIT”) and Deputy Assistant to the President. I am the senior officer responsible for the information resources and information systems provided to the President, Vice President and Executive Office of the President. I report to White House Deputy Chief of Staff for Operations and Assistant to the President, and through him to the Chief of Staff and the President. I am part of what is known as the White House Office. This declaration is based on my personal knowledge and upon information provided to me in my official capacity.

2. A number of components make up the Executive Office of the President, including the White House Office (also referred to as the Office of the President). Components of the White House Office include the President’s immediate staff, the White House Counsel’s Office and the Staff Secretary’s Office. The White House Office serves the President in the performance of the many detailed activities incident to his immediate office, and the various

Assistants and Deputy Assistants to the President aid the President in such matters as he may direct. My role is to ensure the effective use of information resources and systems to the President. I am also a member of the Executive Committee for Presidential Information Technology, as established in the March 19, 2015, Presidential Memorandum creating my position. See, <https://obamawhitehouse.archives.gov/the-press-office/2015/03/19/presidential-memorandum-establishing-director-white-house-information-te>. The Executive Committee is chaired by the Deputy Chief of Staff Operations.

3. I was asked by the Office of the Vice President to assist in creating a mechanism by which data could be securely loaded and stored within the White House computer systems. To do that I repurposed an existing system that regularly accepts personally identifiable information through a secure, encrypted computer application within the White House Information Technology system.

4. States that wish to provide information to the Presidential Advisory Commission on Election Integrity (“Commission”) can email the Commission to request an access link. Once a staff member verifies the identity of the requester and the email address, a one-time unique uniform resource locator (“URL”) link will be emailed to that state representative. Data can be uploaded via that one-time link to a server within the domain [electionintegrity.whitehouse.gov](http://electionintegrity.whitehouse.gov). Authorized members of the Commission will be given access to the file directory identified to house the uploaded information. Once the files have been uploaded, there is no further transfer of the data from that location. The technology is similar to a shared folder in Microsoft SharePoint.

5. The Commission will receive dedicated laptops, which can access the data provided by states through the White House network over an SSL (Secure Sockets Layer)

connection. The SSL connection ensures that all data passed between the web server and browsers remain private and secure. The laptops use Personal Identity Verification (PIV) and the data at rest is encrypted.

6. The Executive Committee for Information Technology will have no role in this data collection process. The U.S. Digital Service (which is within the Office of Management and Budget) will also have no role, nor will any federal agency. The only people who will assist are a limited number of my technical staff from the White House Office of Administration. They will have access to the data, but all access will be logged and recorded by our network monitoring tools.

7. I can confirm, based on information provided to me from the Department of Defense, that the data the state of Arkansas uploaded to the Army's SAFE site has been deleted without ever having been accessed by the Commission.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

\*\*\*

Executed this 16th day of July 2017.



Digitally signed by CHARLES HERNDON  
DN: c=US, o=U.S. Government, ou=Executive Office  
of the President, cn=CHARLES HERNDON,  
0.9.2342.19200300.100.1.1=11001003426249  
Date: 2017.07.17 06:36:16 -04'00'

Charles C. Herndon