

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

ELECTRONIC PRIVACY INFORMATION
CENTER,

Plaintiff,

v.

PRESIDENTIAL ADVISORY
COMMISSION ON ELECTION
INTEGRITY, *et al.*,

Defendants.

Civil Action No. 1:17-cv-1320 (CKK)

**DEFENDANTS' POSITION REGARDING PLAINTIFF'S MOTION FOR LEAVE TO
FILE SECOND AMENDED COMPLAINT**

Plaintiff seeks to amend the Complaint a second time to add, as new defendants, the Director of White House Information Technology, Charles C. Herndon, the Executive Committee for Presidential Information Technology, and the United States Digital Service. ECF No. 30. The government does not believe that plaintiff can state a valid cause of action against these entities. For example, Mr. Herndon is a Deputy Assistant to the President, an official located within the White House Office, who provides only operational and administrative assistance in direct support of the President and does not exercise any regulatory powers or independent authority. Hence, his office is not an "agency" within the meaning of the E-Government Act of 2002 or the Administrative Procedure Act. *See Citizens for Resp. & Ethics in Wash. v. Office of Admin.*, 566 F.3d 219, 222-24 (D.C. Cir. 2009).

Thus, while adding these defendants is arguably futile, as a procedural matter, the government does not oppose plaintiff's motion to amend. The government will provide more argument on the issue of whether plaintiff has a cause of action as to any of the new or existing defendants in its response to plaintiff's amended motion for injunctive relief, due Monday at 12:00 p.m., and later when it files a response to the amended complaint.

Dated: July 11, 2017

Respectfully submitted,

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/s/ Carol Federighi
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