

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

MATTHEW DUNLAP,

Plaintiff,

- versus -

PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY; MICHAEL R. PENCE, IN HIS OFFICIAL CAPACITY AS CHAIR OF THE PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY; KRIS W. KOBACH, IN HIS OFFICIAL CAPACITY AS VICE CHAIR OF THE PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY; ANDREW KOSSACK, IN HIS OFFICIAL CAPACITY AS DESIGNATED FEDERAL OFFICER FOR THE PRESIDENTIAL ADVISORY COMMISSION ON ELECTION INTEGRITY; GENERAL SERVICES ADMINISTRATION; TIMOTHY R. HORNE, IN HIS OFFICIAL CAPACITY AS ACTING ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION; EXECUTIVE OFFICE OF THE PRESIDENT; OFFICE OF THE VICE PRESIDENT; OFFICE OF ADMINISTRATION; MARCIA L. KELLY, IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE OFFICE OF ADMINISTRATION,

Defendants.

Civil Action No. 17-cv-2361-CKK

DECLARATION OF HARRY SANDICK

I, Harry Sandick, declare as follows:

1. I am a partner at the law firm Patterson Belknap Webb & Tyler LLP. I represent Plaintiff Maine Secretary of State Matthew Dunlap in this action. A motion for me to be admitted *pro hac vice* in this action is pending. I submit this declaration in support of Secretary Dunlap's motion for a preliminary injunction.

2. Secretary Dunlap filed the complaint to initiate this action on November 9, 2017. The complaint alleges five causes of action relating to Secretary Dunlap's service on the

Presidential Advisory Commission on Election Integrity (the “Commission”). In particular, the Complaint charges that the Commission’s leadership and staff have failed to share the Commission’s documents with Secretary Dunlap, interfering with his ability to participate in the Commission’s business and depriving him of his right to access information as a member of a federal advisory committee. The complaint was filed only after several efforts by Secretary Dunlap to obtain these materials from the Commission’s staff were rebuffed, leaving litigation as the only remaining option.

3. On November 13, 2017, after summonses were issued, I directed a process server to effectuate service on all Defendants. Service has not yet been completed.

4. On November 14, 2017, I sent a letter to attorneys from the U.S. Department of Justice that I believe likely represent Defendants in this action. That letter is attached to this declaration as Exhibit 1. The reason for my belief that these attorneys represent Defendants in this action is because the same attorneys represent defendants in the related cases *Electronic Privacy Information Center v. Presidential Advisory Commission on Election Integrity*, No. 1:17-cv-1320 (CKK); *American Civil Liberties Union v. Trump*, No. 17-cv-1351 (CKK); and *Lawyers’ Committee for Civil Rights Under Law v. Presidential Advisory Commission on Election Integrity*, No. 17-cv-1354 (CKK), all of which also assert claims under the Federal Advisory Committee Act relating to the practices of the Commission, including its refusal to share information under federal disclosure laws.

5. In my November 14 letter, I referenced the repeated requests for documents and information that Secretary Dunlap had made to Andrew Kossack, the Commission’s Designated Federal Officer. I asked that the DOJ attorneys inform me by November 16 at 11:00 a.m. if Mr. Kossack was willing to produce Commission documents to Secretary Dunlap. I also sent a courtesy copy of the complaint.

6. On the afternoon of November 15, 2017, I sent an email to the DOJ attorneys informing them that we planned to file a motion for preliminary injunction asking the Court to order Defendants to (1) promptly produce records requested by Secretary Dunlap; (2) produce to Secretary Dunlap all future documents made available to or prepared for or by the Commission promptly and no later than two weeks in advance of any future Commission meeting; (3) permit Secretary Dunlap to fully participate on an equal basis as all other commissioners; (4) inform all Commissioners of plans to hold Commission meetings; and to enjoin Defendants from (5) releasing a final report until Secretary Dunlap has received all documents to which he is entitled, has had an opportunity to review them, and has participated in the drafting of the report or, if necessary, has completed a concurrence or dissent to the report; and (6) punishing, retaliating against, or terminating Secretary Dunlap as commissioner for asserting his rights under FACA. That email is attached to this declaration as Exhibit 2.

7. I also provided a draft of the proposed order to the DOJ attorneys. I invited the DOJ attorneys to tell me if they would agree to the relief requested, mooted the need to file the motion.


8. On the morning of November 16, 2017, I received a response from Joseph E. Borson, Esq., on behalf of Defendants. Mr. Borson is a trial attorney for the Department of Justice, Civil Division, Federal Programs Branch and his letter to me is attached to this declaration as Exhibit 3. Mr. Borson represented that all materials related to the Commission were being preserved and promised that the Commission would not punish, retaliate, or terminate Secretary Dunlap for asserting his rights under FACA. He also advised that Secretary Dunlap will be notified as soon as the next Commission meeting is scheduled, and at least 15 days in advance of such a meeting. But Mr. Borson stated that Defendants would not agree to produce *any* documents that Secretary Dunlap requested, stating that “the Commission has taken

the position . . . that these incidental communications are not subject to disclosure under FACA section 10(b).” Nor did Mr. Borson agree to produce future documents to Secretary Dunlap in advance of any meeting or agree to permit Secretary Dunlap participate in the setting of meeting agendas or topics for discussion.

9. The specific commitments made by the Defendants in Mr. Borson’s letter do narrow the issues that might require judicial intervention, but the letter does not resolve the central issue raised in the complaint or this motion for a preliminary injunction: whether Secretary Dunlap is entitled to review documents that reflect the work of the Commission. On this point, the Defendants have renewed the position taken before our exchange of letters, and taken a position that is similar to the Defendants’ position in other related litigation over the Commission’s disclosure obligations.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed this 16th day of November, 2017.



Harry Sandick