

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

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

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

versus

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

**PLAINTIFFS' CORRECTED MOTION FOR TEMPORARY RESTRAINING
ORDER ("TRO"), WITH REQUEST FOR EXPEDITED TREATMENT AND
INCORPORATED MEMORANDUM OF LAW¹**

¹ The original Motion for Temporary Restraining Order [ECF 4] exceeds 20 pages, excluding certificates and signature blocks, due to an inadvertent formatting error. This Corrected Motion for Temporary Restraining Order is essentially identical to the original Motion but complies with the 20 page limit.

I. PRELIMINARY STATEMENT & BACKGROUND

It is true that home addresses often are publicly available through sources such as telephone directories and voter registration lists, ‘but [i]n an organized society, there are few facts that are not at one time or another divulged to another.’ . . . An individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.

U.S. Dep’t of Def. v. Fed. Labor Relations Auth., 510 U.S. 487, 500 (1994).

1. Plaintiffs, under Fed. R. Civ. P. 7 and 65, seek an expedited TRO prohibiting Defendants from collecting every American voter’s personal data to create a national, centralized database in violation of Article II and the Separation of Powers, and exceeding Executive Order No. 13,799’s written scope, (May 11, 2017) 82 Fed. Reg. 22,389 (Exhibit A) (“Executive Order” or “EO”); and prohibiting Defendants from running all business until fully complying with the Federal Advisory Committee Act (“FACA”) (5 U.S.C. app. 2), E-Government Act of 2002 (44 U.S.C. § 3501 note), and Paperwork Reduction Act (“PRA”) (44 U.S.C. § 3501). Plaintiffs seek the Florida Secretary of State be restrained from submitting to the Commission any voter data in violation of Fla. Stat. § 97.0585 and Florida’s Right to Privacy; and that the Commission be restrained from obtaining that information.²

2. The President has a long history of propagating baseless conspiracy theories about voter fraud, ostensibly in order to suppress the right to vote. As a presidential candidate, Mr. Trump encouraged people to intimidate voters at polling sites, saying, for example, “[p]eople that have died 10 years ago are still voting.

² The Complaint and its exhibits are incorporated by reference. [ECF 1, 1-1].

Illegal immigrants are voting. I mean, where are the street smarts of some of these politicians? . . . So many cities are corrupt, and voter fraud is very, very common.”³

As President-Elect, Mr. Trump continued his baseless charges about voter fraud, tweeting, “[i]n addition to winning the Electoral College in a landslide, I won the popular vote if you deduct the millions of people who voted illegally.”⁴ ABC News declared this statement “False,” because there is “no proof to back up this claim.”^{5, 6}

3. Kansas Secretary of State Kris Kobach falsely stated then, “I think the president-elect is absolutely correct when he says the number of illegal votes cast exceeds the popular vote margin[.]” News reports say Mr. Kobach “had no tangible evidence to support that statement.”⁷ Presidential Counselor Kellyanne Conway said the President “bases his information” about voter fraud on Mr. Kobach.

4. On January 25, 2017, the President tweeted his intention to create what would later become the Commission: “I will be asking for a major investigation into VOTER FRAUD, including those registered to vote in two states, those who are

³ Tribune news services, *Trump wrongly insists voter fraud is ‘very, very common,’* Chicago Tribune (Oct. 17, 2016), <http://www.chicagotribune.com/news/nationworld/politics/ct-donald-trump-voter-fraud-20161017-story.html>.

⁴ Donald J. Trump (@realDonaldTrump), Twitter (Nov. 27, 2016, 3:30 p.m.), <https://twitter.com/realDonaldTrump/status/802972944532209664>.

⁵ Lauren Pearle, *Fact-Checking Trump's Claims About ‘Serious Voter Fraud,’* ABC News (Nov. 28, 2016), <http://abcnews.go.com/Politics/fact-checking-trumps-claims-voter-fraud/story?id=43820475>.

⁶ A compilation of public statements by or on behalf of the President promoting the existence of voter fraud in connection with the 2016 election, despite no legitimate supportive facts or evidence, is located at Exhibit B.

⁷ Bryan Lowry, *Kobach backs Trump’s unsupported claim of millions illegally voting,* The Wichita Eagle (Nov. 30, 2016), <http://www.kansas.com/news/politics-government/election/article117933098.html>.

illegal and....⁸ even, those registered to vote who are dead (and many for a long time). Depending on results, we will strengthen up voting procedures!”⁹

The Commission Attempts to Collect State Voter Information

5. The Commission was established by Executive Order (Exhibit A) and by Charter (Exhibit C). Vice President Michael Pence is Chair. Kansas Secretary of State Kris Kobach is Vice Chair. The Vice Chair has a long history of suppressing the fundamental right to vote. *See League of Women Voters v. Newby*, 838 F.3d 1, 13 (D.C. Cir. 2016) (reversing denial of motion for preliminary injunction, noting “precious little record evidence” of Kobach’s assertions of fraudulent voter registration by non-citizens); *Fish v. Kobach*, 840 F.3d 710, 747, 755 (10th Cir. 2016) (Kobach’s disenfranchisement of voters is a “mass denial of a fundamental constitutional right;” his “assertion that the ‘number of aliens on the voter rolls is likely to be in the hundreds, if not thousands’ is pure speculation”).

6. The Executive Order instructs the Commission to “study the registration and voting processes used in Federal elections.” (Exhibit A). 82 Fed. Reg. at 22,389. The EO does not contain any authority to collect personal voter data, to initiate investigations, or to seek the disclosure of state voter data. Yet, on June 28, 2017, before the Commission’s members were all appointed and sworn in and before any noticed meetings, the Vice Chair stated during a telephonic Commission meeting, led by the Vice President, that “a letter w[ould] be sent today to the 50

⁸ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 25, 2017, 7:10 am), <https://twitter.com/realDonaldTrump/status/824227824903090176>.

⁹ Donald J. Trump (@realDonaldTrump), Twitter (Jan. 25, 2017, 7:13 am), <https://twitter.com/realDonaldTrump/status/824228768227217408>.

States and District of Columbia on behalf of the Commission requesting publicly-available data from state voter rolls. . . .” (Exhibit D) (“Request Letters”).¹⁰

7. All the Request Letters, including the one to Florida Secretary of State Ken Detzner, (Exhibit E),¹¹ request voter identifying information, including the:

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

8. The Request Letters also seek “[w]hat evidence or information [the state had] regarding instances of voter fraud or registration fraud” and “[w]hat convictions for election related crimes ha[d] occurred in [the] state since the November 2000 federal election.” According to the Commission, “any documents that are submitted to the full Commission w[ould] also be made available to the public.” The states’ responses to the Commission are due by July 14, 2017. *Id.*

9. The Request Letters do not list the Commission’s physical address. The

¹⁰ Press Release, Office of the Vice President, Readout of the Vice President's Call with the Commission on Election Integrity (June 28, 2017).

¹¹ That same day, June 28, 2017, the U.S. Department of Justice sent a letter to every state covered by the National Voter Registration Act, 52 U.S.C. § 20501 (“NVRA”) seeking “all statutes, regulations, written guidance, internal policies, or database user manuals that set out the procedures” each state has relating to removing voters from voter registration rolls. The letter also discusses coordination between “state voter registration lists with state agency records on felony status and death.” A copy of the letter sent to Washington Secretary of State Kim Wyman is attached as Exhibit F and is believed to be representative of the letters to all states covered by the NVRA. Given the nearly identical timing and subject matter of the DOJ’s letter and the Commission’s letter, it appears the Commission exists to obtain records that would be unavailable to the DOJ in order to enact policies and procedures to suppress the vote.

URL (<https://safe.amrdec.army.mil/safe/Welcome.aspx>) to transfer voter information is not secure. Visitors to the URL are told the “connection is not secure” and are warned of “your information . . . being stolen.” (Exhibit G). This makes Plaintiffs and the public fraud and identity theft targets. Florida leads the country in complaints for fraud and identity theft.¹² Florida’s voter data security will be undermined if it is amassed and centralized into a non-secure federal database.

10. The Defendants failed to do a Privacy Impact Assessment, under the E-Government Act of 2002 (44 U.S.C. § 3501 note), to (i) “conduct a privacy impact assessment;” (ii) “ensure the review of the privacy impact assessment;” and (iii) if practicable, “make the privacy impact assessment publicly available through the website of the agency, publication in the Federal Register, or other means.” *Id.*

States Oppose the Commission’s Demand for Voter Information

11. Numerous state officials oppose the Commission’s requests.¹³ The President tweeted in response: “Numerous states are refusing to give information to the very distinguished VOTER FRAUD PANEL. What are they trying to hide?”¹⁴

¹² Maria LaMagna, *Residents of these states are most vulnerable to identity theft*, Market Watch (July 9, 2017), <http://www.marketwatch.com/story/residents-of-these-states-are-most-vulnerable-to-identity-theft-2017-07-07>; William E. Gibson & Donna Gehrke-White, *Florida leads nation in fraud, ID theft*, South Florida Sun-Sentinel (Mar. 3, 2015), <http://www.sun-sentinel.com/news/florida/fl-florida-leading-fraud-id-theft-20150303-story.html>.

¹³ Bump & Ingraham, *Trump Says States Are “Trying to Hide Things” from His Voter Fraud Commission. Here’s What They Actually Say*, Wash. Post (July 1, 2017), <https://www.washingtonpost.com/news/wonk/wp/2017/07/01/trump-says-states-are-trying-tohide-things-from-his-voter-fraud-commission-heres-what-they-actually-say/>.

¹⁴ Donald J. Trump (@realDonaldTrump), Twitter (July 1, 2017, 6:07am), <https://twitter.com/realDonaldTrump/status/881137079958241280>.

12. Voting technology professionals warn that “[t]here is no indication how the information will be used, who will have access to it, or what safeguards will be established.”¹⁵ The Vice Chair concedes that “information like the last four numbers of a voter’s social security number” is “private,” but says “[t]he Commission didn’t request that information” and “there is no threat that the Commission’s work might compromise anyone’s privacy.”¹⁶ In reality, the Request Letters specifically request, among other things, the “last four digits of social security number[s].” (Exhibit E).

13. On July 6, 2017, the Florida Secretary of State announced that Florida will comply with the request by producing only publicly available information.¹⁷ (Exhibit I). Plaintiffs have no reason to believe Florida has yet provided the Commission its requested data. It is unclear what data Florida intends to provide.

II. ARGUMENT

14. Fed. R. Civ. P. 65 provides for TROs and preliminary injunctions. The movant must establish: “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest.” *Schiavo ex rel.*

¹⁵ Letter from EPIC to Nat’l Ass’n of State Sec’y’s (July 3, 2017), <https://epic.org/privacy/voting/pacei/Voter-Privacy-letter-to-NASS-07032017.pdf>.

¹⁶ Kris W. Kobach, *Kobach: Why States Need to Assist the Presidential Commission on Election Integrity*, *Briertbart News* (July 3, 2017), <http://www.breitbart.com/big-government/2017/07/03/kobach-why-states-need-to-assist-the-presidential-commission-on-election-integrity/>. (Exhibit H).

¹⁷ Associated Press, *Florida to hand over some voting information to commission investigating voter fraud*, *Local 10 South Florida* (July 6, 2017), <https://www.local10.com/news/politics/florida-to-hand-over-some-voting-information-to-commission-investigating-voter-fraud>.

Schindler v. Schiavo, 403 F.3d 1223, 1225–26 (11th Cir. 2005).

A. Plaintiffs Are Likely to Succeed on the Merits.

15. The showing of a substantial likelihood of success on the merits is generally the most important prerequisite to obtaining temporary injunctive relief and only requires a showing of *likely* or probable, rather than *certain*, success. *Schiavo*, 403 F.3d at 1232 (emphasis in original). A movant must only show a substantial likelihood of success on one of its claims to obtain relief. *See id.* “Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction” as it is inappropriate “to allow the government to use the product of a tainted procedure.” *Ala.-Tombigbee Rivers Coal. v. Dep’t of Interior*, 26 F.3d 1103, 1107 (11th Cir. 1994).

16. Plaintiffs and the public at large will be particularly harmed. Plaintiffs wish to attend Commission meetings. (Composite Exhibit J, Affidavits).

1. Federal Advisory Committee Act

17. The Commission was created under FACA. (Exhibits A, C, K). “Because FACA’s dictates emphasize the importance of openness and debate, the timing of such observation and comment is crucial to compliance with the statute. Public observation and comment must be contemporaneous to the advisory committee process itself. . . . If public commentary is limited to retrospective scrutiny, the Act is rendered meaningless.” *See Ala.-Tombigbee Rivers Coal.*, 26 F.3d at 1106. *See also Ctr. for Law & Educ. v. U.S. Dep’t of Educ.*, 209 F. Supp. 2d 102, 113 (D.D.C. 2002), *aff’d* 396 F.3d 1152 (D.C. Cir. 2005) (“FACA’s principal

purpose was to establish procedures aimed at enhancing public accountability of federal advisory committees”); *Food Chem. News, Inc. v. Davis*, 378 F. Supp. 1048, 1051 (D.D.C. 1974) (FACA’s purpose is “to control the advisory committee process and to open to public scrutiny the manner in which government agencies obtain advice from private individuals”).

18. “[I]njunctive relief [is] the only vehicle that carries the sufficient remedial effect to ensure future compliance with FACA’s clear requirements,” even where there are “minor transgressions,” “the subject matter is serious,” and “the objective is worthy.” *Ala.-Tombigbee Rivers*, 26 F.3d at 1107 & n.9. “Because the matters are so serious and of such great concern to so many with differing interests, it is absolutely necessary that the procedures established by Congress be followed to the letter.” *Id.* “[T]o allow the government to use the product of a tainted procedure would circumvent the very policy that serves as the foundation of the Act.” *Id.*

19. *First*, the Commission is conducting official business before holding any noticed meetings and its members being fully appointed and sworn in. The first noticed meeting, with the swearing-in, is set for July 19, 2017. Weeks earlier on June 28, 2017, the Vice Chair issued Request Letters, seeking personal data on every American voter. During an un-noticed June 28, 2017 telephonic meeting, the Vice Chair told other unsworn members he had sent the Request Letters, which require replies by July 14, 2017, before the first noticed Commission meeting. (Exhibit D). Thus, the Vice President and Vice Chair acted alone, violating FACA.

20. *Second*, Defendants fail to name all of the Commission members.

“[T]he Congress and the public should be kept informed with respect to the number, purpose, membership, activities, and cost of advisory committees.” 5 U.S.C. App. 2 § 2(b)(5). The media revealed 10 members appointed prior to this suit’s filing on July 10, 2017, and at least 2 members were appointed on or after July 10, 2017. None have been sworn in and it is unknown if more have been or will be appointed.¹⁸

21. *Third*, Defendants violate FACA by failing to “publish at least 15 calendar days prior to an advisory committee meeting a notice in the FEDERAL REGISTER,” with certain information. “In exceptional circumstances,” a FACA committee “may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice.” 41 C.F.R. § 101-6.1015(b).

22. The Defendants violate 41 C.F.R. § 101-6.1015(b) by holding un-noticed meetings of only the Vice Chair and Vice President and telephonic meetings, and taking action based upon those un-noticed meetings, including sending the Request Letters. And, the notice they did provide for a June 19, 2017 meeting is deficient. The Commission published that notice in the Federal Register on July 5, 2017. 82 Fed. Reg. 31,063 (Exhibit K). Despite giving less than 15 days notice, no explanation of exceptional circumstances is given, in violation of FACA.

23. *Fourth*, Defendants violate FACA by not allowing public attendance.

¹⁸ Christopher Ingraham, *Here are the first 10 members of Trump’s voting commission*, Wash. Post (July 6, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/07/06/here-are-the-first-10-members-of-trumps-voter-fraud-commission/?utm_term=.141775f130dc; Cyra Master, *Trump adds two to election integrity commission*, The Hill (July 10, 2017), <http://thehill.com/homenews/administration/341378-trump-adds-two-to-election-integrity-commission>.

As Chair, the Vice President “shall ensure that [the] meeting room size is sufficient to accommodate . . . interested members of the public.” 41 C.F.R. § 101-6.1021(b). Yet the June 19, 2017 meeting will only have “livestreaming.” (Exhibit K). The un-noticed *and noticed* meetings violate FACA as the public cannot attend in person.

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

25. *Sixth*, Defendants fail to make available for public inspection an E-Government Act Privacy Impact Assessment for voter data collection. The E-Government Act applies to the Commisison because it is an “establishment in the executive branch of the Government,” a category that “include[es] the Executive Office of the President.” 44 U.S.C. § 3502(1). And it requires a Privacy Impact Assessment for a “new collection of information” to ensure it “commensurate[s] with the size of the information system being assessed, the sensitivity of the information that is in an identifieable form in that system, and the risk of harm from unauthorized release of that information.” § 3501 note. A Privacy Impact Assessment must address what information is to be collected, why the information is being collected, the intended use of the information, what notice for consent if

provided, and how the information will be secured. *Id.* Despite this requirement, the Commission did not prepare a Privacy Impact Assessment.

26. *Seventh*, the Defendants violate 5 U.S.C. app. 2 § 10(b), which requires:

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

27. The Request Letters lack the Commission's address, inviting replies to be sent to the Vice Chair in Kansas, which Florida did. (Exhibit I). It is unclear if all records will be sent to the Commission for public record keeping purposes.

28. Defendants may be violating FACA in other ways not yet known, as they have kept the public in the dark about the Commission's conduct. There is vast evidence that Defendants violated FACA and their noncompliance will continue unless restrained. Plaintiffs have established a likelihood of success on the merits.

2. Exceeding the Authority of the Executive Order

29. The Commission's purported mission under the Executive Order is to "study the registration and voting processes used in Federal Elections" and submit a report identifying laws and actions that "enhance" or "undermine" confidence in American elections. It is also supposed to report vulnerabilities in voting systems and practices used for federal elections.

30. *Nowhere* does the Executive Order empower the Commission to amass and centralize a federal database of voters and then publicize it. The Commission exceeds its authority by seeking to amass and centralize a federal database of

Americans' personal information, placing this data on an unsecure server and making it public, and duplicating the work of existing government entities including the States, F.E.C., and the Election Assistance Commission. See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952).

31. The Vice Chair and Vice President go beyond the EO's written word by amassing and centralizing all American voters' personal information. The President himself stated his support for these actions, which exceed his own EO's scope, by tweeting, "Numerous states are refusing to give information to the very distinguished VOTER FRAUD PANEL. What are they trying to hide?" The Commission's actions are pretext to violate the public's privacy, to suppress the fundamental right to vote in the future. There is overwhelming evidence that Defendants unlawfully exceed the Executive Order and they will continue unless restrained. Plaintiffs have established a likelihood of success on the merits.

3. Breaches and Violations of Separation of Powers and Art. II

32. "The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself". *Youngstown Sheet & Tube*, 343 U.S. at 585. "The President may not circumvent the constitution by attempting to legislate by Executive Order." *Muller Optical Co. v. E.E.O.C.*, 743 F.2d 380, 386 (6th Cir. 1984). Here, the Defendants' actions rest on weaker underpinnings than in *Youngstown*. The Commission's activities are based upon a bogus voter fraud myth.

33. Congress has exclusive federal power to regulate elections, otherwise run by the states: Art. I, § 4, U.S. Const. The 14th, 15th, 19th, 24th, and 26th

Amendments also give Congress power to enforce voting rights through legislation. The Executive Branch is not mentioned; it has limited powers under Article II. Nowhere in the Constitution or the U.S. Code is the Executive granted or delegated power to amass and centralize a national database of personal information.

34. These transgressions of Article II and the Separation of Powers include (a) amassing and centralizing a federal database with individuals' personal and private information based on a myth of voter fraud, without any legitimate factual finding to support its purported mission; (b) duplicating the work of existing government entities including the States, the F.E.C., and the Election Assistance Commission; (c) violating FACA and sunshine laws; and (d) intruding on Congress's Article I powers over the electoral system and the protection of the vote.

35. The Commission invades Congress's Article I powers over the electoral system. It violates the Separation of Powers by exceeding the Executive's Article II powers. *See County of Santa Clara v. Trump*, 2017 WL 1459081, at *21 (N.D. Cal. Apr. 25, 2017) (entering preliminary injunction as against executive order, where enforcement would invade Congress's Article I power). The vast evidence supports restraining further constitutional breaches. Plaintiffs have a likelihood of success.

4. Paperwork Reduction Act

36. The PRA seeks to ensure the "greatest possible public benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government." 44 U.S.C. § 3501. For purposes of the PRA, "agency" means any executive department, military department,

Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency” 44 U.S.C. § 3502. The Commission is not specifically excluded. More particularly, the Executive Office of the President is specifically included as an agency bound by the PRA.

37. Under the PRA, an agency must receive approval from the Office of Management and Budget (“OMB”) when seeking information from more than 10 respondents. Prior to collecting any voter data, the Commission must obtain OMB approval. *See* 44 U.S.C. § 3506. There was no attempt at compliance. The Commission failed to prepare a review identifying the plan for collection of information, inventory, and control numbers for each item, and that “informs the person receiving the collection of information of” “the reasons the information is being collected;” “the way such information is to be used;” “an estimate, to the extent practicable, of the burden of the collection;” and/or “whether responses to the collection of information are voluntary, required to obtain benefit, or mandatory,” among other things. 44 U.S.C. § 3506(c)(1)(B)(iii).

38. Defendants fail to “provide 60-day notice in the Federal Register, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information,” and solicit comments about whether “the proposed collection of information is necessary,” or “practical utility,” the “burden of the proposed collection of information;” and/or about “quality, utility, and clarity of the information to be collected;” and proper collection procedures that “minimize the

burden of the collection of information.” 44 U.S.C. § 3506(c)(2)(A).

39. Defendants’ data collection prior to PRA compliance is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with 5 U.S.C. § 706(2)(a) or (c). Defendants cannot collect any information unless it complies with the PRA, which “clearly provides that the protective section may be raised in the form of a ‘complete defense, or bar *or otherwise* at any time” This “[could not] be more expansive.” See *Livestock Mktg. Ass’n v. U.S. Dep’t of Agric.*, 132 F. Supp. 2d 817, 831 (D.S.D. 2001) (granting preliminary injunction to enjoin violations of the PRA); cf. *Ala.-Tombigbee Rivers Coal.*, 26 F.3d at 1106. (“Absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions” where the government uses “a tainted procedure.”). There is vast evidence that Defendants breached the PRA, and they will continue unless restrained. Plaintiffs have established a likelihood of success on the merits.

5. Violations of Florida Privacy Laws

40. Art. I, § 23, Fla. Const. guarantees the right of privacy, and Fla. Stat. § 97.0585, mandates confidentiality of certain voter information data, including, among other things, “[t]he social security number, driver license number, and Florida identification number of a voter registration applicant or voter.” The Commission’s request for voters’ information includes protected information. The Florida Secretary of State is obligated to preserve, and must be prohibited from disclosing, confidential, protected voter registration information. Minimally, Florida must be restrained redact any protected information. Fla. Stat. § 119.07(1)(d).

41. On July 6, 2017, Defendant Detzner stated that he would give the Commission personal Florida voter information but would not share voters' social security numbers and driver license numbers. To ensure compliance with § 97.0585, Plaintiffs seek a TRO to preclude the Commission from obtaining Florida voters' social security numbers and Driver's License numbers from any source, including the Florida Secretary of State, who should be restrained from providing it and from violating Florida's right to privacy. It is unknown if Florida has yet transmitted data to the Commission, and if so, whether the transmissions were secure. There is vast evidence that Defendants seek to violate Florida privacy laws, including through data transmission by the Florida Secretary of State, and will continue unless restrained. Plaintiffs have established a likelihood of success on the merits.

B. Plaintiffs Will Suffer Irreparable Harm.

42. Unless a TRO is granted, Plaintiffs, their members, and the public face imminent threat of being entered, without their consent, into a centralized federal database not authorized by any statute or the Executive Order, that is being operated in violation of the Constitution, FACA, the PRA, E-Government Act, and that seeks protected information. The Commission's activities are of great public importance and concern, especially as this unlawful data collection may result in findings and recommendations that touch upon the fundamental right to vote.

43. *First*, the Commission fails to use secure procedures, even though Florida has rampant fraud and identity theft. The URL to transfer voter data is not secure and the data is at risk of being "stolen," creating imminent threat of harm.

(Exhibit G). *See Does v. Univ. of Wash.*, 2016 WL 4147307, at *2 (W.D. Wash. Aug. 3, 2016) (entering TRO to prevent disclosure of personal identifying information, including phone numbers and email addresses). “In the age of the internet, when information is made public quickly and without borders, it is nearly impossible to contain an impermissible disclosure after the fact, as information can live on in perpetuity in the ether to be shared for any number of deviant purposes.” *Wilcox v. Bastiste*, 2017 WL 2525309, at *3 (E.D. Wash. June 9, 2017) (preliminary injunction entered where release of personal DMV information would cause irreparable harm).

44. *Second*, the Commission, prior to its first noticed meeting, held illegal meetings and took unlawful actions to obtain protected data. It is impossible to know the extent of the Defendants’ violations as they are operating in the dark.

45. Even the first noticed meeting’s online access violates FACA. Unless Defendants are restrained to comply with all notice and attendance laws, Plaintiffs and the public will forever lose their right to attend and oversee the meeting in a “place reasonably accessible to the public” and in a “meeting room or other forum . . . sufficient to accommodate . . . interested members of the public.” 41 C.F.R. § 102-3.140(a)-(b).¹⁹ “If public commentary is limited to retrospective scrutiny, the Act is rendered meaningless.” *See Ala.-Tombigbee Rivers Coal.*, 26 F.3d at 1106; *see also Food Chem. News*, 980 F.2d at 1472 (timely release of committee documents critical since “[o]pening the meetings to the public would be meaningless if the public could

¹⁹ *See also Food Chem. News*, 980 F.2d at 1472 (“interested parties” must have timely “access to relevant materials” “to present their views” and “be informed with respect to the subject matter” when “the materials are used and discussed”).

not follow the substance of the discussions”). Absent a TRO, irreparable harm to Plaintiffs and the public is imminent.

C. The Balance of Harm Supports Entry of a TRO

46. The balance of harm supports a TRO as Plaintiffs and the public will be imminently harmed if their information is disclosed to Defendants, who have violated numerous laws. This outweighs any delay Defendants could endure from the TRO’s issuance. A TRO simply restrains Defendants to follow the law, and not collect protected information without cause and approval. *See Gates v. Schlesinger*, 366 F. Supp. 797, 801 (D.D.C. 1973) (“The Court finds no injury to Defendants in being obliged to conform to the open meeting requirement imposed by [FOIA]”).

47. Improper data disclosure threatens injury outweighing any harm the TRO could cause the Defendants, who would suffer no harm as the status quo will remain. *See U.S. Dept. of Def.*, 510 U.S. at 500–01. There is no public interest in creating an illegal federal database of all American voters’ personal information.

D. Entry of the Relief Would Serve the Public Interest

48. *First*, a TRO serves the public interest since Defendants will have to comply with law, including federal transparency provisions. “There is generally no public interest in the perpetuation of unlawful agency action. . . . To the contrary, there is a substantial public interest ‘in having governmental agencies abide by the federal laws that govern their existence and operations.’” *League of Women Voters*, 838 F.3d at 12; *accord United States v. Ala.*, 691 F.3d 1269, 1301 (11th Cir. 2012) (“Frustration of federal statutes and prerogatives are not in the public interest[.]”).

49. *Second*, “FACA’s principal purpose was to enhance the public accountability of advisory committees established by the Executive Branch and to reduce wasteful expenditures on them.” *Pub. Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 459 (1989); *Gates*, 366 F. Supp. at 801 (D.D.C. 1973) (“public interest will be best served by requiring strict compliance with the letter and spirit of [FACA]”).

50. *Third*, PRA compliance is in the public interest as it seeks to “ensure the greatest possible public benefit from and maximize the utility of information created collected, maintained, used, shared and disseminated by or for the Federal Government.” 44 U.S.C. § 3501(2); see *Livestock Mktg. Ass’n*, 132 F. Supp. 2d at 817.

51. *Fourth*, the public interest is to prevent the transfer of voter data to the Commission. While “publicly available [information is in] voter registration lists, . . . [a]n individual’s interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.” *U.S. Dept. of Def.*, 510 U.S. at 500–01. See also *News-Press v. U.S. Dep’t of Homeland Sec.*, 489 F.3d 1173, 1205 (11th Cir. 2007) (“Although . . . it is possible to derive names from addresses through public records, we see no reason to enable this process with a ready-made list of names, absent some compelling public interest”).²⁰ The Vice Chair admits some of the

²⁰ See also *Sheet Metal Workers Intern. Ass’n, Local Union No. 19 v. U.S. Dep’t of Veterans Affairs*, 135 F.3d 891, 905 (3d Cir. 1998) (“we find unconvincing the union’s argument that employees have waived their privacy rights because their addresses are available from other public sources and are posted publicly at the job site”); *Nat’l Ass’n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989) (no public interest in disclosing names and addresses of retirement benefit recipients, but there were personal private interests against disclosure); *Fed. Labor*

requested data is “private.” (Exhibit H). But even if it is all “publicly available,” any non-trivial interest against disclosure warrants non-disclosure of personal identifying information where there is no public interest in the disclosure. *U.S. Dept. of Def.*, 510 U.S. at 500; *Fed. Labor Relations Auth.*, 977 F.2d at 549.

52. Absent a TRO, the Commission will continue to amass and centralize an unauthorized federal database of Americans’ personal information, including not just names and addresses, but also party affiliation, voting history, social security numbers, military history, and/or criminal history, without any privacy protections in place or explanations how the data will be used. The Commission’s unsecure data transmission system, and the fact that the data is being collected in furtherance of a bogus voter fraud myth with all indications being that it will be used to suppress the fundamental right to vote, weigh in favor of a TRO.

III. CONCLUSION

Plaintiffs respectfully request a TRO restraining Defendants from (a) collecting voter data from in furtherance of creating a national, centralized voter database in violation of Article II and Constitutional Separation of Powers, and that exceeds the scope of the Executive Order; (b) conducting any business until fully complying with FACA and the PRA; and (c) transferring, to the Commission, individualized voter data from the Florida Secretary of State or otherwise. Plaintiffs also request expedited treatment and any other relief that is just and proper.

Relations Auth. v. U.S. Dept. of Def., 977 F.2d 545, 549 (11th Cir. 1992) (“If one does not want one’s residence to be known, the importance of its being unknown seems to go to the core of privacy. Also, an address tells much more than just where a person lives. It is an indicator of one’s choice of neighborhoods and one’s affluence.”).

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I HEREBY CERTIFY that on July 13, 2017, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner.

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