

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON
1331 F Street N.W., Suite 900
Washington, D.C. 20004,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
EDUCATION,
400 Maryland Ave. SW
Washington, D.C. 20202,

MIGUEL CARDONA,
in his official capacity as Secretary of the
Department of Education,
400 Maryland Ave. S.W.
Washington, D.C. 20202,

THE PRESIDENT'S ADVISORY 1776
COMMISSION,
400 Maryland Ave. S.W.
Washington, D.C. 20202,

ADAM HONEYSETT,
in his official capacity as the Designated
Federal Officer for the 1776 Commission,
400 Maryland Ave S.W.
Washington, D.C. 20202,

Defendants.

Civil Action No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff Citizens for Responsibility and Ethics in Washington (“CREW”) brings this suit against Defendants United States Department of Education, Secretary Miguel Cardona, the President’s Advisory 1776 Commission (“1776 Commission” or the “Commission”), and Adam Honeysett, pursuant to the Federal Advisory Committee Act (“FACA”), 5 U.S.C. App. 2, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701-706, for their failure to publicly disclose all the records prepared by, or made available to, the 1776 Commission as requested by CREW on January 20, 2021.
2. The 1776 Commission was an advisory committee established by former President Trump, and therefore subject to the obligations enumerated in the FACA. 5 U.S.C. App. 2. As the agency, agency head and the Designated Federal Official to which the 1776 Commission reported, the Defendants’ failure to disclose the “records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by” the Commission is a violation of § 10(b) of the FACA. *See* 5 U.S.C. App. 2, § 10(b). CREW is seeking declaratory and injunctive relief, asking this court to order the Defendants to make all studies, documents, records, working papers, and transcripts available to CREW for public inspection.

PARTIES

3. CREW is a nonprofit, non-partisan organization, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the right of citizens to be informed about the activities of government officials and to ensuring the integrity of government officials. To advance its mission, CREW uses a combination of research,

litigation, advocacy, and public education to disseminate information to the public about public officials and their actions. As part of its research, CREW uses government records and information made available to it under various federal disclosure statutes, including the FACA and the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”).

4. Access to the records of an important Presidential Advisory Commission is essential to CREW’s mission of informing citizens about the activities of government officials.
5. Defendant United States Department of Education is a federal agency. Executive Order 13,958 created the Commission within the Department of Education. Exec. Order No. 13,958. 85 Fed. Reg. 70,951 (Nov. 2, 2020).
6. Defendant Miguel Cardona is named in this suit in his official capacity as the Secretary of the Department of Education. The Commission’s Charter made the Secretary of Education “responsible for filings and other applicable statutory requirements of the Federal Advisory Committee Act and . . . for ensuring the reporting requirements of 6(b) of the Act are appropriately fulfilled.” (*See Exhibit A*).
7. Defendant 1776 Commission was a federal advisory committee established by Executive Order 13,958 on November 2, 2020. *Id.*
8. Defendant Adam Honeysett is named in this suit in his official capacity as the Designated Federal Officer for the Commission. Each advisory committee must have a Designated Federal Officer (“DFO”) designated by the agency head. 41 C.F.R. § 102-3.120. A committee’s DFO is responsible for calling meetings of the committee, approving the agenda for all committee meetings, attending meetings, adjourning any meeting when they determine it to be “in the public interest,” and chairing the meeting when directed by the agency head. *Id.*

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 5 U.S.C. § 704, and 28 U.S.C. § 1331 because this action arises under federal law.
10. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1391(e) because: Defendants are United States agencies or officers sued in their official capacities, the Department of Education is a defendant in this suit and is located in Washington, D.C., and a substantial part of the events or omissions giving rise to the claim occurred in the District of Columbia.

STATUTORY FRAMEWORK

I. The Federal Advisory Committee Act

11. Congress passed the FACA in 1972, and the Act sets forth certain requirements and obligations that advisory committees must follow. The FACA defines advisory committees as “any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup . . . which is (A) established by statute or reorganization plan, or (B) established or utilized by the President, or (C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government.” 5 U.S.C. App. 2, § 3(2).
12. In addition to setting forth requirements that govern the creation and make-up of advisory committees, the FACA explicitly requires that the public have access to “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other

documents which were made available to or prepared for or by each advisory committee.” 5 U.S.C. App. 2, § 10(b). The records must be made available for public review at the office of the advisory committee or “at the agency to which the advisory committee reports.” 5 U.S.C. App. 2, § 10(b).

II. The Administrative Procedure Act

13. The APA permits judicial review when a person is suffering a “legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute.” 5 U.S.C. § 702.
14. The APA requires the reviewing court to “compel agency action unlawfully withheld or unreasonably delayed,” and to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §§ 706(1), 706(2)(A).

STATEMENT OF FACTS

I. President Trump Establishes the 1776 Commission Pursuant to the FACA.

15. On November 2, 2020, President Trump signed Executive Order 13,958 establishing the 1776 Commission. The stated purpose of the Commission was to “enable a rising generation to understand the history and principles of the founding of the United States in 1776 and to strive to form a more perfect Union.” Executive Order 13,958 mentions several functions of the Commission, but its chief purpose was to create a report that “summarize[d] the principles of the American founding and how those principles have shaped our country.”
16. President Trump signed the Executive Order establishing the 1776 Commission on the day before the 2020 presidential election. President Trump framed the creation of the

Commission as a response to the 1619 Project, a *New York Times* article turned podcast that aimed to “reframe the country’s history by placing the consequences of slavery and the contributions of Black Americans at the very center of the United States’ national narrative.”¹

17. In a 2020 speech at the White House Conference on American History, President Trump stated “[t]he left has warped, distorted, and defiled the American story with deceptions, falsehoods, and lies. There is no better example than the New York Times’ totally discredited 1619 Project. This project rewrites American history to teach our children that we were founded on the principle of oppression, not freedom.”² In this same speech, President Trump announced that he would sign an Executive Order to create the 1776 Commission, stating that it will “promote patriotic education” and “will encourage our educators to teach our children about the miracle of American history.”³

18. The Commission was established as a presidential advisory committee subject to FACA. It filed a charter with the Administrator of the General Services Administration on December 14, 2020, pursuant to § 9(c) of the FACA. The “Description of Duties” section of the charter includes “producing a report for the President, within 1 year of the date of Executive Order 13,958, which shall be publicly disseminated, regarding the core principles of the American founding and how these principles may be understood to further enjoyment of ‘the blessings of liberty’ and to promote our striving ‘to form a more perfect Union.’”

¹ Jake Silverstein, *Why We Published The 1619 Project*, THE NEW YORK TIMES MAGAZINE (Dec. 20, 2019), <https://www.nytimes.com/interactive/2019/12/20/magazine/1619-intro.html>.

² Remarks by President Trump at the White House Conference on American History, 2020 Daily Comp. Pres. Docs., DCPD 00691 (Sept. 17, 2020).

³ *Id.*

19. The charter charged the Department of Education with the responsibility for making filings, satisfying other applicable statutory requirements of FACA and for ensuring compliance with the reporting requirements of § 6(b) of the Act.
20. President Trump appointed Larry Arnn, president of Hillsdale College, to serve as chair of the Commission, and Carol Swain, a former law professor at Vanderbilt University, as Vice-Chair. The Commission had two public meetings, one on January 5, 2021, and another on January 15, 2021. Pursuant to the FACA, transcripts of both meetings and the minutes were posted on the Department of Education's website.
21. The Commission publicly released its report on January 18, 2021, two days before the end of President Trump's term.⁴
22. The American Historical Association condemned the 1776 Commission's report, noting it was "[w]ritten hastily in one month after two desultory and tendentious 'hearings,'" without "any consultation with professional historians of the United States."⁵ Forty-seven organizations, including the American Library Association, Organization of American Historians, and the National Coalition for History, signed onto the statement.
23. A significant portion of the Commission's report appears to have been "copied nearly verbatim from an opinion piece published in 2008 by one of the commission's members, Thomas Lindsay."⁶

⁴ Final Report to the President, PRESIDENT'S ADVISORY 1776 COMMISSION (Jan. 18, 2021), <https://www2.ed.gov/about/bdscomm/list/1776/final-report.pdf>.

⁵ *AHA Condemns Report of Advisory 1776 Commission*, AMERICAN HISTORICAL ASSOCIATION (Jan. 20, 2021), <https://www.historians.org/Documents/Statements%20and%20Standards%20of%20the%20Profession/Report%20of%201776%20Commission%20Statement.pdf>.

⁶ Tina Nguyen, *A Big Chunk Of Trump's 1776 Report Appears Lifted From An Author's Prior Work*, POLITICO (Jan. 19, 2021, 4:47 PM), <https://www.politico.com/news/2021/01/19/trump-1776-report-plagiarism-460464>.

24. On January 20, 2021, on his first day in office, President Biden signed Executive Order 13,985 that dissolved the Commission. Nonetheless, legislation to reestablish the 1776 Commission, titled The Preserve American History Act, was introduced in the House of Representatives on January 28 as H.R. 514, by Rep. Ted Budd (R-NC).
25. Since its dissolution as a Presidential Advisory Commission, the 1776 Commission has continued in a non-governmental form at Hillsdale College. According to the website of Hillsdale College, “President Joe Biden might have cancelled the 1776 Commission on his first day in office, but America’s founding principles cannot be cancelled—the work to defend American history will go on, especially at Hillsdale College.”⁷ The 1776 Commission at Hillsdale College has since met once on May 24, 2021, and released the “1776 Curriculum” for grades K-12.⁸ The Commission’s work continues to have educational and political significance.

II. CREW Requests Documents Pursuant to FACA.

26. On January 20, 2021, CREW requested, pursuant to § 10(b) of the FACA, “all ‘records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda[s] or other documents which were made available to or prepared for or by’ the 1776 Commission—including by any of its members, ex-officio members, or contributors—in connection with the Commission’s January 5 and 15, 2021 meetings and its January 18, 2021 report.” (Exhibit B).

⁷ *1776 Report Calls for a Return to America’s Founding Principles in Our Schools*, HILLSDALE COLLEGE (Feb. 5, 2021), <https://dc.hillsdale.edu/News/Latest-News/1776-Report-Calls-for-a-Return-to-America%E2%80%99s-Foundi/>.

⁸ *See Meeting of The 1776 Commission Takes Place at Hillsdale College in D.C.*, HILLSDALE COLLEGE (June 24, 2021), <https://dc.hillsdale.edu/News/Latest-News/Meeting-of-The-1776-Commission-Takes-Place-at-Hill/>; *see also Hillsdale College Releases 1776 Curriculum*, Hillsdale College (July 29, 2021), <https://dc.hillsdale.edu/News/Latest-News/Hillsdale-College-Releases-1776-Curriculum/>.

27. On January 22, 2021, CREW received an acknowledgment letter via email from the Department of Education stating that the Department had received the request. The letter made clear that the Department was processing CREW's FACA request as a FOIA request. (*See Exhibit C*). CREW has not received any responsive records from Defendants.
28. Six months later, CREW sent a follow-up email to the Department of Education's FOIA liaison and the Government Information Specialist inquiring into the status of its FACA request. The Department responded, stating that the Department was still processing the request.
29. On September 13, 2021, counsel for CREW emailed the Department regarding the status of its FACA request. The FOIA liaison for the Department of Education responded and stated that he would check on the status of the request. CREW has not heard anything further. Counsel for CREW then called the FOIA liaison on September 27, 2021, and September 28, 2021, to check on the status of the request, but received no response.
30. To date, the Defendants have not made available the requested records, reports, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by the Commission and therefore have not complied with § 10(b) of the FACA.

COUNT I
(Violation of the Federal Advisory Committee Act)

31. Plaintiff hereby incorporates Paragraphs 1 through 30 above as if they were fully set forth herein.
32. The Commission was an advisory committee within the meaning of the FACA. It was a commission established by the President "in the interest of obtaining advice or

recommendations for the President or one or more agencies or officers of the Federal Government.” 5 U.S.C. App. 2 § 3(2).

33. By failing to make available the requested “records reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by” the Commission, Defendants have failed to comply with the FACA.

COUNT II
(Violation of the Administrative Procedure Act)

34. Plaintiff hereby incorporates Paragraphs 1 through 30 above as if they were fully set forth herein.
35. Defendants have failed to comply with the FACA’s requirement that “the records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by” the Commission be disclosed to the public.
36. By failing to comply with the FACA, Defendants have unlawfully withheld or unreasonably delayed agency action and have acted contrary to law in violation of the APA. *See* 5 U.S.C. §§ 706(1), 706(2)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Citizens for Responsibility and Ethics in Washington seeks the following relief:

- a. A declaration that the Commission is and was subject to the FACA and all of its requirements;
- b. A declaration that Defendants violated the FACA and the APA by not producing records of the Commission that are responsive to CREW’s request;

- c. An injunction requiring Defendants to produce to CREW all records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents which were made available to or prepared for or by the Commission.
- d. An award of Plaintiff's costs and reasonable attorneys' fees in this action.
- e. Other relief that the Court deems just and proper.

DATED: October 8, 2021

Respectfully Submitted,



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