

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:17-22568-CIV-COOKE/GOODMAN**

**ARTHENIA JOYNER, et al.,
Plaintiff,**

vs.

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

_____ /

**PLAINTIFFS' UNOPPOSED MOTION TO AMEND COMPLAINT,
WITH MOTION TO FILE AMENDMENT ONE DAY OUT-OF-
TIME**

Plaintiffs move to amend their complaint pursuant to Rule 15 of the Federal Rules of Civil Procedure, and Local Rule 15.1. Good cause exists to grant this requested amendment. The proposed amendment accompanies this motion as required by Local Rule 15.1. The defendants do not oppose this amendment. Because of the number of time consuming final edits to the Amended Complaint, this motion and the Amended Complaint are being filed slightly more than two hours out-of-time. Plaintiffs seek leave for the out-of-time filing of the Amended Complaint.

The defendants consent to allowing the amendment, without waiving any right to assert any defenses. In return for the defendants'

agreement to the filing of the Amended Complaint, and with due consideration to the end-of-year holiday period that is nearly upon us, the plaintiffs agree to an enlargement of time until January 31, 2018, for the defendants to file their' motions to dismiss the Amended Complaint. Additionally, the plaintiffs agree to an enlargement of time until January 31, 2018, for the defendants to respond and object to the pending discovery served by the plaintiffs.

The Amended Complaint is justified and necessary because of three significant occurrences since the initial filing of the Complaint on July 10, 2017. First, Mathew Dunlap, a member of the Presidential Commission and the Maine Secretary of State, has partially revealed the misconduct ongoing at the Presidential Advisory Commission. Secretary Dunlap, just one month ago (on November 9, 2017), sued the very Commission on which he serves as an appointed member. In that federal lawsuit, which is referenced in the Amended Complaint, Secretary Dunlap revealed the Presidential Advisory Commission is not complying with FACA, is excluding certain Commissioners from participating in the Commission's activities, and appears to be pursuing a hidden, potentially corrupt agenda.

Second, since the hearing on Plaintiffs' Motion for Temporary Restraining Order [DE 31], the Presidential Advisory Commission – through its Vice Chair Kobach – requested that States upload voter data to a “White House computer system.” On that same day, the Florida Secretary of State complied – uploading Florida's voter data to this White House computer. But what is being done with Florida Voter Data (and those of other states) remains a mystery. The Presidential Advisory Commission continues to operate in secret, and is not making its intentions or its actions with this data known to the public. No information this White House computer was placed on the Commission Agenda or even discussed at its September 12, 2017 public hearing. This violates FACA.

Now that Secretary Dunlap has revealed the secrecy under which this Commission is operating, the concrete harm and threat to Plaintiffs is better understood than what had been revealed by the known facts at the time of the initial Complaint. Plaintiffs and the public now have a level of certainty that the Presidential Advisory Commission is, indeed, pursuing a hidden agenda in violation of federal law. It appears the Commission's true agenda may well be voter suppression.

That only some favored Commission members and other unknown persons are accessing the enormous amount of voter information reveals the third reason for this amendment: true national and cyber security concerns resulting from the unknown use of the data behind closed White House doors. Since the inception of the activities of the Presidential Advisory Commission, significant new information has been developed by the United States Congress identifying serious national security and cybersecurity implications of database breaches, and the coordination of intrusion efforts by foreign governments. Warnings have been issued from current and former government security officials that Russia and other foreign adversaries have sought to intervene and will intervene in future United States elections, and that such behavior is likely to escalate. Admiral Michael Rogers, director of the National Security Agency, recently testified before Congress that “[w]e have seen states seeking to shape the policies and attitudes of democratic peoples, and we are convinced such behavior will continue for as long as autocratic regimes believe they have more to gain than to lose by challenging their opponents in cyberspace.” James Clapper, the former Director of National Intelligence, similarly testified that Russia is now “emboldened

to continue” its election interference activities, “and to do so even more intensely.”

These and other concerns led prominent former national security officials to weigh in on the activities of the Presidential Advisory Commission in pending litigation against the Commission. Their principled concerns are addressed in the Amended Complaint.

Rule 15(a) of the Federal Rules of Civil Procedure provides that leave to amend a pleading “shall be freely given when justice so requires.” *Walters v. Altec Industries, Inc.*, 2003 WL 22012046 (M.D. Fla. 2003). The Supreme Court held in *Foman v. Davis*, 371 U.S. 178, 182 (1962), that in the absence of a dilatory motive or repeated failures to cure deficiencies, leave to amend should be given freely:

“If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’”

Here, the Amended Complaint is not filed in any dilatory fashion. This is the first amendment sought, and is brought to the court's attention at a time consistent with this Scheduling Order (DE52, ¶ 3). Secretary Dunlap's revelations are new. They shed light and credibility on the threatened harm to the public and the Plaintiffs. The newly obtained revelations raise the stakes on the need for FACA-required sunlight to shed light on the White House computer system.

Furthermore, with the newly obtained facts, the Amended Complaint not only adds to the depth and flagrancy of the FACA violations and the usurpation of the Separation of Powers, but it strengthens the need for judicial involvement in this important public battle.

For all these reasons, Plaintiffs ask this court to grant the unopposed motion for leave to file the Amended Complaint that is attached hereto.

Dated: December 9, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify on December 9, 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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