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*Attorneys for Plaintiffs*

Bail, Deborah A.

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BERT MARLEY, an individual; and )  
IDAHO STATE DEMOCRATIC PARTY, )  
a political party, )

Plaintiffs, )

vs. )

LAWRENCE DENNEY in his official )  
capacity as Secretary of State )

Defendant, )

Case No. CV01-17-12594

**SUMMONS**

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S): THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 21 DAYS. READ THE INFORMATION BELOW.

**TO: LAWRENCE DENNEY, in his official capacity as Secretary of State, the above-named Defendant:**

**OFFICE OF THE  
ATTORNEY GENERAL**  
**INTERNAL RECORD RECEIPT**

This document was received by:

Signature [Signature]

Name Sherm Furey

Date 7-11-17

Time 3:30 pm

Name(s) of person(s) delivering document:

Kasey Vink  
Tri-County

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above-designated Court, 200 West Front Street, Boise, Idaho 83702-7300, (208)287-6900, within 21 days after service of this Summons on you. If you fail to so respond the Court may enter judgment against you as demanded by the Plaintiff(s) in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representative by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

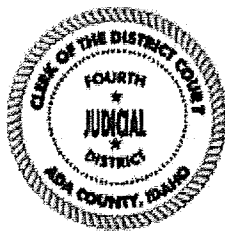
An appropriate written response requires compliance with Rule 2 and other Idaho Rules of Civil Procedure and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to Plaintiff's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named Court.

7/11/2017

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017:



CLERK OF THE DISTRICT COURT  
CHRISTOPHER D. RICH

By *Janice Johnson*  
Deputy Clerk

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IDAHO STATE DEMOCRATIC PARTY, )  
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Plaintiffs, )

vs. )

LAWERENCE DENNEY in his official )  
capacity as Secretary of State )

Defendant, )

CV01-17-12594

Case No. \_\_\_\_\_

**COMPLAINT FOR EMERGENCY**  
**TEMPORARY RESTRAINING**  
**ORDER AND PRELIMINARY**  
**INJUNCTION AND/OR A WRIT OF**  
**PROHIBITION**

Plaintiffs, BERT MARLEY ("Mr. Marley") as an individual, and the IDAHO STATE  
DEMOCRATIC PARTY ("IDP") (collectively referred to as "Plaintiffs") on its own behalf as on

behalf of its members by and through their attorneys of record, hereby complains and alleges as follows:

## **I. PARTIES**

1. Plaintiff Mr. Marley is a registered qualified elector in the State of Idaho, pursuant to Idaho Code § 34-402. Mr. Marley is one of hundreds of thousands of Idahoans whose personal information is being sought by the Presidential Advisory Commission on Election Integrity (the “Commission”).

2. Plaintiff IDP is a political party recognized by Idaho law I.C. § 34-501. The IDP is the Idaho organization of the national Democratic Party and is the duly authorized statewide organization representing Democratic candidates and voters throughout the State of Idaho. Thousands of Idahoans are registered Democrats, and many other Idahoans support Democratic nominees. The IDP engages in vitally important and lawfully protected activities, including supporting the Democratic Party candidates in national, state, and local elections, protecting the legal rights of voters, registering Idaho voters from all political parties, and ensuring that all voters have a meaningful ability to participate in our nation’s democratic process. The IDP also works to protect the rights of all voters in the State of Idaho, including the rights of all Idahoans to participate in the electoral process without being subjected to a violation of their privacy.

3. Defendant Lawrence Denney (“Defendant”) is the Secretary of State for the State of Idaho and is joined in his official capacity only as a party to this action. Under Idaho Code § 34-201, Defendant is the chief election officer of the State of Idaho. On June 28, 2017, Defendant was sent a letter from the Vice-Chair of the Commission Kris Kobach (“Mr. Kobach”), on behalf of the Commission (the “Letter”), which requested certain information that is in Defendant’s custody and/or control, pursuant to Idaho Code § 34-437A. Defendant has the ultimate authority

as to whether or not, and to what degree, the State of Idaho responds to the Commission's request. At all times mentioned in this complaint, Defendant acted under color of state law.

## II. NATURE OF ACTION, JURISDICTION, AND VENUE

4. This is an action seeking an emergency temporary restraining order and injunctive relief pursuant to I.R.C.P. Rule 65.

5. This is also an action, in the alternative, for a writ of prohibition, pursuant to Idaho Code § 7-402.

6. This Court has personal jurisdiction over Defendant, and subject matter jurisdiction over this action as the matter is grounded in state law, and meets all other jurisdictional requirements.

7. Venue is proper in the Fourth Judicial District of Idaho in and for the County of Ada, pursuant to and by virtue of Idaho Code § 5-402.

## III. STATEMENT OF FACTS

### Background

8. On May 11, 2017, President Donald Trump established the Commission by executive order (the "Order"). Exec. Order No. 13,799, 82 Fed. Reg. 22,389 (May 11, 2017). Attached hereto is a true and correct copy of the Order, marked as **Exhibit 1**. Vice President Mike Pence is the Chair of the Commission. *Id.* Vice President Pence named Mr. Kobach to serve as Vice Chair of the Commission. The purpose of the Commission is to "*study* the registration and voting processes used in Federal elections." *Id.* (emphasis added).

9. The Order seeks to classify the Commission as a "Presidential Advisory Committee." *See* Exhibit 1. In fact, the Commission may constitute a federal agency. Either way, the Commission is certainly an entity of the federal government within the Executive Branch.

10. The Order did not expressly grant the Commission any authorization to (1) request both public and private personally identifying information from the states on behalf of the Executive Branch of the federal government, (2) establish (unsecure) methods of data transfer for the requested information, (3) store the requested information, or (4) release to the public the collected public and personal information. Rather, the Order merely authorized the Commission to *study* the electoral process and advise President Trump on its findings.

11. On Wednesday, June 28, 2017, Mr. Kobach, on behalf of the Commission, sent the Letter to the Secretaries of State or similar electoral authorities for all 50 states and the District of Columbia. The Letter requested a list of all registered voters, and the following information pertaining to each voter if publicly available: their full names, the last four digits of their social security numbers, their dates of birth, their political party affiliation, their voting history, their addresses and phone numbers, their information regarding felony convictions if applicable, their military status if applicable, their overseas voting records if applicable, and information related to their registration in another state if applicable. *Id.* Each letter was identical, except in regards to whom it was addressed. While a copy of the letter sent to Defendant is unavailable to Plaintiffs at this time, an identical letter (with the exception of to whom the letter is addressed) was sent to North Carolina Secretary of State Elaine Marshall.<sup>1</sup> Attached hereto is a true and correct copy of the letter sent to Secretary Marshall, marked as **Exhibit 2**.

12. The Letter offered two methods for Defendant to transmit the collected voter data to the Commission: the data can be sent through email to ElectionIntegrityStaff@ovp.eop.gov or by utilizing the Safe Access File Exchange (“SAFE”) system. *See* Exhibit 2. The SAFE system

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<sup>1</sup> The letter from the Commission to Defendant was not made public or released by Defendant’s office to Plaintiffs’ knowledge, so Plaintiffs were unable to provide the Idaho specific letter to the Court.

is run by the Department of Defense, and it allows for unclassified documents to be uploaded to the SAFE server and for the receiving party to access it through the SAFE system. Both methods of data transmittal are not sufficiently secure considering the nature of the information requested. An attempt to access the SAFE website resulted in a security warning popup. Attached hereto is a true and correct copy of a screenshot of this security warning when counsel for Plaintiffs attempted to access the SAFE site on July 8, 2017, marked as **Exhibit 3**. The Commission has not provided the public or Defendant with any information related to the email account which will be receiving the data from Defendant.

13. The Letter stated in part: "Please be aware that any documents that are submitted to the full commission will also be made available to the public." *See* Exhibit 2.

14. The Letter requested a response from Defendant by July 14, 2017 through one of the unsecured methods of sending the information.

15. On July 3, 2017, the Idaho Secretary of State's Office released a press release (the "Release") pertaining to the Letter and the Commission's request. Attached hereto is a true and correct copy of the Release, marked as **Exhibit 4**.

16. In the Release, Defendant stated that he would treat the Letter as if it were a public records request: "We are interpreting this as a public records request from the Commission." *Id.*

17. Defendant went on to state that he would provide any information to the Commission that was deemed a public record under Idaho law, according to his office's interpretation, by July 14, 2017. *See* Exhibit 4. In regards to requested information that was not defined as "public" under to Idaho law, Defendant stated that he would "review what the appropriate and legally required response is, in coordination with the office of both the Governor, and the Idaho Attorney General." *Id.*

18. At least 44 states have refused to comply with the Commission's request to a certain degree, with some of those opting not to comply with the request in its entirety. *See* Liz Stark and Grace Hauck, *Forty-four states and DC have refused to give certain voter information to Trump commission*, CNN (July 4, 2017), available at <http://www.cnn.com/2017/07/03/politics/kris-kobach-letter-voter-fraud-commission-information/index.html> ("Forty-four states and the District of Columbia have refused to provide certain types of voter information to the Trump administration's election integrity commission, according to a CNN inquiry to all 50 states.").

19. The Commission's request has already produced a chilling effect on voter registration. Even in states that have only provided the Commission public information according to state law, many electors are opting to withdraw their registration to protect their privacy. *See* Alicia Cohn, *Hundreds of voters un-register after Trump voter fraud panel demands info*, THE HILL (July 8, 2017), available at <http://thehill.com/homenews/state-watch/341107-hundreds-of-voters-un-register-after-trump-voter-fraud-panel-demands> ("Hundreds of voters are responding to the possibility their information will be shared with President Trump's election integrity panel by withdrawing their voter registration, according to a Friday report.").

20. At least one member of the Commission has publicly admitted that the Commission's request for information was problematic, and needed to be "refined".<sup>2</sup>

21. On July 3, 2017, the Electronic Privacy Information Center ("EPIC"), a Washington D.C. based organization focused on data and information privacy civil liberty, filed a Complaint for Injunctive Relief (the "Federal Complaint") in the United States District Court for the District of Columbia against the Commission (the "Federal Case").<sup>3</sup> *EPIC v. The Commission*,

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<sup>2</sup> <http://www.cnn.com/2017/07/07/politics/matthew-dunlap-voting-commission-cnntv/index.html>

<sup>3</sup> <https://www.epic.org/epic/about.html>



No. 1:17-cv-01320-CKK (D.D.C. filed July 3, 2017). Contemporaneous to the filing of the Federal Complaint, EPIC also filed an Emergency Motion for a Temporary Restraining Order (the “TRO”).  
*Id.*

22. In the Federal Case, EPIC seeks to prevent the Commission from collecting information until certain federal privacy laws are complied with. The Commission filed its response on July 5, 2017. EPIC filed its reply on July 9, 2017. The court held a hearing on the motion for the TRO on July 9, 2017. As of the filing of the case at hand, no decision has yet been issued in the DC Case.

23. The Federal Case is grounded solely in federal law.

24. On July 10, 2017, Mr. Kobach submitted his Third Declaration of Kris W. Kobach in the Federal Case (the “Third Declaration”). Attached hereto is a true and correct copy of the Third Declaration, marked as **Exhibit 5**. In it, Mr. Kobach stated in relevant part that: 1) the Commission no longer will use the SAFE site for transmitting data from the states, and instead intends on repurposing an existing data system within the White House Technology enterprise which is now ready for use, and 2) that the Commission had instructed the states not to submit any data until the Court (in the Federal Case) had ruled on the motion for temporary restraining order.  
*Id.*

25. A ruling is expected at any time on the motion for temporary restraining order in the Federal Case, at which point the Defendant could immediately send the information requested by the Commission.

26. Defendant is not a party to the Federal Case. Even if EPIC is successful in obtaining a temporary restraining order to prevent the Commission from gathering voter information, such an order would not prevent Defendant from sending the requested information through one of the

provided data transmission methods. Furthermore, even if Defendant does not send the List until at such point that a temporary restraining order or a preliminary injunction is lifted by the court in the Federal Case, Defendant could immediately send the Commission Idaho voter information without Plaintiffs having the opportunity to file an action seeking injunctive relief. Finally, even if EPIC is not successful in obtaining the TRO, Defendant must be enjoined from sending Idaho voter data to the Commission because doing so would be in violation of Idaho state law, as discussed below.

Only “Persons” Have A Right to Public Record in Idaho

27. Idaho defines a “public record” as follows: “‘Public Record’ includes, but is not limited to, any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.” I.C. § 74-102(1).

28. The Idaho Statewide List of Registered Voters (the “List”) is a public record under Idaho law. I.C. § 34-437A. Defendant has publicly stated that, at a minimum, he will provide the Commission with the List by July 14, 2017. *See* Exhibit 4. The List contains the following information about every registered voter in Idaho: Full name, street address, mailing address, county, gender, age (not DOB), party affiliation if declared, and voting history. *Id.*

29. Idaho law only allows a “person” to demand public records. I.C. § 74-102(1). A “person” is defined in the Idaho Public Records Act as “any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity.” I.C. § 74-101(9).

30. The federal government or an agency or commission within the federal government is not listed within the definition of “person.” I.C. § 74-101(9). However, requests from state and local government are within the definition of “person.” *Id.* Based on rules of statutory interpretation, the inclusion of state and local government in the definition of a “person” and the exclusion of the federal government should be deemed a purposeful exclusion: “It is a universally recognized rule of the construction that, where a constitution or statute specifies certain things, the designation of such things excludes all others,” a maxim commonly known as *expressio unius est exclusio alterius*.” *KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 528, 236 P.3d 1284, 1288 (2010) (quoting *Peck v. State*, 63 Idaho 375, 380, 120 P.2d 820, 822 (1941)).

31. Because the Commission does not qualify as a “person” under Idaho law I.C. § 74-101(9), Defendant has no statutory authority to release any information to it pursuant to a public records request. To be clear, while Mr. Kobach’s name was on the Letter, it was sent in his official capacity as the Vice-Chair of the Commission and on behalf of the Commission. Further, the Letter does not instruct the states (and district) to send the requested information to Mr. Kobach but instead to the Commission.

32. Every relevant provision of the Public Records Act outlines the procedures for how to deal with public record requests from a “person.” There is no provision in the Public Records Act that allows for compliance with public records requests from anything not qualifying as a “person” as defined in the statute.

#### Idaho Public Record Law and the Commercial Use Prohibition

33. Idaho law prohibits the use of public records for the purposes of “mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything

of value. Provided however, that any such list and label may be used for any political purpose.” I.C. § 34-437A(3).

34. The Letter was clear in that all information gathered by the Commission would be made available to the public. When the Commission releases the information to the public after collection, which at a minimum includes the information in the List, neither the Commission, nor Idaho, will be able to ensure that the Idaho data submitted won’t be used for commercial purposes. The inevitable use of Idaho’s public information for commercial purposes is clearly prohibited under I.C. § 34-437A(3). The Commission’s request will lead to the unlawful use of the information it seeks. As such, Defendant cannot comply with the request. I.C. § 74-121(1).

Idaho Public Record Law Requires Secure Methods of Data Transfer

35. Idaho law requires that the transfer of any public records be secure. I.C. § 74-121(1). Therefore, Defendant, as the custodian of the requested information, is required to make an inquiry with the requesting person to ensure that the transfer of information pursuant to a public records request is conducted in a manner that is proper and that protects personal information from disclosure under Idaho and federal law. I.C. § 74-102(5)(c).

36. There is serious and well-grounded cause for concern that the SAFE site utilized by the Commission is insecure. The Commission has not provided the public or, to Plaintiffs’ knowledge, the Defendant with any information related to the email account, the alternative method of data transfer, showing that the email address is secure.

Defendant is Required to Assess the Commission a Fee for the List

37. Defendant gave no indication that he would charge the Commission a fee for providing the List. *See* Exhibit 4. Defendant is required to assess a fee whenever a copy of the List is requested and a copy is made. I.C. § 34-437A(3).

38. Defendant also did not indicate in the Release whether the Commission would be charged for their request more generally, outside of the required fee for the List. *See* Exhibit 4. Defendant admitted in the Release that he and staff in his office have spent time considering the request, and are continuing to do so. *See* **Exhibit 4**. Defendant is required to charge and collect fees for his office's services related to any public records request. I.C. § 67-910(1), (3).

39. Beyond the Office of the Secretary of State, Defendant stated that the Office of the Attorney General and the Office of the Governor are involved in the state's review of the Commission's request. *See* Exhibit 4. Any agency of the state of Idaho can charge for certain expenses incurred when responding to and complying with a public record request. I.C. § 74-102.

40. The exact costs of this response may never be fully discovered. However, considering the high-profile nature of the Commission's request, and the clearly massive response effort undertaken by numerous state officials and employees, it is certain that Idahoans will be paying for thousands of dollars in state expenses if Defendant and/or other state offices do not assess the Commission these expenses.

#### **IV. CAUSES OF ACTION**

##### **Count I**

##### **First Violation of Idaho Code § 74-121(1)**

41. Plaintiffs reallege the allegations set forth in paragraphs 1 through X above and incorporates the same by reference as though fully set forth herein.

42. Idaho law only allows a "person" to demand public records. I.C. § 74-102(1). The Commission does not qualify as a "person". I.C. § 74-101(9). Defendant has no statutory authority to release any information pursuant to a public records request when the Commission does not qualify as a "person" under Idaho law. The Commission is not entitled to unwritten exemptions

in the Public Records Act. Therefore, compliance with the Commission's request would be improper, and in violation of I.C. § 74-121(1).

43. Because Defendant has stated that he will comply at least in part with the Commission's request by July 14, 2017, in violation of state law, Petitioners seek an emergency temporary restraining order and injunctive relief preventing Defendant from producing any voter information to the Commission. Without such an emergency temporary restraining order, Idahoans including Mr. Marley and other members of the IDP will be irreparably harmed, as their right to have their voting information only conveyed consistent with Idaho law will be incurably violated. In addition, the IDP will be harmed because the Commission's unlawful collection of data has a chilling effect on voter registration, a core activity of the IDP.

44. Petitioners have no adequate alternative remedy at law if they are denied the requested relief.

45. In the alternative as an extraordinary remedy, because Defendant has stated that he will comply at least in part with the Commission's request by July 14, 2017, in violation of state law, Petitioners seek a writ of prohibition, or any other appropriate writ pursuant to Idaho law, preventing Defendant from producing any voter information to the Commission. Without such a writ, Idahoans including Mr. Marley and other members of the IDP will be irreparably harmed, as their right to have their voting information only conveyed consistent with Idaho law will be incurably violated. In addition, the IDP will be harmed because the Commission's unlawful collection of data has a chilling effect on voter registration, a core activity of the IDP.

## **Count II**

### **Second Violation of Idaho Code § 74-121(1)**

46. Plaintiffs reallege the allegations set forth in paragraphs 1 through X above and incorporates the same by reference as though fully set forth herein.

47. The Letter states that all information sent to the Commission will be made available to the public. When the Commission makes public the names, phone numbers, addresses, and other information about of Idaho voters, it is a certainty that such information will be used for an impermissible commercial purpose as defined in I.C. § 34-437A(3). Defendant cannot comply with the Commission's request because it will lead to the inevitable unlawful use of the information. I.C. § 74-121(1).

48. Because Defendant has stated that he will comply at least in part with the Commission's request by July 14, 2017, in violation of state law, Petitioners seek an emergency temporary restraining order and injunctive relief preventing Defendant from producing any voter information to the Commission. Without such an emergency temporary restraining order, Idahoans including Mr. Marley and other members of the IDP will be irreparably harmed, as their right to have their voter information, including their telephone number and address among other information, protected from impermissible commercial use will be incurably violated.

49. Petitioners have no adequate alternative remedy at law if they are denied the requested relief.

50. In the alternative as an extraordinary remedy, because Defendant has stated that he will comply at least in part with the Commission's request by July 14, 2017, in violation of state law, Petitioners seek a writ of prohibition, or any other appropriate writ pursuant to Idaho law, preventing Defendant from producing any voter information to the Commission. Without such a

writ, Idahoans including Mr. Marley and other members of the IDP will be irreparably harmed, as their right to have their voting information only conveyed consistent with Idaho law will be incurably violated. In addition, the IDP will be harmed because the Commission's unlawful collection of data has a chilling effect on voter registration, a core activity of the IDP.

### **Count III**

#### **Third Violation of Idaho Code § 74-121(1)**

51. Plaintiffs reallege the allegations set forth in paragraphs 1 through X above and incorporates the same by reference as though fully set forth herein.

52. Idaho law requires that the transfer of any public records be secure. I.C. § 74-121(1). Defendant, as the custodian of the requested information, is required to make an inquiry with the requesting person to ensure that the transfer of information pursuant to a public records request is conducted in a manner that is proper and which protects personal information from unlawful access and disclosure under Idaho and federal law. I.C. § 74-102(5)(c).

53. There is serious and well-grounded cause for concern that the Commission's methods of data transfer from the states are insecure. The Commission has already had to change one method of data transfer, namely the SAFE site. It hastily created a new apparatus to collect the information, a system about which there is little to no information about. Further, the Commission has not provided the public or Defendant with any information related to the email account it has provided. The chaos surrounding the method of data transfer illustrates the flawed methods employed by the Commission in this regard, and only strengthen Plaintiffs' argument for maintaining the status quo while these privacy and security concerns are addressed.



54. Based on information and belief, Defendant has failed to uphold his duty as the custodian of the requested records to ensure that ensuring that the transfer of public records is proper, as required by Idaho law.

55. Because Defendant has stated that he will comply at least in part with the Commission's request by July 14, 2017, in violation of state law, Petitioners seek an emergency temporary restraining order and injunctive relief preventing Defendant from producing any voter information to the Commission. Without such an emergency temporary restraining order, Idahoans including Mr. Marley and other members of the IDP will be irreparably harmed, as their right to have their voting information only conveyed consistent with Idaho law and in a secure and proper manner, will be irreparably violated.

56. In the alternative, Petitioners seek an emergency temporary restraining order and injunctive relief preventing Defendant from producing any public record to the Commission until Defendant has ensured that the Commission has a secure method of data transfer as required by Idaho law. Without such an emergency temporary restraining order, Idahoans including Mr. Marley and other members of the IDP will be irreparably harmed, as their right to have their voting information only conveyed consistent with Idaho law and in a secure and proper manner, will be incurably violated.

57. Petitioners have no adequate alternative remedy at law if they are denied the requested relief.

58. In the alternative as an extraordinary remedy, because Defendant has stated that he will comply at least in part with the Commission's request by July 14, 2017, in violation of state law, Petitioners seek a writ of prohibition, or any other appropriate writ pursuant to Idaho law, preventing Defendant from producing any voter information to the Commission. Without such a

writ, Idahoans including Mr. Marley and other members of the IDP will be irreparably harmed, as their right to have their voting information only conveyed consistent with Idaho law will be incurably violated. In addition, the IDP will be harmed because the Commission's unlawful collection of data has a chilling effect on voter registration, a core activity of the IDP.

#### **Count IV**

##### **Violation of Idaho Code § 74-121(1)**

59. Plaintiffs reallege the allegations set forth in paragraphs 1 through X above and incorporates the same by reference as though fully set forth herein.

60. Defendant is required by Idaho law to assess a fee whenever a copy of the List is requested and a copy is made. I.C. § 34-437A(3). In addition, Defendant is required to charge and collect fees for his office's services related to any public records request. I.C. § 67-910(1), (3).

61. Defendant admitted in the Release that staff in his office and himself have spent time considering the request and are continuing to do so. In addition, there will be labor and expense in copying the List and preparing it for transfer to the Commission.

62. Because Defendant has stated that he will comply at least in part with the Commission's request by July 14, 2017, and has not indicated that he will assess any fees to the Commission in violation of state law, Petitioners seek an emergency temporary restraining order and injunctive relief preventing Defendant from producing any voter information to the Commission without submitting to the Court an assessment to be charged to the Commission pursuant to Idaho law. Without such an emergency temporary restraining order, Idahoans including Mr. Marley and other members of the IDP will be irreparably harmed, as they will have

to pay thousands of dollars in state expenses that under state law are required to be assessed to the Commission.

63. Petitioners have no adequate alternative remedy at law if they are denied the requested relief.

64. In the alternative, because Defendant has stated that he will comply at least in part with the Commission's request by July 14, 2017, in violation of state law, Petitioners seek a writ of prohibition, or any other appropriate writ pursuant to Idaho law, Defendant from producing any voter information to the Commission without submitting to the Court an assessment to be charged to the Commission pursuant to Idaho law. Without such a writ, Idahoans including Mr. Marley and other members of the IDP will be irreparably harmed, as their right to have their voting information only conveyed consistent with Idaho law will be incurably violated. In addition, the IDP will be harmed because the Commission's unlawful collection of data has a chilling effect on voter registration, a core activity of the IDP.

## **V. PRAYER FOR RELIEF**

**WHEREFORE**, Petitioners pray that:

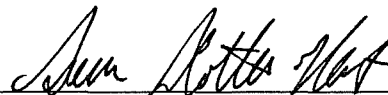
1. Pending a final hearing on this matter, the Court schedule an immediate hearing given the parties' need for an immediate resolution of the legal issues raised by Petitioners; and
2. Following an immediate hearing, in light of the irreparable harm to Petitioners caused by Defendant's decision to release voter information, and perhaps other personal information, by July 14, 2017, Petitioners' lack of an adequate remedy at law if Defendant produces this information by July 14, 2017, and the substantial likelihood that Petitioners will succeed on the merits of their case, the Court issue an Emergency Temporary Restraining Order barring,

for the duration of the case, Defendant from disclosing any voter information to the Commission; and

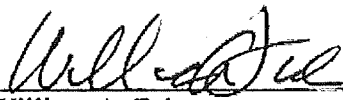
3. If the Defendant has already sent any data to the Commission, that the Court order Defendant to ensure that the sent data is surrendered by the Commission back into the custody of the state; or
4. In the alternative, the Court issue a writ of prohibition, or any other appropriate writ pursuant to Idaho law, barring, for the duration of the case, Defendant from disclosing any voter information to the Commission; or
5. In the alternative, the Court issue an Emergency Temporary Restraining Order barring, for the duration of the case, Defendant from disclosing any voter information to the Commission, until Defendant has submitted to the Court adequate proof that: 1) he has fulfilled his duty, as is required by Idaho law, to ensure that data sent to the Commission will not be used for any impermissible purpose as defined under Idaho law, 2) he has fulfilled his duty, as is required by Idaho law, to ensure that the data transmission methods requested by the Commission are in fact secure and proper as defined under Idaho law, and 3) he has assessed the Commission an appropriate fee as is required by and in conformity with Idaho law; and
6. The Court schedule an expedited final hearing on this matter; and
7. For such other relief as may be just and proper.

Respectfully submitted this 11 day of July, 2017

By:



Sam Dotters-Katz  
Marcus Christian Hardee Davies, LLP.  
Idaho State Bar Association No. 9709

By:   
William A. Fuhrman  
Jones, Gledhill, Fuhrman, Gourley, P.A.  
Idaho State Bar Association No. 2932

*Counsel for Plaintiffs*

# Presidential Documents

## Title 3—

Executive Order 13799 of May 11, 2017

## The President

## Establishment of Presidential Advisory Commission on Election Integrity

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote fair and honest Federal elections, it is hereby ordered as follows:

**Section 1. *Establishment.*** The Presidential Advisory Commission on Election Integrity (Commission) is hereby established.

**Sec. 2. *Membership.*** The Vice President shall chair the Commission, which shall be composed of not more than 15 additional members. The President shall appoint the additional members, who shall include individuals with knowledge and experience in elections, election management, election fraud detection, and voter integrity efforts, and any other individuals with knowledge or experience that the President determines to be of value to the Commission. The Vice President may select a Vice Chair of the Commission from among the members appointed by the President.

**Sec. 3. *Mission.*** The Commission shall, consistent with applicable law, study the registration and voting processes used in Federal elections. The Commission shall be solely advisory and shall submit a report to the President that identifies the following:

(a) those laws, rules, policies, activities, strategies, and practices that enhance the American people's confidence in the integrity of the voting processes used in Federal elections;

(b) those laws, rules, policies, activities, strategies, and practices that undermine the American people's confidence in the integrity of the voting processes used in Federal elections; and

(c) those vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.

**Sec. 4. *Definitions.*** For purposes of this order:

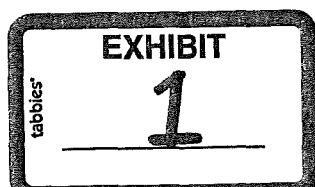
(a) The term "improper voter registration" means any situation where an individual who does not possess the legal right to vote in a jurisdiction is included as an eligible voter on that jurisdiction's voter list, regardless of the state of mind or intent of such individual.

(b) The term "improper voting" means the act of an individual casting a non-provisional ballot in a jurisdiction in which that individual is ineligible to vote, or the act of an individual casting a ballot in multiple jurisdictions, regardless of the state of mind or intent of that individual.

(c) The term "fraudulent voter registration" means any situation where an individual knowingly and intentionally takes steps to add ineligible individuals to voter lists.

(d) The term "fraudulent voting" means the act of casting a non-provisional ballot or multiple ballots with knowledge that casting the ballot or ballots is illegal.

**Sec. 5. *Administration.*** The Commission shall hold public meetings and engage with Federal, State, and local officials, and election law experts, as necessary, to carry out its mission. The Commission shall be informed by, and shall strive to avoid duplicating, the efforts of existing government entities. The Commission shall have staff to provide support for its functions.



**Sec. 6. Termination.** The Commission shall terminate 30 days after it submits its report to the President.

**Sec. 7. General Provisions.** (a) To the extent permitted by law, and subject to the availability of appropriations, the General Services Administration shall provide the Commission with such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission on a reimbursable basis.

(b) Relevant executive departments and agencies shall endeavor to cooperate with the Commission.

(c) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the "Act"), may apply to the Commission, any functions of the President under that Act, except for those in section 6 of the Act, shall be performed by the Administrator of General Services.

(d) Members of the Commission shall serve without any additional compensation for their work on the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

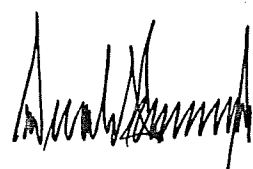
(e) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(g) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
May 11, 2017.

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## Presidential Advisory Commission on Election Integrity

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June 28, 2017

The Honorable Elaine Marshall  
Secretary of State  
PO Box 29622  
Raleigh, NC 27626-0622

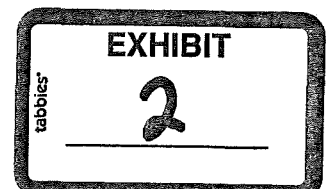
Dear Secretary Marshall,

I serve as the Vice Chair for the Presidential Advisory Commission on Election Integrity ("Commission"), which was formed pursuant to Executive Order 13799 of May 11, 2017. The Commission is charged with studying the registration and voting processes used in federal elections and submitting a report to the President of the United States that identifies laws, rules, policies, activities, strategies, and practices that enhance or undermine the American people's confidence in the integrity of federal elections processes.

As the Commission begins its work, I invite you to contribute your views and recommendations throughout this process. In particular:

1. What changes, if any, to federal election laws would you recommend to enhance the integrity of federal elections?
2. How can the Commission support state and local election administrators with regard to information technology security and vulnerabilities?
3. What laws, policies, or other issues hinder your ability to ensure the integrity of elections you administer?
4. What evidence or information do you have regarding instances of voter fraud or registration fraud in your state?
5. What convictions for election-related crimes have occurred in your state since the November 2000 federal election?
6. What recommendations do you have for preventing voter intimidation or disenfranchisement?
7. What other issues do you believe the Commission should consider?

In addition, in order for the Commission to fully analyze vulnerabilities and issues related to voter registration and voting, I am requesting that you provide to the Commission the publicly-available voter roll data for North Carolina, including, if publicly available under the laws of your state, the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social





security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.

You may submit your responses electronically to [ElectionIntegrityStaff@ovp.eop.gov](mailto:ElectionIntegrityStaff@ovp.eop.gov) or by utilizing the Safe Access File Exchange ("SAFE"), which is a secure FTP site the federal government uses for transferring large data files. You can access the SAFE site at <https://safe.amrdec.army.mil/safe/Welcome.aspx>. We would appreciate a response by July 14, 2017. Please be aware that any documents that are submitted to the full Commission will also be made available to the public. If you have any questions, please contact Commission staff at the same email address.

On behalf of my fellow commissioners, I also want to acknowledge your important leadership role in administering the elections within your state and the importance of state-level authority in our federalist system. It is crucial for the Commission to consider your input as it collects data and identifies areas of opportunity to increase the integrity of our election systems.

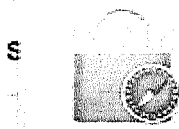
I look forward to hearing from you and working with you in the months ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Kobach". The signature is fluid and cursive, with the first name "Kris" and last name "Kobach" clearly distinguishable.

Kris W. Kobach  
Vice Chair  
Presidential Advisory Commission on Election Integrity

Google



Safari can't verify the identity of the website  
"safe.amrdec.army.mil".

The certificate for this website is invalid. You might be connecting to a website that is pretending to be "safe.amrdec.army.mil", which could put your confidential information at risk. Would you like to connect to the website anyway?

Show Certificate

Cancel

Continue



Control your Google p  
settings. Take a quick  
Checkup.

YES, GO NOW

## AMRDEC SAFE - Army SAFE - Army.mil

<https://safe.amrdec.army.mil/safe/guide.aspx>

The AMRDEC SAFE application is used to send large files to individuals ... Everyone has access to SAFE, and the application is available for use by anyone .

## AMRDEC SAFE - Army SAFE

<https://safe.amrdec.army.mil/safe/About.aspx>

The AMRDEC Safe Access File Exchange is an application for securely exchanging files. Since many organizations that do business with AMRDEC limit the size ...

## [PDF] Using the Safe Access File Exchange (SAFE) to Transfer Files - Arm...

[https://path.tamc.amedd.army.mil/pdf/SAFE\\_File\\_Sending.pdf](https://path.tamc.amedd.army.mil/pdf/SAFE_File_Sending.pdf)

The Safe Access File Exchange (SAFE) is a secure method of transferring large ... It is recommended that you access the SAFE website using your CAC card's ...

## Safe Access File Exchange - DoN CIO - Navy.mil

[www.doncio.navy.mil/contentview.aspx?id=4098](http://www.doncio.navy.mil/contentview.aspx?id=4098) ▼

Aug 8, 2012 - Safe Access File Exchange (SAFE) allows users to send up to 25 files securely to recipients within the .mil and .gov domains. The files can total ...

## [PDF] amrdec safe access file exchange (safe) - NetCents

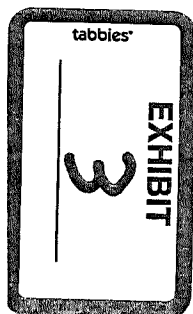
[www.netcents.af.mil/Portals/30/...2/.../AMRDEC%20SAFE%20Instructions.pdf?...](http://www.netcents.af.mil/Portals/30/...2/.../AMRDEC%20SAFE%20Instructions.pdf?...) ▼

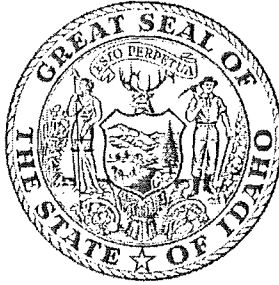
AMRDEC SAFE ACCESS FILE EXCHANGE (SAFE). Safe can be used for free by both contractors and vendors to exchange files that exceed the. AFWay 12MB ...

## Northrop Grumman - Safe Access File Exchange

<https://ngsafe.northropgrumman.com/> ▼

Mar 10, 2017 - NG Safe is a file transfer system to be utilized when conventional methods (email ) isn't





**STATE OF IDAHO  
OFFICE OF THE SECRETARY OF STATE  
LAWRENCE DENNEY**

FOR IMMEDIATE RELEASE - July 3<sup>rd</sup>, 2017

Contact: Sec of State Lawrence Denney, [ldenny@sos.idaho.gov](mailto:ldenny@sos.idaho.gov)

**DENNEY SAYS VOTING PRIVACY STILL SAFE IN IDAHO**

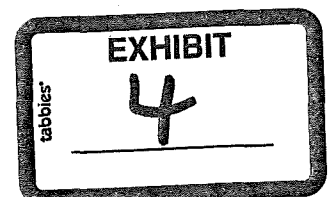
(BOISE) - **Idaho Secretary of State Lawrence Denney** received a request by email on Friday for specific information pertaining to Idaho state voter registrations from the Presidential Advisory Commission on Election Integrity. "While a request for voter information itself is not atypical, and while specific parts of the state voter roll are in fact public, this particular request was of a unique enough nature that it bears some additional review," says Denney.

"I am carefully reviewing the request from the Presidential Advisory Commission on Election Integrity. The request asks only for the 'publicly available' voter roll data, including, 'if publicly available,' additional identifying information. We are interpreting this as a public records request from the Commission. As such, Idaho law requires me to respond ONLY with the non-exempt public records available under the request." While additional information is requested in the letter (such as driver's license and the last 4 of a voter's social security number), that information is NOT considered public and Secretary Denney could not be compelled, outside of a specific court order detailing the need for and intended use of such data, to provide that information under Idaho Public Records statutes.

The Statewide List of Registered Electors (voter roll) is a publicly available document under Idaho Statute 34-437A(3) that includes the First, Middle, Last, Street Address, Mailing Address, county, gender, age (not DOB), telephone # if provided (optional), and party affiliation (if declared) of all currently registered electors in the state. It also includes a record of which elections that currently registered elector participated in, but does NOT include any of their voting decisions. "That information, who someone voted for, is never even seen by our office. That is how we ensure that YOUR ballot, as prescribed by the Idaho Constitution, remains sacred and private", says Denney.

Also important to note is the fact that the physical Voter Registration Card itself is NOT a public record as set forth in Idaho Statute 74-106-25, as portions of the form contain non-public information (driver's license, last 4 of social, date of birth, and signature). The remaining information on the form, barring special circumstances for the protection of a physical address, are public information available from the database within the voter roll.

The specific information requested by the Commission was:



Item Requested	Based on Idaho Statute
Voter Roll Data for Idaho	
(includes First, Middle, Last, Street Address, Mailing Address, county, gender, age (not DOB), telephone # if provided (optional), party affiliation if declared, and yes/no on the elections in which the registered voter has participated)	ALL PUBLIC INFORMATION available under Idaho statute 34-437A-(3)
Full First and Last name of all registrants	In voter roll above
Middle Names and Initials	Middle name part of voter roll above
Addresses	In voter roll above
Dates of Birth	Not public information
Political Party	In voter roll above
Last four of social	Not public information
Voter history	Participation data is public and in voter roll, but no actual ballot information is recorded.
Active/Inactive status	Not applicable to the Idaho System. It is ONLY a list of registered voters.
Cancelled Status	Not applicable
Felony Conviction Information	Not applicable
Voter Registration in another state	Not part of the public voter roll, and not available

The official letter from the commission was received on July 3<sup>rd</sup> by mail and receipted into the Secretary's office at 9:42 am. The Commission has requested a response by July 14, 2017, and the Secretary of State's office will continue to utilize that time to review what the appropriate and legally required response is, in coordination with the office of both the Governor and the Idaho Attorney General.

Secretary Denney concluded, "In the end, I will look to fulfill the requirements of the law under Idaho Statute while continuing to protect both the Idaho Voter, their non-public, personal information, and their right to an absolutely private ballot under Article VI, section 1 of the Idaho Constitution."

Additional online information can be found on the following at the links provided:

**Idaho Constitution, Article VI** - <http://www.sos.idaho.gov/elect/stcon/articl06.htm>

**Idaho Public Records Act** - <https://legislature.idaho.gov/statutesrules/idstat/Title74/T74CH1/SECT74-106/>

**Statewide List of Registered Electors** -

<https://legislature.idaho.gov/statutesrules/idstat/Title34/T34CH4/SECT34-437A/>

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)

**THIRD DECLARATION OF KRIS W. KOBACH**

I, Kris W. Kobach, declare as follows:

As described in my declaration of July 5, 2017, I am the Vice Chair of the Presidential Advisory Commission on Election Integrity (“Commission”). I submit this third declaration in support of Defendant’s supplemental brief regarding the addition of the Department of Defense (“DOD”) as a defendant in plaintiff’s Amended Complaint. This declaration is based on my personal knowledge and upon information provided to me in my official capacity as Vice Chair of the Commission.

1. In order not to impact the ability of other customers to use the DOD Safe Access File Exchange (“SAFE”) site, the Commission has decided to use alternative means for transmitting the requested data. The Commission no longer intends to use the DOD SAFE system to receive information from the states, and instead intends to use alternative means of receiving the information requested in the June 28, 2017, letter. Specifically, the Director of White House Information Technology is repurposing an existing system that regularly accepts



personally identifiable information through a secure, encrypted computer application within the White House Information Technology enterprise. We anticipate this system will be fully functional by 6:00 p.m. Eastern today.

2. Today, the Commission sent the states a follow-up communication requesting the states not submit any data until this Court rules on this TRO motion. A copy of this communication is attached hereto as Exhibit A. The Commission will not send further instructions about how to use the new system pending this Court's resolution of this TRO motion.

3. The Commission will not download the data that Arkansas already transmitted to SAFE and this data will be deleted from the site.

4. Additionally, I anticipate that the President will today announce the appointment of two new members of the Commission, one Democrat and one Republican.

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

\*\*\*

Executed this 10th day of July 2017.

A handwritten signature in black ink, appearing to read "Kris Kobach", written over a horizontal line.

Kris W. Kobach

**SAM DOTTERS-KATZ ISB No. 9709**  
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**WILLIAM A. FUHRMAN, ISB No. 2932**  
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Boise, Idaho 83701  
Telephone: (208) 331-1170  
Facsimile: (208) 331-1529  
Email: BFuhrman@idalaw.com

*Attorneys for Plaintiffs*

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BERT MARLEY, an individual; and )  
IDAHO STATE DEMOCRATIC PARTY, )  
a political party, )

Plaintiffs, )

vs. )

LAWERENCE DENNEY in his official )  
capacity as Secretary of State )

Defendant, )

Case No. CV01-17-12594

**MOTION FOR EMERGENCY  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION AND OR WRIT OF  
PROHIBITION**

Pursuant to I.R.C.P. 65(b), 65(e)(1)-(3), and I.C. § 7-402, Plaintiffs, BERT MARLEY ("Mr. Marley"), and the IDAHO STATE DEMOCRATIC PARTY ("IDP") (collectively referred to as "Plaintiffs"), by and through their attorneys or record, hereby moves


the Court for an emergency temporary restraining order and preliminary injunction, or in the alternative, a writ of prohibition or any other writ allowable under Idaho law, for the duration of the case as follows:


1. Prohibiting Defendant, LAWERENCE DENNEY (“Defendant”) from disclosing any voter information to the Presidential Advisory Commission on Election Integrity; and
2. If the Defendant has already sent any data to the Commission, that the Court order Defendant to ensure that the transmitted data is surrendered by the Commission back into the custody of the state; or
3. In the alternative, the Court issue an emergency temporary restraining order and preliminary injunction, or in the alternative a writ of prohibition or any other allowable writ under Idaho law, for the duration of the case, barring Defendant from disclosing any voter information to the Commission, until Defendant has submitted to the Court adequate proof that: 1) he has fulfilled his duty, as is required by Idaho law, to ensure that data sent to the Commission will not be used for any impermissible purpose as defined under Idaho law, 2) he has fulfilled his duty, as is required by Idaho law, to ensure that the data transmission methods requested by the Commission are in fact secure and proper as defined under Idaho law, and 3) he has assessed the Commission an appropriate fee as is required by and in conformity with Idaho law

This motion is supported by the Memorandum in Support of Motion for Emergency Temporary Restraining Order and Preliminary Injunction, and the Affidavit of Sam Dotters-Katz in Support of Motion for Emergency Temporary Restraining Order and Preliminary Injunction, submitted concurrently herewith, and the pleadings and papers on file herein.



Respectfully Submitted,

By:   
Sam Dotters-Katz  
Marcus Christian Hardee Davies, LLP.  
Idaho State Bar Association No. 9709

By:   
William A. Fuhrman  
Jones, Gledhill, Fuhrman, Gourley, P.A.  
Idaho State Bar Association No. 2932

Dated this 11 day of July, 2017

*Counsel for Plaintiffs*

**SAM DOTTERS-KATZ, ISB No. 9709**  
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*Attorneys for Plaintiffs*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT**  
**OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

BERT MARLEY, an individual; and )  
IDAHO STATE DEMOCRATIC PARTY, )  
a political party, )

Plaintiffs, )

vs. )

LAWERENCE DENNEY in his official )  
capacity as Secretary of State )

Defendant, )

CV01-17-12594

Case No. \_\_\_\_\_

**MEMORANDUM IN SUPPORT OF  
MOTION FOR EMERGENCY  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION AND OR A WRIT OF  
PROHIBITION**

COMES NOW, the Petitioners, BERT MARLEY ("Mr. Marley"), and the IDAHO  
STATE DEMOCRATIC PARTY ("IDP") (collectively referred to as "Plaintiffs") by and

through their attorneys of record, and submit this Memorandum in Support of Motion for Emergency Temporary Restraining Order and Preliminary Injunction.

This memorandum is supported by the Affidavit of Sam Dotters-Katz in Support of Motion for Emergency Temporary Restraining Order and Preliminary Injunction (“Sam Aff.”) filed contemporaneously herewith, and all other pleadings and papers on file herein.

## I. INTRODUCTION

Plaintiffs seek an emergency temporary restraining order and preliminary injunction to protect the sensitive personal information of all Idahoans. The Presidential Advisory Commission on Election Integrity (the “Commission”) requested that by July 14, 2017 certain information be produced by every Secretary of State in the country, or other appropriate election official, including from Defendant Lawrence Denney (“Defendant”)<sup>1</sup>. In a press release published on July 3, 2017 (the “Release”), Defendant stated that at a minimum, he would provide the Commission with the Statewide List of Registered Voters (the “List”)<sup>2</sup>. The List contains the following information about every registered voter in Idaho: Full name, street address, mailing address, county, gender, age (not DOB), party affiliation if declared, and voting history.<sup>3</sup> The Commission stated in its request that all information provided to the Commission would be made public.<sup>4</sup>

The Commission did not submit a public records request, and there is no statutory or other authority that allows Defendant to release information to the Commission, as it does not qualify as a person under Idaho public records law. I.C. § 74-101(9). In addition, the release of the List, which the Commission will make publicly available, violates the prohibition of use of

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<sup>1</sup> Sam Aff. ¶3, Ex. 2.

<sup>2</sup> Sam Aff. ¶5, Ex. 4.

public records for commercial purposes. I.C. § 34-437A(3). Also, the Commission has provided two methods which the secretaries of state are to use to transmit the information requested by the Commission.<sup>5</sup> Defendant has not inquired as to the nature of these methods of data transfer, and there is cause for concern that the methods provided are not secure as is required under Idaho law. I.C. § 74-121(1). Finally, Defendant is required to assess a fee on the Commission related to its request, which he has not done. I.C. § 34-437A(3), I.C. § 67-910(1),(3).

The Plaintiffs seek relief that will maintain the status quo until the security and privacy concerns raised herein have been addressed, and until the issues of state law have been resolved. There will be tremendous harm to Plaintiffs if the List is publicly released. In addition, once Defendant produces the List to the Commission, which it will make public, there will be no way to cure the harm to Plaintiffs, making such harm irreparable. Conversely, there will be no harm or prejudice to Defendant if the status quo is maintained on a temporary or even permanent basis. Therefore, Plaintiffs respectfully request the Court grant its Motion for Emergency Temporary Restraining Order and Preliminary Injunction (the “Motion”).

## **II. STATEMENT OF FACTS**

### Background

On May 11, 2017, President Donald Trump established the Commission by executive order (the “Order”). Exec. Order No. 13,799, 82 Fed. Reg. 22,389 (May 11, 2017).<sup>6</sup> Vice President Mike Pence is the Chair of the Commission.<sup>7</sup> Vice President Pence named Kris Kobach (“Mr. Kobach”) to serve as Vice Chair of the Commission. The purpose of the

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<sup>3</sup> Id.

<sup>4</sup> Sam Aff. ¶3, Ex. 2.

<sup>5</sup> Id.

<sup>6</sup> Sam Aff. ¶2, Ex. 1.

<sup>7</sup> Id.

Commission is to “*study* the registration and voting processes used in Federal elections.”<sup>8</sup> (emphasis added).

The Order seeks to classify the Commission as a “Presidential Advisory Committee”.<sup>9</sup> In fact, the Commission may constitute a federal agency. Either way, the Commission is certainly an entity of the federal government within the Executive Branch.

The Order did not expressly grant the Commission any authorization to (1) request both public and private personal information from the states on behalf of the Executive Branch of the federal government, (2) establish (unsecure) methods of data transfer for the requested information, (3) store the requested information, or (4) release to the public the collected public and personal information.<sup>10</sup> Rather, the Order merely authorized the Commission to *study* the electoral process and advise President Trump on its findings.<sup>11</sup>

On Wednesday, June 28, 2017, Mr. Kobach, on behalf of the Commission, sent the Letter to the Secretaries of State or other appropriate election official for all 50 states and the District of Columbia.<sup>12</sup> The Letter requested a list of all registered voters, and the following information pertaining to each voter if publicly available: their full names, the last four digits of their social security numbers, their dates of birth, their political party affiliation, their voting history, their addresses and phone numbers, their information regarding felony convictions if applicable, their military status if applicable, their overseas voting records if applicable, and information related to their registration in another state if applicable.<sup>13</sup> Each letter was identical, except in regards to whom it was addressed. While a copy of the letter send to Defendant is unavailable to Plaintiffs

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<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Sam Aff. ¶3, Ex. 2.

at this time, an identical letter (with the exception of to whom the letter is addressed) was sent to North Carolina Secretary of State Elaine Marshall.<sup>14</sup>

The Letter offered two methods to transmit the collected voter data to the Commission: the data can be sent through email to ElectionIntegrityStaff@ovp.eop.gov or by utilizing the Safe Access File Exchange (“SAFE”) system.<sup>15</sup> The SAFE system is run by the Department of Defense, allowing for unclassified documents to be uploaded to the SAFE server and for the receiving party to access it through the SAFE system. Both methods of data transmittal are not sufficiently secure considering the nature of the information requested. An attempt by counsel for Plaintiffs to access the SAFE website resulted in a security warning popup message.<sup>16</sup> The Commission has not provided the public or Defendant with any information related to the email account which will be receiving the data from Defendant.

The Letter stated in part: “Please be aware that any documents that are submitted to the full commission will also be made available to the public.”<sup>17</sup> The Letter requested a response from Defendant by July 14, 2017 through one of the unsecured methods of sending the information.<sup>18</sup>

On July 3, 2017, the Idaho Secretary of State’s Office released a press release pertaining to the Letter and the Commission’s request.<sup>19</sup> In the Release, Defendant stated that he would

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Sam Aff. ¶4, Ex. 3.

<sup>17</sup> Sam Aff. ¶3, Ex. 2.

<sup>18</sup> Id.

<sup>19</sup> Sam Aff. ¶ 5, Ex. 4.

treat the Letter as if it were a public records request: “We are interpreting this as a public records request from the Commission.”<sup>20</sup>

Defendant went on to state that he would provide any information to the Commission that was deemed a public record under Idaho law, according to his office’s interpretation, by July 14, 2017.<sup>21</sup> In regards to requested information that was not defined as “public” under Idaho law, Defendant stated that he would “review what the appropriate and legally required response is, in coordination with the office of both the Governor, and the Idaho Attorney General.”<sup>22</sup>

At least 44 states have refused to comply with the Commission’s request to a certain degree, with some of those opting not to comply with the request in its entirety. *See* Liz Stark and Grace Hauck, *Forty-four states and DC have refused to give certain voter information to Trump commission*, CNN (July 4, 2017), available at <http://www.cnn.com/2017/07/03/politics/kris-kobach-letter-voter-fraud-commission-information/index.html> (“Forty-four states and the District of Columbia have refused to provide certain types of voter information to the Trump administration's election integrity commission, according to a CNN inquiry to all 50 states.”).

The Commission’s request has already produced a chilling effect on voter registration. Even in states that have only provided the Commission public information according to state law, many electors are opting to withdraw their registration to protect their privacy. *See* Alicia Cohn, *Hundreds of voters un-register after Trump voter fraud panel demands info*, THE HILL (July 8, 2017), available at <http://thehill.com/homenews/state-watch/341107-hundreds-of-voters-un-register-after-trump-voter-fraud-panel-demands> (“Hundreds of voters are responding to the

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<sup>20</sup> Id.

<sup>21</sup> Id.

possibility their information will be shared with President Trump's election integrity panel by withdrawing their voter registration, according to a Friday report.”).

At least one member of the Commission has publicly admitted that the Commission's request for information was problematic, and needed to be “refined.”<sup>23</sup>

On July 3, 2017, the Electronic Privacy Information Center (“EPIC”), a Washington D.C. based organization focused on data and information privacy civil liberty, filed a Complaint for Injunctive Relief (the “Complaint”) in the United States District Court for the District of Columbia, against the Commission (the “Federal Case”).<sup>24</sup> *EPIC v. The Commission*, No. 1:17-cv-01320-CKK (D.D.C. filed July 3, 2017). Contemporaneous to the filing of the Complaint, EPIC also filed an Emergency Motion for a Temporary Restraining Order (the “TRO”).

In the Federal Case, EPIC seeks to prevent the Commission from collecting information until certain federal privacy laws are complied with. The Commission filed its response on July 5, 2017. EPIC filed its reply on July 9, 2017. The court held a hearing on the motion for the TRO on July 9, 2017. As of the filing of the case at hand, no decision has yet been issued in the DC Case. The Federal Case is grounded solely in federal law.

On July 10, 2017, Mr. Kobach submitted his Third Declaration of Kris W. Kobach in the Federal Case (the “Third Declaration”).<sup>25</sup> In it, Mr. Kobach stated in relevant part that: 1) the Commission no longer will use the SAFE site for transmitting data from the states, and instead intends on repurposing an existing data system within the White House Technology enterprise which is now ready for use, and 2) that the Commission had instructed the states not to submit

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<sup>22</sup> Id.

<sup>23</sup> <http://www.cnn.com/2017/07/07/politics/matthew-dunlap-voting-commission-cnntv/index.html>

<sup>24</sup> <https://www.epic.org/epic/about.html>

<sup>25</sup> Sam Aff. ¶6, Ex. 5.



any data until the Court (in the Federal Case) had ruled on the motion for temporary restraining order.<sup>26</sup>

A ruling is expected at any time on the motion for temporary restraining order in the Federal Case, at which point the Defendant could immediately send the information requested by the Commission.

Defendant is not a party to the Federal Case. Even if EPIC is successful in obtaining a temporary restraining order to prevent the Commission from gathering voter information, such an order would not prevent Defendant from sending the requested information through one of the provided data transmission methods. Furthermore, even if Defendant does not send the List until at such point that a temporary restraining order or a preliminary injunction is lifted by the court in the Federal Case, Defendant could immediately send the Commission Idaho voter information without Plaintiffs having the opportunity to file an action seeking injunctive relief. Finally, even if EPIC is not successful in obtaining the TRO, Defendant must be enjoined from sending Idaho voter data to the Commission because doing so would be in violation of Idaho state law.

#### Only “Persons” Have A Right to Public Record in Idaho

Idaho defines a “public record” as follows: “‘Public Record’ includes, but is not limited to, any writing containing information relating to the conduct or administration of the public’s business prepared, owned, used or retained by any state agency, independent public body corporate and politic or local agency regardless of physical form or characteristics.” I.C. § 74-102(1).

Pursuant to Idaho voter law, Defendant is required to compile a statewide list of registered electors (the “List”). I.C. § 34-437A. The List is a public record under Idaho law.

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<sup>26</sup> Id.

Defendant has publicly stated that, at a minimum, he will provide the Commission with the List by July 14, 2017.<sup>27</sup> The List contains the following information about every registered voter in Idaho: Full name, street address, mailing address, county, gender, age (not DOB), party affiliation if declared, and voting history.

Idaho law only allows a “person” to demand public records. I.C. § 74-102(1). A “person” is defined in the Idaho Public Records Act as: “any natural person, corporation, partnership, firm, association, joint venture, state or local agency or any other recognized legal entity.” I.C. § 74-101(9).

The federal government or an agency or commission within the federal government is not listed within the definition of “person.” I.C. § 74-101(9). Notably, however, requests from state and local government are within the definition of “person.” *Id.* Based on rules of statutory interpretation, the inclusion of state and local government in the definition of a “person” and the exclusion of federal government should be deemed a purposeful exclusion: “It is a universally recognized rule of the construction that, where a constitution or statute specifies certain things, the designation of such things excludes all others,” a maxim commonly known as *expressio unius est exclusio alterius*.” *KGF Dev., LLC v. City of Ketchum*, 149 Idaho 524, 528, 236 P.3d 1284, 1288 (2010) (quoting *Peck v. State*, 63 Idaho 375, 380, 120 P.2d 820, 822 (1941)).

Because the Commission does not qualify as a “person” under Idaho law, I.C. § 74-101(9), Defendant has no statutory authority to release any information to it pursuant to a public records request. To be clear, while Mr. Kobach’s name was on the Letter, it was sent in his official capacity as the Vice-Chair of the Commission, on behalf of the Commission. Further, the

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<sup>27</sup> Sam Aff. ¶5, Ex. 4.

Letter does not instruct the states (and district) to send the requested information to Mr. Kobach, but instead to the Commission.

Every relevant provision of the Public Records Act outlines the procedures for how to deal with public record requests from a “person.” There is no provision in the Public Records Act that allows for compliance with public records requests from anything not qualifying as a “person” as defined in the statute.

#### Idaho Public Record Law and the Commercial Use Prohibition

Idaho law prohibits the use of public records for the purposes of: “mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. Provided however, that any such list and label may be used for any political purpose.” I.C. § 34-437A(3).

The Letter was clear in that all information gathered by the Commission would be made available to the public.<sup>28</sup> When the Commission releases the information to the public after collection, which at a minimum includes the information in the List, neither the Commission, nor Idaho, will be able to ensure that the Idaho data submitted won’t be used for commercial purposes. The inevitable use of Idaho’s public information for commercial purposes is clearly prohibited under I.C. § 34-437A(3). The Commission’s request will lead to the unlawful use of the information it seeks. As such, Defendant cannot comply with the request. I.C. § 74-121(1).

#### Idaho Public Record Law Requires Secure Methods of Data Transfer

Idaho law requires that the transfer of any public records be secure. I.C. § 74-121(1). Therefore, Defendant, as the custodian of the requested information, is required to make an

inquiry with the requesting person to ensure that the transfer of information pursuant to a public records request is conducted in a manner that is proper and which protects personal information from disclosure under Idaho and federal law. I.C. § 74-102(5)(c).

As stated in the Sam Aff. in paragraph 4, there is serious and well-grounded cause for concern that the SAFE site utilized by the Commission is insecure, which is likely why it was in recent days eliminated as a data transfer option for the states. The Commission has not provided the public or Defendant with any information related to the email account or new system, which are the alternative methods of data transfer.

Defendant is Required to Assess the Commission a Fee for the List

Defendant gave no indication that he would charge the Commission a fee for providing the List.<sup>29</sup> Defendant is required to assess a fee whenever a copy of the List is requested and a copy is made. I.C. § 34-437A(3).

Defendant also did not indicate in the Release whether the Commission would be charged for its request more generally, outside of the required fee for the List.<sup>28</sup> Defendant admitted in the Release that staff in his office and himself have spent time considering the request, and are continuing to do so.<sup>30</sup> Defendant is required to charge and collect fees for his office's services related to any public records request. I.C. § 67-910(1), (3).

Beyond the Office of the Secretary of State, Defendant stated that the Office of the Attorney General, and the Office of the Governor are involved in the state's review of the

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<sup>28</sup> Sam Aff. ¶3, Ex. 2.

<sup>29</sup> Sam Aff. ¶5, Ex. 4.

<sup>30</sup> Id.

Commission's request.<sup>31</sup> Any agency of the state of Idaho can charge for certain expenses incurred when responding to and complying with a public record request. I.C. § 74-102(10).

The exact costs of this response may never be fully discovered. However, considering the "high-profile" nature of the Commission's request, and the clearly significant response effort undertaken by numerous state officials and employees, it is certain that Idahoans will be paying thousands of dollars in state expenses if Defendant and/or other state offices do not assess the Commission these expenses.

### **III. STANDARD OF REVIEW**

#### **A. Temporary Restraining Order**

Under I.R.C.P. 65(b), a temporary restraining order may be granted without written or oral notice to the adverse party or the party's attorney only if:

(1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the party's attorney can be heard in opposition, and

(2) the applicant's attorney certified to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the party's claim that notice should not be required.

Furthermore, a temporary restraining order shall:

expire by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible

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<sup>31</sup> Id.

time and takes precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if that party does not do so, the court shall dissolve the temporary restraining order.

IRCP 65(b).

### **B. Preliminary Injunction**

Under I.R.C.P. 65(e), the Court may grant a preliminary injunction in one or more of the following instances: (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually. (2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff. (3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

When moving for a preliminary injunction, "it is not necessary that a case should be made out that would entitle complainant to relief at all events on the final hearing." *Farm Service, Inc. v. U.S. Steel Corp.*, 90 Idaho 570, 586, 414 P.2d 898 (1966) (quoting *Rowland v. Kellogg Power & Water Co.*, 40 Idaho 216, 225, 233 P. 869 (1925)). "If complainant has made out a prima facie case or if from the pleadings and the conflicting affidavits it appears to the court that a case is presented proper for its investigation on a final hearing, a preliminary injunction may issue to maintain the status quo." *Id.* *The Blue Creek Land & Livestock Co. v. Battle Creek Sheep Co.*, 52 Idaho 728, 729, 19 P.2d 638 (1933).

### **C. Writ of Prohibition**

Under I.C. § 7-401, the Court may issue a writ of prohibition to a person in a case when such proceedings are in excess of the jurisdiction of the person. Jurisdiction here “includes the power or authority conferred by law.” *Wasden ex rel. State v. Idaho State Bd. of Land Comm'rs*, 150 Idaho 547, 552, 249 P.3d 346, 351 (2010). “The writ of prohibition is not a remedy in the ordinary course of law, but is an extraordinary remedy.” *Maxwell v. Terrell*, 37 Idaho 767, 774, 220 P. 411, 413 (1923). The party seeking the writ of prohibition carries the burden of proving the absence of that adequate, plain, or speedy remedy. *Edwards v. Indus. Comm'n*, 130 Idaho 457, 460, 943 P.2d 47, 50 (1997).

## **IV. ARGUMENT**

### **A. The Court Should Enter a Temporary Restraining Order.**

Plaintiffs are entitled to the requested temporary restraining order based on the standards in I.R.C.P. 65(b). In regard to the first element, the balance of harms in this matter is completely lopsided. The Commission is a federal entity seeking information that has nothing to do with any state objective. There is absolutely no harm or prejudice that would befall Defendant if the status quo is maintained even just for a few weeks while the issues raised in this matter are sorted out.

On the other hand, Plaintiffs will be substantially harmed if the status quo is not maintained. Once the information is released by Defendant, there is no way to reverse the harm that act will cause. In regard to the second element, no notice has been given to Defendant or Defendant's counsel both because there has not been enough time, and because the release of

information is imminent according to statements made by Defendant.<sup>32</sup> Defendant can release the information at any moment, and therefore it was necessary to file this action before notice is given to prevent the premature release of the List.

### **B. The Court Should Enter a Preliminary Injunction.**

Plaintiffs are entitled to the requested preliminary injunction based on the standards in I.R.C.P. 65(e). First, Plaintiffs must show that they are entitled to the requested relief, and such relief does include the restraining of the commission of the acts complained of. Based on the pleadings and papers filed in this matter, Plaintiffs have met their burden of showing a substantial likelihood of success on the merits. The rationale behind Plaintiffs arguments are discussed at length in multiple pleadings in this action including above.

First, the Commission does not qualify as a “person” under Idaho law, and therefore there is no statutory basis for Defendant to comply with its request for information. I.C. § 74-101(9), I.C. § 74-102(1). Second, once Defendant produces the list to the Commission, it will make the information public.<sup>33</sup> Idaho law prohibits the use of public information for impermissible commercial purposes. I.C. § 34-437A(3). Once the List is made public, the information will of course be used in an impermissible manner, and therefore the Commission’s request must be denied. Third, at this time the methods of data transfer that will be used by Defendant to produce the List to the Commission appear to be insecure.<sup>3435</sup> Defendant must inquire as to any public records request for which he is the custodian of the records sought (which he has not), and can only send the public information in a proper (secure) manner. I.C. § 74-121(1), I.C. § 74-102(5)(c). Therefore, Defendant must ensure that the data transmission methods proposed by the

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<sup>32</sup> Sam Aff. ¶5, Ex. 4.

<sup>33</sup> Sam Aff. ¶3, Ex. 2.



Commission are secure, and cannot comply with the request until determining that such methods are in fact secure. Finally, Defendant is required to assess a fee to the Commission for his office's efforts in complying with its request. I.C. § 34-437A(3), I.C. § 67-910(1),(3). Defendant has not assessed such a fee, and in fact has indicated that he will not assess a fee, in violation of Idaho law.<sup>36</sup>

In addition, as is required by the first prong of the preliminary injunction standard in I.R.C.P. 65(e), the requested relief is the restraining of the commission of an act, namely, the production of the List by Defendant. Plaintiffs simply seek an order preventing such production (maintaining the status quo), until the privacy and security issues raised here are addressed.

It has also been conclusively established that Plaintiffs would suffer serious and irreparable harm if the List is produced, as is required by the second prong in I.R.C.P. 65(e). Idaho recognized the harm that is caused by providing the information contained in the List to those who would use it to endlessly harass Idahoans with commercial solicitation. That is why there is a commercial use prohibition in Idaho public records law. In addition, the potential harm here goes beyond unwanted phone calls and junk mail in mailboxes. The release of so much information about Idaho voters subjects these individuals to increased risk of identity theft. There have been almost repeated data breaches at both public and private institutions, and with the verified public information contained in the List, hackers and identity thieves will have more data points to exploit in seeking to victimize Idahoans. Once the information is released, there is no way to undue the harm caused. That is why there is such an urgent need for relief here. Releasing the information contained in the List is like throwing feathers into the wind, and there

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<sup>34</sup> Sam Aff. ¶4, Ex. 3.

<sup>35</sup> Sam Aff ¶ 6, Ex. 5.

is no way to gather up that information and ensure that it no longer exists in the public sphere. Personal information is traded on forums every day, far beyond the reach or ability of Idaho to redress. It would simply be impossible to cure the harm caused by the public release of the information in the List. As such, Plaintiffs would suffer both substantial and irreparable harm if the requested relief is not granted, whereas there would be no harm to Defendant.

Finally, the threat of the harm alleged in this action is real. Defendant in his own words stated that he would provide the information in the List by July 14, 2017.<sup>37</sup> It is possible he already has released the information, which is why Plaintiffs seek the potential relief of an order instructing Defendant to retrieve any information sent to the Commission if applicable. The threat of action by Defendant would be in violation of the rights of Plaintiffs as outlined above and in the pleadings filed in this matter.

### **C. The Court Should Enter a Writ of Prohibition.**

If the Court finds that an emergency temporary restraining order and preliminary injunction are not proper in this matter, it should instead issue a writ of prosecution, or any other writ as allowable under Idaho law. A writ of prohibition is appropriate in this matter, because Defendant, by complying with the Commission, is violating state law. Defendant does not have the authority, or “jurisdiction” as is used in statute, to disregard state law and act as he sees fit. Plaintiffs do not allege that Defendant, when he produces the List to the Commission, will be doing so with the intention of violating state law, but his actions run afoul of the above cited statutes nonetheless.

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<sup>36</sup> Sam Aff. ¶5, Ex. 4.

<sup>37</sup> Sam Aff. ¶5, Ex. 4.


To be certain, Plaintiffs do allege that the most appropriate remedy is an emergency temporary restraining order and preliminary injunction. However, if the Court disagrees, then the extraordinary remedy of a writ of prohibition would be appropriate and would effectuate the same relief as an emergency temporary restraining order and preliminary injunction.

## V. CONCLUSION


Plaintiffs have met their burden of showing success on all of the elements for a temporary restraining order and a preliminary injunction, or in the alternative, a writ of prohibition or any other writ allowable under Idaho law, based on the facts alleged and the authority cited, and respectfully requests the Court enter a temporary restraining order and preliminary injunction, or in the alternative, a writ of prohibition or any other writ allowable under Idaho law, as requested.

Respectfully submitted this 11 day of July, 2017.

By:

  
Sam Dotters-Katz  
Marcus Christian Hardee Davies, LLP.  
Idaho State Bar Association No. 9709

By:

  
William A. Fuhrman  
Jones, Gledhill, Fuhrman, Gourley, P.A.  
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*Attorneys for Plaintiffs*

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT**  
**OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

BERT MARLEY, an individual; and )  
IDAHO STATE DEMOCRATIC PARTY, )  
a political party, )  
Plaintiffs, )  
vs. )  
LAWERENCE DENNEY in his official )  
capacity as Secretary of State )  
Defendant, )

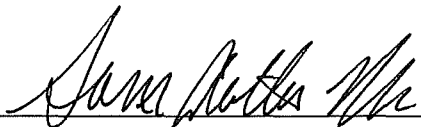
Case No. CV01-17-12594  
**AFFIDAVIT OF SAM DOTTERS-  
KATZ IN SUPPORT OF MOTION  
FOR EMERGENCY TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION AND  
OR WRIT OF PROHIBITION**

STATE OF IDAHO )  
County of Ada ) ss

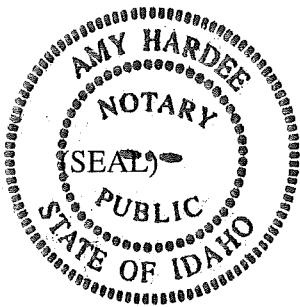
Sam Dotters-Katz, being first duly sworn on oath, states as follows:

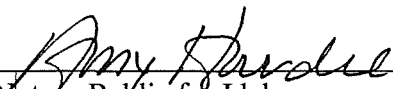
1. I am the attorney for Plaintiffs so named above.
2. Attached hereto is a true and correct copy of the Exec. Order No. 13,799, 82 Fed. Reg. 22,389 (May 11, 2017, marked as **Exhibit 1**.
3. Attached hereto is a true and correct copy of the letter sent from the Commission to North Carolina Secretary of State Elaine Marshall, which is identical in all respects to the letter sent to Defendant Lawrence Denney ("Defendant"), with the exception of to whom it is addressed, marked as **Exhibit 2**.
4. I attempted to access the SAFE site on July 5, 2017, which resulted in a pop-up that warned about the security of the SAFE site. I personally took a screenshot of this message. Attached hereto is a true and correct copy of that screenshot, marked as **Exhibit 3**.
5. On July 3, 2017, Defendant or his office published a press release (the "Release"). Attached hereto is a true and correct copy of the Release, marked as **Exhibit 4**.
6. On July 10, 2017, Commission Vice-Chair Kris Kobach submitted his Third Declaration of Kris W. Kobach in a case in Federal Court in which the Commission was the defendant. Attached hereto is a true and correct copy of the Third Declaration, marked as **Exhibit 5**.
7. I certify that I did not make contact with the Defendant or Defendant's attorney(s) because there was no time to seek such motivation due to the immediate nature of this action.
8. Due to the facts, as set forth in Plaintiff's Emergency Motion for Temporary Restraining Order and Preliminary Injunction; I believe the notice requirement under IRCP 65(b) should be waived.
9. Further, your affiant say naught.

DATED this 11 day of July, 2017.

  
Sam Dotters-Katz

SUBSCRIBED AND SWORN to before me this 11 day of July, 2017.



  
Notary Public for Idaho,  
Residing at: Boise, Idaho  
My Commission Expires: 10/10/2019

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# Presidential Documents

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Title 3—

Executive Order 13799 of May 11, 2017

The President

## Establishment of Presidential Advisory Commission on Election Integrity

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to promote fair and honest Federal elections, it is hereby ordered as follows:

**Section 1. *Establishment.*** The Presidential Advisory Commission on Election Integrity (Commission) is hereby established.

**Sec. 2. *Membership.*** The Vice President shall chair the Commission, which shall be composed of not more than 15 additional members. The President shall appoint the additional members, who shall include individuals with knowledge and experience in elections, election management, election fraud detection, and voter integrity efforts, and any other individuals with knowledge or experience that the President determines to be of value to the Commission. The Vice President may select a Vice Chair of the Commission from among the members appointed by the President.

**Sec. 3. *Mission.*** The Commission shall, consistent with applicable law, study the registration and voting processes used in Federal elections. The Commission shall be solely advisory and shall submit a report to the President that identifies the following:

(a) those laws, rules, policies, activities, strategies, and practices that enhance the American people's confidence in the integrity of the voting processes used in Federal elections;

(b) those laws, rules, policies, activities, strategies, and practices that undermine the American people's confidence in the integrity of the voting processes used in Federal elections; and

(c) those vulnerabilities in voting systems and practices used for Federal elections that could lead to improper voter registrations and improper voting, including fraudulent voter registrations and fraudulent voting.

**Sec. 4. *Definitions.*** For purposes of this order:

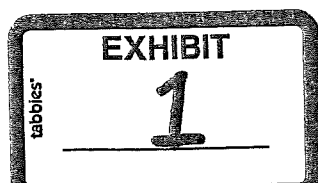
(a) The term "improper voter registration" means any situation where an individual who does not possess the legal right to vote in a jurisdiction is included as an eligible voter on that jurisdiction's voter list, regardless of the state of mind or intent of such individual.

(b) The term "improper voting" means the act of an individual casting a non-provisional ballot in a jurisdiction in which that individual is ineligible to vote, or the act of an individual casting a ballot in multiple jurisdictions, regardless of the state of mind or intent of that individual.

(c) The term "fraudulent voter registration" means any situation where an individual knowingly and intentionally takes steps to add ineligible individuals to voter lists.

(d) The term "fraudulent voting" means the act of casting a non-provisional ballot or multiple ballots with knowledge that casting the ballot or ballots is illegal.

**Sec. 5. *Administration.*** The Commission shall hold public meetings and engage with Federal, State, and local officials, and election law experts, as necessary, to carry out its mission. The Commission shall be informed by, and shall strive to avoid duplicating, the efforts of existing government entities. The Commission shall have staff to provide support for its functions.



**Sec. 6. Termination.** The Commission shall terminate 30 days after it submits its report to the President.

**Sec. 7. General Provisions.** (a) To the extent permitted by law, and subject to the availability of appropriations, the General Services Administration shall provide the Commission with such administrative services, funds, facilities, staff, equipment, and other support services as may be necessary to carry out its mission on a reimbursable basis.

(b) Relevant executive departments and agencies shall endeavor to cooperate with the Commission.

(c) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.) (the "Act"), may apply to the Commission, any functions of the President under that Act, except for those in section 6 of the Act, shall be performed by the Administrator of General Services.

(d) Members of the Commission shall serve without any additional compensation for their work on the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

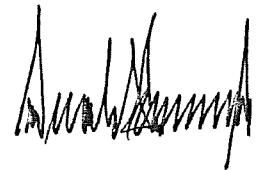
(e) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(f) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(g) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,  
May 11, 2017.



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## Presidential Advisory Commission on Election Integrity

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June 28, 2017

The Honorable Elaine Marshall  
Secretary of State  
PO Box 29622  
Raleigh, NC 27626-0622

Dear Secretary Marshall,

I serve as the Vice Chair for the Presidential Advisory Commission on Election Integrity ("Commission"), which was formed pursuant to Executive Order 13799 of May 11, 2017. The Commission is charged with studying the registration and voting processes used in federal elections and submitting a report to the President of the United States that identifies laws, rules, policies, activities, strategies, and practices that enhance or undermine the American people's confidence in the integrity of federal elections processes.

As the Commission begins its work, I invite you to contribute your views and recommendations throughout this process. In particular:

1. What changes, if any, to federal election laws would you recommend to enhance the integrity of federal elections?
2. How can the Commission support state and local election administrators with regard to information technology security and vulnerabilities?
3. What laws, policies, or other issues hinder your ability to ensure the integrity of elections you administer?
4. What evidence or information do you have regarding instances of voter fraud or registration fraud in your state?
5. What convictions for election-related crimes have occurred in your state since the November 2000 federal election?
6. What recommendations do you have for preventing voter intimidation or disenfranchisement?
7. What other issues do you believe the Commission should consider?

In addition, in order for the Commission to fully analyze vulnerabilities and issues related to voter registration and voting, I am requesting that you provide to the Commission the publicly-available voter roll data for North Carolina, including, if publicly available under the laws of your state, the full first and last names of all registrants, middle names or initials if available, addresses, dates of birth, political party (if recorded in your state), last four digits of social



security number if available, voter history (elections voted in) from 2006 onward, active/inactive status, cancelled status, information regarding any felony convictions, information regarding voter registration in another state, information regarding military status, and overseas citizen information.

You may submit your responses electronically to [ElectionIntegrityStaff@ovp.eop.gov](mailto:ElectionIntegrityStaff@ovp.eop.gov) or by utilizing the Safe Access File Exchange ("SAFE"), which is a secure FTP site the federal government uses for transferring large data files. You can access the SAFE site at <https://safe.amrdec.army.mil/safe/Welcome.aspx>. We would appreciate a response by July 14, 2017. Please be aware that any documents that are submitted to the full Commission will also be made available to the public. If you have any questions, please contact Commission staff at the same email address.

On behalf of my fellow commissioners, I also want to acknowledge your important leadership role in administering the elections within your state and the importance of state-level authority in our federalist system. It is crucial for the Commission to consider your input as it collects data and identifies areas of opportunity to increase the integrity of our election systems.

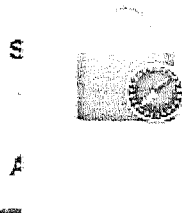
I look forward to hearing from you and working with you in the months ahead.

Sincerely,

A handwritten signature in black ink, appearing to read "Kris Kobach". The signature is fluid and cursive, with the first name "Kris" and last name "Kobach" clearly distinguishable.

Kris W. Kobach  
Vice Chair  
Presidential Advisory Commission on Election Integrity

Google



Safari can't verify the identity of the website  
"safe.amrdec.army.mil".

The certificate for this website is invalid. You might be connecting to a website that is pretending to be "safe.amrdec.army.mil", which could put your confidential information at risk. Would you like to connect to the website anyway?

Show Certificate

Cancel

Continue

Control your Google p  
settings. Take a quick  
Checkup.

YES, GO NOW

## AMRDEC SAFE - Army SAFE - Army.mil

<https://safe.amrdec.army.mil/safe/guide.aspx>

The AMRDEC SAFE application is used to send large files to individuals ... Everyone has access to SAFE, and the application is available for use by anyone .

## AMRDEC SAFE - Army SAFE

<https://safe.amrdec.army.mil/safe/About.aspx>

The AMRDEC Safe Access File Exchange is an application for securely exchanging files. Since many organizations that do business with AMRDEC limit the size ...

## [PDF] Using the Safe Access File Exchange (SAFE) to Transfer Files - Arm...

[https://path.tamc.amedd.army.mil/pdf/SAFE\\_File\\_Sending.pdf](https://path.tamc.amedd.army.mil/pdf/SAFE_File_Sending.pdf)

The Safe Access File Exchange (SAFE) is a secure method of transferring large ... It is recommended that you access the SAFE website using your CAC card's ...

## Safe Access File Exchange - DoN CIO - Navy.mil

[www.doncio.navy.mil/contentview.aspx?id=4098](http://www.doncio.navy.mil/contentview.aspx?id=4098) ▼

Aug 8, 2012 - Safe Access File Exchange (SAFE) allows users to send up to 25 files securely to recipients within the .mil and .gov domains. The files can total ...

## [PDF] amrdec safe access file exchange (safe) - NetCents

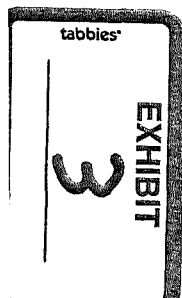
[www.netcents.af.mil/Portals/30/...2/.../AMRDEC%20SAFE%20Instructions.pdf?...](http://www.netcents.af.mil/Portals/30/...2/.../AMRDEC%20SAFE%20Instructions.pdf?...) ▼

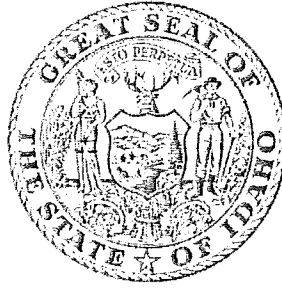
AMRDEC SAFE ACCESS FILE EXCHANGE (SAFE). Safe can be used for free by both contractors and vendors to exchange files that exceed the AFWay 12MB ...

## Northrop Grumman - Safe Access File Exchange

<https://ngsafe.northropgrumman.com/> ▼

Mar 10, 2017 - NG Safe is a file transfer system to be utilized when conventional methods (email ) isn't





**STATE OF IDAHO  
OFFICE OF THE SECRETARY OF STATE  
LAWRENCE DENNEY**

FOR IMMEDIATE RELEASE - July 3<sup>rd</sup>, 2017

Contact: Sec of State Lawrence Denney, [Idenney@sos.idaho.gov](mailto:Idenney@sos.idaho.gov)

**DENNEY SAYS VOTING PRIVACY STILL SAFE IN IDAHO**

(BOISE) - Idaho Secretary of State Lawrence Denney received a request by email on Friday for specific information pertaining to Idaho state voter registrations from the Presidential Advisory Commission on Election Integrity. "While a request for voter information itself is not atypical, and while specific parts of the state voter roll are in fact public, this particular request was of a unique enough nature that it bears some additional review," says Denney.

"I am carefully reviewing the request from the Presidential Advisory Commission on Election Integrity. The request asks only for the 'publicly available' voter roll data, including, 'if publicly available,' additional identifying information. We are interpreting this as a public records request from the Commission. As such, Idaho law requires me to respond ONLY with the non-exempt public records available under the request." While additional information is requested in the letter (such as driver's license and the last 4 of a voter's social security number), that information is NOT considered public and Secretary Denney could not be compelled, outside of a specific court order detailing the need for and intended use of such data, to provide that information under Idaho Public Records statutes.

The Statewide List of Registered Electors (voter roll) is a publicly available document under Idaho Statute 34-437A(3) that includes the First, Middle, Last, Street Address, Mailing Address, county, gender, age (not DOB), telephone # if provided (optional), and party affiliation (if declared) of all currently registered electors in the state. It also includes a record of which elections that currently registered elector participated in, but does NOT include any of their voting decisions. "That information, who someone voted for, is never even seen by our office. That is how we ensure that YOUR ballot, as prescribed by the Idaho Constitution, remains sacred and private", says Denney.

Also important to note is the fact that the physical Voter Registration Card itself is NOT a public record as set forth in Idaho Statute 74-106-25, as portions of the form contain non-public information (driver's license, last 4 of social, date of birth, and signature). The remaining information on the form, barring special circumstances for the protection of a physical address, are public information available from the database within the voter roll.

The specific information requested by the Commission was:



Item Requested	Based on Idaho Statute
Voter Roll Data for Idaho	
(includes First, Middle, Last, Street Address, Mailing Address, county, gender, age (not DOB), telephone # if provided (optional), party affiliation if declared, and yes/no on the elections in which the registered voter has participated)	ALL PUBLIC INFORMATION available under Idaho statute 34-437A-(3)
Full First and Last name of all registrants	In voter roll above
Middle Names and Initials	Middle name part of voter roll above
Addresses	In voter roll above
Dates of Birth	Not public information
Political Party	In voter roll above
Last four of social	Not public information
Voter history	Participation data is public and in voter roll, but no actual ballot information is recorded.
Active/Inactive status	Not applicable to the Idaho System. It is ONLY a list of registered voters.
Cancelled Status	Not applicable
Felony Conviction Information	Not applicable
Voter Registration in another state	Not part of the public voter roll, and not available

The official letter from the commission was received on July 3<sup>rd</sup> by mail and receipted into the Secretary's office at 9:42 am. The Commission has requested a response by July 14, 2017, and the Secretary of State's office will continue to utilize that time to review what the appropriate and legally required response is, in coordination with the office of both the Governor and the Idaho Attorney General.

Secretary Denney concluded, "In the end, I will look to fulfill the requirements of the law under Idaho Statute while continuing to protect both the Idaho Voter, their non-public, personal information, and their right to an absolutely private ballot under Article VI, section 1 of the Idaho Constitution."

Additional online information can be found on the following at the links provided:

**Idaho Constitution, Article VI** - <http://www.sos.idaho.gov/elect/stcon/articl06.htm>

**Idaho Public Records Act** - <https://legislature.idaho.gov/statutesrules/idstat/Title74/T74CH1/SECT74-106/>

**Statewide List of Registered Electors** -

<https://legislature.idaho.gov/statutesrules/idstat/Title34/T34CH4/SECT34-437A/>

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)

**THIRD DECLARATION OF KRIS W. KOBACH**

I, Kris W. Kobach, declare as follows:

As described in my declaration of July 5, 2017, I am the Vice Chair of the Presidential Advisory Commission on Election Integrity (“Commission”). I submit this third declaration in support of Defendant’s supplemental brief regarding the addition of the Department of Defense (“DOD”) as a defendant in plaintiff’s Amended Complaint. This declaration is based on my personal knowledge and upon information provided to me in my official capacity as Vice Chair of the Commission.

1. In order not to impact the ability of other customers to use the DOD Safe Access File Exchange (“SAFE”) site, the Commission has decided to use alternative means for transmitting the requested data. The Commission no longer intends to use the DOD SAFE system to receive information from the states, and instead intends to use alternative means of receiving the information requested in the June 28, 2017, letter. Specifically, the Director of White House Information Technology is repurposing an existing system that regularly accepts



personally identifiable information through a secure, encrypted computer application within the White House Information Technology enterprise. We anticipate this system will be fully functional by 6:00 p.m. Eastern today.

2. Today, the Commission sent the states a follow-up communication requesting the states not submit any data until this Court rules on this TRO motion. A copy of this communication is attached hereto as Exhibit A. The Commission will not send further instructions about how to use the new system pending this Court's resolution of this TRO motion.

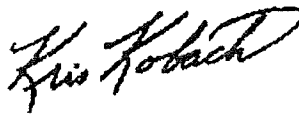
3. The Commission will not download the data that Arkansas already transmitted to SAFE and this data will be deleted from the site.

4. Additionally, I anticipate that the President will today announce the appointment of two new members of the Commission, one Democrat and one Republican.

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

\*\*\*

Executed this 10th day of July 2017.

A handwritten signature in black ink, appearing to read "Kris Kobach", written in a cursive style.

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Kris W. Kobach