

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.; and

THE ORDINARY PEOPLE SOCIETY,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States;

PRESIDENTIAL ADVISORY
COMMISSION ON ELECTION
INTEGRITY, an advisory committee
commissioned by President Trump;

MICHAEL R. PENCE, in his official
capacity as Chair of the Presidential
Advisory Commission on Election
Integrity; and

KRIS W. KOBACH, in his official capacity
as Vice Chair of the Presidential Advisory
Commission on Election Integrity,

Defendants.

Civil Action No. 1:17-cv-5427

COMPLAINT

COMPLAINT

PRELIMINARY STATEMENT

The NAACP Legal Defense and Educational Fund, Inc. and The Ordinary People Society (“Plaintiffs”) bring this action against Donald J. Trump, in his official capacity as President of the United States (“President Trump”), the Presidential Advisory Commission on Election Integrity (“Commission”), Michael R. Pence, in his official capacity as Vice President of the United States

and chair of the Commission (“Vice President Pence”), and Kris W. Kobach, in his official capacity as Vice Chair of the Commission (“Secretary Kobach”).

Plaintiffs seek to enjoin the operation of the Commission because the President has neither constitutional nor statutory authority to create a new executive organ for the purpose of launching an investigation that targets individual or groups of voters. President Trump has not appointed a commission for the purpose of *consulting* with fair-and-balanced advisors; rather, he has appointed a commission stacked with biased members to undertake an *investigation* into unfounded allegations of voter fraud, even though Congress has specifically delegated the authority to ensure the accuracy of voter rolls to the Election Assistance Commission (“EAC”) and state election officials, not the President. As such, the creation of this Commission constitutes unauthorized Presidential action. Further, statements by President Trump, his spokespersons and surrogates, and individuals he has selected to lead and serve on the Commission, as well as the work of the Commission as described by its co-chairs, are grounded on the false premise that Black and Latino voters are more likely to perpetrate voter fraud. These statements and the planned actions of the Commission evince an intention to discriminate against African-American and Latino voters, in violation of the United States Constitution. Finally, Plaintiffs seek to enjoin the Commission because it does not comply with the nondiscretionary requirements of the Federal Advisory Committee Act, 5. U.S.C. App. 2 (“FACA”).

Both before and since his election, President Trump has made repeated statements alleging that there is widespread voter fraud throughout the United States, including the false claim that he lost the popular vote because of 3 to 5 million “illegal” votes for former Secretary Hillary Clinton. The President and/or his surrogates have also repeatedly described voter fraud in language suggesting that voters of color are more likely to commit voter fraud than white voters, using

racially-coded language linking voter fraud to predominantly-minority urban communities and to “illegals.” At no time has President Trump provided any evidence to substantiate the claim that widespread voter fraud existed in the November 2016 election or any other election. Moreover, the Commission’s actions have already had a chilling effect on Black and Latino voters. Some voters have taken the extraordinary step of unregistering, and Black and Latino voters in particular have reported well-founded fears of being targeted for false allegations of voter fraud and of being retaliated against for their political affiliation.

In an effort to manufacture evidence supporting his false claim of widespread voter fraud, President Trump has ordered the creation of the Commission, led by Vice President Pence and Secretary Kobach. President Trump’s choice of Secretary Kobach as co-chair of the Commission underscores both that the Commission has a pre-determined agenda to find false facts, and that the Commission’s creation and activities are motivated, at least in part, by racial discrimination. Secretary Kobach has, on numerous occasions, railed against what he regards as the threat of voter fraud in distinctly racialized terms. For example, Secretary Kobach has warned against “replacing American voters with newly legalized aliens,” because “if you look at it through an ethnic lens, . . . over the long term, you’ve got a locked in vote for socialism.” Similarly, other prominent members of the Commission selected by President Trump—Hans A. von Spakovsky and J. Christian Adams—are affiliated with the Public Interest Legal Foundation (“PILF”), which supports restrictive voting laws, including those with a racially discriminatory impact. PILF’s literature is filled with virulently racist rhetoric, equating non-citizens to non-humans and trafficking heavily in the rhetoric of “invasion.”

On June 29, 2017, on behalf of the Commission, Secretary Kobach requested the voter rolls of all 50 states and the District of Columbia. The request included the disclosure of every voter’s

political party affiliation, the last four digits of each voter's social security number, voter history, and any felony conviction information. The Commission has stated its intention to compare those voter rolls to federal databases. On information and belief, this comparison will involve checking state voter rolls against a database of non-citizens maintained by the Department of Homeland Security. That process, however, is not a reliable method to identify voter fraud, and it is likely to generate numerous false positives, with a disproportionate impact on voters of color. Secretary Kobach has aggressively championed a similar "crosscheck" program, which compares voter roll information for various states. Studies in one state have found that crosscheck analyses resulted in 200 false positives for every one possible instance of voter fraud, and that false positives are much more likely to involve voters of color.

To date, more than 40 states have refused to provide all of the categories of information identified in Secretary Kobach's letter, and 21 states and the District of Columbia have refused to transmit any information to the Commission. In addition, at least 5 lawsuits have been filed challenging the operations of the Commission as violative of a variety of federal and state statutes.

The Commission's investigation into voter fraud is not only discriminatory, it is *ultra vires*. The power to create a commission to *investigate* Americans for criminal or improper conduct (such as voter fraud) requires an Act of Congress or a specific provision in the Constitution. Neither exists here. On the contrary, the Commission's unreliable and unauthorized investigation contravenes Congress's intent in, among other laws, the National Voter Registration Act of 1993 (NVRA) and the Voting Rights Act of 1965 (VRA), to expand access to voting and ensure that voters are only removed from voting rolls if proper, nondiscriminatory procedures are followed.

Finally, the Commission has failed to comply with FACA, a requirement for all advisory committees. FACA requires that any such commission (i) be "fairly balanced in terms of the points

of view represented,” (ii) “not be inappropriately influenced by the appointing authority,” (iii) “not be inappropriately influenced . . . by any special interest.” The stacked composition of the Commission—in favor of those who share the false views that widespread in-person voter fraud exists, and that minority voters are disproportionately engaged in this alleged fraud—is designed to reaffirm President Trump’s false allegations of millions of “illegal” votes, and to provide a basis for actions that will target African-American and Latino voters, rather than objectively analyze an issue of national significance.

For all these reasons, Plaintiffs respectfully request that this Court permanently enjoin further operation of the Commission.

PARTIES

1. Plaintiff NAACP Legal Defense & Educational Fund, Inc. (LDF) is a nonprofit 501(c)(3) corporation established under the laws of the State of New York. Plaintiff is the nation’s oldest civil and human rights law organization, founded in 1940 by Thurgood Marshall. Since its inception, LDF has used legal, legislative, public education and advocacy strategies to promote full, equal and active participation of African Americans in America’s democracy. In furtherance of its mission, LDF has been involved in nearly all landmark litigation relating to minority voting rights, including *Shelby County v. Holder*, 133 S.Ct. 2612 (2013), *Thornburg v. Gingles*, 478 U.S. 30 (1986), *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016) (en banc), and *Greater Birmingham Ministries et al. v. John Merrill*, 2:15-cv-02193-LSC (N.D. Ala.). LDF therefore has a direct interest in the integrity, balance, and legitimacy of the Commission, and in preventing any efforts to chill minority voting. Further, to ensure that its decades of litigation and advocacy efforts to secure and protect the right to vote are not compromised, LDF will be required to divert resources to educate minority voters about their rights in response to the work of the Commission.

2. The Ordinary People Society (“TOPS”) was founded in 1994 and is a faith-based organization that provides services to its low-income members of currently and formerly incarcerated people throughout the state of Alabama. TOPS engages in community efforts to increase voter registration and voter participation with the goal of creating systemic change.

3. TOPS actively opposes laws, policies and practices that result in the exclusion of vulnerable groups or individuals from political participation, focusing mainly on African Americans and Latinos re-entering their community following incarceration. To that end, TOPS regularly engages in efforts to register, educate, and increase registration and turnout among African-American and Latino voters, as well as low-income voters in general. TOPS has participated in lawsuits to vindicate these democratic principles.

4. Given the President’s racially-coded statements regarding voter fraud and of the Commission’s activities, TOPS’ constituents, mainly African-American and Latino citizens, are being intimidated with respect to their exercise of the most fundamental of all rights—the right to vote. As a result of the Commission, TOPS is now required to undertake such activities as (1) increasing its efforts to inform African-American and Latino voters about lawful registration; (2) holding meetings and trainings to educate African-American and Latino voters, as well as the general public, about the Commission; and (3) addressing concerns and fears of African-American and Latino voters about false accusations of “voter fraud.”

5. Thus, the Commission’s investigation is causing, and will continue to cause, TOPS to divert a portion of its limited financial, personnel and other organizational resources to educating African-American and Latino voters in Alabama about the Commission, and to assisting voters who fear being targeted by the Commission and accused of “voter fraud.”

6. Defendant Donald J. Trump is President of the United States. In that capacity, he issued Executive Order 13,799 of May 11, 2017, establishing the Commission, and appoints the members of the Commission. He is being sued in his official capacity.

7. Defendant Michael R. Pence is Vice President of the United States and Chair of the Commission. He is being sued in his official capacity.

8. Defendant Kris W. Kobach is Kansas Secretary of State and Vice Chair of the Commission. He is being sued in his official capacity.

9. Defendant Presidential Advisory Commission on Election Integrity was established by President Trump pursuant to Executive Order 13,799, and is a presidential advisory committee. Exec. Order No.13,799.

JURISDICTION AND VENUE

10. Jurisdiction is conferred on this Court by 28 U.S.C. §§ 1331 and 1361.

11. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (e).

FACTS

A. President Trump's Unsubstantiated and Racially-Coded Allegations of Widespread Voter Fraud

12. Following the 2016 Presidential Election, Defendant Trump was elected President of the United States. The official results of the Electoral College indicated that 304 Electoral Colleges votes were cast for Defendant Trump, and 227 Electoral College votes were cast for Democratic nominee Hillary Diane Rodham Clinton. However, President Trump lost the national popular vote to Secretary Clinton by approximately three million votes.

13. Defendant Trump repeatedly asserted that, contrary to overwhelming evidence and Federal Election Commission (FEC) findings, he would have won the popular vote by 3 to 5 million votes if it were not for voter fraud.¹

14. “Voter fraud” is commonly defined as an individual casting a ballot despite knowing that she is ineligible to vote, in an attempt to defraud the election system. When speaking of “voter fraud” President Trump and Secretary Kobach have referred to either in-person impersonation voter fraud, non-citizen voting, or improper voter registration.

15. Numerous studies have shown that the such “voter fraud” is extremely rare. Elected officials, election administrators, experts, and leaders from across the political spectrum have refuted the assertions made by the President and by members he has appointed to the Commission that voter fraud is a widespread phenomenon.

16. A 2014 study found that, over a recent fourteen-year period, there were only thirty-one (31) credible cases of voter impersonation nationwide, out of more than one billion ballots cast. The study’s author counted not just prosecutions or convictions, but all credible claims.²

17. A 2014 paper concluded that “the likely percent of non-citizen voters in recent US elections is 0.”

18. A 2012 study pulled records from every state for all alleged election fraud, and found the overall fraud rate to be “infinitesimal,” and impersonation fraud by voters at the polls to

¹ 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

² Philip Bump, *The disconnect between voter ID laws and voter fraud*, Washington Post (Oct. 13, 2014), https://www.washingtonpost.com/news/the-fix/wp/2014/10/13/the-disconnect-between-voter-id-laws-and-voter-fraud/?utm_term=.71c9f0132ca7.

be rarest fraud of all: only 10 cases alleged in 12 years. The study also found only 56 alleged cases of non-citizen voting in 12 years.

19. Courts have similarly found that in-person voter fraud is nearly non-existent:
 - a. The Fourth Circuit, in an opinion finding that North Carolina's restrictive elections bill was motivated by unconstitutional racial discrimination, noted that the State had failed to identify even a single individual who has ever been charged with committing in-person voter fraud in North Carolina.
 - b. The *en banc* Fifth Circuit, in an opinion finding that Texas's strict photo ID law violated the Voting Rights Act, recognized that there were "only two convictions for in-person voter impersonation fraud out of 20 million votes cast in the decade" before Texas passed its law.
 - c. The United States Supreme Court, in its opinion in upholding Indiana's voter ID law, noted that the record in that case "contains no evidence of any [in-person voter impersonation] fraud actually occurring in Indiana at any time in its history."

20. Defendant Kobach himself, a longtime proponent of voter restrictions, has been unable to support his claim that voter fraud is widespread. Defendant Kobach argued before Kansas state lawmakers that his office needed special power to prosecute voter fraud, because he knew of 100 such cases in the state. After being granted these powers, he has brought six such cases, of which only four have been successful. Defendant Kobach has also testified about his review of 84 million votes cast in 22 states, which yielded 14 instances of fraud referred for prosecution.

21. Yet, despite this overwhelming evidence debunking the existence of widespread voter fraud, Defendant Trump has repeatedly claimed the opposite. Those false allegations began even before the election. During the 2016 presidential campaign, Donald Trump repeatedly claimed that the election would be "rigged" and plagued by fraud. None of his allegations were supported by facts or evidence.

22. Defendant Trump's campaign statements alleging widespread voter fraud include, but are by no means limited to, the following:

- a. On August 1, 2016, at a campaign rally in Columbus, Ohio, Defendant Trump stated that the 2016 U.S. presidential election was "going to be rigged."³ He added: "People are going to walk in and they're going to vote 10 times, maybe, who knows?"⁴ The same evening, appearing on *Fox News*, Defendant Trump again stated that the "election [wa]s going to be rigged."⁵
- b. On October 17, 2016, Defendant Trump stated: "Of course there is large scale voter fraud happening on and before election day. Why do Republican leaders deny what is going on? So naive!"⁶
- c. On October 17, 2016, at a campaign rally in Green Bay, Wisconsin, Defendant Trump stated: "They even want to try to rig the election at the polling booths People that have died 10 years ago are still voting. Illegal immigrants are voting."⁷ Defendant Trump then added that "many cities are corrupt, and voter fraud is very, very common."⁸

23. Moreover, in advancing unsubstantiated allegations about widespread in-person voter fraud, Defendant Trump and his spokespersons and surrogates repeatedly used language that linked voter fraud to voters of color through targeted references to majority-minority cities and "illegals" or "illegal voters," referring to immigrants.

24. During campaign rallies attended overwhelmingly by white supporters, then-candidate Trump encouraged supporters to prevent majority-minority communities from engaging in fraud and thereby stealing the election. For example, at a rally in Ambridge, Pennsylvania,

³ Ryan Teague Beckwith, *Donald Trump Thinks a Lot of Things Are Phony, Rigged, Politically Motivated Hoaxes*, TIME (Oct 11, 2016), <http://time.com/4522922/donald-trump-rigged-phony-hoaxes/>.

⁴ *Id.*

⁵ Linda Qiu, Donald Trump's baseless claims about the election being 'rigged', PolitiFact (Aug. 15, 2016, 3:01 PM), www.politifact.com/truth-o-meter/statements/2016/aug/15/donald-trump/donald-trumps-baseless-claims-about-election-being/

⁶ Donald J. Trump (@realDonaldTrump), Twitter (Oct. 17, 2016, 5:33 AM), <https://twitter.com/realdonaldtrump/status/787995025527410688>

⁷ Robert Farley, Fact check: Trump's bogus voter fraud claims, USA Today (Oct. 19, 2016, 7:10 PM), <https://www.usatoday.com/story/news/politics/elections/2016/10/19/fact-check-trump-bogus-voter-fraud-claims/92434104/>.

⁸ *Id.*

President Trump urged his supporters to “watch *other communities*” to prevent the election being “stolen from *us*.”⁹

25. At a rally in Altoona, Pennsylvania, which is 94% white, President Trump similarly called for volunteers to scout for cheating in “certain parts of the state.” He directed the supporters to “[g]o down to certain areas and watch and study and make sure other people don’t come in and vote five times . . . And we have to call up law enforcement.”¹⁰

26. After urging his supporters to call law enforcement because in “certain sections of the state they cheat,” Defendant Trump invited Representative Bill Shuster (R-PA) to speak to the crowd. Representative Shuster reinforced President Trump’s racially-coded message, urging supporters “in western and central Pennsylvania” to “overcome what goes on down in Philadelphia. . . . The cheating, what they do – we’ve got to make sure we’re doing the job here in central Pennsylvania.”¹¹

27. A few weeks before Election Day, Trump told an audience in predominately white Wilkes-Barre, Pennsylvania, “I just hear such reports about Philadelphia. . . . I hear these horror shows, and we have to make sure that this election is not stolen from *us* and is not taken away from *us*.” He added for emphasis: “Everybody knows what I’m talking *about*.”¹²

⁹ *Donald Trump Campaign Rally in Ambridge, Pennsylvania*, C-Span (Oct. 10, 2016), <https://www.c-span.org/video/?416683-1/donald-trump-campaigns-ambridge-pennsylvania&start=2761> (emphasis added).

¹⁰ Philip Bump, *Trump says he will only lose Pennsylvania if there’s widespread voter fraud. That’s very wrong.*, Wash. Post (Oct. 1, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/08/12/donald-trump-says-hell-only-lose-pennsylvania-where-hes-down-9-points-is-if-cheating-goes-on/?utm_term=.4b2be7f36ca0; Sean Sullivan, *Trump urges Pennsylvania backers: Don’t just vote, watch for signs of ‘cheating’ on election day*, Wash. Post (Aug. 12, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/08/12/trump-urges-pennsylvania-backers-dont-just-vote-watch-for-signs-of-cheating-on-election-day/?utm_term=.8792ad92b71d.

¹¹ Sean Sullivan, *Trump urges Pennsylvania backers: Don’t just vote, watch for signs of ‘cheating’ on election day*, Wash. Post (Aug. 12, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/08/12/trump-urges-pennsylvania-backers-dont-just-vote-watch-for-signs-of-cheating-on-election-day/?utm_term=.8792ad92b71d.

¹² Ashley Parker, *Donald Trump, Slipping in Polls, Warns of ‘Stolen Election,’* N.Y. Times (Oct. 13 2016), <https://www.nytimes.com/2016/10/14/us/politics/trump-election-rigging.html> (emphasis added)

28. President Trump did not limit his unfounded statements about voter fraud in urban communities to Philadelphia. He also targeted other majority-minority cities.

29. On Oct. 18, 2016, at a rally in Colorado Springs, Colorado, then-candidate Trump stated, “Voter fraud is all too common, and then they criticize us for saying that But take a look at Philadelphia, what’s been going on, take a look at Chicago, take a look at St. Louis. Take a look at some of these cities, where you see things happening that are horrendous.”¹³

30. The sub-text was clear. People of color make up over 60% of Philadelphia’s population; over 55% of St. Louis’s population; and over 70% of Chicago’s population. By targeting these cities as alleged hotbeds of voter fraud and speaking in terms of “us” and “them,” then-candidate Trump was suggesting that voters of color are more likely to commit voter fraud.

31. Supporters of President Trump understood his message and followed his direction. One Ohio supporter stated: “Trump said to watch your precincts. I’m going to go, for sure . . . I’ll look for . . . well, it’s called racial profiling. Mexicans. Syrians. People who can’t speak American . . . I’m going to go right up behind them. I’ll do everything legally. I want to see if they are accountable. I’m not going to do anything illegal. I’m going to make them a little bit nervous.”¹⁴

32. After losing the popular vote in the 2016 Presidential Election, President-elect Trump ramped up his false allegations of voter fraud. Defendant Trump also continued his racially-coded messaging linking voter fraud to voters of color. Indeed, a fundamental premise of President Trump’s false assertion that voter fraud cost him the popular vote is that supporters of Secretary Clinton—in particular, voters of color—were disproportionately likely to commit voter fraud.

¹³ Trip Gabriel, *Donald Trump’s Call to Monitor Polls Raises Fears of Intimidation*, N.Y. Times (Oct. 18, 2016), <https://www.nytimes.com/2016/10/19/us/politics/donald-trump-voting-election-rigging.html>.

¹⁴ Matt Viser & Tracy Jan, *Warnings of conspiracy stoke anger among Trump faithful*, Bos. Globe (Oct. 15, 2016), www.bostonglobe.com/news/politics/2016/10/15/donald-trump-warnings-conspiracy-rig-election-are-stoking-anger-among-his-followers/LcCY6e0QOcfH8VdeK9UdsM/story.html.

33. After his inauguration, President Trump persisted in falsely alleging widespread voter fraud committed by “illegal” voters. In his first White House meeting with congressional leaders from both parties, and in which Vice President Pence participated, President Trump alleged that millions of people voted “illegally,” depriving him of a popular vote majority.¹⁵

34. When one congressional leader attempted to challenge his unsubstantiated allegation that he lost the popular vote because of illegal votes, President Trump cited an anecdote. According to President Trump, the golfer Bernhard Langer, who is German, told Mr. Trump that Langer was turned away from a polling place while others in line who did not look as if they should be allowed to vote were permitted to cast provisional ballots. Defendant Trump further identified the names of Latin American countries that the presumably ineligible voters might have come from.¹⁶ Mr. Langer was subsequently interviewed by reporters and denied that he had ever been part of such an incident or relayed such a story to Mr. Trump. Indeed, as a German citizen, Mr. Langer is not eligible to vote and made no attempt to do so.

35. A little less than a month after the election, President Trump also claimed: “In addition to winning the Electoral College in a landslide, I won the popular vote if you deduct millions of people who voted illegally.”¹⁷

36. That assertion was contrary to the position of President Trump’s own legal team, which argued four days later in response to a recount request filed by Green Party Candidate Jill Stein: “On what basis does Stein seek to disenfranchise Michigan citizens? None really, save for

¹⁵ Michael D. Shear and Emmarie Huetteman, *Trump Repeats Lie About Popular Vote in Meeting With Lawmakers*, N.Y. Times, (Jan. 23, 2017), <https://www.nytimes.com/2017/01/23/us/politics/donald-trump-congress-democrats.html>

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¹⁶ Glenn Thrush, *Trump’s Voter Fraud Example? A Troubled Tale with Bernhard Langer*, N.Y. Times (Jan. 25, 2017), <https://www.nytimes.com/2017/01/25/us/politics/trump-bernhard-langer-voting-fraud.html>

¹⁷ See Donald Trump (@realDonaldTrump), Twitter (November 27, 2016, 12:30 PM), <https://twitter.com/realDonaldTrump/status/802972944532209664>.

speculation. All available evidence suggests that the 2016 general election was not tainted by fraud or mistake.”

37. Other statements by President Trump falsely alleging voter fraud to explain his loss of the popular vote include the following:

- a. On January 25, 2017, two days after his meeting with congressional leaders where he alleged widespread voter fraud, Defendant Trump tweeted: “I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, [and] those who are illegal.”¹⁸ He continued the statement in a second post issued three minutes later: “even, [sic] those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!”¹⁹
- b. On February 5, 2017, when asked by Bill O’Reilly whether he thought he would be “proven correct” in his allegations of voter fraud, President Trump responded “Well, I think I already have.” O’Reilly reminded President Trump that he would only be correct only if “the data . . . show[ed] that three million illegals voted.” President Trump responded: “Forget that, forget all of that. Just take a look at the registration and we’re going to do it, and I’m going to set up a commission to be headed by Vice President Mike Pence and we’re going to look at it very, very carefully.”
- c. On February 9, 2017, in a meeting with senators, Defendant Trump claimed his loss in the state of New Hampshire was attributable to thousands of Massachusetts residents who were bused into New Hampshire to vote against him.²⁰

38. Similarly, in an appearance on a news program in February 2017, White House Senior Policy Advisory Stephen Miller—invoking Secretary Kobach for support—defended President Trump’s false assertions about widespread voter fraud. Mr. Miller further asserted: “It is a fact . . . that *there are massive numbers of non-citizens who are registered to vote*. . . . As a country, we should be aghast about the fact that you have people who have no right to vote

¹⁸ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 25, 2017, 4:10 AM), <https://twitter.com/realdonaldtrump/status/824227824903090176>;

¹⁹ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 25, 2017, 4:13 AM), <https://twitter.com/realdonaldtrump/status/824228768227217408> (emphasis added).

²⁰ Annie Linskey, Matt Viser & James Pindell, *Trump makes groundless N.H. voter fraud claims*, Boston Globe (Feb. 10, 2017), <https://www.bostonglobe.com/news/nation/2017/02/10/trump-makes-groundless-voter-fraud-claims/fcnMJfLgOx0UAVhJeTS8TP/story.html>.

cancelling out the franchise of lawful citizens of this country. . . . The President of the United States is correct 100%.”²¹

B. President Trump’s False Claims About Voter Fraud Have Been Roundly Rejected by Election Officials and Prominent Members of His Own Party.

39. Since President Trump’s allegations of widespread voter fraud in the 2016 election, numerous elected officials have refuted his claims, including multiple members of the President’s own party:

- a. Speaker Paul Ryan (WI), in response to Defendant Trump’s claims that millions of individuals illegally voted, said: “I’ve seen no evidence to that effect. I’ve made that very, very clear.”
- b. Former Arkansas Governor Mike Huckabee said: “I have no evidence whatsoever, and I don’t know that anyone does, that there were that many illegal people who voted. . . .”
- c. Former Attorney General of New Hampshire Tom Rath tweeted: “This will probably cost me my spot in the Cabinet but there was no fraud, serious or other, in this election in NH. There just wasn’t.”
- d. Former Speaker of the House Newt Gingrich, when asked if he saw evidence of millions of illegal votes cast, said “no.”

40. Election officials have also refuted President Trump’s allegations:

- a. When asked if he thought the 2016 election was rigged, U.S. Election Assistance Commission Chair Matthew Masterson, a Republican, said: “No. The process had integrity. It was extremely well administered.”
- b. Mississippi Secretary of State Delbert Hosemann, a Republican, said: “We don’t have it [voter fraud]. . . . We think we do it right.”
- c. Massachusetts Secretary of State William Galvin, a Republican, said that President Trump’s allegations of widespread voter fraud were “outrageous lies.”
- d. Meredith Beatrice, a spokeswoman for Florida’s Secretary of State Ken Detzner, a Republican, said: “[We are] not aware of documented findings of illegal immigrants or non-citizens voting in Florida during the 2016 General Election. We have several safeguards in place to prevent elections fraud.”

²¹ *Stephen Miller Holds Firm On Voter Fraud Claims With George Stephanopoulos*, YouTube (Feb. 12, 2017), <https://www.youtube.com/watch?v=74DAI2hr9Kk>.

- e. David Dove, chief of staff to Georgia's Secretary of State Brian Kemp, a Republican, said: "We haven't had illegal votes in Georgia."
- f. The National Association of Secretaries of State, in a press release, stated: "We are not aware of any evidence that supports the voter fraud claims made by President Trump. . . . In the lead up to the November 2016 election, secretaries of state expressed their confidence in the systemic integrity of our election process as a bipartisan group, and they stand behind that statement today."

C. President Trump Seeks to Manufacture Evidence to Support His False and Racially Biased Claims by Appointing a Biased Commission to Investigate Alleged Voter Fraud.

41. Notwithstanding the overwhelming evidence that widespread voter fraud does not exist, on May 11, 2017, Defendant Trump made good on his promise to "ask[] for a major investigation into VOTER FRAUD, including those registered to vote in two states, [and] those who are illegal," by signing Executive Order 13,799, "Establishment of Presidential Advisory Commission on Election Integrity," which created the Commission. 82 Fed. Reg. 22,389 (2017).

42. Executive Order 13,799 instructed the Commission to "study the registration and voting processes used in Federal elections," *id.* § 3, and to prepare a report discussing "vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registration and fraudulent voting," *id.* §3(c), as well as electoral laws and practices that "enhance" or "undermine" public confidence in elections, *id.* § 3(a), (b).

43. That same day, the White House issued a statement that the Commission would "also study concerns about voter suppression, as well as other voting irregularities." The Order and Charter, however, make no reference to voter suppression or other impediments to voting. Nor does the Commission have members with experience protecting voters from suppression.

44. The creation of the Commission includes procedural and substantive departures from legal requirements, which are further evidence of its discriminatory underpinnings.

45. First, although Executive Order 12,838, 58 Fed. Reg. 8,207 (1993), requires the appointment of a new advisory commission to be justified by “compelling considerations,” President Trump identified no such compelling considerations in establishing the Commission.

46. Second, FACA requires that advisory committees be fair and balanced, and regulations implementing FACA require commissions to provide a description of their plan to attain fairly-balanced membership during their charter consultation process with General Services Administration. Yet, as discussed below, the Commission is not fair and balanced, and it has not created any such plan to comport with this requirement.

D. The Commission’s Blatantly Skewed Membership

47. According to the Executive Order forming the Commission, the Commission will consist of Defendant Pence and “not more than 15 additional members.” Exec. Order No. 13,799 § 2, 82 Fed. Reg. 22,389 (2017). To date, 13 men and women have been appointed to the Commission. One Commission member resigned, leaving 12 members currently on the Commission and only 3 spots available to be filled, absent an unforeseen vacancy.

48. The same day Defendant Trump signed the Executive Order, the White House announced that Defendant Trump had appointed Defendant Kobach as the Commission’s Vice Chair,²² as well as Connie Lawson, Bill Gardner, Matthew Dunlap, Ken Blackwell, and Christy McCormick as members of the Commission.²³

²² Although the Executive Order and Charter state that the Vice President “may select a Vice Chair from among those members appointed by the President,” the White House released a statement indicating that President Trump named Secretary Kobach as the Vice Chair. *See* Executive Order 13,799, 82 Fed. Reg. 22,389 (2017).

²³ Off. of the Press Secretary, *President Announces Formation of Bipartisan Presidential Commission on Election Integrity*, The White House (May 11, 2017), <https://www.whitehouse.gov/the-press-office/2017/05/11/president-announces-formation-bipartisan-presidential-commission>

49. On June 21, 2017, the White House announced that President Trump had appointed Luis Borunda, David K. Dunn, and Mark Rhodes as members of the Commission.²⁴

50. On June 29, 2017, the White House announced that President Trump had appointed Hans A. von Spakovsky as a member of the Commission.²⁵

51. On July 3, 2017, Luis Borunda resigned from the Commission.²⁶

52. On July 10, 2017, the White House announced that President Trump had appointed J. Christian Adams and Alan Lamar King as members of the Commission.

53. The appointees to the Commission demonstrate that the Commission is not fair and balanced and not designed to undertake an objective analysis of voting irregularities. Instead, the Commission is fully skewed by the appointment of individuals who share the President's unsubstantiated views about voter fraud, many of whom have demonstrated racially discriminatory views about minority voters.

54. Relevant information about the 12 currently appointed members of the Commission is provided below.

Defendant Michael R. Pence, Chair

55. Defendant Pence's appointment to chair the Commission comes after his public defense of Defendant Trump's allegations that "millions of people . . . voted illegally" in the 2016 election.²⁷ Confronted about Defendant Trump's Twitter statement by an ABC News interviewer,

²⁴ Off. of the Press Secretary, *President Donald J. Trump Announces Intent to Nominate Personnel to Key Administration Posts*, The White House (June 21, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/21/president-donald-j-trump-announces-intent-nominate-personnel-key>.

²⁵ Off. of the Press Secretary, *President Donald J. Trump Announces Key Additions to his Administration*, The White House (June 29, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/29/president-donald-j-trump-announces-key-additions-his-administration>.

²⁶ Luke Broadwater, *Maryland official resigns from Trump voter fraud panel*, Baltimore Sun (July 3, 2017, 6:50 PM), <http://www.baltimoresun.com/news/maryland/politics/bs-md-borunda-resigns-trump-20170703-story.html>.

²⁷ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 27, 2016, 12:30 PM), <https://twitter.com/realdonaldtrump/status/802972944532209664>.

Defendant Pence said, “I don’t know that that is a false statement . . . and neither do you,” and characterized Defendant Trump’s making such a claim (notwithstanding the lack of evidence for it) as “refreshing.”²⁸

56. In an October 2016 campaign rally in Ohio, Defendant Pence echoed Defendant Trump’s rhetoric by stating that preserving “freedom and honest democracy” demands “vigilance” against voter fraud.²⁹

57. In a January 2017 private meeting with Congressional Republicans, Defendant Pence referred to “the concern that you have, I have, the [P]resident certainly has about people being registered in multiple states.”³⁰

Defendant Kris W. Kobach, Vice Chair

58. Defendant Kobach, the Kansas Secretary of State and the Vice Chair of the Commission, has gained a national reputation for his unsupported claims that voter fraud is widespread.³¹

59. Defendant Kobach has defended and encouraged Defendant Trump’s statements about fraudulent voting.³² In November 2016, Defendant Kobach stated that Defendant Trump “is

²⁸ Amy B. Wang, *Watch Mike Pence try to defend Trump’s false claim that ‘millions’ voted illegally*, Wash. Post (Dec. 4, 2016), https://www.washingtonpost.com/news/the-fix/wp/2016/12/04/watch-mike-pence-try-to-defend-trumps-false-claim-that-millions-voted-illegally/?utm_term=.9d1670fa46e0.

²⁹ Alan He, *Mike Pence warns of voter fraud and a “rigged” election*, CBS News (Oct. 17, 2016, 4:28 PM), www.cbsnews.com/news/mike-pence-warns-of-voter-fraud-and-a-rigged-election/.

³⁰ Mike DeBonis & Sari Horwitz, *In private meeting, Pence vows ‘full evaluation of voting rolls’ over claims of fraud*, Wash. Post (Jan. 27, 2017), https://www.washingtonpost.com/powerpost/in-private-meeting-pence-vows-full-evaluation-of-voting-rolls-over-claims-of-voting-fraud/2017/01/27/1c1fa1de-e49a-11e6-a547-5fb9411d332c_story.html?utm_term=.4a7ec39da956.

³¹ *See generally* Ari Berman, *The Man Behind Trump’s Voter-Fraud Obsession*, N.Y. Times Mag. (June 13, 2017), (<https://www.nytimes.com/2017/06/13/magazine/the-man-behind-trumps-voter-fraud-obsession.html>).

³² Hunter Woodall, *Kris Kobach was a source of Donald Trump’s voter fraud allegation, Conway says*, Kan. City Star (Dec. 2, 2016, 10:46 AM), <http://www.kansascity.com/news/local/news-columns-blogs/the-buzz/article118434743.html> ; Bryan Lowry, *Kobach backs Trump’s unsupported claim of millions illegally voting*, Wichita Eagle (Nov. 30, 2016, 10:41 AM), <http://www.kansas.com/news/politics-government/election/article117933098.html>.

absolutely correct when he says the number of illegal votes cast exceeds the popular vote margin between him and Hillary Clinton at this point.”³³

60. Secretary Kobach currently operates an “Interstate Crosscheck” system, which purports to compare voter registration files in multiple states to search for double voters.³⁴

61. Being registered in two locations, however, is not evidence that a voter voted twice or committed voter fraud.

62. Further, experts in data analysis—none of whom are included on the Commission—have shown that running such a superficial 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.³⁵

63. A database expert reviewed the “crosscheck” methodology and conducted a statistical analysis. He found that “African-American, Latino and Asian names predominate, a simple result of the Crosscheck matching process, which spews out little more than a bunch of common names. No surprise: The U.S. Census data shows that minorities are overrepresented in 85 of 100 of the most common last names. If your name is Washington, there’s an 89 percent chance you’re African-American. If your last name is Hernandez, there’s a 94 percent chance you’re Hispanic. If your name is Kim, there’s a 95 percent chance you’re Asian.”³⁶

³³ Bryan Lowry, *Kobach backs Trump’s unsupported claim of millions illegally voting*, *Wichita Eagle* (Nov. 30, 2016, 10:41 AM), <http://www.kansas.com/news/politics-government/election/article117933098.html>.

³⁴ Interstate Voter Registration Crosscheck Program (Jan. 26, 2013), http://www.nased.org/NASED_Winter_2013_PP_Presentations/KANSAS.pdf

³⁵ *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/>.

³⁶ Greg Palast, *The GOP’s Stealth War Against Voters*, *Rolling Stone* (Aug. 24, 2016), <http://www.rollingstone.com/politics/features/the-gops-stealth-war-against-voters-w435890>

64. The expert concluded there is an inherent bias in the “crosscheck,” resulting in “one in six Hispanics, one in seven Asian-Americans and one in nine African-Americans in Crosscheck states landing on the list.”

65. Thus, the false positives generated by crosscheck are disproportionately likely to be voters of color. When the crosscheck program is used to investigate voters and purge voter rolls, it is more likely to disproportionately impede the constitutional rights of voters of color.

66. After North Carolina joined the crosscheck program, election officials reported that in the 2012 general election, there were 35,750 voters in the state whose first and last names and dates of birth matched those of individuals who voted in the same election in a different state. Some North Carolina politicians and strategists touted this as “alarming evidence of voter fraud,” and “the first concrete evidence we’ve ever had of massive voter fraud.” However, after investigation with additional data, only eight cases of potential double voting were referred to prosecutors, and two people were convicted.³⁷

67. A team of researchers from Stanford, Harvard, the University of Pennsylvania, and Microsoft concluded that, if Secretary Kobach’s 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.”³⁸

68. Secretary Kobach’s repeated efforts to restrict voting have been successfully challenged in court. In *League of Women Voters of United States v. Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016), the Court of Appeals reversed the decision of the Executive Director of the federal Election Assistance Commission’s (“EAC”) to grant requests from Alabama, Georgia, and Kansas

³⁷ Ari Berman, *The Man Behind Trump’s Voter-Fraud Obsession*, N.Y. Times Mag. (June 13, 2017) <https://www.nytimes.com/2017/06/13/magazine/the-man-behind-trumps-voter-fraud-obsession.html>

³⁸ See Sharad Goelet al., *One Person, One Vote: Estimating the Prevalence of Double Voting in U.S. Presidential Elections* (Jan. 13, 2017), <https://5harad.com/papers/1p1v.pdf>.

to modify the federal voter registration form by requiring documentary proof of citizenship. The federal form already requires registrants to swear under penalty of criminal prosecution that they are citizens of the United States. Defendant Kobach, as the Kansas Secretary of State, had filed Kansas's request to the EAC and, as a private citizen, represented the EAC as an attorney in that case. In both capacities, he argued that documentary proof of citizenship requirements was necessary to prevent non-citizens from fraudulently registering to vote. The D.C. Circuit rejected these arguments and found that there was "precious little record evidence" that the failure to present documentary proof of citizenship leads to fraudulent registration by non-citizens.

69. In *Fish v. Kobach*, 840 F.3d 710 (10th Cir. 2016), the Tenth Circuit upheld the district court's injunction against Secretary Kobach, requiring him to register voters in Kansas whose voter registrations were rejected for failure to provide documentary proof of citizenship. Prior to the injunction, Secretary Kobach had refused to register eligible Kansas voters who had submitted federal voter registration forms without documentary proof of citizenship. Secretary Kobach based his refusal to register these voters by relying on a Kansas law that requires registrants to provide documentary proof of citizenship. The Tenth Circuit held that this Kansas law was preempted by the National Voter Registration Act of 1993, which permits individuals to register to vote with the federal form by swearing under the threat of criminal prosecution that they are citizens. Mr. Kobach was ordered to permit all registrants who had properly completed the federal form to be registered for federal elections in Kansas. The Tenth Circuit explained that Mr. Kobach's actions and the Kansas statute had amounted to a "mass denial of a fundamental constitutional right" for more than 18,000 voters. Moreover, the Tenth Circuit explained that Defendant 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.

70. In the wake of these successful challenges to his efforts to restrict voting, Secretary Kobach wants to change federal law designed to protect voters. The day after Defendant Trump's election, Secretary Kobach emailed a member of Defendant Trump's transition team, stating that he had already been drafting proposed legislation to amend the NVRA to permit proof of citizenship requirements for registration.³⁹ In the same sentence of that email, Secretary Kobach stated that he also drafted legislation to stop states from providing instate tuition to "illegal aliens."⁴⁰

71. Upon information and belief, Secretary Kobach wants his work in Kansas to become a model for the rest of the country.

72. Secretary Kobach recently announced his intent to run for the 2018 Kansas gubernatorial election, and is alleged in a lawsuit to have repeatedly exploited his role as Vice Chair of the Commission to promote his candidacy and to solicit campaign contributions. The lawsuit claims that Secretary Kobach's use of his official federal position on the Commission for electoral purposes violates the Hatch Act.

73. Secretary Kobach has also served as counsel to the Immigration Reform Law Institute, the legal arm of the Federation for American Immigration Reform (FAIR), which the Southern Poverty Law Center has identified as a hate group.⁴¹

74. Secretary Kobach has used his platform as a public official to spread an extremist, anti-immigrant message, associating minority voters with socialism and "ethnic cleansing."⁴²

³⁹ Sam Levine, *Head of Trump Voter Fraud Probe Wanted to Change Law to Make Registration More Difficult*, HuffPost (July 15, 2017), http://www.huffingtonpost.com/entry/kris-kobach-nvra_us_59698037e4b017418627ac98?ncid=tweetInkushpmg00000067.

⁴⁰ *Id.*

⁴¹ Ryan Lenz & Stephen Piggott, *Trump Appoints Hate Group Figures to Voter Fraud Commission*, Southern Poverty L. Ctr.(May 16, 2017), <https://www.splcenter.org/hatewatch/2017/05/16/trump-appoints-hate-group-figures-voter-fraud-Commission>.

⁴² See Ahiza Garcia, *Kobach: Obama's Lawlessness Could Lead To 'Ethnic Cleansing' In America*, Talking Points Memo (Nov. 20, 2014, 5:02 PM), <http://talkingpointsmemo.com/livewire/kris-kobach-obama-ethnic-cleansing>.

75. In November of 2014, during an episode of his radio talk show, Secretary Kobach alleged the existence of a socialist conspiracy to replace “American” voters with Latinos.⁴³ He described this conspiracy as “[t]he long term strategy of, first of all, replacing American voters with illegal aliens, recently legalized, who then become U.S. citizens.”⁴⁴ Secretary Kobach further stated: “So maybe this strategy of replacing American voters with newly legalized aliens, if you look at it through an ethnic lens, . . . over the long term, you’ve got a locked in vote for socialism.”⁴⁵

76. In this same episode of Secretary Kobach’s radio talk show, he speculated about the likelihood of “ethnic cleansing” by a future Latino majority in the United States. A caller asked, “What happens, if you know your history, when one culture or one race or one religion overwhelms another culture or race?”⁴⁶ The caller stated that he was referring to “Hispanic rights groups,” and introduced the analogy of “ethnic cleansing” in Bosnia.⁴⁷

When one race or culture overwhelms another culture, they run them out or they kill them And they know in numbers, once the numbers are so bad, they can pretty much do whatever they want to do.⁴⁸

Secretary Kobach responded to the caller as follows:

What protects us in America from any kind of ethnic cleansing is the rule of law, of course. And the rule of law used to be unassailable, used to be taken for granted in America. And now, of course, we have [President Obama] who disregards the law when it suits his interests. And so, while I normally would answer that by saying, ‘Steve, of course we have the rule of law, that could never happen in America,’ I wonder what could happen. I still don’t think it’s

⁴³ Miranda Blue, *Kobach Wonders if Hispanic Majority Would Conduct ‘Ethnic Cleansing’ In U.S.*, Right Wing Watch (Nov. 20, 2014, 1:53 PM), <http://www.rightwingwatch.org/post/kobach-wonders-if-hispanic-majority-would-conduct-ethnic-cleansing-in-u-s/> (second recording).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Miranda Blue, *Kobach Wonders if Hispanic Majority Would Conduct ‘Ethnic Cleansing’ In U.S.*, Right Wing Watch (Nov. 20, 2014, 1:53 PM), <http://www.rightwingwatch.org/post/kobach-wonders-if-hispanic-majority-would-conduct-ethnic-cleansing-in-u-s/> (first recording).

⁴⁷ *Id.*

⁴⁸ *Id.*

going to happen in America, but I have to admit, things are strange and they are happening.”⁴⁹

Ken Blackwell, Former Ohio Secretary of State

77. Ken Blackwell has been involved in restricting voting rights for decades, and his views align closely with those of the President. Blackwell is currently on the Policy Board of the American Civil Rights Union (“ACRU”),⁵⁰ an organization which asserts that voter fraud is rampant and promotes restrictive voting laws in part by claiming that “voter rolls bulge with the names of people who have moved away, the dead, noncitizens and felons.”⁵¹ The ACRU has sent hundreds of requests to election commissioners, of mostly under-resourced small counties, for them to reduce the number of registered voters. These requests are part of the ACRU’s campaign to purge voter rolls across the country.⁵²

78. Blackwell rose to notoriety during the 2004 presidential election, when he was both the co-chair of George W. Bush’s reelection campaign and the Ohio Secretary of State, responsible for administering impartial elections.⁵³ Observers believed that irregularities in the voting process, including massive purge of voter rolls, attributable to Blackwell’s influence, effectively disenfranchised thousands of voters.

⁴⁹ *Id.*

⁵⁰ *Policy Board*, Am. Civil Rights Union, <http://www.theacru.org/policy-board/> (last visited July 11, 2017).

⁵¹ *Defending Honest Elections*, Am. Civil Rights Union, http://www.theacru.org/wordpress/wp-content/uploads/2017/05/VII-Flyer_FINAL.pdf (last visited July 11, 2017).

⁵² Penna Levy, *These Three Lawyers are Quietly Purging Voter Rolls Across the Country*, Mother Jones (Jul. 7, 2017), <http://www.motherjones.com/politics/2017/07/these-three-lawyers-are-quietly-purging-voter-rolls-across-the-country/>

⁵³ Ari Berman, *Ohio’s Secretary of State Subverts Voting Rights*, The Nation (Oct. 9, 2012), <https://www.thenation.com/article/ohios-secretary-state-subverts-voting-rights/>.

79. In October of 2008, Blackwell wrote an op-ed in *The Washington Times* in which he warned of a threat from “unsavory activists who are looking to subvert the [2008 presidential] election.”⁵⁴

80. Since the 2016 presidential election, Blackwell has echoed Defendant Trump’s talking points about illegal voting. “By one estimate, more than a million noncitizens may have voted in November,” Blackwell wrote, in December of 2016, in the *Daily Caller*.⁵⁵

Matthew Dunlap, Maine Secretary of State

81. Matthew Dunlap, the Maine Secretary of State, has expressed skepticism of President Trump’s claims that voter fraud is widespread.⁵⁶ However, Mr. Dunlap expressed surprise that the Commission’s request for state voter rolls generated so much concern. Based on publicly-available materials, he does not appear to have any experience working with voters of color who have been subject to voter suppression, intimidation, or selective investigations.

David Dunn, Former Arkansas State Representative

82. David Dunn served in the Arkansas State House of Representatives as a Democrat from 2005 to 2011.⁵⁷ He is now a lobbyist in Arkansas.⁵⁸ Dunn has never been responsible for

⁵⁴ Ken Blackwell, *BLACKWELL: Voter Fraud*, Wash. Times (Oct. 21, 2008), <http://www.washingtontimes.com/news/2008/oct/21/voter-fraud/>.

⁵⁵ Ken Blackwell, *Confirm Jeff Sessions As Attorney General*, Daily Caller (Dec. 20, 2016, 9:22 AM), <http://www.dailycaller.com/2016/12/20/confirm-jeff-sessions-as-attorney-general/>.

⁵⁶ See Edward D. Murphy, *Winner of 2 elections, Gov. LePage casts doubt on state’s voting process*, Portland Press Herald (Oct. 19, 2016), <http://www.pressherald.com/2016/10/18/lepage-claims-maine-election-process-could-be-rigged/>; Eric Russell, *Secretary of state contradicts LePage’s warning to college students about Maine residency, voter fraud*, Portland Press Herald (Nov. 8, 2016), <http://www.pressherald.com/2016/11/07/governor-says-college-students-should-establish-maine-residency-to-vote/>; Scott Thistle, *Maine’s secretary of state invited to join Trump commission on voter fraud*, Portland Press Herald (May 12, 2017), <http://www.pressherald.com/2017/05/11/maines-secretary-of-state-could-join-trump-commission-on-voter-fraud/>.

⁵⁷ *Representative David Dunn (D)*, Ark. State Legislature, <http://www.arkleg.state.ar.us/assembly/2009/R/Pages/MemberProfile.aspx?member=Dunn>

⁵⁸ *Partners: David Dunn*, Capitol Partners, <http://www.capitolpartners.co/about/>; Max Brantley, *Former Arkansas Democratic legislator lands on Trump vote fraud Commission*, Ark. Times (June 22, 2017, 4:02 PM), <https://www.arktimes.com/ArkansasBlog/archives/2017/06/22/former-arkansas-democratic-legislator-lands-on-trump-votie-fraud-Commission>.

administering an election. In public statements, he has expressed uncertainty as to why he was appointed to the Commission.⁵⁹ “I don’t know why this has fallen on my shoulders,” Dunn stated in the press.⁶⁰ He added, “I’m just a very small old country boy from Arkansas in this bigger Commission with Vice President Pence, and I’m just going to do the best I can, to be honest.”⁶¹

83. According to reporting by the *Arkansas Democrat-Gazette*, Dunn was appointed on the recommendation of Arkansas Secretary of State Mark Martin, a colleague from Dunn’s years as a legislator.⁶² Last year, Secretary Martin was accused of “the systematic removal of eligible voters from the rolls” on the basis of inaccurate felony data his office distributed to Arkansas county clerks.⁶³

Bill Gardner, New Hampshire Secretary of State

84. Bill Gardner has been the Secretary of State of New Hampshire since 1976. In New Hampshire, Secretary Gardner has vocally supported efforts to investigate voter fraud and legislation that would end same-day registration and grant the secretary of state’s office the power to investigate voter fraud, among other changes to the state’s election laws.⁶⁴

⁵⁹ Frank E. Lockwood, *Arkansan on U.S. list for cote-system study*, ArkansasOnline (June 25, 2017, 4:30 AM), <http://www.arkansasonline.com/news/2017/jun/25/arkansan-on-u-s-list-for-vote-system-st-1/>.

⁶⁰ Sam Levine, *Some Of Trump’s New Election Investigators Don’t Seem To Have Much Election Experience*, Huffington Post (June 22, 2017, 3:31 PM), http://www.huffingtonpost.com/entry/trump-voter-fraud-commission_us_594c1068e4b01cdedf01e75e.

⁶¹ *Id.*

⁶² Frank E. Lockwood, *Arkansan on U.S. list for cote-system study*, ArkansasOnline (June 25, 2017, 4:30 AM), <http://www.arkansasonline.com/news/2017/jun/25/arkansan-on-u-s-list-for-vote-system-st-1/>.

⁶³ David Ramsey, *Secretary of State Mark Martin’s craven dereliction of duty*, Arkansas Times: Arkansas Blog (Aug. 4, 2016, 5:16 PM), <https://www.arktimes.com/ArkansasBlog/archives/2016/08/04/secretary-of-state-mark-martins-craven-dereliction-of-duty>.

⁶⁴ S.B. 3 (N.H. 2017), available at http://www.gencourt.state.nh.us/bill_status/Bill_docket.aspx?lsr=883&sy=2017&sortoption=&txtsessionyear=2017&txbillnumber=Sb3&q=1; Casey McDermott, *Amid Voter Intimidation Concerns, N.H. Sec. of State Supports GOP’s Voting Bill*, N.H. Pub. Radio (Mar. 7, 2017), <http://nhpr.org/post/amid-voter-intimidation-concerns-nh-sec-state-supports-gops-voting-bill#stream/0>.

85. In an interview with local media in May 2017, Gardner expressed his support for New Hampshire's voter ID law and stated that he is "not a fan" of the NVRA.⁶⁵

Connie Lawson, Indiana Secretary of State

86. Connie Lawson was a state senator for 16 years before being appointed to her current position, Indiana secretary of state.⁶⁶ As a legislator, Lawson sponsored and helped write S.B. 483, Indiana's voter identification law, the strictest in the nation at the time it was passed.⁶⁷

87. Since the 2016 election, Lawson has implemented a massive purge, totaling over 480,000 registered voters,⁶⁸ or approximately 10% of the Indiana electorate.⁶⁹

Christy McCormick, Commissioner, U.S. Election Assistance Commission

88. Christy McCormick was nominated to the Election Assistance Commission ("EAC") on December 16, 2014. As an EAC Commissioner, McCormick supported Secretary Kobach's attempt to alter the federal voter registration form in Kansas to require documentary proof of citizenship. McCormick also broke with fellow EAC Commissioners in supporting Secretary Kobach's intervention in *League of Women Voters v. Newby*.⁷⁰

⁶⁵ John DiStaso, *Gardner says concern about lack of voter confidence prompted him to say yes to Trump Commission*, WMUR (May 12, 2017, 9:11 PM), <http://www.wmur.com/article/gardner-says-concern-about-lack-of-voter-confidence-prompted-him-to-say-yes-to-trump-Commission/9647860>.

⁶⁶ *Secretary of State Connie Lawson's Biography*, Ind. Secretary of State, http://www.in.gov/sos/files/Secretary_Lawson_Bio_Updated_3.18.16.pdf

⁶⁷ S.B. 483, 114th Gen. Assembly, 1st Reg. Sess. (Ind. 2005), *available at* <http://www.in.gov/legislative/bills/2005/PDF/SB/SB0483.1.pdf>.

⁶⁸ *Indiana Purges 481K Inactive Voter Registrations From Rolls*, US News & World Report (Apr. 18, 2017, 2:53 PM), <https://www.usnews.com/news/best-states/indiana/articles/2017-04-18/indiana-purges-481k-inactive-voter-registrations-from-rolls>.

⁶⁹ *General Election Turnout and Registration*, Ind. Secretary of State, http://www.in.gov/sos/elections/files/2016_General_Election_Turnout.pdf.

⁷⁰ Brennan Ctr. for Justice, *League of Women Voters v. Newby* (June 1, 2017), <https://www.brennancenter.org/legal-work/league-women-voters-v-newby>. *See also League of Women Voters of United States v. Newby*, 838 F.3d 1 (D.C. Cir. 2016).

89. McCormick has supported Defendants Trump’s and Kobach’s viewpoints in recent months. She has been vocally skeptical about the evidence that Russian interference affected the 2016 elections, despite clear evidence to the contrary.⁷¹

Mark Rhodes, County Clerk, Wood County, West Virginia

90. Mark Rhodes is the county clerk of Wood County, West Virginia, and oversees elections.⁷² West Virginia Secretary of State Mac Warner affirmed that he had “strongly recommended Rhodes for this position.”⁷³

91. Secretary Warner was an early supporter of Trump’s voter fraud claims. In January of 2017, Secretary Warner’s office released a statement that quoted him as saying, “Mr. President, we hear you loud and clear. . . . Accurate and up-to-date voter registration is a real concern for our county clerks and me.”⁷⁴ According to the same statement, Secretary Warner’s office has established a “toll-free hotline” for reports of voter fraud and “employs a team of investigators to investigate claims of voter fraud.”⁷⁵ In 2016, Warner denounced open voter registration as “an

⁷¹ Thomas Hicks, Matthew Masterson & Christy McCormick, Don’t believe the hype. Foreign hackers will not choose the next president., Wash. Post, https://www.washingtonpost.com/opinions/dont-believe-the-hype-foreign-hackers-will-not-choose-the-next-president/2016/10/18/a2a89b2c-94b1-11e6-9b7c-57290af48a49_story.html?utm_term=.d52d23256a37; see also *Statement by Commissioner Christy McCormick*, U.S. Election Assistance Comm’n (Jan. 7, 2017), available at <https://www.eac.gov/file.aspx?D=yJhKazC8FP9wPeXrFu7jdj%2B%2B1hyqkcjnHBHVcsw%2F1bA%3D&A=9GBOqNGqLU1AYARikcsYC8xmT1rSMHZ42EV2jQwSilQ%3D>.

⁷² W. Va. Secretary of State, *Voter Registration Totals*, http://www.sos.wv.gov/elections/voterregistration/pages/voter_registration.aspx; *Summary Report: Official Results: General Election, November 8, 2016*, Wood County, W.Va., available at https://woodcountywv.com/component/easyfolderlistingpro/?view=download&format=raw&data=eNpNT1sOgkAMvEv_jYARsXx7Ag9AVii4yS5L9qEY493tshD9amc6004F5jm-HZYIvVEdWagdFgUjqcjtSVHrpRl3llxcUN7FKRsgOLJJnyiEbBsNgZz_7TohNM3CRVQl6yg0RZghxFImVnZQS8ySyZKahL__qaoUavPmR4TLGu8atBb2FekDAs1-7aauXzPQPEn-YTuQ807hvWjvnmkZW3xb2zA5LD0nPIJ1zDcYMiu99vkkdXrs.

⁷³ W. Va. Secretary of State, *Voter Registration Totals*, http://www.sos.wv.gov/elections/voterregistration/pages/voter_registration.aspx.

⁷⁴ *WV Secretary of State Office already at work to clean up voter rolls*, West Virginia Secretary of State: News Center (Jan. 25, 2017), www.sos.wv.gov/News-Center/Pages/WV-Secretary-of-State-Office-already-at-work-to-clean-up-voter-rolls.aspx”made.

⁷⁵ *Id.*

effort by billionaire George Soros to register as many people as possible, including ‘citizens, non-citizens, felons.’”⁷⁶

Hans von Spakovsky, Senior Legal Fellow, Heritage Foundation

92. Hans von Spakovsky, a Heritage Foundation senior fellow and Fox News commentator, is a long-time advocate for restrictive voting measures. He—like Ken Blackwell and J. Christian Adams—is a member of the Policy Board of the ACRU.⁷⁷ von Spakovsky is also one of the nation’s leading proponents of the myth of widespread in-person voter fraud.

93. Additionally, von Spakovsky serves on the Board of Directors of the Public Interest Legal Foundation (PILF), an organization led by his fellow Commission-member J. Christian Adams, which promotes restrictive voter registration and voting laws.⁷⁸ With Adams, von Spakovsky wrote in June of 2017 that “[t]he most significant problem facing America’s electoral process is the chronic inaccuracy and lack of integrity in the voter rolls that list the individuals registered to vote in local, state, and federal elections.”⁷⁹

94. Like President Trump and Christy McCormick, von Spakovsky has downplayed the significance of potential hacking to influence the outcome of U.S. elections and argued that “[t]he real problem we face . . . is from inaccurate voter rolls full of ineligible voters, from the dead to noncitizens to felons.”⁸⁰

⁷⁶ Phil Kabler, *Voter registration, campaign laws hot topics for WV secretary of state candidates*, Charleston Gazette-Mail (Oct. 10, 2016), <http://www.wvgazette.com/news-election/20161010/voter-registration-campaign-laws-hot-topics-for-wv-secretary-of-state-candidates>.

⁷⁷ *Policy Board*, Am. Civil Rights Union, <http://www.theacru.org/policy-board/> (last visited July 11, 2017).

⁷⁸ *About Us*, Pub. Interest Legal Found., <https://publicinterestlegal.org/about-us/> (last visited July 12, 2017).

⁷⁹ J. Christian Adams, Donald Palmer & Hans von Spakovsky, *Best Practices for Achieving Integrity in Voter Registration* 3 (June 21, 2017), <https://publicinterestlegal.org/files/PILF-best-practices-report-FINAL.pdf>.

⁸⁰ Hans A. von Spakovsky, *The War on Election Integrity*, The Heritage Foundation (Nov. 13, 2016), <http://www.heritage.org/election-integrity/commentary/the-war-election-integrity>.

95. In 2008, Paul DeGregorio, a former Chairman of the U.S. Election Assistance Commission who served with von Spakovsky, told the EAC's Office of Inspector General that "too many of [von Spakovsky's] decisions are clouded by his partisan thinking."⁸¹

96. In 2012, Defendant von Spakovsky, along with a co-author, wrote: "Election fraud, whether it's phony voter registrations, illegal absentee ballots, vote-buying, shady recounts, or old-fashioned ballot-box stuffing, can be found in every part of the United States."⁸²

Alan Lamar King, Judge of Probate, Jefferson County

97. Alan Lamar King, a probate judge, is the chief election official for Jefferson County, Alabama.⁸³ His appointment to the Commission was announced on July 10, 2017, at the same time as that of J. Christian Adams.⁸⁴ On July 11, 2017, Judge King stated that Alabama Secretary of State John Merrill contacted him regarding the Commission "about a month ago," and Judge King has been in contact with the White House about the appointment.⁸⁵ The Commission has not been transparent about Secretary Merrill's role in the appointment process. Merrill has also implemented a photo ID law in Alabama which disproportionately impacts Black and Latino voters.

⁸¹ U.S. Election Assistance Comm'n Off. of Inspector Gen., *Report of Investigation: Preparation of the Voter Fraud and Voter Intimidation Report 17* (March 2008),

<https://www.eac.gov/assets/1/1/EAC%20Inspector%20General%20Report%20on%20the%20Preparation%20of%20the%20Voter%20Fraud%20and%20Voter%20Intimidation.pdf>.

⁸² Christopher Ingraham, *Here are the first 10 members of Trump's voting Commission*, Wash. Post (July 6, 2017, 3:06 PM), https://www.washingtonpost.com/news/wonk/wp/2017/07/06/here-are-the-first-10-members-of-trumps-voter-fraud-commission/?utm_term=.389cff1ae7da; see John Fund & Hans von Spakovsky, *Who's Counting?: How Fraudsters and Bureaucrats Put Your Vote at Risk* (2012).

⁸³ *MEET OUR JUDGES*, Probate Court of Jefferson Cty., Ala., <http://jeffcoprobatocourt.com/home/meet-our-judges/> (last visited July 12, 2017); Leada Gore, *Trump appoints Alabama probate judge, a Democrat, to controversial election commission*, AL.com (July 11, 2017, 6:20 AM), http://www.al.com/news/index.ssf/2017/07/alabama_probate_judge_named_to.html.

⁸⁴ Off. of the Press Sec'y, *President Donald J. Trump Announces Key Additions to his Administration*, The White House (July 10, 2017), <https://www.whitehouse.gov/the-press-office/2017/07/10/president-donald-j-trump-announces-key-additions-his-administration>.

⁸⁵ Leada Gore, *Trump appoints Alabama probate judge, a Democrat, to controversial election commission*, AL.com (July 11, 2017, 6:20 AM), http://www.al.com/news/index.ssf/2017/07/alabama_probate_judge_named_to.html.

98. Judge King stated that he believes one reason he was chosen was that he was “a life-long Democrat.”⁸⁶ He stated that “there has not been any voter fraud for 30 years or more.”⁸⁷ Based on publicly-available materials, Judge King does not appear to have any experience representing or conducting outreach to voters of color or others who have been subject to voter suppression, intimidation, or selective investigations.

J. Christian Adams, President and General Counsel, PILF

99. J. Christian Adams, after Ken Blackwell and Hans von Spakovsky, is the third member of the ACRU’s Policy Board to be appointed to the Commission.⁸⁸ Adams is also president and general counsel of the Public Interest Legal Foundation (PILF), a legal organization that promotes restrictive voter registration and voting laws in what its website describes as a “fight against lawlessness in American Elections.”⁸⁹ He is also a Fox News commentator, contributor to *Breitbart*, and regular columnist on the far-right website *PJMEDIA.com*.

100. Adams has made numerous statements and writings in which he is explicit in his anti-immigrant views and his discriminatory and false belief that voter fraud is disproportionately committed by voters of color. Through PILF, Adams has released reports equating non-citizens to non-humans, illustrated with cartoonish depictions of space aliens and flying saucers and trafficking heavily in the rhetoric of “invasion.”⁹⁰ In a May 10, 2017 statement, Adams falsely alleged that U.S. states’ voter “rolls are now full of non-citizens and people registered and voting in multiple states.”⁹¹

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Policy Board*, Am. Civil Rights Union, <http://www.theacru.org/policy-board/> (last visited July 12, 2017).

⁸⁹ *About Us*, Pub. Interest Legal Found., <https://publicinterestlegal.org/about-us/> (last visited July 12, 2017).

⁹⁰ *E.g.*, Pub. Interest Legal Found. & Va. Voters Alliance, *Alien Invasion II: The Sequel to the Discovery and Cover-up of Non-citizen Registration and Voting in Virginia* (May 2017), <https://publicinterestlegal.org/files/Alien-Invasion-II-FINAL.pdf>.

⁹¹ *J. Christian Adams Statement on Next FBI Director*, Pub. Interest Legal Found. (May 10, 2017), <https://publicinterestlegal.org/press/>.

101. In his columns, Adams has made numerous statements that reflect prejudice on the basis of race, national origin, and religion—not to mention wholesale acceptance of the President’s unfounded statements about voter fraud. Examples include:

- a. “Time is running out for American Muslims. . . . American Muslims are running out of time because Americans are running out of patience. With each new slaughter by a jihadist, the American Muslim community exhausts a bit more patience and goodwill of Americans. . . . When jihadist after jihadist destroys our treasured domestic tranquility, they will eventually awaken an American resolve that will sweep away these distractions and confront the problem head-on. It’s why Donald Trump has tapped into a silent mainstream fury. If the attacks by jihadists continue against innocents, what Donald Trump is proposing might not go far enough to many Americans. I’m not suggesting this is a good thing. This is merely the human condition. It’s what civilizations have done for thousands of years when faced with similar circumstances.”⁹²
- b. “Trump . . . lost the noncitizen vote by a wide margin -- and yes, it exists. The incoming Trump Justice Department must prioritize voter fraud prosecutions of the crimes that occurred yesterday and in early voting. It will shut up a lot of voter fraud deniers, and ensure that the behavior is deterred in his reelection.”⁹³
- c. “Unfortunately, when it comes to voter fraud, when you catch one crook, it usually means there are hundreds more hiding in the darkness. When it comes to aliens voting, it’s more like thousands and thousands.”⁹⁴
- d. “One of the bright spots of the Trump campaign has been his willingness to talk about vulnerabilities in the election system. . . .”⁹⁵
- e. “Fact: Voter fraud has altered the outcome of elections.”⁹⁶
- f. “Voter fraud associated with same day registration allowed Senator Al Franken to win in 2008, and also helped President Obama win Ohio in 2008.”⁹⁷

⁹² J. Christian Adams, *Time Is Running Out for American Muslims*, PJMedia.com (June 15, 2016), <https://pjmedia.com/jchristianadams/2016/06/15/time-is-running-out-for-american-muslims/1/>.

⁹³ J. Christian Adams, *Trump Destroys Elites’ Assumptions: Autopsy of the 2012 ‘GOP Autopsy’*, PJMedia.com (Nov. 9, 2016), <https://pjmedia.com/jchristianadams/2016/11/09/trump-destroys-elite-assumptions-autopsy-of-the-gop-autopsy/3/>.

⁹⁴ J. Christian Adams, *Illegal Alien Voter Convicted in Texas is Tip of the Iceberg*, PJMedia.com (February 11, 2017), <https://pjmedia.com/jchristianadams/2017/02/11/illegal-alien-voter-convicted-in-texas-is-tip-of-the-iceberg/>.

⁹⁵ J. Christian Adams, *Trump is Right, John Ellis is Wrong: Elections Are Vulnerable to Criminal Fraud*, PJMedia.com (Oct. 23, 2016), <https://pjmedia.com/jchristianadams/2016/10/23/trump-is-right-john-ellis-is-wrong-elections-are-vulnerable-to-criminal-fraud/>.

⁹⁶ J. Christian Adams, *Five Voter Fraud Myths and Truths*, PJMedia.com (Oct. 7, 2014), <https://pjmedia.com/jchristianadams/2014/10/7/five-voter-fraud-myths-and-truths/1/>.

⁹⁷ J. Christian Adams, *Manipulating U.S. Elections: 10 Ways Voting Is Being Hacked by the Left*, PJMedia.com (Sept. 19, 2016), <https://pjmedia.com/jchristianadams/2016/09/19/manipulating-american-elections-the-lefts-ten-wishes-to-transform-america/3/>.

- g. “Fact: Eric Holder’s Justice Department is facilitating voter fraud.”⁹⁸
- h. “The Obama Justice Department has also interfered with citizenship verification. With the collusion of Soros-funded organizations, the DOJ has tried to stop states like Kansas and Georgia from verifying citizenship of voters. There’s one reason for this: aliens who registered illegally tend to vote for Democrats.”⁹⁹
- i. “Make no mistake about why Obama wants millions of foreigners to remain in the United States. He told us exactly why in 2008: he aims to ‘fundamentally transform’ America. One way to transform America is to import populations with cultural and legal traditions foreign to American traditions. Central and South America has [sic] a cultural tradition of instability in government, of graft, corruption, and civil strife. People from those countries bring an expectation that the systems are rigged against them, because oftentimes they are. Obama wants to transform America by transforming who Americans are. Even if these millions are not granted the right to vote (immediately), their children, yet unborn, will be granted it by virtue of being natural-born citizens. Obama is playing the long game.”¹⁰⁰
- j. “Noncitizen voting helps the left win elections.”¹⁰¹
- k. “Criminal voter fraud in Ohio helps Democrats win elections, and Democrats know it. That’s why they are pouring millions into overturning election integrity laws in the federal courts. The laws enacted in Ohio were specifically designed to stop election gangsters That’s why Democrats are fighting so hard in court to strike these election reforms down. That’s why they’ve brought so many lawsuits, to undo the efforts of Secretary Husted and the Ohio legislature to stop the gangsters.”¹⁰²
- l. “The racial left is today built around racial division, race hatred, and racial guilt. It is full of people who see the world through an angry racial lens.”¹⁰³
- m. “Race is the fuel that runs the modern progressive agenda. It’s 24-7 race. Race is the weapon for the great transformation, for plunking Section 8 housing in wealthy

⁹⁸ J. Christian Adams, *Five Voter Fraud Myths and Truths*, PJMedia.com (Oct. 7, 2014), <https://pjmedia.com/jchristianadams/2014/10/7/five-voter-fraud-myths-and-truths/2/>.

⁹⁹ J. Christian Adams, *Manipulating U.S. Elections: 10 Ways Voting Is Being Hacked by the Left*, PJMedia.com (Sept. 19, 2016), <https://pjmedia.com/jchristianadams/2016/09/19/manipulating-american-elections-the-lefts-ten-wishes-to-transform-america/>.

¹⁰⁰ J. Christian Adams, *Obama, Our Modern John C. Calhoun*, PJMedia.com (Nov. 20, 2014), <https://pjmedia.com/jchristianadams/2014/11/20/obama-our-modern-john-c-calhoun>.

¹⁰¹ J. Christian Adams, ‘Rigged?’ 5 Ways the Election Is Under Attack, PJMedia.com (August 7, 2016), <https://pjmedia.com/jchristianadams/2016/08/07/rigged-5-ways-the-election-is-under-attack/>.

¹⁰² J. Christian Adams, *The Coming Ohio Election Mess*, PJMedia.com (June 9, 2016), <https://pjmedia.com/jchristianadams/2016/06/09/the-coming-ohio-election-mess/>.

¹⁰³ J. Christian Adams, *Rachel Dolezal: No Surprise Here*, PJMedia.com (June 12, 2015), <https://pjmedia.com/jchristianadams/2015/6/12/rachel-dolezal-no-surprise-here>.

residential areas, for undermining law enforcement and for transforming election laws.”¹⁰⁴

- n. “The only way Hillary had a hope to win the White House was to ride intense racial polarization among black and Hispanic voters.”¹⁰⁵
- o. “The states control the casting of electoral votes under our Constitution. That’s what the left hates. They prefer large urban areas decide the outcome of presidential elections, areas where an effective two-party system doesn’t exist. When the corruption of Philadelphia and Detroit can directly taint the outcome of national elections instead of being confined to the casting of Pennsylvania’s and Michigan’s electoral votes, the lawless will have triumphed.”¹⁰⁶
- p. “Voter registration takes forethought and initiative, something lacking in large segments of the Democrat base.”¹⁰⁷

102. Commission members’ public statements and political actions make clear that the Commission is stacked with members who share the President’s conviction, not founded in credible evidence, that voter fraud is rampant in U.S. elections.

103. On information and belief, the overwhelming majority of individuals appointed to the Commission to date are either presently influenced or likely to become inappropriately influenced by one or more of the Defendants, whether because of personal or political connections or because their relative lack of political stature makes them ill-equipped to challenge the views of powerful actors including the President and Vice President of the United States and their surrogates.

¹⁰⁴ J. Christian Adams, *Rachel Dolezal: No Surprise Here*, PJMedia.com (June 12, 2015), <https://pjmedia.com/jchristianadams/2015/6/12/rachel-dolezal-no-surprise-here/2/>.

¹⁰⁵ J. Christian Adams, *Why They Oppose Jeff Sessions as Attorney General*, PJMedia.com (Dec. 19, 2016), <https://pjmedia.com/jchristianadams/2016/12/19/why-they-oppose-jeff-sessions-as-attorney-general/>.

¹⁰⁶ J. Christian Adams, *Manipulating U.S. Elections: 10 Ways Voting Is Being Hacked by the Left*, PJMedia.com (Sept. 19, 2016), <https://pjmedia.com/jchristianadams/2016/09/19/manipulating-american-elections-the-lefts-ten-wishes-to-transform-america/4/>.

¹⁰⁷ J. Christian Adams, *Manipulating U.S. Elections: 10 Ways Voting Is Being Hacked by the Left*, PJMedia.com (Sept. 9, 2016), <https://pjmedia.com/jchristianadams/2016/09/19/manipulating-american-elections-the-lefts-ten-wishes-to-transform-america/2/>.

104. On information and belief, no member of the Commission is part of the voting rights community. Nor is any member of the Commission in a position to represent the interests of the voters of color who are intimidated, or who have their votes suppressed, as a result of false allegations of voter fraud.

E. The Commission's Activities to Date

105. On June 28, 2017, the Commission held a 90-minute telephonic meeting. During this meeting, substantive decisions were made regarding the Commission's investigative actions—including how to determine how many people are registered to vote in more than one state.¹⁰⁸ One of those decisions was to send a letter to all 50 states and the District of Columbia, from Vice Chair Kobach on behalf of the Commission, requesting data from state voter rolls. The Commission members agreed they would not review the actual language of the request before it was sent to states signed by Secretary Kobach.

106. Subsequent to the Commission's first meeting, Vice Chair Kobach sent a letter to the Secretary of State of each of the fifty states and to the District of Columbia requesting submission by July 14, 2017, of 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 regarding military status, and overseas citizen information.”

¹⁰⁸ 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>.

107. Officials in 21 states and the District of Columbia have declined to provide any data to the Commission, and officials in 8 other States have imposed conditions prior to the release of any data. An additional 17 states have agreed to provide only that data which they have stated is not protected by state law.¹⁰⁹

108. On July 1, 2017, President Trump tweeted: “Numerous states are refusing to give information to the very distinguished VOTER FRAUD PANEL. What are they trying to hide?”

109. On July 2, 2017, Vice Chair Kobach referred to resistance to providing the state voter rolls as ‘idiotic.’ “These states make the information available to the public, but they don’t want a presidential commission to take a serious look at it? That makes no sense at all.”¹¹⁰

110. On July 5, 2017, a spokesperson for Vice President Pence, Marc Lotter, stated that the Commission intended to check the information contained in the state voter rolls against data in various federal databases to identify supposed ineligible registrants.

111. Comparison of state voter rolls to federal databases is likely to lead to false positives disproportionately for voters of color. In fact, it is strikingly similar to the crosscheck methodology championed by Secretary Kobach, which has been demonstrated to produce results that discriminate minority voters.

112. Government citizenship records similarly contain errors and incomplete information. Naturalization documentation may be updated slowly, or not at all, leaving outdated or inaccurate information to be compared to voter rolls.

¹⁰⁹ Responses to “Fraud” Commission’s Voter File Data Request, Brennan Ctr. for Justice (July 12, 2017, 9:49 AM), <https://www.brennancenter.org/latest-updates-fraud-commission>

¹¹⁰ Stephen Dinan & Dave Boyer, Voter integrity panel’s vice chairman questions states’ ‘idiotic’ withholding of information, Wash. Times (July 2, 2017), <http://www.washingtontimes.com/news/2017/jul/2/kris-kobach-voter-information-refusal-idiotic/>

113. On July 5, 2017, a planned July 19, 2017 in-person meeting of the Commission was noticed in the Federal Register. The Meeting Notice stated that the meeting would be held in the Eisenhower Executive Office Building and would be accessible to the public only through an internet livestream.

114. On July 10, 2017, the Commission affirmed in a court filing that it had “sent the states a follow-up communication” requesting states not to comply with the Commission’s previous request for voter rolls until a pending lawsuit was resolved.

F. The Commission’s Chilling Effect

115. Since the formation of the Commission and its expansive request for state voter rolls, voters have expressed a desire to, and have unregistered from, state voter rolls. Upon information and belief, voters are unregistering and expressing a desire to unregister in response to the Commission so that their information is not handed over to the Commission.

116. In Colorado, thousands of voters have withdrawn their registrations in response to the Commission’s actions to date.¹¹¹ In Denver County, 180 voters withdrew their registration between July 3, 2017, and July 7, 2017;¹¹² 160 voters in Arapahoe County withdrew their registration between July 1, 2017, and July 7, 2017;¹¹³ 270 voters in Boulder County withdrew their registration between July 3, 2017, and July 7, 2017;¹¹⁴ and “about 30 to 40” voters in Adams

¹¹¹ Brian Eason, *More than 3,000 Colorado voters have canceled their registrations since Trump election integrity commission request*, Denver Post (July 13, 2017), <http://www.denverpost.com/2017/07/13/trump-election-integrity-commissions-colorado-voters-cancel-registration/>; Corey Hutchins, *In Colorado, ‘confusion,’ ‘hysteria,’ and voters unregistering at some local election offices*, The Co. Indep. (July 7, 2017), www.coloradoindependent.com/166227/colorado-voting-trump-unregister-confidential.

¹¹² Blair Miller, *Hundreds withdraw Colorado voter registrations in response to compliance with commission request*, 7NEWS Denver (July 7, 2017, 10:41 PM), <http://www.thedenverchannel.com/news/politics/hundreds-withdraw-colorado-voter-registrations-in-response-to-compliance-with-commission-request>.

¹¹³ *Id.*

¹¹⁴ Corey Hutchins, *In Colorado, ‘confusion,’ ‘hysteria,’ and voters unregistering at some local election offices*, The Co. Indep. (July 7, 2017), www.coloradoindependent.com/166227/colorado-voting-trump-unregister-confidential.

County withdrew their registration each day during the week preceding July 7, 2017.¹¹⁵ At least 110 additional voters have reportedly changed their registration status to “confidential,”¹¹⁶ which required them to pay a fee and sign an affidavit asserting that “they have ‘reason to believe that [they], or a member of [their] immediate family . . . will be exposed to criminal harassment . . . or otherwise be in danger of bodily harm, if [their] address is not kept confidential.”¹¹⁷

117. Commissioner Dunlap acknowledged that voters in Maine have also de-registered due to the Commission’s activities.

118. In Florida, after the Commission requested the state’s voter roll, an election official spent several days speaking to at least 15 voters who wanted to unregister. Upon information, these voters wanted to unregister because their information had been requested by the Commission and because of privacy concerns. Prior to the creation of the Commission, the election official had never had to convince as many voters to remain registered to vote. The election official believes these voters wanting to unregister was a reaction to the Commission.

119. In response to the sudden request by voters to unregister, the election official has added a page on the official’s website to address questions on the Commission. Included on this website is the following information:

Can I simply cancel my voter registration? For a myriad of reasons, I would ask you not to cancel your voter registration. Stay registered. So many before us fought, in the fields of battle, politics, government and beyond, to ensure this far into our nation’s future that you would still have the privilege of casting your vote. Don’t let an action you disagree with have the effect of silencing your most powerful tool to change it: your vote. If you are still desirous of removing yourself from the rolls, you may do so using this form.

¹¹⁵ *Id.*

¹¹⁶ Corey Hutchins, In Colorado, ‘confusion,’ ‘hysteria,’ and voters unregistering at some local election offices, The Co. Indep. (July 7, 2017), www.coloradoindependent.com/166227/colorado-voting-trump-unregister-confidential.

¹¹⁷ Erica Meltzer, Here’s how to keep your voter information from being released to Trump’s election commission, Denverite (July 3, 2017, 4:53 PM), <https://www.denverite.com/heres-keep-voter-information-released-trumps-38724/>.

120. Vice Chair Kobach, however, is unconcerned with citizens being chilled in their exercise of the franchise. He has minimized the de-registrations as either a “political stunt,” or suggested it confirms his false allegations of voter fraud because it may be that “people who are not qualified to vote . . . someone who is not a U.S. citizen” are de-registering.¹¹⁸

121. Upon information and belief, the chilling effect caused by the Commission has been, and will continue to be, particularly severe for voters of color. This is a result of, *inter alia*, the repeated and clear racially-coded language used to create the Commission and to justify its investigation; the historical use of voter fraud claims to target minority voters; and the disproportionate likelihood that voters of color will be included in false positive matches when voter rolls are compared.

122. Civil rights hero, Presidential Medal of Freedom winner and Congressman John Lewis (D-Ga) is all too familiar with government efforts to intimidate voters on the basis of race. As Congressman Lewis recently stated, the Commission is a “form of harassment” and a “form of intimidation.”¹¹⁹

COUNT I

(Violation of the Fifth Amendment to the United States Constitution)

123. Plaintiffs incorporate paragraphs 1-122 as if fully set forth herein.

¹¹⁸ Nicole Lafond, *Kobach Says People Who are Canceling Voter Registration Might Not Be Citizens*, TPM (Jul. 14, 2017), <http://talkingpointsmemo.com/livewire/koback-says-hundreds-canceling-voter-registration-probably-not-citizens>

¹¹⁹ Max Greenwood, *John Lewis: Trump voter fraud commission ‘a form of harassment’*, The Hill (Jul. 14, 2017), <http://thehill.com/homenews/house/342138-john-lewis-trump-voter-fraud-commission-a-form-of-harassment>

124. The Due Process Clause of the Fifth Amendment incorporates the equal protection principle of the Fourteenth Amendment. *Sessions v. Morales*, 137 S.Ct. 1678, 1686 n.1 (2017); *United States v. Windsor*, 133 S. Ct. 2675, 2693 (2013); *Bolling v. Sharpe*, 347 U.S. 497 (1954).

125. The Due Process Clause of the Fifth Amendment also prohibits irrational government action. *U. S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 532 (1973).

126. The establishment of the Commission, and the actions it has already taken to initiate an “investigation” into voter fraud, violate both aspects of the Fifth Amendment.

127. First, the creation of the Commission, and its pending investigation into allegations of voter fraud, were motivated by racial discrimination against voters of color.

128. That discriminatory motive is indicated by President Trump’s false statements, set forth in detail above, suggesting that voters of color are disproportionately likely to commit voter fraud.

129. Statements by a number of Trump’s handpicked Commissioners, including Vice Chair Kobach, von Spakovsky and Adams, are likewise indicative of discriminatory purpose.

130. The inference of racial discrimination underlying the Commission’s creation and investigation of alleged fraud is supported by a number of additional circumstances.

131. In creating the Commission, President Trump substantively departed from FACA’s requirement that any such commission be fair and balanced, as discussed further below. Similarly, President Trump procedurally departed from the requirement set forth in a prior executive order that a compelling justification must be provided whenever a new commission is appointed. Specifically, Executive Order 12,838, dated February 12, 1993, mandates that:

executive departments and agencies shall not create or sponsor a new advisory committee subject to FACA unless the committee is required by statute or the agency head (a) finds that compelling considerations necessitate creation of

such a committee, and (b) receives the approval of the Director of the Office of Management and Budget. Such approval shall be granted only sparingly and only if compelled by considerations of national security, health or safety, or similar national interests. These requirements shall apply in addition to the notice and other approval requirements of FACA.

132. The Commission has likewise engaged in procedural departures from legal requirements. FACA regulations require that advisory committees provide a description of their plan to attain fairly-balanced membership during their charter consultation process with General Services Administration. *See* 41 CFR § 102-3.60(b)(3). The Commission has not created any such plan.

133. The inference of racial discrimination is also supported by the historical background of the allegations of voter fraud underlying the establishment of the Commission and its work thus far. As experts have documented, there is a long history in this country of justifying racially-suppressive voting measures, including poll taxes, all-white primaries and discriminatory voter ID laws, with unsubstantiated claims of voter fraud.

134. In a recent case holding that Texas's particularly harsh voter ID law violated the Voting Rights Act, the Fifth Circuit sitting *en banc* noted that "the record shows that Texas has a history of justifying voter suppression efforts such as the poll tax and literacy tests with the race-neutral reason of promoting ballot integrity." *Veasey v. Abbott*, 830 F.3d 216, 237 (5th Cir. 2016).

135. In another recent case, the Fourth Circuit Court of Appeals held that restrictive voter laws enacted in North Carolina, which were supposedly passed to combat in-person voter fraud, were actually promulgated with the intent of suppressing minority votes. *See N. Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204 (4th Cir. 2016).

136. Similarly, numerous courts have found that laws in Alabama, passed with the stated purpose of preventing voter fraud, were actually passed to suppress Black votes.¹²⁰

137. Taken together, the absence of a legitimate rationale to support the creation of the Commission; its function as an investigative entity that is clearly skewed in composition and by context to affirm biased views about racial minorities and voter fraud; its intention to use research methodologies that have been proven to be racially biased; its substantive and procedural deficiencies; and the proven history of unsubstantiated allegations of voter fraud serving as a pretext for voter suppression support the inference that this Commission serves as a means to advance racial discrimination.

138. As set forth above, the Commission's creation and its initiation of an investigation into alleged fraud are also raising well-founded fears among minority voters that they will be targeted for lawfully exercising their fundamental right to vote. Notably, the Commission has requested information about felony convictions even though: (a) there is no federal law limiting eligibility for voting on the basis of felony convictions; and (b) because of structural and systemic discrimination, Black and Latino Americans are more likely than their white counterparts to have a felony conviction.

¹²⁰ See *League of Women Voters of United States v. Newby*, 838 F.3d 1, 13-14 (D.C. Cir. 2016) (finding no harm to Alabama and three other states in enjoining their requests to enforce documentary proof of citizenship requirements for federal voters where there was "little" evidence of "fraudulent registration by noncitizens"); *United States v. McGregor*, 824 F. Supp.2d 1339, 1345 (M.D. Ala. 2011) (finding that the purpose of state legislators in "cooperating with F.B.I. investigators was not to clean up corruption but to increase Republican political fortunes by reducing African-American voter turnout"); *Dillard v. Crenshaw Cty.*, 640 F. Supp.1347, 1357-58 (M.D. Ala. 1986) (finding that the enactment of discriminatory voting laws was purportedly justified as a response to the registration "en masse" of "unqualified" voters); *Bolden v. City of Mobile*, 542 F. Supp. 1050, 1061 (S.D. Ala. 1982) ("good government reform was considered synonymous with the elimination of [B]lack political influence"); *Hendrix v. McKinney*, 460 F. Supp. 626, 628 (M.D. Ala. 1978) (rejecting claims that rumors of voter fraud had driven Alabama's passage of at-large election laws where there was "no evidence that anyone treated the rumors as a serious matter"); *United States v. Alabama*, 252 F. Supp. 95, 100, 107 (M.D. Ala. 1966) (finding that Alabama's claim that poll taxes served to "protect[] the ballot" was "no more than ingenious afterthought").

139. The Commission's improper investigation is also causing organizations dedicated to advancing the interests of Black and Latino voters and potential registrants to divert their scarce resources to address the chilling effects of the creation of the Commission and its investigation into alleged voter fraud.

140. Upon information and belief, since the formation of the Commission, Black and Latino voters are refraining from registering for fear that they will be accused of voter fraud or subject to retaliation for their political affiliation.

141. Upon information and belief, voters of color have expressed concern that they will be targeted or unnecessarily questioned about their immigration status based on the Commission's stated intention to crosscheck voter rolls to federal databases.

142. Upon information and belief, Black and Latino voters fear that their private information will not be secure when sent to the Commission. Specifically, Black and Latino voters fear retaliation from employers as a result of their party affiliation being identified in such information.

143. The establishment of the Commission, and its actions to investigate voter fraud, are premised on the false belief that voters of color are disproportionately likely to commit voter fraud. The stigma caused by such discrimination constitutes a further harm to voters of color.

144. Finally, the establishment of the Commission and its investigation into voter fraud are irrational. Creating a new organ of the Government to manufacture evidence in support of a claim that has been unequivocally refuted, *viz.*, the false claim that widespread voter fraud cost President Trump the popular vote, is the essence of irrational Government action. For that reason as well, the Defendants' conduct is prohibited by the Fifth Amendment.

145. As a direct and proximate result of the formation of the Commission and the acts of Defendants and their agents, the Plaintiffs have been deprived of their rights under the Fifth Amendment to the United States Constitution.

COUNT II

(Violation of the Fifteenth Amendment to the United States Constitution)

146. Plaintiffs incorporate by reference paragraphs 1-145 as if fully set forth herein.

147. Section 1 of the Fifteenth Amendment states: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.”

148. The discriminatory and irrational Government conduct described above, and the chilling effect on voters of color, results in the denial or abridgment of the right to vote on account of race, color, or previous condition of servitude.

149. Therefore, as a direct and proximate result of the formation of the Commission and the acts of Defendants and their agents, the Plaintiffs have been deprived of their rights under the Fifteenth Amendment to the United States Constitution.

COUNT III

(Unauthorized Presidential Action)

150. Plaintiffs incorporate by reference paragraphs 1-149 as if fully set forth herein.

151. President Trump had no authority to form a Commission with a racially discriminatory purpose, which is gathering voter rolls from all 50 states and the District of Columbia to investigate alleged misconduct by individual Americans.

152. Presidential power is limited to the authority conferred on the President by acts of Congress or by the Constitution itself. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952).

153. Presidential power is at its nadir when the President takes measures incompatible with the expressed or implied will of Congress. *Id.* at 637 (Jackson, J., concurring in the judgment).

154. These principles limit the President's power to launch investigations of alleged misconduct by individuals.

155. Notably, Article II, Section 2 of the Constitution gives the President the authority to "require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices." By providing the President with one, limited type of power to consult with advisors and obtain their advice, Article II makes clear that the President lacks a general power to launch investigations that target individual citizens absent specific authorization by Congress.

156. Here, the Commission does not simply involve a presidential effort to consult with advisors. On the contrary, it involves the creation of a new executive organ that is already investigating (or attempting to investigate) individuals. Nothing in either the Constitution, or in any act of Congress, authorizes the President to appoint a new Commission to investigate individual voters based on unsubstantiated claims of voter fraud.

157. Further, the allegations set forth above demonstrate that the Executive Order creating the new Commission was motivated, at least in part, by racial discrimination, specifically the false stereotype that voters of color are more likely to commit voter fraud, and by the desire to suppress minority voting. President Trump lacks the power to take actions motivated by such

discriminatory purpose, which is contrary to the Due Process Clause of the Fifth Amendment, and to congressional statutes including the NVRA and the Voting Rights Act of 1965.

158. Upon information and belief, the Commission's comparison of voter rolls with federal databases will include, but not be limited to, the federal government's database of noncitizens—including green card holders, temporary visa holders and undocumented immigrants who have been arrested. As set forth above, that "investigation" is not a reliable means for analyzing voter fraud, and false positive matches are disproportionately likely to be people of color.

159. Far from authorizing the improper investigation being conducted by the Commission, Congress reached opposite conclusions about appropriate federal policy in the NVRA.

160. The NVRA was the result of a years-long debate about how to address low voter turnout and make voter registration easier.

161. Opponents of the NVRA labeled it an "open invitation to fraud and corruption," and referred to it as the "National Voter Fraud Act."

162. Congress rejected that argument, and enacted the NVRA to address gaps in the protection framework left out of the Voting Rights Act of 1965, 52 U.S.C. § 10301. Specifically, Congress passed the NVRA to combat what it found to be "discriminatory and unfair [state] registration laws and procedures" that "have a direct and damaging effect on voter participation in [federal] elections." *Id.* § 20501(a)(3).

163. In enacting the NVRA, Congress also recognized that "restrictive voter registration laws and administrative procedures were introduced in the United States in the late nineteenth and early twentieth centuries to keep certain groups of citizens from voting." 52 U.S.C. § 10301.

Congress further identified measures including “poll taxes, literacy tests, residency requirements, selective purges, elaborate administrative procedures, and annual registration requirements,” as emblematic of devices created to disenfranchise African Americans.

164. Section 8 of the NVRA sets out the circumstances under which states may remove voters from registration lists. Section 8 requires that list maintenance programs be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.”

165. States make independent determinations for methods for voter-list maintenance, within the requirements of the NVRA. This includes statewide mailings to all registered voters, and membership in the Electronic Registration Information Center (ERIC), an interstate data sharing system that aggregates data from voter registration lists, motor vehicle departments and other sources to identify voters who have likely died or moved outside their jurisdiction or registration.

166. The manner in which States ensure the maintenance of an accurate and current voter registration roll pursuant to the NVRA is within the purview of the States.

167. Congress delegated authority to the Attorney General, private litigants, state election officials and the EAC—but not the President—to enforce the NVRA.

168. Indeed, in the NVRA, Congress granted the EAC the power that the Commission seeks now to exercise, and imposed controls—both in how EAC members are selected and how the agency carries out its mission—that President Trump’s Commission unlawfully circumvents. The NVRA provides that the EAC has the authority to “conduct[] studies and carry[] out other activities to promote the effective administration of Federal elections.” 52 U.S.C. § 20922(3). Further, the NVRA specifically charges the EAC with conducting “periodic studies” that investigate, 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 [and] maintaining secure and accurate lists of registered voters.” *Id.* §§ 20981(b)(3), (6). These studies are to be submitted to the President, the House Administration Committee, and the Senate Rules Committee, “together with such recommendations for administrative and legislative action as the [EAC] determines is appropriate.” *Id.* § 20981(c).

169. The Commission flouts these carefully drawn procedures and circumvents the role Congress created for itself in this process. The EAC is to have four members, appointed by the President with the advice and consent of the Senate. 52 U.S.C. § 20923(1). The EAC is statutorily required to be bipartisan, and the House and Senate leadership are to submit candidates to the President from which he may choose. *Id.* § 20293(2). And, to prevent these members from being unduly influenced by outside groups, the NVRA requires EAC commissioners to resign from any other business or vocation while serving on the Commission. *Id.* § 20293(2)(d)(2).

170. The Commission is not only improperly carrying out functions expressly delegated by Congress to the EAC, the Commission contains *none* of these substantive or procedural safeguards.

171. By expressly providing for the EAC to regularly consider and investigate the sensitive issue of voter fraud—and by putting in place careful controls as to who would conduct that investigation and how—Congress intended to foreclose the haphazard and unaccountable manner in which the Commission is carrying out its activities.

172. Finally, the Commission’s actions, including its request for information about felony convictions notwithstanding the lack of any federal law prohibiting voting on that basis, and President Trump’s suggestion that states are hiding something by protecting the privacy of

their voter rolls, intrude upon the dignity of the states as protected by the Tenth Amendment and the structure of the Constitution.

173. For the foregoing reasons, the establishment of the Commission and the actions it has taken to investigate voter fraud, constitute unauthorized presidential action and are therefore *ultra vires*.

COUNT IV

(Violation of FACA)

174. Plaintiffs incorporate the allegations in paragraphs 1-173 by reference as if fully set forth herein.

175. Enacted in 1972, FACA “formalized a process for establishing, operating, overseeing, and terminating” a broad range of advisory committees in order to ensure that the advice offered by these committees “is objective and accessible to the public.”¹²¹ “FACA’s principal purpose was to enhance the public accountability of advisory committees established by the Executive Branch and to reduce wasteful expenditures on them.” *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 459 (1989).

176. FACA imposes several specific requirements on committees established or utilized by the President or federal agencies to obtain advice or recommendations (“advisory committees”). 5 U.S.C. App. 2 § 2 *et seq.*

177. FACA defines “advisory committee” to include any “committee, board, Commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof . . . established or utilized by one or more agencies, in the interest of

¹²¹ Gen. Servs. Admin., *Federal Advisory Committee Act (FACA) Management Overview* (“FACA Overview”), <https://www.gsa.gov/faca>.

obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.” *Id.* § 3(2).

178. Advisory committees that meet this definition are subject to FACA’s requirements unless they are specifically exempted by statute.¹²² *Id.* § 4.

179. Assuming *arguendo* that there is any lawful basis for the appointment of the Commission (*but see* Counts One through Three, *supra*), the Commission is an “advisory committee” within the definition of FACA and subject to FACA’s requirements.

180. FACA requires the membership of advisory committees to be “fairly balanced in terms of the points of view represented and the functions to be performed.” 5 U.S.C. App. 2 § 5(b)(2). Further, to comply with FACA, committees must “not be inappropriately influenced by the appointing authority or by any special interest.” *Id.* § 5(b)(3).

181. The President has “inappropriately influenced” the Commission with his authority. Specifically, he has repeatedly asserted that his claims of widespread voter fraud will be “proved right” after the Commission conducts an investigation on the matter.

182. Upon information and belief, the Commission did not implement a fair-and-balanced plan to ensure compliance with FACA.

183. As set forth above, the Commission was created by President Trump and heavily stacked with members who have also claimed that voter fraud is a widespread problem despite the overwhelming evidence to the contrary. Further, the Commission does not include anyone who represents the interests of voters who have been suppressed or intimidated. Nor does the Commission include any expert in election data analysis who could demonstrate the unreliability

¹²² By its terms, FACA applies to all “advisory committees,” other than those related to the CIA, the Director of National Intelligence, or the Federal Reserve System. 5 U.S.C. App. 2 § 4. FACA does not apply to groups or committees “composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government.” *Id.* § 3.

of matching voter rolls with federal database to identify alleged voter fraud. Finally, as set forth above, the Commission appears to be unduly influenced by the appointing authority and by special interest groups that perpetuate false claims about voter fraud.

184. The Commission therefore fails to meet the requirements of FACA.

COUNT V

(Declaratory Judgment, 28 U.S.C. § 2201)

185. Plaintiffs incorporate by reference paragraphs 1-184 as if fully set forth herein.

186. For the reasons stated above, the Commission violates the Federal Constitution and FACA.

187. Plaintiffs seek a declaratory judgment to that effect.

188. Defendants' violations of the Constitution, and of FACA, have injured and will continue to injure Plaintiffs by: promoting the false and damaging perception among the American public that voter fraud is a serious threat to U.S. elections, and that such fraud is disproportionately committed by voters of color; chilling the exercise of the franchise by African-American and Latino voters; limiting Plaintiffs' ability to advocate effectively for the rights of voters of color; and limiting Plaintiffs' ability to have a representative voice on the Commission.

189. For the foregoing reasons, a live controversy exists between the parties, and declaratory relief is appropriate.

COUNT VI

(Mandamus, 28 U.S.C. § 1361)

190. Plaintiffs incorporate by reference paragraphs 1-189 as if fully set forth herein.

191. By establishing and utilizing the Commission in violation of the Constitution, and by permitting the Commission to meet and deliberate without complying with FACA, Defendants are failing to carry out ministerial acts owed to Plaintiffs. 28 U.S.C. § 1361.

192. Defendants' failure to carry out ministerial acts owed to Plaintiffs is likely to irrevocably harm both the voting rights of African Americans and Latinos and Plaintiffs' ability to advocate effectively for those rights.

193. Plaintiffs will continue to suffer permanent and irreparable injury unless the operation of the Commission is brought into compliance with the Constitution and, alternatively, the provisions of FACA.

COUNT VII

(Administrative Procedure Act; 5 U.S.C. § 706)

194. Plaintiffs incorporate by reference paragraphs 1-193 as if fully set forth herein.

195. By utilizing the Commission without complying with FACA; by permitting the Commission impermissibly and intentionally to discriminate against Plaintiffs because of their race and ethnicity; and by directing and conducting an investigation that is founded on no factual basis and is therefore arbitrary and capricious, Defendants are (a) acting without observance of procedure required by law; (b) acting contrary to constitutional right, power, privilege, or immunity; and (c) acting in a manner that is arbitrary, capricious, and contrary to law, in violation of the Administrative Procedure Act ("APA"). 5 U.S.C. § 706(2)(A), (B) and (D).

196. Defendants' violations of FACA and the APA have injured Plaintiffs by limiting Plaintiffs' ability to have a representative voice on the Commission on an issue with which Plaintiffs are engaged; by promoting the false and damaging perception among the American public that voter fraud is a serious threat to U.S. elections; and by depriving Plaintiffs of their

rights under the Fifth and Fifteenth Amendments to the United States Constitution. Defendants' violations of FACA and the APA are likely to irrevocably harm both the voting rights of African Americans and Latinos, and Plaintiffs' ability to advocate effectively for those rights.

197. These injuries to Plaintiffs are likely to increase as long as Defendants continue to operate and direct the operation of the Commission out of compliance with FACA.

198. Plaintiffs will continue to suffer permanent and irreparable injury unless the operation of the Commission is enjoined or, alternatively, brought into compliance with FACA and the APA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- (a) Issue a permanent injunction requiring Defendants to cease meetings and all other activities of the Commission, and to return all voter information that has been furnished by the States, and to destroy any copies of that information;
- (b) In the alternative, permanently enjoin Defendants from allowing the Commission to operate in any manner that is not in full compliance with the U.S. Constitution and FACA, including the requirements described in sub-paragraph (d) below;
- (c) Declare that the Commission and any component subcommittees of the Commission are *ultra vires* because of the constitutional and statutory violations described above;
- (d) In the alternative, declare that the Commission and any component subcommittees of the Commission are advisory committees under FACA and must comply with all requirements of FACA and all applicable laws, and further declare that Defendants have violated FACA in the following ways, among others:
 - a. failing to constitute the Commission such that it is “fairly balanced in terms of the points of view represented” in violation of 5. U.S.C. App § 5(b)(2).
 - b. failing to ensure that the Commission will “not be inappropriately influenced by the appointing authority,” in violation of 5 U.S.C. App. 2 § 5(b)(3).
 - c. failing to ensure that the Commission will “not be inappropriately influenced . . . by any special interest,” namely, Defendants’ interest in vindicating their own views regarding voter fraud, in violation of 5 U.S.C. App. 2 § 5(b)(3).
- (e) Issue a writ of mandamus compelling Defendants to carry out all nondiscretionary duties required by the Constitution, FACA, and the APA with respect to the operation of the

Commission, including the requirements set forth above;

- (f) Provide any and all other relief to which Plaintiffs are entitled and that is necessary to remedy the legal violations set forth above, and any and all other relief the Court deems appropriate.

Respectfully submitted this 18th day of July 2017.

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