

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' RESPONSE IN OPPOSITION TO FEDERAL DEFENDANTS'
NOTICE OF RELATED MOTIONS FOR TEMPORARY RESTRAINING
ORDER [ECF 12] AND NOTICE OF FILING [ECF 13];
AND NOTICE OF FILING D.C. CASE PLAINTIFFS' FILINGS**

Plaintiffs respond in opposition to the Federal Government Defendants'
Notice of Related Motions for Temporary Restraining Order [ECF 12] and *Notice of
Filing* [ECF 13], and state as follows:

1. The Federal Government Defendants argue, in ECF 12, that because Motions for Temporary Restraining Orders are pending in *Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity*, Case No. 17-cv-1320 (CKK), *American Civil Liberties Union v. Trump*, Case No. 1:17-cv-1351 (CKK), and *Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Commission for Election Integrity*, Case No. 1:17-cv-1354 (CKK), in the U.S. District Court for the District of Columbia (the "D.C. Cases"), in which the Presidential Advisory Commission for Election Integrity's ("Commission") actions are challenged, that "there is no immediate need for relief here, and this court should respectfully await the forthcoming decision from Judge Kollar-Kotelly" before conducting its own review. In purported support thereof, the Federal Government Defendants also filed, in ECF 13, their response to motions for temporary restraining orders in two of the D.C. Cases.

2. However, a review of the Federal Government Defendants' response to pending motions for temporary restraining orders in the District of Columbia [ECF 13-1] reveals why the instant case warrants expedited treatment.

3. *First*, in their response to Motions for Temporary Restraining Orders in two of the D.C. Cases, the Federal Government cites D.C. Circuit case law, arguing that there is no private right of action under the Federal Advisory Committee Act, 5 U.S.C. app. 2 §§ 1-15 ("FACA").

4. However, in the Eleventh Circuit, where this case is located, binding case law makes it clear that there is a private right of action. As cited in the

Complaint [ECF 1] and argued in the Corrected Motion for Temporary Restraining Order [ECF 6], *Alabama-Tombigbee Rivers Coal. v. Dep't of Interior*, 26 F.3d 1103, 1106-07 (11th Cir. 1994), holds that federal courts retain jurisdiction to enter injunctive relief to enforce FACA, holding that:

Injunctive relief [is] the only vehicle that carries the sufficient remedial effect to ensure future compliance with FACA's clear requirements.

and

[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.

5. *Second*, the instant case addresses issues not briefed by the Federal Government in the filings from the D.C. Cases located at ECF 13, including violations of the Paperwork Reduction Act, E-Government Act, the Commission's actions in excess of the scope of the Executive Order upon which it was founded, its violation of Article II and Constitutional Separation of Powers, and Florida privacy laws.

6. Thus, this case warrants expedited treatment. If a TRO or preliminary injunction is entered in the D.C. Cases, an additional TRO in this case will cause no harm to the Federal Government Defendants. By contrast, if a TRO or preliminary injunction is *not* entered in the D.C. Cases, then this case will be the only vehicle to compel the Federal Government's compliance with applicable law. To reiterate, Plaintiffs have a private right of action to enforce FACA under the Eleventh

Circuit's holding in *Alabama-Tombigbee Rivers Coal. v. Dep't of Interior*, 26 F.3d 1103, 1106-07 (11th Cir. 1994), and the Plaintiffs have raised additional legal issues separate and distinct from those arguments raised in the D.C. Cases that are not before that Court and that justify expedited review here.

7. Additionally, to the extent this Court may rely on the Federal Government's filings in the D.C. Cases filed at ECF 12 and ECF 13, Plaintiffs respectfully file the following additional documents from the D.C. Cases in order to provide the Court with the benefit of all current briefing of the referenced motions:

a. ***Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity***, Case No. 17-cv-1320 (CKK): *Plaintiff's Amended Motion for Temporary Restraining Order and Preliminary Injunction*, ECF No. 35 (filed July 13, 2017), attached hereto as Exhibit A;

b. ***American Civil Liberties Union v. Trump***, Case No. 17-cv-1351 (CKK): *Plaintiff's Application for a Temporary Restraining Order and/or Preliminary Injunction*, ECF No. 3 (filed July 10, 2017), attached hereto as Exhibit B; and

c. ***Lawyers' Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity***, Case No. 17-cv-1354 (CKK): *Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction*, ECF No. 3 (filed July 10, 2017), attached hereto as Exhibit C.

Dated: July 14, 2017

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 14, 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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