

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

AMERICAN CIVIL LIBERTIES UNION, <i>et al.</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No.
	)	
DONALD TRUMP, <i>et al.</i>	)	
	)	
Defendants.	)	
	)	

**PLAINTIFFS’ APPLICATION FOR A TEMPORARY RESTRAINING ORDER  
AND/OR PRELIMINARY INJUNCTION**

Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (together, the “ACLU”), pursuant to Federal Rules of Civil Procedure 7 and 65, and Local Rule of the U.S. District Court for the District of Columbia 65.1, respectfully request that this Court enter a temporary restraining order and/or a preliminary injunction compelling Defendants, in advance of the planned July 19 meeting of the Presidential Advisory Commission on Election Integrity (“Pence-Kobach Commission”), to comply with the mandatory transparency requirements of Section 10 of the Federal Advisory Committee Act (“FACA”), 5 U.S.C. app. 2 § 10, as set forth in Claim 1 of their Complaint.

On May 11, 2017, after asserting for months that he had “won the popular vote if you deduct the millions of people who voted illegally,” President Trump established the Pence-Kobach Commission, an advisory committee subject to the terms of FACA, 5 U.S.C. app. 2 § 3(2). The Commission’s purported “mission” is to “study the registration and voting processes used in Federal elections.” Exec. Order No. 13,799, § 3. But the

context surrounding the Commission's creation, its makeup, and its lack of transparency to date raise questions as to the integrity of this Commission—and underscore the critical need for public oversight. This is all the more true given the profound significance of the privacy and voting rights at issue. The Pence-Kobach Commission is now poised to make findings and recommendations that touch upon these fundamental rights.

Defendants, however, have failed to comply with non-discretionary responsibilities under FACA designed to ensure the transparency needed for the public to monitor the Pence-Kobach Commission effectively and to hold it accountable. *See Ctr. for Law & Educ. v. U.S. Dep't of Educ.*, 209 F. Supp. 2d 102, 113 (D.D.C. 2002), *aff'd* 396 F.3d 1152 (D.C. Cir. 2005); *see also Food Chem. News, Inc. v. Davis*, 378 F. Supp. 1048, 1051 (D.D.C. 1974). Specifically, the Commission: (1) held a substantive meeting without advance notice and without opening it to the public; (2) has not made its office location public, nor released all documents “which were made available to or prepared for or by” the Commission; and (3) intends to hold its second meeting in a building inaccessible to the public. Each of these actions is a violation of FACA.

In order to ensure compliance with statutorily-mandated transparency and public accountability requirements, and to allow the ACLU, its members, and other members of the public to have meaningful oversight and the opportunity for informed participation as provided by FACA in the next meeting of the Commission, the ACLU respectfully requests that the Court compel Defendants, in advance of the Commission's planned July 19 meeting, to: (1) ensure that any telephonic meetings held by the Commission comply with the notice and public access requirements of FACA; (2) make available for public inspection and copying at a single, publically accessible location all minutes, agendas,

reports, studies and documentary material made available to or prepared for or by Commission members; and (3) provide physical access to the July 19 meeting by moving it, with public notice, to a publically-accessible location. If Defendants cannot comply with the requirements of FACA prior to the July 19 meeting, the ACLU requests that any meetings of the Pence-Kobach Commission be enjoined until such compliance with these non-discretionary openness requirements is achieved. This Application is supported by the attached Memorandum in Support of Plaintiffs' Application for a Temporary Restraining Order and/or Preliminary Injunction.

As demonstrated by the accompanying Certificate of Counsel, Defendants have received notice of the time and making of this application, and copies of all pleadings and papers filed have been provided to Defendants, pursuant to Fed. R. Civ. P. 65.1(a).

Respectfully submitted,

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Dated: July 10, 2017

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS’  
APPLICATION FOR A TEMPORARY RESTRAINING ORDER AND/OR  
PRELIMINARY INJUNCTION**

Plaintiffs American Civil Liberties Union and American Civil Liberties Union Foundation (together, the “ACLU”) have moved for a Temporary Restraining Order and/or a Preliminary Injunction with respect to Claim 1 of their Complaint, and submit the following memorandum in support of that motion.

**INTRODUCTION**

For months before the 2016 general election, candidate Donald Trump declared repeatedly that the election was “rigged” and voiced support for laws designed to limit access to the vote.<sup>1</sup> Shortly after the election, despite official results demonstrating the contrary, President-elect Trump 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,”<sup>2</sup> a position he has continued to assert in the months since.<sup>3</sup> Leaders on all

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<sup>1</sup> See David Weigel, *For Trump, A New ‘Rigged’ System: The Election Itself*, Wash. Post (Aug. 2, 2016), [https://www.washingtonpost.com/politics/for-trump-a-new-rigged-system-the-election-itself/2016/08/02/d9fb33b0-58c4-11e6-9aee-8075993d73a2\\_story.html?utm\\_term=.bc4164b38b10](https://www.washingtonpost.com/politics/for-trump-a-new-rigged-system-the-election-itself/2016/08/02/d9fb33b0-58c4-11e6-9aee-8075993d73a2_story.html?utm_term=.bc4164b38b10).

<sup>2</sup> See Donald Trump (@realDonaldTrump), Twitter (Nov. 27, 2017, 12:30 PM), <https://twitter.com/realDonaldTrump/status/802972944532209664>.

sides of the political spectrum, including Speaker of the House Paul Ryan, have rejected this baseless and self-serving claim.<sup>4</sup> Indeed, President Trump’s own legal team argued that “[a]ll available evidence suggests that the 2016 general election was *not* tainted by fraud or mistake.”<sup>5</sup> But one stalwart defender, Kansas Secretary of State Kris Kobach, stated that he thinks that President Trump “is absolutely correct when he says the number of illegal votes cast exceeds the popular vote margin between him and Hillary Clinton at this point.”<sup>6</sup>

Against this backdrop, President Trump created the Presidential Advisory Commission on Election Integrity (“Pence-Kobach Commission”), appointing Vice President Pence as its Chairman and Secretary Kobach as its Vice Chairman. The Commission’s purported “mission” is to “study the registration and voting processes used in Federal elections.” Exec. Order No. 13,799, § 3, 82 Fed. Reg. 22,389 (May 11, 2017). But the context surrounding the Commission’s creation, its makeup, and its lack of transparency to date raise questions as to the integrity of this Commission—and underscore the critical need for public oversight. This is all the more true given the

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<sup>3</sup> See, e.g., Charles Ventura, *Trump Revives False Claim That Illegal Ballots Cost Him Popular Vote*, USA Today (Jan. 23, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/01/23/president-trump-illegal-ballots-popular-vote-hillary-clinton/96976246/>; Aaron Blake, *Donald Trump Claims None of Those 3 to 5 Million Illegal Votes Were Cast for Him. Zero.*, Wash. Post (Jan. 26, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/01/25/donald-trump-claims-none-of-those-3-to-5-million-illegal-votes-were-cast-for-him-zero/?tid=a\\_inl&utm\\_term=.1e862115ce52](https://www.washingtonpost.com/news/the-fix/wp/2017/01/25/donald-trump-claims-none-of-those-3-to-5-million-illegal-votes-were-cast-for-him-zero/?tid=a_inl&utm_term=.1e862115ce52).

<sup>4</sup> See, e.g., Scott Wong, *Ryan: ‘No Evidence’ of Mass Voter Fraud as Trump Claimed*, The Hill (Jan. 24, 2017), <http://thehill.com/homenews/house/315844-ryan-no-evidence-of-mass-voter-fraud-as-trump-claimed>; Frank Thorp V & Corky Siemaszko, *Lindsey Graham to Trump: Stop Claiming ‘Illegals’ Cost You Popular Vote*, NBC News (Jan. 24, 2017), <http://www.nbcnews.com/politics/2016-election/gop-senator-president-trump-stop-claiming-illegals-cost-you-popular-n711386>.

<sup>5</sup> Donald J. Trump and Donald J. Trump for President, Inc.’s Objs. to Dr. Jill Stein’s Recount Pet. at 2, In re Pet. for Recount for the Office of President of the United States of America (Mich. Bd. of State Canvassers Dec. 1, 2016), available at [https://www.michigan.gov/documents/sos/Objection\\_to\\_Recount\\_Petition\\_544089\\_7.pdf](https://www.michigan.gov/documents/sos/Objection_to_Recount_Petition_544089_7.pdf).

<sup>6</sup> Hunter Woodall, *Kris Kobach Agrees with Donald Trump that ‘Millions’ Voted Illegally But Offers No Evidence*, Kan. City Star (Nov. 30, 2016), <http://www.kansascity.com/news/politics-government/article117957143.html>.

profound significance of the rights at issue. The Commission has announced its intention to collect and aggregate data on every registered voter in America in a matter of days—an unprecedented act—and has offered no details as to the security of that data or how it will ensure the privacy of voters. And, of course, “voting is of the most fundamental significance under our constitutional structure.” *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). *See also Wesberry v. Sanders*, 376 U.S. 1, 17 (1964) (“Other rights, even the most basic, are illusory if the right to vote is undermined.”). The Pence-Kobach Commission is now poised to make findings and recommendations that touch upon this most fundamental right.

The Pence-Kobach Commission seeks to do so with minimal public oversight. The Vice President and the Pence-Kobach Commission have failed to comply with their non-discretionary responsibilities under the Federal Advisory Commission Act (“FACA”), 5 U.S.C. app. 2 §§ 1-16, designed to ensure the transparency needed for the public to monitor advisory committees, such as the Pence-Kobach Commission, effectively and to hold them accountable. *See Ctr. for Law & Educ. v. U.S. Dep’t of Educ.*, 209 F. Supp. 2d 102, 113 (D.D.C. 2002), *aff’d* 396 F.3d 1152 (D.C. Cir. 2005) (principal purpose of FACA is to enhance public accountability of federal advisory committees); *see also Food Chem. News, Inc. v. Davis*, 378 F. Supp. 1048, 1051 (D.D.C. 1974) (purpose of FACA is “to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals”).

The Commission has already held a meeting without advance notice and without opening it to the public—a meeting that was more than merely organizational and

preparatory—at which numerous substantive decisions were made.<sup>7</sup> The Commission has also not made its office location public, nor released all documents “which were made available to or prepared for or by” the Commission since its inception. Equally troubling in moving forward, the Commission intends to hold its second meeting in a building inaccessible to the public, only allowing for a non-interactive internet livestream, a method notably inaccessible to citizens without access to a computer and broadband internet. Each of these actions is a violation of FACA. And while the Commission has purported to make minor gestures towards transparency, it has specifically reserved the right not to comply with federal law, stating in a memorandum filed in this Court last week that it “do[es] not concede that FACA applies” to the Commission.<sup>8</sup>

In order to ensure compliance with statutorily-mandated transparency and public accountability requirements, and to allow the ACLU, its members, and other members of the public to have meaningful oversight and the opportunity for informed participation as provided for by FACA in the next meeting of the Commission, the ACLU respectfully requests that the Court compel Defendants, in advance of the July 19 meeting, to:

(1) ensure that any telephonic meetings held by the Commission comply with the notice

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<sup>7</sup> See, e.g., Celeste Katz, *Trump Election Integrity Commission Member: ‘We Should Have Predicted’ the Backlash*, Mic (July 5, 2017), <https://mic.com/articles/181510/trump-election-integrity-commission-member-we-should-have-predicted-the-backlash#.FJyGiAIZO> (discussed the potential number of double registrants and how to identify such registrations); Sam Levine, *Trump Voter Fraud Commission Was Cautioned About Seeking Sensitive Voter Information*, Huffington Post (July 5, 2017), [http://www.huffingtonpost.com/entry/trump-voter-fraud-commission\\_us\\_595d511fe4b02e9bdb0a073d](http://www.huffingtonpost.com/entry/trump-voter-fraud-commission_us_595d511fe4b02e9bdb0a073d) (noting that one Commissioner advised the Commission “to be careful how you go at this because election officials are very sensitive guardians of this information, so you want to make sure you’re asking for it, not demanding it, and that it really should only cover the information that is publicly available in your state”); Decl. of Kris Kobach, *Elec. Privacy Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, No. 17-cv-1320 (D.D.C. July 5, 2017), ECF No. 8-1 (commission will store materials on White House computers).

<sup>8</sup> Mem. in Opp. to Pl.’s Emergency Mot. for Temp. Restraining Order at 12, *Privacy Info. Ctr. v. Presidential Advisory Comm’n on Election Integrity*, No. 17-cv-1320 (D.D.C. July 5, 2017), ECF No. 8.

and public access requirements of FACA; (2) make available for public inspection and copying at a single, publically accessible location all minutes, agendas, reports, studies and documentary material made available to and/or prepared for or by Commission members; and (3) provide physical access to the July 19 meeting by moving it, with public notice, to a publically-accessible location. If Defendants cannot comply with the requirements of FACA prior to the July 19 meeting, the ACLU requests that any meetings of the Pence-Kobach Commission be enjoined until such compliance with these non-discretionary openness requirements is achieved.

## **FACTUAL BACKGROUND**

### **I. The Federal Advisory Commission Act**

Congress enacted FACA, 5 U.S.C. app. 2 §§ 1-16, to open federal advisory committees to public scrutiny and accountability. *See Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 446 (1989) (stating that purpose of FACA was to ensure, among other things, “that Congress and the public remained apprised of [advisory committees’] existence, activities, and cost”); *Ctr. for Law & Educ.*, 209 F. Supp. 2d at 113; *Food Chem. News*, 378 F. Supp. at 1051. While recognizing that advisory committees can serve an important function in providing advice and ideas, Congress was particularly concerned with “prevent[ing] ‘subjective influences not in the public interest’ from controlling the meetings.” *Food Chem. News v. Dep't of Health & Human Servs.*, 980 F.2d 1468, 1472 (D.C. Cir. 1992) (quoting S. Rep. No. 92-1098, at 6 (1972)). FACA applies (with exceptions not relevant here) to “any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . established or utilized by the President . . . in the interest of obtaining advice or recommendations for the President,” denominating such groups as

“advisory committees.” 5 U.S.C. app. 2 § 3(2); *see also Nat’l Anti-Hunger Coal. v. Exec. Comm. of President’s Private Sector Survey on Cost Control*, 711 F.2d 1071, 1073 n.1 (D.C. Cir. 1983) (presidential committees must comply with requirements of FACA).

To achieve its goals of accountability and transparency, FACA requires that advisory committees comply with a host of procedures designed to ensure the transparency needed for the public to monitor such committees effectively and to hold them accountable. *See Cummock v. Gore*, 180 F.3d 282, 284-85 (D.C. Cir. 1999) (noting Congress’ concern with special interests on advisory committees “seeking to advance their own agendas” and that in enacting FACA, “Congress aimed, in short, . . . to open to public scrutiny the manner in which government agencies obtain advice from private individuals” (internal quotation marks and citations omitted)). All advisory committee meetings must be open to the public<sup>9</sup> and must be timely noticed in the Federal Register at least fifteen days before the meeting is held. 5 U.S.C. app. 2 § 10(a)(1)-(2); 41 C.F.R. § 102-3.150(a). Interested members of the public must “be permitted to attend, appear before, or file statements with any advisory committee,” subject only to “reasonable” regulations set by the Administrator of General Services. 5 U.S.C. app. 2 § 10(a)(3). These regulations require that each advisory committee meeting be “held at a reasonable time and in a manner or place reasonably accessible to the public,” in a place sufficient to accommodate “a reasonable number of interested members of the public.” 41 C.F.R. § 102-3.140(a)-(b). If an advisory committee meeting is held via teleconference, videoconference, or other electronic medium, it still must be made accessible to the public. 41 C.F.R. § 102-3.140(e).

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<sup>9</sup> Although portions of meetings may be closed where the President determines that closure is provided for pursuant to 5 U.S.C. § 552b(c) (the federal Open Meetings statute), any such determination must be made in writing and set forth the reasons for the conclusion. 5 U.S.C. app. 2 § 10(d).

FACA also requires that, subject to the provisions of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, “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.” 5 U.S.C. app. 2 § 10(b). “Detailed minutes of each meeting of each advisory committee shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the advisory committee.” 5 U.S.C. app. 2 § 10(c). And advisory committees must make available copies of transcripts of advisory committee meetings to “any person” at only the “actual cost of duplication.” 5 U.S.C. app. 2 § 11(a).

These requirements of FACA are mandatory on the appointing authority, in this case, President Trump, and on the advisory committee itself.

## **II. The Creation of the Pence-Kobach Commission**

President Trump lost the popular vote in the 2016 Presidential Election. The official results indicated that 65,853,516 votes were cast for the Democratic nominee, Hillary Rodham Clinton, and 62,984,825 votes were cast for the Republican nominee, Donald J. Trump. With respect to the Electoral College, the official results indicated that 227 and 304 Electoral College votes were cast for Democratic nominee Clinton and Republican nominee Trump, respectively.<sup>10</sup> Shortly thereafter, on November 27, 2016, President-elect Trump tweeted, “In addition to winning the Electoral College in a

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<sup>10</sup> Federal Election Commission, Official 2016 Presidential General Election Results (Jan. 30, 2017), available at <https://transition.fec.gov/pubrec/fe2016/2016presgeresults.pdf>.

landslide, I won the popular vote if you deduct the millions of people who voted illegally.”<sup>11</sup> In the months since, President Trump has continued to assert that millions of purportedly “illegal votes” cost him the popular vote.<sup>12</sup>

Following the election, on November 20, 2017, President-elect Trump met with Kansas Secretary of State, and now Vice Chair of the Pence-Kobach Commission, Kris Kobach. Outside this meeting, Secretary Kobach was photographed holding a document that appeared to reference proposed amendments to the National Voter Registration Act.<sup>13</sup> Secretary Kobach has long sought to relieve himself of the requirements of the NVRA,<sup>14</sup> which have prevented him from fully enforcing restrictions on voting that, had they been implemented, would have disenfranchised thousands of qualified voters in Kansas. *See Fish v. Kobach*, 840 F.3d 710, 754 (10th Cir. 2016) (finding that Secretary Kobach’s documentary proof of citizenship requirement risked the “imminent disenfranchisement of over 18,000 Kansans” who had registered to vote at DMV offices); *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 12-13 (D.C. Cir. 2016)

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<sup>11</sup> *See* Donald Trump (@realDonaldTrump), Twitter (Nov. 27, 2017, 12:30 PM), <https://twitter.com/realDonaldTrump/status/802972944532209664>.

<sup>12</sup> *See, e.g.*, Charles Ventura, *Trump Revives False Claim That Illegal Ballots Cost Him Popular Vote*, USA Today (Jan. 23, 2017), <https://www.usatoday.com/story/news/politics/onpolitics/2017/01/23/president-trump-illegal-ballots-popular-vote-hillary-clinton/96976246/>; Aaron Blake, *Donald Trump Claims None of Those 3 to 5 Million Illegal Votes Were Cast for Him. Zero.*, Wash. Post (Jan. 26, 2017), [https://www.washingtonpost.com/news/the-fix/wp/2017/01/25/donald-trump-claims-none-of-those-3-to-5-million-illegal-votes-were-cast-for-him-zero/?tid=a\\_inl&utm\\_term=.1e862115ce52](https://www.washingtonpost.com/news/the-fix/wp/2017/01/25/donald-trump-claims-none-of-those-3-to-5-million-illegal-votes-were-cast-for-him-zero/?tid=a_inl&utm_term=.1e862115ce52).

<sup>13</sup> *See, e.g.*, Peter Hancock, *Kobach Ordered To Turn Over Document He Used in Meeting with Trump*, Lawrence J.-World (Apr. 5, 2017), <http://www2.ljworld.com/news/2017/apr/05/kobach-ordered-turn-over-document-he-used-meeting-/>; *see also* Order, *Fish v. Kobach*, No. 16-cv-2105-JAR-JPO (D. Kan. Apr. 17, 2017), ECF No. 320; Order, *Fish v. Kobach*, No. 16-cv-2105-JAR-JPO (D. Kan. June 23, 2017), ECF No. 355.

<sup>14</sup> *See, e.g.*, Letter to Anne Miller, Acting Exec. Dir., Election Assistance Comm’n, from Kris Kobach, Kan. Secretary of State (June 18, 2013), *available at* <https://www.eac.gov/assets/1/28/KWK%20to%20EAC%206-18-OCR.pdf>; Complaint, *Kobach v. Election Assistance Comm’n*, No. 13-cv-4095 (D. Kan. Aug. 21, 2013), ECF No. 1; Kobach’s Column, Kris Kobach, Kan. Secretary of State (Mar. 11, 2011) (noting Secretary Kobach’s office “draft[ed] and advocat[ed] passage of” the SAFE Act), *available at* [https://www.kssos.org/other/news\\_releases/PR\\_2011/Kobach%27s\\_Column\\_3-11-2011.pdf](https://www.kssos.org/other/news_releases/PR_2011/Kobach%27s_Column_3-11-2011.pdf).

(finding that the same requirements, as applied to voters who registered using the federal voter registration form, created “a substantial risk that citizens will be disenfranchised in the present federal election cycle,” and will “make it substantially more difficult for groups like the League[ of Women Voters] to register otherwise qualified voters”). It appears that Secretary Kobach came to this meeting armed to lobby the President-elect to alter federal election law and restrict the right to vote.

On May 11, 2017, President Trump issued Executive Order No. 13,799, establishing the Pence-Kobach Commission. The Executive Order provided that the Commission would be chaired by the Vice President and composed of not more than fifteen additional members selected by the President. Exec. Order No. 13,799, § 2. President Trump also named Kansas Secretary of State Kris Kobach as Vice Chair of the Commission.<sup>15</sup>

According to the Executive Order, the “mission” of the Pence-Kobach Commission is to “study the registration and voting processes used in Federal elections.” Exec. Order No. 13,799, § 3. The Commission is to “submit a report to the President that identifies . . . 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; . . . 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 . . . 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.” *Id.*

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<sup>15</sup> Press Release, Office of the Press Secretary, President Announces Formation of Bipartisan Presidential Commission on Election Integrity (May 11, 2017), *available at* <https://www.whitehouse.gov/the-press-office/2017/05/11/president-announces-formation-bipartisan-presidential-commission>.

The office location and address of the Pence-Kobach Commission have not been made public. As required under FACA, the Pence-Kobach Commission has a “Designated Federal Officer,” who is an Associate Counsel in the Office of the Vice President, which is an office within the Executive Office of the President. But the offices of the Office of the Vice President are primarily located within the Eisenhower Executive Office Building (“EEOB”), which is part of the White House Complex, and is not generally open to members of the public at large. In order to enter the EEOB, a visitor must have a set meeting with a particular person in the building, who must enter the full name, Social Security Number, date of birth, citizenship status, country of birth, gender, and city and state of residence of each visitor into the White House Worker and Visitor Entry System (“WAVES”), maintained by the United States Secret Service, for review and approval prior to entry.<sup>16</sup>

### **III. The Pence-Kobach Commission’s Failure to Comply with FACA**

On June 28, 2017, Vice President Pence, as chair of the Pence-Kobach Commission, held a telephonic meeting with the members of the Commission.<sup>17</sup> This meeting was not noticed in the Federal Register nor was it held open to the public. According to after-the-fact media interviews with Commission members, this meeting was not merely preparatory or organizational, but touched upon issues of substance, including the potential number of double registrants, and how to identify them.<sup>18</sup> Vice

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<sup>16</sup> See Decl. of Donald E. White, Deputy Ass’t Dir., U.S. Secret Serv. ¶¶ 4, 7-8, *Judicial Watch, Inc., v. U.S. Secret Serv.*, No. 09-cv-2312 (D.D.C. Apr. 21, 2010), ECF No. 14-2.

<sup>17</sup> See 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), *available at* <https://www.whitehouse.gov/the-press-office/2017/06/28/readout-vice-presidents-call-presidential-advisory-commission-election> [hereinafter Pence Release].

<sup>18</sup> See Katz, *Trump Election Integrity Commission Member: ‘We Should Have Predicted’ the Backlash*, *supra* note 7.

Chair Kobach told the members of the Commission that he intended to send a letter “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.”<sup>19</sup> The Commission then reportedly deliberated and concluded that they did not need to review the language of the letters to the states because only Vice Chair Kobach would sign them.<sup>20</sup> During this discussion at the meeting, Commission member Matthew Dunlap, the Secretary State of Maine, advised the Commission, “to be careful how you go at this because election officials are very sensitive guardians of this information, so you want to make sure you’re asking for it, not demanding it, and that it really should only cover the information that is publicly available in your state.”<sup>21</sup>

Subsequently, on June 28, 2017, Vice Chair Kobach sent a letter to the Secretary of State of each of the fifty states and to the equivalent official of the District of Columbia, requesting submission via e-mail or FTP site by July 14, 2017, of the state’s voter roll data, 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

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<sup>19</sup> Pence Release.

<sup>20</sup> See Levine, *Trump Voter Fraud Commission Was Cautioned About Seeking Sensitive Voter Information*, *supra* note 7; 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> (citing statements from Commission member, Secretary Dunlap of Maine, and spokesperson for Vice President Pence, Marc Lotter).

<sup>21</sup> See Levine, *Trump Voter Fraud Commission Was Cautioned About Seeking Sensitive Voter Information*, *supra* note 7.

regarding military status, and overseas citizen information.”<sup>22</sup>

The information requested by Vice Chair Kobach and the manner in which it has been sought are clearly of interest and concern to the public. Officials in 48 states refused to comply with the request or have agreed to provide publicly-available data only.<sup>23</sup> Cybersecurity experts, moreover, have described the Commission’s plans to aggregate this data as a “gold mine” for hackers.<sup>24</sup> Michael Chertoff, the former Secretary of Homeland Security under President George W. Bush, has published a column titled “Trump’s Voter Data Request Poses an Unnoticed Danger,” noting that “whatever the political, legal and constitutional issues raised by this data request, one issue has barely been part of the public discussion: national security.”<sup>25</sup> There has been no public explanation as to how this data will be maintained in a secure fashion, other than conclusory assertions that it will be.

Media reports indicate that the Pence-Kobach Commission, whether at the June 28 meeting, or at some other time, has already formulated plans for the voter data that it is collecting pursuant to Vice Chair Kobach’s letters.<sup>26</sup> According to Marc Lotter, spokesperson for Vice President Pence, the Commission intends to check the information

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<sup>22</sup> See, e.g., Letter from Kris Kobach to Elaine Marshall, North Carolina Secretary of State (June 28, 2017), available at <https://assets.documentcloud.org/documents/3881856/Correspondence-PEIC-Letter-to-North-Carolina.pdf>; see also Pence Release; Brandon Carter, *Trump Election Panel Asks All 50 States for Voter Roll Data*, The Hill (June 29, 2017), <http://thehill.com/homenews/administration/340117-trump-election-integrity-commission-requests-years-of-voter-data-from>.

<sup>23</sup> Ari Berman, *Suppression Plans are Backfiring Badly*, The Nation (July 5, 2017), <https://www.thenation.com/article/the-trump-administrations-voter-suppression-plans-are-backfiring-badly/>

<sup>24</sup> Eric Geller & Corey Bennett, *Trump Voter-Fraud Panel’s Data Request a Gold Mine for Hackers, Experts Warn*, Politico (July 1, 2017), <http://www.politico.com/story/2017/07/01/trump-voter-fraud-panel-hackers-240168>.

<sup>25</sup> Michael Chertoff, *Trump’s Voter Data Request Poses an Unnoticed Danger*, Wash. Post (July 5, 2017), [https://www.washingtonpost.com/opinions/trumps-voter-data-request-poses-an-unnoticed-danger--to-national-security/2017/07/05/470efce0-60c9-11e7-8adc-fea80e32bf47\\_story.html?utm\\_term=.47ed19183852](https://www.washingtonpost.com/opinions/trumps-voter-data-request-poses-an-unnoticed-danger--to-national-security/2017/07/05/470efce0-60c9-11e7-8adc-fea80e32bf47_story.html?utm_term=.47ed19183852).

<sup>26</sup> Jessica Huseman, *Election Experts See Flaws in Trump Voter Commission’s Plan to Smoke Out Fraud*, ProPublica (July 6, 2017), <https://www.propublica.org/article/election-experts-see-flaws-trump-voter-commissions-plan-to-smoke-out-fraud>.

contained in state voter rolls against data housed in various federal databases to identify supposedly ineligible registrants. Mr. Lotter would not specify which federal databases the Pence-Kobach Commission intended to use, but public reports from June 27, 2017 indicated that the Commission intends to compare state voter roll data against the federal database of non-citizens.<sup>27</sup> These plans—which have not been made fully public—are also of immense public concern. Election administration experts have stated that running such a comparison is certain to lead to numerous false positives due to minor inaccuracies on the voter rolls, inconsistencies in data collection and formatting, and the reality of common names and birthdays.<sup>28</sup> Indeed, Secretary Kobach currently operates a highly inaccurate “Interstate Crosscheck” system, which purports to compare voter registration files in multiple states to search for double voters. A team of researchers from Stanford, Harvard, and Microsoft concluded that, if the Crosscheck system were used for voter list maintenance in one state (Iowa), 99.5% of the purported matches would be false positives, such that “200 legitimate voters may be impeded from voting for every double vote stopped.”<sup>29</sup>

On July 5, 2017, a planned July 19, 2017 meeting of the Pence-Kobach Commission was noticed in the Federal Register, 14 days prior to the scheduled meeting. The Presidential Commission on Election Integrity (PCEI); Upcoming Public Advisory Meeting, 82 Fed. Reg. 31063-01 (July 5, 2017). The notice stated that the meeting would be held in the EEOB and would be available to the public only through an internet

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<sup>27</sup> *Id.*

<sup>28</sup> See *id.*; Maggie Koerth-Baker, *Trump’s Voter Fraud Commission is Facing a Tough Data Challenge*, FiveThirtyEight (July 7, 2017), <https://fivethirtyeight.com/features/trumps-voter-fraud-commission-is-facing-a-tough-data-challenge/>.

<sup>29</sup> Sharad Goel, *et al.*, *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections*, Jan. 13, 2017, available at <https://5sharad.com/papers/1p1v.pdf>.

livestream. *Id.*

Also on July 5, 2017, the ACLU requested that the Pence-Kobach Commission produce or make available for public inspection and copying all materials “which were made available to or prepared for or by” the Commission. As of the date the Complaint in this case was filed, the ACLU has not received a response to this request.

### **Standard of Review**

Preliminary relief is warranted where the party seeking relief makes a “clear showing that four factors, taken together, warrant relief: likely success on the merits, likely irreparable harm in the absence of preliminary relief, a balance of equities in its favors, and accord with the public interest.” *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016) (internal quotation marks and citation omitted); *see also Council on Am.-Islamic Relations v. Gaubatz*, 667 F. Supp. 2d 67, 74 (D.D.C. 2009). “The standard for a temporary restraining order is the same as that for preliminary injunction.” *Singh v. Carter*, 168 F. Supp. 3d 216, 223 (D.D.C. 2016).

### **ARGUMENT**

#### **I. The ACLU Has a Substantial Probability of Success on the Merits.**

To advance its public scrutiny and accountability goals, FACA sets forth requirements for the composition, operation, and meetings of advisory committees designed to guarantee transparency and disclosure. As relevant to this motion, FACA mandates that “[e]ach advisory committee shall be open to the public” and notice of each meeting “shall be published in the Federal register.” 5 U.S.C. app. 2 § 10(a)(1)-(2). In addition, the statute requires that “[i]nterested persons shall be permitted to attend, appear before, or file statements with any advisory committee,” subject only to “reasonable” regulations issued by the Administrator of General Services. *Id.* § 10(a)(3). FACA also

mandates that, subject to the provisions of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, “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.” 5 U.S.C. app. 2 § 10(b). These requirements, each using the word “shall” to specify a mandatory duty, are “equivalent to a positive command” and are thus nondiscretionary. *Judicial Watch, Inc. v. Nat’l Energy Policy Dev. Grp.*, 219 F. Supp. 2d 20, 42-43 (D.D.C. 2002) (“by virtue of the use of the word shall, Congress has made [the duty] nondiscretionary”); *see also Wilbur v. United States ex rel. Kadrie*, 281 U.S. 206, 218-219 (1930) (ministerial or nondiscretionary duties are those “so plainly prescribed as to be free from doubt and equivalent to a positive command”).

FACA applies to “any committee, board, commission, council, conference, panel, take force, or similar other group, or any subcommittee or other subgroup thereof . . . established or utilized by the President . . . in the interest of obtaining advice or recommendations for the President,” denominating such groups as “advisory committees.” 5 U.S.C. app. 2 § 3(2). As a commission established by President Trump to “study the registration and voting processes used in Federal elections” and submit a report on this topic to the President, thus providing “advice or recommendations” to the President, the Pence-Kobach Commission is an advisory committee subject to the requirements of FACA. *Id.*; *see Nat’l Anti-Hunger Coal. v. Exec. Comm. of President’s Private Sector Survey on Cost Control*, 711 F.2d at 1073 n.1; *see also* 82 Fed. Reg. 31,063, <https://www.federalregister.gov/documents/2017/07/05/2017-14210/the-presiden>

tial-commission-on-election-integrity-pcei-upcoming-public-advisory-meeting (stating that Pence-Kobach Commission was “established in accordance with [FACA]”). Nevertheless, the Vice President and the Pence-Kobach Commission are not complying with non-discretionary requirements of FACA designed to ensure transparency and allow members of the public to scrutinize the activities of the Commission; indeed, as noted, *supra*, they have expressly asserted that they do not acknowledge that FACA’s requirements apply to the Commission. Where, as here, federal officials fail to perform ministerial or nondiscretionary duties, district courts are authorized to issue relief in the nature of mandamus compelling them to do so. 28 U.S.C. § 1361.

Three FACA violations are addressed on this motion. *First*, the Vice President and the Pence-Kobach Commission held a telephonic meeting on June 28, 2017 without the requisite notice and public access in violation of the non-discretionary openness requirements of § 10(a)(1)-(3) of FACA. According to subsequent statements by Commission members reported by the media, during this meeting, the Commission discussed substantive issues including potential double registrants and how to identify them, and deliberated over the sending of a letter request for information to all 50 States, the way that the letter should be drafted, and whether the letter should come solely from Vice Chair Kobach or from the Commission as a whole. Decisions have apparently already been made about how the data will be collected, aggregated, stored, and used. Far from being merely preparatory or organizational, this was a substantive meeting of the Commission, triggering FACA’s transparency requirements under § 10(a). Indeed, other substantive issues may have been discussed as well during this 90-minute meeting—such as the Commission’s already-formulated plans for the voter data that it is

collecting<sup>30</sup>—but there is no way for the public to know, precisely because the meeting did not conform to the openness requirements of the statute.

Nevertheless, Defendants did not notice this meeting in the Federal Register as mandated by § 10(a)(2) of FACA. 5 U.S.C. app. 2 § 10(a)(2) (notice of each advisory committee meeting “shall be published in the Federal register”). Nor was the meeting “open to the public” or “[i]nterested persons . . . permitted to attend, appear before, or file statements” for this meeting as is required by § 10(a)(1) and (3) of FACA. *Id.* §§ 10(a)(1), (3); *see also* 41 C.F.R. § 102-3.140(e) (requiring that advisory committee meetings “conducted in whole or part by a teleconference, videoconference, the Internet, or other electronic medium” must still “meet[] the requirements of this subpart,” which include being “held at a reasonable time and in a manner or place reasonably accessible to the public” and permitting “members of the public . . . to file a written statement with the advisory committee”).

*Second*, although the Commission has provided notice of its next meeting—which will take place in-person on July 19—the current plans for that meeting indicate that it will similarly violate the non-discretionary open meeting requirements of § 10(a)(1) and (3) of FACA. Advisory committees must be “open to the public”, 5 U.S.C. app. 2 § 10(a)(1), and the chair of a presidential advisory committee “must ensure,” among other things, that each “meeting is held . . . in a manner or place reasonably accessible to the public” and that the “meeting room or other forum selected is sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public,” 41 C.F.R. § 102-3.140(a)-(b).

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<sup>30</sup> *See* Huseman, *Election Experts See Flaws in Trump Voter Commission’s Plan to Smoke Out Fraud*, *supra* note 26.

The EEOB is not “reasonably accessible to the public,” and the Commission, by intending to allow the public to view the meeting only through an internet livestream, also fails to offer a meeting room or forum “sufficient to accommodate . . . a reasonable number of interested members of the public.” *Id.*

*Third*, compounding the lack of transparency in failing to comply with the nondiscretionary openness requirements applicable to meetings, Defendants have failed to make available all “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by” the Pence-Kobach Commission since its inception, to the public for “inspection and copying at a single location” within the office of the Commission, as is required by § 10(b) of FACA. *See Ctr. for Biological Diversity v. Tidwell*, No. 15-cv-2176 (CKK), 2017 WL 943902, at \*9 (D.D.C. Mar. 9, 2017) (“The government is required to make section 10(b) materials available to the public as a matter of course, unless a FOIA exception applies.”). These include not only minutes, agendas, transcripts, and other documentary materials made available to or prepared for or by the Commission for the June 28 meeting, but also the agenda and all documents made available to or prepared for or by the Pence-Kobach Commission members in advance of the July 19, 2017. Indeed, Defendants have even failed to make public the location of the office of the Pence-Kobach Commission. Insofar as the materials subject to disclosure are kept at the location of the Designated Federal Officer and the listed location of the next Commission meeting—*i.e.*, in the EEOB which houses the Office of the Vice President—that office is essentially closed to public access.<sup>31</sup> Other Presidential advisory

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<sup>31</sup> *See* Decl. of Donald E. White, Deputy Ass’t Dir., U.S. Secret Serv. ¶¶ 4, 7-8, *Judicial Watch, Inc., v. U.S. Secret Serv.*, No. 09-cv-2312 (D.D.C. Apr. 21, 2010), ECF No. 14-2.

committees have, for example, kept documents in offices at the Health and Human Services Agency buildings, which have fewer public access restrictions.<sup>32</sup> In failing to provide a publically accessible location for the public to inspect and copy the Commission's records, the Vice President and the Pence-Kobach Commission do not meet the non-discretionary openness requirements of § 10(b) of FACA.

## **II. The ACLU Will Suffer Irreparable Harm Absent Preliminary Relief.**

The ACLU, its members, and other members of the public will be irreparably harmed without a temporary restraining order and/or preliminary injunction. The Pence-Kobach Commission is collecting and aggregating an unprecedented amount of data on every voter in the United States, without providing any information to assure voters that their privacy will be maintained. The Commission is also poised to make findings and recommendations that touch upon the fundamental right to vote. The Commission's discussions and decisions are thus of considerable public importance and concern—a fact reflected in the intense media attention and public backlash to the Commission's request for voter information.<sup>33</sup>

And yet, as discussed above, the Commission has already deliberated and made a

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<sup>32</sup> For example, the President's Advisory Council on Faith-based and Neighborhood Partnerships stored its documents in the headquarters for the Department of Health and Human Services, which is not part of the White House Complex and not subject to the same security restrictions as buildings that are part of the Complex. See President's Advisory Council on Faith-based and Neighborhood Partnerships, FACA Database, <http://www.facadatabase.gov/committee/committee.aspx?cid=2222&aid=76> (last visited July 9, 2017) (advisory committee based out of Department of Health and Human Services); Health & Human Services, Contact Us, <https://www.hhs.gov/about/contact-us/index.html> (offices located at Hubert H. Humphrey Building, 200 Independence Avenue); Decl. of Donald E. White, Deputy Ass't Dir., U.S. Secret Serv. ¶¶ 4, 7-8, *Judicial Watch, Inc., v. U.S. Secret Serv.*, No. 09-cv-2312 (D.D.C. Apr. 21, 2010), ECF No. 14-2 (Hubert H. Humphrey Building not part of White House Complex).

<sup>33</sup> Editorial Board, *Happy Fourth of July! Show Us Your Papers*, N.Y. Times (July 3, 2017), <https://www.nytimes.com/2017/07/03/opinion/voter-fraud-data-kris-kobach.html>; Editorial Board, *Trump Launches His Opening Voter Suppression Salvo*, Wash. Post (July 2, 2017), [https://www.washingtonpost.com/opinions/trump-launches-his-opening-voter-suppression-salvo/2017/07/02/a525561a-5dd3-11e7-9b7d-14576dc0f39d\\_story.html?utm\\_term=.7d1cc26d04b6](https://www.washingtonpost.com/opinions/trump-launches-his-opening-voter-suppression-salvo/2017/07/02/a525561a-5dd3-11e7-9b7d-14576dc0f39d_story.html?utm_term=.7d1cc26d04b6); Berman, *Suppression Plans are Backfiring Badly*, *supra* note 23.

number of substantive decisions—all prior to the first meeting that will be “open”—if only via internet—to the public. Indeed, under these circumstances, it is impossible to know the full extent of the Commission’s substantive activities to date. Absent relief, there is nothing to prevent the Commission from continuing to conduct its substantive business without public access, under the guise of so-called “organizational” meetings.

Indeed, even the minimal “access” that has been granted for the next Commission meeting is inadequate. Unless the Commission is ordered to move its meeting to another location, the ACLU, its members, and other members of the public will, absent the ACLU’s requested relief, “permanently los[e]” their right to attend the in-person July 19 meeting in a “place reasonably accessible to the public” and in a “meeting room or other forum . . . sufficient to accommodate advisory committee members, advisory committee or agency staff, and a reasonable number of interested members of the public.” 41 C.F.R. § 102-3.140(a)-(b).

And, with that meeting fast-approaching, the ACLU, its members, and other members of the public will lose any meaningful opportunity for public oversight or comment unless relief is ordered ensuring timely access to the minutes, transcript and any other documents related to the June 28 meeting in order to properly evaluate and understand what the Commission has already discussed, decided and reviewed. *See Food Chem. News*, 980 F.2d at 1472 (“interested parties” must have timely “access to relevant materials” in order “to present their views” and “be informed with respect to the subject matter” at the meeting “at which the materials are used and discussed”). The public, moreover, must have access to all materials from the June 28 meeting and all those associated with the upcoming July 19 meeting *before* that meeting takes place, in order to

be in a position to submit informed written comments that could be considered during the meeting. Retrospective relief will be inadequate; absent the requested relief, the rights of the ACLU, its members, and other members of the public to effectively monitor and hold accountable the Commission in real-time as it develops recommendations and policies at the upcoming July 19 meeting will be “permanently lost.” *Gates v. Schlesinger*, 366 F. Supp. 797, 800-01 (D.D.C. 1973). “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 Ala.-Tombigbee Rivers Coal. v. Dep’t of Interior*, 26 F.3d 1103, 1106 (11th Cir. 1994) (internal citation omitted); *see also Food Chem. News*, 980 F.2d at 1472 (timely release of committee documents important because “[o]pening the meetings to the public would be meaningless if the public could not follow the substance of the discussions”).

### **III. The Balance of Harm Weighs in Favor of Preliminary Relief.**

The balance of equities strongly favors entry of the requested relief. In contrast to the irreparable harm that will be suffered by the ACLU, its members, and other members of the public, absent a temporary restraining order or preliminary injunction, Defendants will suffer no harm if the requested relief is issued. Indeed, the requested injunction simply requires Defendants to obey the law, by making its documents and deliberations publicly-accessible. *See, e.g., Gates*, 366 F. Supp. at 801 (holding that government Defendant suffers no injury “in being obliged to conform to the open meeting requirement imposed by [FACA]”).

#### **IV. Preliminary Relief Will Serve the Public Interest.**

The requested relief will further the public interest in two important ways. First, in mandating that the Vice President and Pence-Kobach Commission comply with their non-discretionary transparency and disclosure obligations, the requested relief will serve the strong public interest embodied by FACA, namely in “providing the public its right to know how its government is conducting the public’s business.” *Pub. Citizen v. Nat’l Econ. Council*, 703 F. Supp. 113, 129 (D.D.C. 1989); *cf. N. Mariana Islands v. United States*, 686 F. Supp. 2d 7, 21 (D.D.C. 2009) (“The public interest is served when administrative agencies comply with their [notice and comment] obligations under the APA.”); *Cresote Council v. Johnson*, 555 F. Supp. 2d 36, 40 (D.D.C. 2008) (finding that there is a “general public interest in open and accountable agency decision-making”).

A temporary restraining order and/or preliminary injunction will also serve the public’s interest in the government following the law and preventing a violation of statutory rights. *See Gates*, 366 F. Supp. at 801 (the “public interest will be best served by requiring strict compliance with the letter and spirit of the Federal Advisory Committee Act”); *see also In re Medicare Reimbursement Litig.*, 309 F. Supp. 2d 89, 99 (D.D.C. 2004), *aff’d*, 414 F.3d 7 (D.C. Cir. 2005) (in granting mandamus relief, recognizing “the public’s substantial interest in the [Defendant agency] Secretary’s following the law”).

#### **CONCLUSION**

For the foregoing reasons, the ACLU respectfully requests that the Court grant a temporary restraining order and/ or preliminary injunction to compel Defendants, in advance of the July 19 meeting, to: (1) ensure that any telephonic meetings held by the Commission comply with the notice and public access requirements of FACA; (2) make

available for public inspection and copying at a single, publically accessible location all minutes, agendas, reports, studies and documentary material made available to and/or prepared for or by Commission members; and (3) provide physical access to the July 19 meeting by moving it, with public notice, to a publically-accessible location. If Defendants cannot comply with the requirements of FACA prior to the July 19 meeting, the ACLU requests that any meetings of the Pence-Kobach Commission be enjoined until such compliance with these non-discretionary openness requirements is achieved.

Respectfully submitted,

/s/ Dale E. Ho

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Dated: July 10, 2017

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

AMERICAN CIVIL LIBERTIES UNION, <i>et al.</i>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No.
	)	
DONALD TRUMP, <i>et al.</i>	)	
	)	
Defendants.	)	

**CERTIFICATE OF COUNSEL PURSUANT TO  
LOCAL CIVIL RULE 65.1(a)**

I, Dale E. Ho, one of the attorneys for Plaintiffs in the above captioned case pursuant to Local Civil Rule 65.1(a), certify that on this date at approximately 11:30 a.m. copies of the Complaint and Plaintiffs’ Application for a Temporary Restraining Order and/or Preliminary Injunction were e-mailed to Marcia Berman and Elizabeth Shapiro at the United States Department of Justice. Counsel for Plaintiffs spoke with Ms. Berman at approximately 11:00 a.m. on this date, and she confirmed that Plaintiffs could provide advance notice via submission through e-mail to her and Ms. Shapiro.

Respectfully submitted,

/s/ Dale E. Ho  
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Dated: July 10, 2017

**CERTIFICATE OF SERVICE**

I, Dale E. Ho, hereby certify that on July 10, 2017, I will cause one copy of the foregoing Motion for Temporary Restraining Order and/or Preliminary Injunction, including the Memorandum in support and associated attachments to be served on each of the following via in-person service and certified mail:

United States Attorney for the District of Columbia  
Judiciary Center Building  
555 Fourth Street, N.W.  
Washington, D.C. 20530

Attorney General of the United States  
U.S. Department of Justice  
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Washington, D.C. 20530

Presidential Advisory Committee on Election Integrity  
Eisenhower Executive Office Building  
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