

**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.

Civ. Action No. 17-1320 (CKK)

PLAINTIFF’S MOTION FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT

Plaintiff hereby moves the Court for leave to file a Second Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a)(2). In support, Plaintiff states:

1. Following the filing of Plaintiff’s Amended Complaint, ECF No. 21, Defendants filed a Response to the Court on July 10, 2017 that contained previously undisclosed facts. ECF No. 24.
2. In that Response, the Defendants revealed that the Commission “no longer intends to use the DOD SAFE system to receive information from the states” Def.’s Supp. Br. ¶ 1.a.
3. Defendants revealed that the Commission “instead intends to use alternative means of receiving” the personal voter data that the Commission has demanded. *Id.*
4. Defendants revealed that an agency official—the Director of White House Information Technology (“the Director”)—“is repurposing an existing system” to collect personal voter data. *Id.* The Commission claimed that it “anticipated [the system] to be fully functional by 6:00 pm EDT” yesterday (July 10, 2017). *Id.*
5. The Director of White House Information Technology was established in 2015 and has “the primary authority to establish and coordinate the necessary policies and procedures for

operating and maintaining the information resources and information systems provided to the President, Vice President, and EOP.” Memorandum on Establishing the Director of White House Information Technology and the Executive Committee for Presidential Information Technology § 1, 2015 Daily Comp. Pres. Doc. 185 (Mar. 19, 2015).

6. The Director has the independent authority to oversee and “provide the necessary advice, coordination, and guidance to” the Executive Committee for Presidential Information Technology, which “consists of the following officials or their designees: the Assistant to the President for Management and Administration; the Executive Secretary of the National Security Council; the Director of the Office of Administration; the Director of the United States Secret Service; and the Director of the White House Military Office.” *Id.* § 3.

7. The U.S. Digital Service is a component of the Executive Office of the President that is responsible for managing “technology projects” within the executive branch. U.S. Digital Serv., The White House, *Our Mission*, <https://www.usds.gov/mission.html> (last visited July 11, 2017).

8. Defendants have not provided any indication that the Commission, the Director, or any other party will complete a Privacy Impact Assessment, as required by E-Government Act of 2002, prior to a subsequent request for data from the states.

9. Defendants have not provided any indication that the Commission will publish a Privacy Impact Assessment pursuant to the Federal Advisory Committee Act.

10. Under Federal Rule of Civil Procedure 15(a)(2), a complaint may be amended for a second time “with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

11. In accordance with Local Civil Rule 7(m), EPIC contacted opposing counsel regarding this motion, but counsel did not immediately indicate whether or not they would consent.

12. “[J]ustice requires the Plaintiff be permitted to amend the operative complaint” when the amendments are “based on evidence not available to the Plaintiff” at the time the operative complaint was filed. *Mattiaccio v. DHA Grp., Inc.*, 293 F.R.D. 229, 234 (D.D.C. 2013).

13. Plaintiff proposes to amend the complaint to name Director of White House Information Technology Charles C. Herndon, the Executive Committee for Presidential Information Technology, and the United States Digital Service as Defendants.

14. The proposed amendments to Plaintiff’s complaint are based on evidence that was not available to the Plaintiff on July 7, 2017, when the Amended Complaint was filed. The involvement of all three newly-named parties in the collection of personal voter data was only revealed by the Commission after the Amended Complaint.

15. WHEREFORE, Plaintiff respectfully requests that the Court permit the requested amendment. A Proposed Order is attached.

Respectfully Submitted,

/s/ Marc Rotenberg
MARC ROTENBERG, D.C. Bar # 422825
EPIC President and Executive Director

ALAN BUTLER, D.C. Bar # 1012128
EPIC Senior Counsel

CAITRIONA FITZGERALD*
EPIC Policy Director

JERAMIE D. SCOTT, D.C. Bar # 1025909
EPIC Domestic Surveillance Project
Director

ELECTRONIC PRIVACY
INFORMATION CENTER
1718 Connecticut Avenue, N.W.
Suite 200
Washington, D.C. 20009

(202) 483-1140 (telephone)
(202) 483-1248 (facsimile)

Attorneys for Plaintiff EPIC

** Pro hac vice motion pending*

Dated: July 11, 2017