



August 11, 2021

Ms. Dana Fowler
Designated Federal Officer
Presidential Commission on the
Supreme Court of the United States
The White House
Washington, DC 205000

Dear Ms. Fowler:

On April 9, 2021, President Joe Biden signed Executive Order 14023, establishing the Presidential Commission on the Supreme Court of the United States (the “Commission”), a federal advisory committee subject to the Federal Advisory Committee Act. We write to you in your capacity as the Designated Federal Official for the Commission.

As you know, Section 10(b) of the Federal Advisory Committee Act requires that “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.” *See* 5 U.S.C. app. § 10(b).

Guidance from the General Services Administration (“GSA”) has emphasized that “[t]he purpose of section 10(b) is [to] provide for the contemporaneous availability of advisory committee records that, when taken in conjunction with the ability to attend committee meetings, provide a meaningful opportunity to fully comprehend the work undertaken by the committee.” *See* Memorandum for Comm. Mgmt. Officers from James L. Dean, Dir., Comm. Mgmt. Secretariat, “Public Access to Advisory Committee Records” (March 14, 2000).

Courts have provided further guidance as to the universe of “records” that must be made publicly available. The District Court for the District of Columbia has advised that “a document is subject to disclosure under section 10(b), unless an exemption applies, if it was created or obtained with the intent to disclose it to the

advisory committee....” *Lawyers Comm. for Civil Rights v. Presidential Advisory Commission on Election Integrity*, No. 17-1354 (CKK) (Aug. 30, 2017 Order on Motion for Discovery and Status Conference). This may include records from personal email accounts. *See, e.g., Brennan Center for Justice v. U.S. Department of Justice*, 17-Civ-6335 (AKH) (SDNY) (April 30, 2019).

We are therefore requesting an opportunity inspect the Commission’s records as provided for in Section 10(b). We would like to inspect, at a minimum, the following records and documents:

- A. Records of all drafts of any reports or sections of any reports which were made available to or prepared for or by any Commissioner or Commissioners. This includes materials prepared by Commission members, staff supporting the Commission, or non-Commission individuals or entities and shared with one or more Commission members.
- B. Records of all working papers, studies, or other materials which were made available to or prepared for or by any Commissioner or Commissioners. This includes materials prepared by Commission members, staff supporting the Commission, or non-Commission individuals or entities and shared with one or more Commission members.
- C. Records of all resolutions proposed or adopted by the Commission or any committee of the Commission.
- D. Records of any training provided to Commissioners, including any training related to the creation or retention of Commission records.
- E. Records of all communications, including, but not limited to, electronic mail, texts, memoranda, and handwritten notes, relating to the Commission’s work, including but not limited to communications:
 - 1. Distributed to all Commissioners, or to any subset of Commissioners, including any Commissioners on any committee or subcommittee;
 - 2. Between any Commissioner or Commissioners and staff supporting the Commission;
 - 3. Between any Commissioner or Commissioners and any witness or witnesses;
 - 4. Between and among any Commissioners;
 - 5. Between any Commissioner or Commissioners and any person or group affiliated with the Executive Office of the President.

6. Between any Commissioner or Commissioners and any person or group affiliated with any advocacy organization or other non-governmental entity related to the work of the Commission.

Please have an appropriate employee contact me at foia@aflegal.org or at (202) 964-3721 to coordinate the arrangements for such an inspection. Thank you for your assistance in this matter.

Sincerely,

/s/ Gene P. Hamilton

Gene P. Hamilton

America First Legal Foundation