

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

CASE NO. _____

**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.**

_____ /

**COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF,
WITH REQUEST FOR EXPEDITED TREATMENT**

I. PRELIMINARY STATEMENT

1. This action is brought on behalf of Florida voters and organizations involved and interested in the fair conduct of elections in Florida and elsewhere throughout the United States. This litigation challenges the legality of the actions of the Presidential Advisory Commission on Election Integrity and the legality of its directive requesting voter registration information of state-registered voters in Florida and throughout the United States.

2. This suit proceeds pursuant to the Administrative Procedure Act (“APA”) (5 U.S.C. §§ 551-706), the Federal Advisory Committee Act (“FACA”) (5 U.S.C. app. 2), the Paperwork Reduction Act (“PRA”) (44 U.S.C. § 3501), the Declaratory Judgment Act (28 U.S.C. § 2201, *et seq.*), and the United States Constitution, seeking injunctive and declaratory relief, and other appropriate relief to prevent the unauthorized collection of state voter information data and to prohibit the Florida Secretary of State and other similarly situated officials of other states from providing state voter data to the Presidential Advisory Commission on Election Integrity (the “Presidential Advisory Commission” or “Commission”) and any other person or entity acting

pursuant to the request or directives of the Presidential Advisory Commission.

3. At issue in this lawsuit is the request by the Presidential Advisory Commission to collect, aggregate, and potentially disseminate a massive volume of state-maintained voter information, including personal identification information and private data that citizens are required by law to furnish to state officials solely to pursue their First Amendment constitutional right to vote. The challenged requests made to state elections officials infringe voters' First Amendment rights. The requests also constitute an unjustified invasion of privacy not authorized under the Constitution and laws of the United States or the individual states. The actions of the Presidential Advisory Commission have occurred in the absence of a required Privacy Impact Assessment. Importantly, the Presidential Advisory Commission's request for voter information preceded any authorized meeting of the Commission.

II. JURISDICTION, STANDING, AND VENUE

4. This court has jurisdiction under its general federal question jurisdiction, 28 U.S.C. § 1331, and specific jurisdiction over claims arising under the Administrative Procedure Act, 5 U.S.C. §§ 702 & 704.

5. The Court has jurisdiction over claims for violations of the Paperwork Reduction Act. *See Livestock Mktg. Ass'n v. U.S. Dep't of Agriculture*, 132 F. Supp. 2d 817, 831 (D.S.D. 2001); *see also Alabama-Tombigbee Rivers Coal. v. Dep't of Interior*, 26 F. 3d 1103 (11th Cir. 1994) (holding that “[a]bsent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction” because it is inappropriate “to allow the government to use the product of a tainted procedure” in violation of federal statutes) (internal citation omitted)).

6. The Declaratory Judgment Act (28 U.S.C. § 2201) authorizes courts to issue declaratory judgments.

7. This court has personal jurisdiction over all defendants.

8. Plaintiffs have standing to commence this action under the Administrative Procedure Act (“APA”), which confers standing to any party adversely affected by government action. 5 U.S.C. § 702 (1988).

9. Plaintiffs also have standing pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2). *Miccosukee Tribe of Indians of Fla. v. S. Everglades Restoration Alliance*, 304 F.3d 1076, 1080–81 (11th Cir. 2002).

10. The Plaintiffs are authorized to seek compliance with the Separation of Powers. *Id.*

11. Plaintiffs have standing for a private cause of action for violation of the Paperwork Reduction Act of 1995, in that, “[t]he protection provided by this section may be raised in the form of a complete defense, bar, or otherwise at any time during the agency administrative process or judicial action applicable thereto.” (emphasis added). 44 U.S.C. § 3512(b); see also *Livestock Mktg. Ass’n*, 132 F. Supp. 2d at 831 (holding that there is a private right of action under the Paperwork Reduction Act because the court “[could] not imagine language that would be more expansive.”).

12. Plaintiffs’ privacy interests are also adversely affected by the federal government action that is the subject of this complaint.

13. Venue is proper in the Southern District of Florida under 5 U.S.C. § 703 and 28 U.S.C. § 1391 as a place where the challenged conduct is occurring with respect to Florida voters.

14. All conditions precedent to bringing this action have occurred, have been waived, or would be a useless act and are accordingly waived.

III. PARTIES

15. Plaintiff Senator Arthenia Joyner (retired), is a resident and voter of Hillsborough County, Florida, and a member in good standing of The Florida Bar. She sues in her individual capacity. Senator Joyner formerly served as a member of the Florida House of Representatives, representing the 59th House District from 2000 through 2006, and as a member of the Florida Senate representing the 19th Senate District from 2006 through 2016. As a member of the Florida Senate from 2014 through 2016, Senator Joyner served as the Florida Senate Minority Leader. Senator Joyner has long been a passionate advocate for civil rights and justice during the entirety of her political and legal careers, and within her private life. Senator Joyner is concerned about the disclosure of private information and how such disclosures may violate the law and the civil rights of all people. She opposes the dissemination, collection, and potential distribution of her voter and identity information.

16. Plaintiff Councilman Mike Suarez, is a resident and voter of Hillsborough County, Florida. He sues in his individual capacity. Councilman Suarez represents District 1 in the Tampa (Florida) City

Council and is the immediate past Chair of the Tampa City Council, having served in that position from 2016 through 2017. Councilman Suarez is a third-generation Tampa resident who is concerned about the protection of personal voter and identification information and privacy rights for himself as a registered voter, and for his constituents throughout the City of Tampa. He opposes the dissemination, collection, and potential distribution of his voter and identity information.

17. Plaintiff Joshua A. Simmons is a resident and voter in Broward County, Florida, in the Southern District of Florida. He sues in his individual capacity. He opposes the dissemination, collection, and potential distribution of his voter and identity information.

18. Plaintiff Brenda Shapiro is a resident and voter in Miami-Dade County, Florida, in the Southern District of Florida. She sues in her individual capacity. She is an active voter, a practicing attorney, and has been a leader in civic affairs in Miami, where she has served as Chair of both the City of Miami's Community Relations Board and the City of Miami's Civilian Investigative Panel. She is concerned about the circulation of her voting history and her personal information, and she is especially concerned about the misuse of that information. She

opposes the dissemination, collection, and potential distribution of her voter and identity information.

19. Plaintiff Luis Meurice is a resident and voter in Miami-Dade County, Florida, in the Southern District of Florida. He is a 38-year member of the International Longshoremen's Association, its Florida Legislative Director, and President of ILA Local 2062. He is also District Vice President of South Florida AFL-CIO. He is active in Movimiento Democracia, a non-profit organization advocating for freedom and democracy for all people. He sues in his individual capacity. He opposes the dissemination, collection, and potential distribution of his voter and identity information.

20. Plaintiff 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.

21. Plaintiff 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 and elsewhere.

22. Defendant Presidential Advisory Commission is an advisory commission of the United States government within the meaning of the Federal Advisory Committee Act (5 U.S.C. app. 2 § 10). It is a

subcomponent of the Executive Office of the President of the United States. The Office of Management and Budget and the General Services Administration, along with the Presidential Advisory Commission are agencies or the equivalent thereof within the meaning of 44 U.S.C. § 3502 and the APA, 5 U.S.C. § 701.

23. Defendant Michael Pence is the Vice President of the United States and the Chair of the Presidential Advisory Commission. He is sued in his official capacity as Chair of the Presidential Advisory Commission.

24. Defendant Kris Kobach is the Secretary of State of Kansas, and the Vice Chair of the Presidential Advisory Commission. Vice Chair Kobach has a lengthy history of attempting to suppress the right to vote within his home state of Kansas. For example, in *League of Women Voters of United States v. Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016), the U.S. Court of Appeals for the District of Columbia Circuit rejected Secretary Kobach's arguments that proof of citizenship should be required when registering to vote because there is "precious little record evidence" that failure to present citizenship leads to fraudulent registration by non-citizens. Similarly, in *Fish v. Kobach*, 840 F.3d 710

(10th Cir. 2016), the U.S. Court of Appeals for the Tenth Circuit upheld the district court's injunction against Secretary Kobach, requiring him to register voters whose voter registrations were rejected for failure to provide documentary proof of citizenship. The Tenth Circuit explained that Mr. Kobach's actions and the Kansas statutory scheme amounted to a "mass denial of a fundamental constitutional right" for more than 18,000 voters. Moreover, the Tenth Circuit explained that Secretary Kobach's "assertion that the 'number of aliens on the voter rolls is likely to be in the hundreds, if not thousands' is pure speculation." *Id.* at 755. He is sued in his official capacity as Vice Chair of the Presidential Advisory Commission.

25. Defendant Executive Office of the President of the United States ("EOP") is an agency within the meaning of 44 U.S.C. § 3502 and the APA, 5 U.S.C. § 701.

26. Defendant Office of the Vice President of the United States ("OVP") is a subcomponent of EOP and constitutes an agency within the meaning of 44 U.S.C. § 3502 and the APA, 5 U.S.C. § 701.

27. Defendant Tim Horne is the Administrator of the U.S. General Services Administration ("GSA"), an agency within the

meaning of 44 U.S.C. § 3502 and the APA, 5 U.S.C. § 701. The GSA is charged with providing the Presidential Advisory Commission “such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission” (Exhibit A). Exec. Order. No. 13,799, 82 Fed. Reg. 22,389, 22,390 (May 11, 2017). He is sued in his official capacity.

28. Defendant Mick Mulvaney is the Director of the Office of Management and Budget (“OMB”), an office within the Executive Office of the President of the United States. The OMB Director reports to the President, Vice President, and the White House Chief of Staff. The OMB is tasked with promulgating the Federal Regulations to effectuate the mandates of the Paperwork Reduction Act. He is sued in his official capacity.

29. Defendant Ken Detzner is the Florida Secretary of State, charged with the statutory responsibilities of maintaining and securing Florida voter information. He is sued in his official capacity.

IV. FACTS

The President and His Administration Propagate Baseless Accusations About Widespread Voter Fraud

30. President Trump has a long history of propagating baseless conspiracy theories about voter fraud, ostensibly in order to suppress the right to vote. As a presidential candidate and now as President, Mr. Trump repeatedly, and baselessly, spoke about widespread voter fraud across the country, including supposed votes cast by dead people, people voting multiple times, people voting in multiple states, and, supposed votes cast by “illegal immigrants.”¹

31. In August 2016, then-Candidate Trump told an audience that:

The only way they can beat me, in my opinion, and I mean this 100 percent, is if in certain sections of the state, they cheat, OK . . . So I hope you people can sort of not just vote . . . (but also) go around and look and watch other polling places and make sure that it’s 100 percent fine.

Sachelle Saunders, *Donald Trump wants to fight voter fraud with observers*, Orlando News 6 (August 17, 2017),

<http://www.clickorlando.com/news/politics/trumps-call-for-poll->

¹ Attached as Exhibit B is a compilation of public statements by or on behalf of the President promoting the existence of voter fraud in connection with the 2016 election, despite no legitimate supportive facts or evidence.

observers-could-cause-trouble. Similarly, on October 1, 2017, then-Candidate Trump told an audience to:

watch your polling booths because I hear too many stories about Pennsylvania, certain areas. . . . We can't lose an election because of, you know what I'm talking about.

Robert Farley, *Trump's Bogus Voter Fraud Claims*, FactCheck.org (October 19, 2016), <http://www.factcheck.org/2016/10/trumps-bogus-voter-fraud-claims/>. These are just two examples, of many, of Mr. Trump encouraging people to go to polling sites to intimidate voters.

32. As another example, on October 17, 2016, then-Candidate Trump stated:

They even want to try to rig the election at the polling booths. And believe me, there's a lot going on. Do you ever hear these people? They say there's nothing going on. People that have died 10 years ago are still voting. Illegal immigrants are voting. I mean, where are the street smarts of some of these politicians? ... So many cities are corrupt, and voter fraud is very, very common.

Tribune news services, *Trump wrongly insists voter fraud is 'very, very common,'* Chicago Tribune (Oct. 17, 2016), <http://www.chicagotribune.com/news/nationworld/politics/ct-donald-trump-voter-fraud-20161017-story.html>.

33. On November 27, 2016, shortly after the election, the President-Elect continued his baseless accusations about voter fraud, claiming without evidence that he actually won the national popular vote if “illegal” votes were deducted from the total. The President-Elect tweeted:

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.

Donald J. Trump (@realDonaldTrump), Twitter (Nov. 27, 2016, 3:30 p.m.), <https://twitter.com/realDonaldTrump/status/802972944532209664>. ABC News declared this statement “False,” because “Trump offered no proof to back up this claim, and ABC News, which monitored all 50 states for voting irregularities on election night, has found no evidence of widespread voter fraud.”

34. Soon after the inauguration, on January 25, 2017, President Trump tweeted:

I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are illegal and....

even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!

Donald J. Trump (@realDonaldTrump), Twitter (Jan. 25, 2017, 7:10 am), <https://twitter.com/realDonaldTrump/status/824227824903090176>;

Donald J. Trump (@realDonaldTrump), Twitter (Jan. 25, 2017, 7:13 am), <https://twitter.com/realDonaldTrump/status/824228768227217408>.

35. With these tweets, the President stated his intention to create what would later become the Presidential Advisory Commission.

The Presidential Advisory Commission Attempts to Collect State Voter Information

36. The Presidential Advisory Commission was established by Executive Order No. 13,799 on May 11, 2017 (the “Executive Order”). 82 Fed. Reg. 22,389 (Exhibit A). Its Charter is attached as Exhibit C.

37. The Executive Order instructs the Presidential Advisory Commission to “study the registration and voting processes used in Federal elections.” (Exhibit A). 82 Fed. Reg. at 22,389. The Executive Order does not contain any authority to collect personal voter data, to initiate investigations, or to seek the disclosure of state voter data.

38. On June 28, 2017, the Vice Chair of the Commission initiated a process to collect detailed voter information, including personal identifying information, from all 50 States and the District of Columbia. This request had never occurred before, notwithstanding the

existence of the U.S. Election Assistance Commission created by the Help America Vote Act of 2002. 52 U.S.C. §§ 20921-20930.²

39. Prior to all of the Presidential Advisory Commission's members being publicly named and sworn in, and before any duly noticed meetings, Vice Chair Kobach stated during a phone call with Presidential Advisory Commission members 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. . . ." (Exhibit D). Press Release, Office of the Vice President, Readout of the Vice President's Call with the Presidential Advisory Commission on Election Integrity (June 28, 2017).

40. According to the U.S. Census, state voter rolls include the names, addresses, and other personally identifiable information of as many as 157 million registered voters nationwide. U.S. Census Bureau, *Voting and Registration in the Election of November 2016* at tbl. 4a

² The U.S. Election Assistance Commission is empowered to conduct periodic studies of election administration including, among other things "[n]ationwide statistics and methods of identifying, deterring, and investigating voting fraud in elections for Federal office" and "[m]ethods of voter registration, maintaining secure and accurate lists of registered voters (including the establishment of a centralized, interactive, statewide voter registration list linked to relevant agencies and all polling sites), and ensuring that registered voters appear on the voter registration list at the appropriate polling site." 52 U.S.C. § 20981.

(May 2017), <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html>.

41. Florida law makes certain voter information confidential and exempt from disclosure under any circumstances. Social security numbers, driver's license numbers, and the source of voter registration application cannot be released under any circumstances. § 97.0585, Florida Statutes (2016). Additionally, other voter information is confidential under certain circumstances. For instance, victims of domestic violence and stalking who are participants in the Attorney General's Address Confidentiality Program are exempt from public disclosure of voter registration information. § 97.0585(3). Also, categories of high-risk professionals can be exempt from disclosure of personal information including address, photograph, and date of birth.

42. The Florida Department of State, Division of Elections, is required to redact all protected exempt information for any requests for production of voter information.

43. One of the Vice Chair's letters, dated June 28, 2017, was sent to Florida Secretary of State Ken Detzner. (Exhibit E).³

44. These letters include a request for 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." *Id.*

³ That same day of June 28, 2017, the U.S. Department of Justice sent a letter to every state covered by the National Voter Registration Act, 52 U.S.C. § 20501 ("NVRA") seeking "all statutes, regulations, written guidance, internal policies, or database user manuals that set out the procedures" each state has relating to various programs including, among other things, removing voters from voter registration rolls. The letter also discusses coordination between "state voter registration lists with state agency records on felony status and death." However, the DOJ letter does not appear to specifically request information about specific identifiable voters. A copy of the letter sent to Washington Secretary of State Kim Wyman is attached as Exhibit F and is believed to be representative of the letters to all states covered by the NVRA. Given the nearly identical timing and subject matter of the DOJ's letter and the Presidential Advisory Commission's letter, it appears that the Presidential Advisory Commission exists to obtain records that would be otherwise unavailable to the DOJ for the purpose of enacting policies and procedures to suppress the vote across the entire country.

45. The Vice Chair's letters also sought "[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." (Exhibit E).

46. According to the Presidential Advisory Commission, "any documents that are submitted to the full Commission w[ould] also be made available to the public." (Exhibit E).

47. According to the letters, the states' responses to the Presidential Advisory Commission are due by July 14, 2017. (Exhibit E).

48. The letter does not list a physical address for the Presidential Advisory Commission, leading some states, including Florida, to address the written response to the Vice Chair at his state government address in Topeka, Kansas. Withholding a physical address from the Commission's correspondence leads to records being produced at a location other than the federally identified address of the Presidential Advisory Commission.

49. The URL (<https://safe.amrdec.army.mil/safe/Welcome.aspx>) provided by the Presidential Advisory Commission for the transmission of voter registration data and information is a non-secure site, subjecting voters to having personal identifying information made available on the Internet and thus making them potential victims of identity theft. Visitors to this URL are informed that the “connection is not secure” and are warned about “your information . . . being stolen.” (Exhibit G).

Florida Leads the Nation in Fraud and Identity Theft, Making it Especially Imperative that Personal Voter Data be Secure

50. The procedures being employed by the Presidential Advisory Commission and the other federal Defendants leave the Plaintiffs and, in the case of the organizational Plaintiffs, their members, open to fraud and identity theft.

51. Florida leads the country in complaints for fraud and identity theft, and has for more than a decade. Maria LaMagna, *Residents of these states are most vulnerable to identity theft*, Market Watch (July 9, 2017), <http://www.marketwatch.com/story/residents-of-these-states-are-most-vulnerable-to-identity-theft-2017-07-07>; William E. Gibson & Donna Gehrke-White, *Florida leads nation in fraud*, *ID*

theft, South Florida Sun-Sentinel (Mar. 3, 2015), <http://www.sun-sentinel.com/news/florida/fl-florida-leading-fraud-id-theft-20150303-story.html>. Additionally, among metropolitan areas across the United States, South Florida produces the most cases of fraud and identity theft. *Id.*

52. The federal Defendants' actions will serve to further compound this problem if the states transmit the requested voter data to the Presidential Advisory Commission.

53. Florida officials stated, in response to media inquiries about possible data breaches during the 2016 election, that "Florida's online elections databases and voting systems remained secure in 2016," and Florida has "secured its databases and put in firewalls to protect information, and the state has 'no indication that any unauthorized access occurred.'" Jeff Pegues, *Election databases in several states were at risk during 2016 presidential campaign*, CBS News (June 13, 2017), <http://www.cbsnews.com/news/election-databases-in-several-states-were-at-risk-during-2016-presidential-campaign/>.

54. Florida is also in the process of implementing a new online voter registration platform. There has been considerable legislative

debate about the platform's implementation, specifically to address security concerns to protect the public. Amy Sherman, *Is online voter registration more secure? Florida state senator says yes*, Politifact (Jan. 23, 2015), <http://www.politifact.com/florida/statements/2015/jan/23/jeff-clemens/online-voter-registration-more-secure-florida-stat/>.

55. Florida's efforts to secure voter registration data and, therefore, its voters (including the Plaintiffs), from among other things, identity theft, will be undermined if personalized voter data is amassed and centralized into a non-secure federal database, as requested by the Presidential Advisory Commission.

Opposition by States to Presidential Advisory Commission's Demand for Voter Identifying Information

56. At the present time, numerous state elections officials have publicly announced their intention to oppose the demand for personal voter data. Philip Bump & Christopher Ingraham, *Trump Says States Are "Trying to Hide Things" from His Voter Fraud Commission. Here's What They Actually Say*, Wash. Post (July 1, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/07/01/trump-says-states-are-trying-tohide-things-from-his-voter-fraud-commission-heres-what-they-actually-say/>.

57. California Secretary of State Alex Padilla announced his state would “not provide sensitive voter information to a committee that has already inaccurately passed judgment that millions of Californians voted illegally. California’s participation would only serve to legitimize the false and already debunked claims of massive voter fraud” Press Release, *Secretary of State Alex Padilla Responds to Presidential Election Commission Request for Personal Data of California Voters* (June 29, 2017), <http://www.sos.ca.gov/administration/news-releases-and-advisories/2017-news-releases-and-advisories/secretary-state-alex-padilla-responds-presidential-election-commission-request-personal-data-california-voters/>.

58. Kentucky Secretary of State Alison Lundergan Grimes stated that “Kentucky w[ould] not aid a commission that is at best a waste of taxpayer money and at worst an attempt to legitimize voter suppression efforts across the country.” Bradford Queen, *Secretary Grimes Statement on Presidential Election Commission’s Request for Voters’ Personal Information*, Kentucky (last accessed July 3, 2017) <http://kentucky.gov/Pages/Activity-stream.aspx?n=SOS&prld=129>.

59. Virginia Governor Terry McAuliffe had “no intention of honoring [the] request.” Terry McAuliffe, *Governor McAuliffe Statement on Request from Trump Elections Commission* (June 29, 2017), <https://governor.virginia.gov/newsroom/newsarticle?articleid=20595>.

60. Mississippi Secretary of State Delbert Hosemann said, of the Vice Chair’s letter: “My reply would be: They can go jump in the Gulf of Mexico, and Mississippi is a great state to launch from. Mississippi residents should celebrate Independence Day and our state’s right to protect the privacy of our citizens by conducting our own electoral processes.” Tal Kopan, *Pence-Kobach voting commission alarms states with info request*, CNN (July 1, 2017), <http://www.cnn.com/2017/06/30/politics/kris-kobach-voter-commission-rolls/index.html>.

61. Despite several requests directed to the Florida Secretary of State to determine the State of Florida’s position regarding the Presidential Advisory Commission request, Florida’s Secretary of State only on the evening of July 6, 2017, announced that Florida will comply with the request by producing only publicly available information. Associated Press, *Florida to hand over some voting information to*

commission investigating voter fraud, Local 10 South Florida (July 6, 2017), <https://www.local10.com/news/politics/florida-to-hand-over-some-voting-information-to-commission-investigating-voter-fraud>. As of the time of this filing, Plaintiffs have no reason to believe the requested information has yet been provided to the Presidential Advisory Commission by the State of Florida. Nor is it clear exactly what voter information the State of Florida intends to transmit to the Commission. The Florida Secretary of State's letter confirming Florida's intention to produce voter information is attached as Exhibit H.

62. Public opposition to the Presidential Advisory Commission's request is mounting. Voting technology professionals wrote state election officials to warn that "[t]here is no indication how the information will be used, who will have access to it, or what safeguards will be established." Letter from EPIC to Nat'l Ass'n of State Sec'ys (July 3, 2017), <https://epic.org/privacy/voting/pacei/Voter-Privacy-letter-to-NASS-07032017.pdf>.

63. After public opposition to the Presidential Advisory Commission's request began to mount, the Vice Chair wrote an article for Breitbart News, in which he conceded that "information like the last

four numbers of a voter's social security number" is "private," but that "[t]he Commission didn't request that information. Thus, there is no threat that the Commission's work might compromise anyone's privacy." Kris W. Kobach, *Kobach: Why States Need to Assist the Presidential Commission on Election Integrity*, Breitbart News (July 3, 2017), <http://www.breitbart.com/big-government/2017/07/03/kobach-why-states-need-to-assist-the-presidential-commission-on-election-integrity/>. (Exhibit I). To the contrary, the Vice Chair's June 28, 2017 letter to the 50 States and the District of Columbia specifically requests, among other things, the "last four digits of social security number[s]." (Exhibit E).

64. The President also responded to the news that numerous states were objecting to the production of voter data to the Presidential Advisory Commission, tweeting:

Numerous states are refusing to give information to the very distinguished VOTER FRAUD PANEL. What are they trying to hide?

Donald J. Trump (@realDonaldTrump), Twitter (July 1, 2017, 6:07am), <https://twitter.com/realDonaldTrump/status/881137079958241280>.

Absence of Privacy Impact Assessment

65. Under the E-Government Act of 2002 (18 Pub. L. 107-347, 116 Stat. 2899 (codified as amended at 44 U.S.C. § 3501 note)), every agency “initiating a new collection of information that (I) will be collected, maintained, or disseminated using information technology; and (II) includes any information in an identifiable form permitting the physical or online contacting of a specific individual” is required to complete a Privacy Impact Assessment (“PIA”) before initiating such collection. 44 U.S.C. § 3501 note (“Privacy Impact Assessments”).

66. The agency must “(i) conduct a privacy impact assessment; (ii) ensure the review of the privacy impact assessment by the Chief Information Officer, or equivalent official, as determined by the head of the agency; and (iii) if practicable, after completion of the review under clause (ii), make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means.” *Id.*

67. The Presidential Advisory Commission is an agency subject to the E-Government Act because it is an “establishment in the

executive branch of the Government,” a category that “includ[es] the Executive Office of the President.” 44 U.S.C. § 3502(1).

68. A Privacy Impact Assessment for a “new collection of information” must be “commensurate with the size of the information system being assessed, the sensitivity of information that is in an identifiable form in that system, and the risk of harm from unauthorized release of that information.” § 3501 note (“Privacy Impact Assessments”). The PIA must specifically address “(I) what information is to be collected; (II) why the information is being collected; (III) the intended use of the agency of the information; (IV) with whom the information will be shared; (V) what notice or opportunities for consent would be provided to individuals regarding what information is collected and how that information is shared; [and] (VI) how the information will be secured” *Id.*

69. Under FACA, “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by [an] 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).

70. The Commission has not conducted a Privacy Impact Assessment for its collection of state voter data.

71. The Commission has not ensured review of a PIA by any Chief Information Officer or equivalent official.

72. The Commission has not published a PIA or made such an assessment available for public inspection.

73. The U.S. Congress has made no finding of a problem that would warrant creation of a nationwide voter database. There has been no congressional finding of a systemic and nationwide problem with voter registration files and voter history, including evidence of voter fraud, to justify the collection of state voter history and voter registration information by the federal government.

COUNT I

Violations of the Federal Advisory Committee Act, 5 U.S.C. App. 2, *et seq.*

Against Presidential Advisory Commission, Pence, Kobach, Executive Office of the President, Executive Office of the Vice President, Horne, and Mulvaney

74. Plaintiffs restate and incorporate paragraphs 1-73.

75. The Executive Order specifically contemplates that the Presidential Advisory Commission is governed by the Federal Advisory Committee Act, 5 U.S.C. App. 2, *et seq.* (“FACA”). *See* Executive Order 82 Fed. Reg. 22,389 at § 7(c) (Exhibit A). The Presidential Advisory Commission’s Charter also states that the Commission “is established in accordance with . . . the Federal Advisory Committee Act[.]” (Exhibit C at ¶ 2). The first notice of any meeting of the Presidential Advisory Commission published in the Federal Register, which was published on July 5, 2017, also states that the Commission was “established in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. App. . . .” 82 Fed. Reg. 31,063 (Exhibit J) (the “First Meeting Notice”).

76. However, Defendant Presidential Advisory Commission and the other federal Defendants have failed to comply with numerous of the FACA’s clear requirements. Among other things, these Defendants

(a) failed to properly notice and conduct meetings, (b) failed to provide opportunities for public participation and input, (c) failed to make its membership fully known, (d) failed to make documents available to the public, and (e) conducted unlawful business not authorized by the Executive Order or any statute prior to all of the Commission's members being appointed and sworn in and without input or participation from the public or even most of the Commission's members.

77. “Because FACA’s dictates emphasize the importance of openness and debate, the timing of such observation and comment is crucial to compliance with the statute. Public observation and comment must be contemporaneous to the advisory committee process itself. . . . If public commentary is limited to retrospective scrutiny, the Act is rendered meaningless.” *See Alabama-Tombigbee Rivers Coal. v. Dep’t of Interior*, 26 F.3d 1103, 1106 (11th Cir. 1994).

78. 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.” *Id.* at 1107. It is the responsibility of the courts to see that the FACA is followed, even where

there are only “minor transgressions” of the FACA and where “the subject matter is serious” and “the objective is worthy.” *Id.* at n.9. “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.*

79. “[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.*

80. *First*, the Presidential Advisory Commission and the other federal Defendants, including the Vice President and the Vice Chair on behalf of the Commission, began conducting official business prior to ever holding a meeting for which a notice was published in the Federal Register, prior to the appointment and swearing in of all of its members, and prior to any public participation or input being permitted.

81. The first meeting of the Commission for which a notice was published in the Federal Register is presently scheduled to take place on July 19, 2017. At that meeting, the Commission’s members will be sworn in.

82. Yet, on June 28, 2017, the Vice Chair issued letters to the chief elections officials of all 50 States and the District of Columbia seeking personal information about every registered voter in the country, the effect of which would be to amass and centralize a federal voter database not authorized by the Executive Order or any statute, thereby indicating one or more earlier meetings of the Commission have taken place without any notice published in the Federal Register.

83. According to the Press Release, Office of the Vice President, Readout of the Vice President's Call with the Presidential Advisory Commission on Election Integrity (June 28, 2017), attached as Exhibit D, additional telephonic meetings, for which there was no notice published in the Federal Register, were unlawfully held. During the conference call with the Commission's members, the Vice Chair told the other members about the letters he sent to the 50 States and the District of Columbia on behalf of the Commission requesting voter data.

84. Thus, the Vice President and the Vice Chair acted unilaterally on behalf of the Presidential Advisory Commission, without the consent or participation of the public or even the majority of the members of the Commission, in sending the letters seeking voter

registration and personal information about every registered voter in the country, in violation of the FACA.

85. In fact, the Vice Chair's June 28, 2017 letter to each of the 50 States and the District of Columbia, which is printed on Presidential Advisory Commission letterhead and which bears the Seal of the President of the United States, requests that each jurisdiction receiving the letter respond by July 14, 2017, which is prior even to the first meeting of the Commission for which notice was published in the Federal Register, which is scheduled for July 19, 2017.

86. *Second*, the Presidential Advisory Commission and the other federal Defendants have failed to name all of its members before it began conducting business, in violation of the FACA.

87. Pursuant to 5 U.S.C. App. 2 § 2(b)(5), "the Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees."

88. Yet, as of July 9, 2017, various news reports have indicated that 11 members of the Commission have been appointed, including the Vice President as Chair, and including the Vice Chair. News reports also indicate that one of the members has since resigned from the

Commission, leaving the Commission with 10 members as of this date. Pursuant to the Executive Order, the Commission will have “no more than 15 additional members” besides the Vice President, for a maximum possible total of 16 members. To date, it is unclear whether additional members have been or will be appointed to the Commission, bringing the total above 10. To date, the Commission’s members’ swearing-in ceremony has not yet taken place because it is noticed for July 19, 2017, even though the Commission has already begun conducting business in violation of the FACA.

89. *Third*, the Presidential Advisory Commission and the other federal Defendants have failed to comply with the FACA’s requirements regarding advance notice of meetings.

90. Pursuant to 41 C.F.R. § 101-6.1015(b), a regulation implementing the FACA:

(b) *Committee meetings*. (1) The agency or an independent Presidential advisory committee shall publish at least 15 calendar days prior to an advisory committee meeting a notice in the FEDERAL REGISTER, which includes:

- (i) The exact name of the advisory committee as chartered;
- (ii) The time, date, place, and purpose of the meeting;
- (iii) A summary of the agenda; and
- (iv) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing

the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552(b)) as the basis for closure.

(2) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the FEDERAL REGISTER.

91. The Presidential Advisory Commission and its affiliated federal Defendants have violated 41 C.F.R. § 101-6.1015(b) in multiple regards, by holding meetings that were not noticed in the Federal Register whatsoever and taking action based upon those un-noticed meetings, including:

a. Holding one or more meetings consisting solely of the Vice Chair and/or the Vice President (and possibly other members of the Trump administration, but not including the majority of the members of the Presidential Advisory Commission) that were not noticed in the Federal Register, which led to the Vice Chair sending out letters seeking voter information from all 50 States and the District of Columbia on June 28, 2017, all without the participation or input of the public or even the majority of the Commission's members; and

b. Holding one or more telephonic meetings that were not noticed in the Federal Register and that did not allow for public participation or input.

92. The meetings of the Commission referenced in the preceding paragraph violate 41 C.F.R. § 101-6.1015(b) for failing to provide any notice in the Federal Register whatsoever.

93. The Presidential Advisory Commission and its affiliated federal Defendants have also violated 41 C.F.R. § 101-6.1015(b) with regard to the first meeting for which a notice was published in the Federal Register, because the notice is legally deficient.

94. The first notice of any meeting of any kind of the Presidential Advisory Commission was published in the Federal Register on July 5, 2017, giving notice of an open meeting to take place on July 19, 2017. 82 Fed. Reg. 31,063 (Exhibit J) (the “First Meeting Notice”). Accordingly, even this First Meeting Notice violates 41 C.F.R. § 101-6.1015(b) in that it provides less than 15 days notice of the meeting and provides no reasons or exceptional circumstances for doing so, in violation of the FACA.

95. *Fourth*, the Presidential Advisory Commission and the other federal Defendants have failed to comply with the FACA's requirement that members of the public be permitted to attend the Commission's open meetings in person.

96. Pursuant to 41 C.F.R. § 101-6.1021(b), a regulation implementing the FACA:

The agency head, or the chairperson of an independent Presidential advisory committee, shall ensure that— . . . (b) The meeting room size is sufficient to accommodate advisory committee members, committee or agency staff, and interested members of the public[.]

97. The Presidential Advisory Commission and its affiliated federal Defendants have violated 41 C.F.R. § 101-6.1021(b) with regard to its earlier un-noticed meetings in multiple regards, including by:

a. Holding one or more meetings of the Commission that were not noticed in the Federal Register, in which the meeting room was not sufficient to accommodate interested members of the public (and in which the majority of the Commission's members were not even in attendance); and

b. Holding one or more telephonic meetings of the Commission that were not noticed in the Federal Register, in

which the meeting room was necessarily not sufficient to accommodate interested members of the public because the meetings took place by telephone, and thus there was no meeting room.

98. The Presidential Advisory Commission and its affiliated federal Defendants have also violated 41 C.F.R. § 101-6.1021(b) with regard to the first meeting for which a notice was published in the Federal Register, because the notice is legally deficient.

99. The First Meeting Notice states that the meeting “will be open to the public through livestreaming on <https://www.whitehouse.gov/live>.” This indicates that interested members of the public will not be permitted to attend and observe the meeting in person, in violation of 41 C.F.R. § 101-6.1021(b).

100. *Fifth*, the Presidential Advisory Commission and the other federal Defendants, including the Vice President, have failed to comply with the FACA’s requirements to provide reasonable public participation in the Commission’s activities.

101. Pursuant to 41 C.F.R. § 101-6.1011(b), a regulation implementing the FACA, “[t]he chairperson of an independent

Presidential advisory committee shall comply with the Act and this subpart and shall: . . . (b) [f]ulfill the responsibilities of an agency head as specified in paragraphs (d), (h) and (j) of §101–6.1009” 41 C.F.R. § 101-6.1009(h), referenced therein, provides that:

The head of each agency that uses one or more advisory committees shall ensure: . . . (h) The opportunity for reasonable public participation in advisory committee activities[.]

102. Thus, the Presidential Advisory Commission’s refusal to allow in-person attendance at its meetings, along with the Commission having taken action by, at a minimum, sending letters to all 50 States and the District of Columbia seeking voter data to amass and centralize a federal voter database, without any public participation or input, violates the Vice President’s obligations as the Chair of the Commission under the FACA to provide for reasonable public participation in the Commission’s activities.

103. The Vice President’s and Vice Chair’s unilateral actions on behalf of the Presidential Advisory Commission, without even the input of the majority of the Commission’s members, in seeking to collect voter data from all 50 States and the District of Columbia to amass and centralize a federal voter database without first (a) making known the

final makeup of the Commission's members, (b) holding any meetings for which notice(s) were published in the Federal Register, (c) swearing in the Commission's members, or (d) providing any opportunity for public comment, participation, or input, necessarily violates the FACA because "[p]ublic observation and comment must be contemporaneous to the advisory committee process itself." *See Alabama-Tombigbee Rivers Coal.*, 26 F.3d at 1106.

104. *Sixth*, the Presidential Advisory Commission and the other federal Defendants have failed to make available for public inspection a privacy impact assessment for the collection of voter data.

105. *Seventh*, the Defendants have failed to comply with 5 U.S.C. app. 2 § 10(b), which provides that "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."

106. As just one example, the Vice Chair's June 28, 2017 letter to each of the 50 States and the District of Columbia, which is printed on Presidential Advisory Commission letterhead and which bears the Seal of the President of the United States, does not contain any physical address for the Commission. As a result, certain documents are being sent to the Vice Chair at his state government address in Topeka, Kansas, rather than at "a single location in the offices of the advisory committee" in Washington, D.C., as in the case of Florida Secretary of State Ken Detzner's July 6, 2016 response to the Vice Chair attached hereto as Exhibit H. It is unclear whether the Vice Chair and the other Commission members have transmitted, and whether they will transmit, all records received by them individually or on behalf of the Commission to the Commission's office for public record keeping purposes. Unless the Defendants are enjoined to comply with all laws, including those of the FACA pertaining to access to documents, Plaintiffs and the public at large will necessarily lack confidence that the Commission is operating with the requisite transparency and in the sunshine.

107. Defendants may have committed additional violations of the FACA not presently known to the Plaintiffs, especially in light of the Defendants' various violations of the FACA that have kept the public in the dark about the Presidential Advisory Commission's conduct.

108. Plaintiffs are, individually and in their representative capacities, adversely affected and aggrieved by the Defendants' actions and inaction.

109. Unless the Court declares the actions of the Presidential Advisory Commission, the Vice President, the Vice Chair, and the other federal Defendants to be illegal and enters an order or orders granting injunctive relief to require the Defendants to follow all legal requirements, Plaintiffs, individually and in their representative capacities, will be entered, without their prior knowledge or consent, into an unauthorized national database—the use of which has not been explained—controlled by the whims of the Commission's directors, that is not authorized by any statute or even the Executive Order, and that is the product of numerous violations of the FACA.

COUNT II

Exceeding the Authority of the Executive Order

Against Presidential Advisory Commission, Pence, Kobach, Executive Office of the President, Executive Office of the Vice President, Horne, and Mulvaney

110. Plaintiffs restate and incorporate paragraphs 1-73.

111. By Executive Order, the purported mission of the Presidential Advisory Commission is to “study the registration and voting processes used in Federal Elections.” The Presidential Advisory Commission is then to submit a report identifying laws and actions that “enhance” or “undermine” the American people’s confidence in voting systems used for federal elections. It is also supposed to identify and report vulnerabilities in voting systems and practices used for federal elections.

112. The Executive Order does not empower the Presidential Advisory Commission to amass and centralize a federal database of voters and then publicize it.

113. Through its letters to the 50 States and the District of Columbia, the Presidential Advisory Commission has breached and exceeded its authority under the Executive Order by, *inter alia*,

(a) Seeking to amass and centralize a federal database of voters with personal and of voters that includes party affiliation, voting history, social security number, military history, criminal history, and address.

(b) Seeking to place this voter data on an unsecure or otherwise suspect server.

(c) Seeking to make the data that it obtains public.

(d) Violating Section 5 of the Executive Order. That is, by creating a federal database, the Commission is duplicating the work of existing government entities, namely the States and the District of Columbia, as well as the *independent commissions* such as the Federal Election Commission and the U.S. Elections Assistance Commission.

114. Plaintiffs are, individually and in their representative capacities, adversely affected and aggrieved by Defendants' actions and inaction.

COUNT III

Breaches and Violations of Constitutional Separation of Powers and Article II

Against Presidential Advisory Commission, Pence, Kobach, Executive Office of the President, Executive Office of the Vice President, Horne, and Mulvaney

115. Plaintiffs restate and incorporate paragraphs 1-73.

116. Pursuant to the U.S. Constitution, the powers of the three branches are separated.

117. The Framers of the Constitution placed Congress's power in Article I. Executive power follows in Article II.

118. Under the U.S. Constitution, Congress is given the power to enforce and protect, through legislation, the right to vote and the election system. The U.S. Constitution gives no power to the Executive Branch concerning the election system or its integrity. Any power the Executive does have to enforce the right to vote or to protect the electoral process is its general enforcement power and its obligation to execute and enforce Congressional acts and laws – *faithfully*.

119. Under Article I, Congress is given the exclusive federal power to make laws and regulate elections: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be

prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations” Art. I, § 4, U.S. Const.

120. Under the 14th, 15th, 19th, 24th, and 26th Amendments to the U.S. Constitution, the right to vote was secured for African-Americans, women, 18-year olds, and poll taxes were eliminated. In each Amendment, Congress was given the power to enforce these rights with legislation. Each of these Amendments conclude with nearly identical language: “The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.” The Executive is not mentioned.

121. Using its Article I Powers, Congress has created the exclusive legal regime over the enforcement of elections and the right to vote, to safeguard the integrity of the voting systems, and to otherwise regulate the integrity of elections. Such legislation includes, *inter alia*: The Voting Rights Act of 1965; The National Voter Registration Act of 1993 (Motor Voter Law); and the Help America Vote Act of 2002. These laws are aimed at protecting election integrity and the right to vote. The U.S. Court of Appeals for the Eleventh Circuit explained that the

Help America Vote Act “represents Congress’s attempt to strike a balance between promoting voter access to ballots on the one hand and preventing voter impersonation fraud on the other.” *Fla. State Conference of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1168 (11th Cir. 2008).

122. The Executive Branch has limited, enumerated powers under Article II of the U.S. Constitution.

123. Nowhere in the Constitution or through Acts of Congress is the Executive granted or delegated any power to amass and centralize a national database of voters that includes party affiliation, voting history, social security numbers, military history, criminal history, address, or any other of the personal data the Presidential Advisory Commission requested.

124. To the extent the Executive has implied or express powers through the enforcement and execution of Congressional Acts – including its limited and delegated authority to establish *sunshine, transparent, out-in-the-open* commissions under FACA – nowhere does Congress or the Constitution contemplate that the Executive can amass and centralize a national voter database.

125. The Commission's acts here are unprecedented.

126. One of the Executive's duties is that "he shall take care that the laws be faithfully executed." The Executive – through the Presidential Advisory Commission – is not faithful to the execution of any law. Rather, the Executive is pursuing a widely disputed complaint that millions voted illegally in the 2016 election.

127. The creation and the activities of the Executive's Presidential Advisory Commission unconstitutionally intrude into the Article I powers of Congress over the electoral system, its authority over the protection of the vote, and its authority over the integrity of the election system. The presidential creation of the Presidential Advisory Commission and its ongoing activities violate the separation of powers of the U.S. Constitution.

128. These actions have exceeded the scope of the Executive's Article II powers and have otherwise breached Article II.

129. These transgressions of Separation of Powers principles as well as Article II limitations and duties include, *inter alia*, the following acts and omissions:

a. Using the Presidential Advisory Commission to amass and centralize a federal database with personal and private information of voters.

b. Creating a commission that is not tied to any of the Executive's enumerated Article II powers or to any congressional enactment or authorization.

c. Creating the Presidential Advisory Commission based on a myth of voter fraud and without any legitimate factual finding to support its purported mission.

d. Creating the Presidential Advisory Commission as a ruse to do what the Executive cannot otherwise do – amass and centralize a federal database with personal and private voter information.

e. Failing to faithfully execute any law through the creation of and workings of the Presidential Advisory Commission.

f. Failing to prevent the commission from exceeding its purported authority and purpose as set forth in Section 5 of the Executive Order. That is, by creating a federal

database, the Presidential Advisory Commission is duplicating the work of existing government entities, namely the states and other existing, independent election commissions such as the U.S. Election Assistance Commission and Federal Election Commission.

g. Failing to prevent the Presidential Advisory Commission from exceeding its purported authority and purpose as set forth in the Executive Order. The Order does not direct the Presidential Advisory Commission to amass and centralize a federal database of voters' personal and private information.

h. Failing to prevent the Presidential Advisory Commission from not disclosing its work materials and full membership as required under the Federal Advisory Committee Act, and to otherwise adhere to the FACA disclosure and sunshine requirements as more fully set forth in Count I.

i. Failing to prevent the commission from exceeding its purported authority and purpose as set forth in Section 5

of the Executive Order. That is, by creating a commission whose goal, *in the written word*, is to protect voting integrity through study of the registration process and voting processes in Federal Elections, the Presidential Advisory Commission is duplicating the work of existing government entities, namely the states and other existing, independent election commissions such as the U.S. Election Assistance Commission and Federal Election Commission.

j. The creation and the activities of the Presidential Advisory Commission unconstitutionally intrude into the Article I powers of Congress over the electoral system, its authority over the protection of the vote, and its authority over the integrity of the election system. The Presidential Advisory Commission's actions violate the separation of powers delineated in the U.S. Constitution.

k. Failing to faithfully execute FACA.

COUNT IV

Violation of The Paperwork Reduction Act, 44 U.S.C. § 3501, *et seq.*

Against Presidential Advisory Commission, Pence, Kobach, Executive Office of the President, Executive Office of the Vice President, Horne, and Mulvaney

130. Plaintiffs restate and incorporate paragraphs 1-73.

131. The Paperwork Reduction Act of 1995 (“PRA”) was designed for multiple purposes, but most notably was intended to minimize the burden on the public and on state governments, to ensure the “greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government.” 44 U.S.C. § 3501 (2017).

132. For purposes of the PRA, “the term ‘agency’ means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency” 44 U.S.C. § 3502 (2017). The Presidential Advisory Commission is not otherwise specifically excluded. More particularly, the Executive Office of the

President is specifically included as an agency bound by the requirements of the PRA.

133. Agencies, such as the Presidential Advisory Commission, when seeking information from more than 10 respondents, must receive approval from the Office of Management and Budget (“OMB”) prior to the collection of information.

134. The OMB is tasked with promulgating the Federal Regulations to effectuate the mandates of the PRA.

135. Prior to its collection of information directed at more than ten respondents, namely each of the 50 States and the District of Columbia, the Presidential Advisory Commission must strictly comply with statutory prerequisites. *See* 44 U.S.C. § 3506 (2017).

136. This includes, in part, preparing for the Director of the OMB a review that identifies the plan for collection of information, inventory, and control numbers for each item, and that:

(iii) informs the person receiving the collection of information of –

- (I) the reasons the information is being collected;
- (II) the way such information is to be used;
- (III) an estimate, to the extent practicable, of the burden of the collection;
- (IV) whether responses to the collection of information are voluntary, required to obtain benefit, or mandatory; and

(V) the fact that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

44 U.S.C. § 3506(c)(1)(B)(iii).

137. The PRA also requires that the agency must “provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information,” 44 U.S.C. § 3506(c)(2)(A), and to solicit comments from the public in order to, in pertinent part:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology[.]

Id.

138. Defendants’ have not complied with, nor have they attempted to comply with, any of the required actions of the PRA.

139. Defendants’ collection of the information sought prior to complying with the requirements of the PRA is arbitrary, capricious, an

abuse of discretion, or otherwise not in accordance with law under 5 U.S.C. § 706(2)(a) and short of statutory right under 5 U.S.C. § 706(2)(c).

140. The Commission is prohibited from collecting information unless in advance of the collection of information the agency has completed all prerequisites pursuant to the prior sections and other items set forth in 44 U.S.C. § 3507.

141. Plaintiffs are, individually and in their representative capacities, adversely affected and aggrieved by Defendants' actions and inaction.

142. The only remedy that will grant full relief to Plaintiffs for these violations of the Paperwork Reduction Act is an order enjoining the Defendants to comply with the PRA prior to the collection of any information by the Presidential Advisory Commission.

COUNT V

Violation of Florida Statute § 97.0585: Information Regarding Voters and Voter Registration Confidentiality

Against Presidential Advisory Commission and Detzner

143. Plaintiffs restate and incorporate paragraphs 1-73.

144. The Florida Constitution guarantees the right of privacy to all persons, Art. I, § 23, Florida Constitution:

Right of privacy.—Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law.

145. Florida law provides for the confidentiality of certain voter information and voting registration data in § 97.0585, Florida Statutes:

Public records exemption; information regarding voters and voter registration; confidentiality.—

(1) The following information held by an agency as defined in s. 119.011 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(a) All declinations to register to vote made pursuant to ss. 97.057 and 97.058.

(b) Information relating to the place where a person registered to vote or where a person updated a voter registration.

(c) The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.

(2) The signature of a voter registration applicant or a voter is exempt from the copying requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(3) This section applies to information held by an agency before, on, or after the effective date of this exemption.

146. The Presidential Advisory Commission's request for voter identifying information includes information deemed confidential under Florida law.

147. The Florida Secretary of State is obligated by the Florida Constitution and laws to preserve and maintain the confidentiality of exempt voter registration information. The Florida Secretary of State must be prohibited from disclosing the private, protected confidential information to the Presidential Advisory Commission. Minimally, the Florida Secretary of State must be enjoined to comply with the requirements in Fla. Stat. § 119.07(1)(d) by redacting any private, protected confidential information to the Presidential Advisory Commission.

148. On July 6, 2017, Defendant Detzner issued a press statement indicating he would comply with the Commission's request

for personal voter registration information from Florida's voter database. Defendant Detzner also stated that in doing so, he will comply with the restrictions set forth in § 97.0585 which prohibit the sharing of a voter's social security number and Driver's License number. To ensure Defendant Detzner complies with § 97.0585, and to prohibit the Commission from attempting to obtain that protected information from any other source, Plaintiffs seek an injunction pursuant to § 97.0585 to preclude disclosure of the social security numbers and Driver's License numbers of Florida voters.

149. At the time of this filing, it is not known whether the Florida Secretary of State has already transmitted the voter data to the Commission, and if so whether he has transmitted only that information permitted to be disclosed under Florida constitutional and statutory provisions cited above, nor whether the transmission of data has been made using a secure method of transmission.

150. To the extent the Presidential Advisory Commission seeks disclosure of private voter information, the request for information is contrary to Florida law.

151. Plaintiffs are, individually and in their representative capacities, adversely affected and aggrieved by Defendants' actions and inaction.

REQUESTED RELIEF

Plaintiffs request that this Court:

- A. Order expedited consideration;
- B. Declare that the Presidential Advisory Commission and its members have violated the FACA and enjoin the Presidential Advisory Commission and its members from conducting any business unless and until the FACA is fully complied with, and further enjoin all of the federal Defendants from utilizing the products of any materials or information obtained or produced in violation of the FACA;
- C. Declare and hold unlawful and set aside Defendants' authority to collect personal voter data from the states;
- D. Order Defendants to halt collection of personal voter data;
- E. Order Defendants to securely delete and properly disgorge any personal voter data collected or subsequently received;
- F. Order Defendants to promptly conduct a privacy impact assessment prior to the collection of personal voter data;

G. Declare that the Presidential Advisory Commission and its members have violated the PRA and enjoin the Presidential Advisory Commission and its members from conducting any business unless and until the PRA is fully complied with, and further enjoin all of the federal Defendants from utilizing the products of any materials or information obtained or produced in violation of the PRA;

H. Order Defendant Florida Secretary of State to withhold voter-identifying information from the Presidential Advisory Commission;

I. Award costs and reasonable attorney's fees incurred in this action; and

J. Grant such other relief as the Court may deem just and proper.

Dated: July 10, 2017

Respectfully submitted,

S/ H.K. Skip Pita

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