

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FOOD & WATER WATCH
1616 P Street, N.W.
Washington, D.C. 20036,

Plaintiff,

vs.

DONALD J. TRUMP, in his official
capacity as PRESIDENT OF THE
UNITED STATES
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500;

and

U.S. DEPARTMENT OF
TRANSPORTATION
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590;

and

U.S. DEPARTMENT OF
COMMERCE
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, AND
PETITION FOR WRIT OF MANDAMUS**

Plaintiff Food & Water Watch sues Defendants, Donald J. Trump, in his official capacity as President of the United States, the U.S. Department of Transportation (“DOT”), and the U.S. Department of Commerce (“Commerce”); and allege as follows.

Preliminary Statement

1. Plaintiff brings this action to enforce the Federal Advisory Committee Act, 5 U.S.C.A. App. 2 (“FACA” or “the Act”). The Act is a “sunshine law” that imposes certain statutory requirements on the operation of advisory committees to ensure that the public is well-positioned to understand the role that those committees play in the development of important government policy. The Government’s failure to adhere to FACA’s requirements threatens public confidence in the integrity of the U.S government as a whole.

2. The present Administration has adopted a pattern and practice of establishing advisory committees, largely populated by President Trump’s business associates and friends, to advise him and agency secretaries on economic and business-related matters. This practice, in effect outsourcing policymaking to private individuals who are unfettered by conflict-of-interest rules and other public accountability standards, raises a host of ethical and transparency concerns.

3. The Administration is taking this approach with respect to developing a trillion-dollar infrastructure plan. In January 2017, President Trump established an Infrastructure Council to advise himself, DOT, and Commerce on matters related to infrastructure policy. The Infrastructure Council, comprising builders and engineers, is chaired by two New York real estate developers with longstanding personal and financial ties to the President, and who own development projects that stand to benefit from the council’s decisions and recommendations. The Infrastructure Council

is charged with monitoring spending on the trillion-dollar plan. In the words of President Trump, “everything is going to be run by them.”¹

4. To date the Infrastructure Council has operated in private—meeting, suggesting policy proposals, and rendering advice. Taxpayers and potentially affected communities have no insight into whether and how the council is considering or is prepared to consider key aspects of infrastructure development, such as the needs of rural and agricultural communities, the needs of underserved and low-income communities, the need to refurbish dangerously aging health and safety infrastructure such as drinking water systems, and public versus private ownership of infrastructure assets.

5. Although the Infrastructure Council has operated since the beginning of the Administration, the President only recently, on July 19, 2017, issued an Executive Order formally announcing the establishment of a Presidential Advisory Council on Infrastructure. Nothing in this Executive Order compels the Presidential Advisory Council on Infrastructure to operate in accordance with FACA.

6. Though it is unclear whether the Executive Order simply recognizes the extant Infrastructure Council or is meant to create a successor council, in either circumstance, FACA applies. Plaintiff therefore sues to remedy the violations of FACA by the Infrastructure Council to date and for a declaration that the

¹ *Partial Transcript: Trump’s Interview with the Times*, NEW YORK TIMES (April 5, 2017), <https://www.nytimes.com/2017/04/05/us/politics/donald-trump-interview-new-york-times-transcript.html>.

Presidential Advisory Council on Infrastructure established by Executive Order is an advisory committee as defined by FACA.

Parties

7. Plaintiff Food & Water Watch (“FWW”) is a non-profit organization which focuses on corporate and government accountability relating to food, water, and corporate overreach. Its mission includes “champion[ing] healthy food and clean water for all.”² It regularly communicates with its nearly 70,000 members about policies and projects related to food and water.

8. FWW has a distinct interest in infrastructure, particularly projects related to water resources. As stated in its mission, FWW advocates “for common sense policies that ... make our drinking water safe and affordable.”³

9. A signature FWW project, “Public Water for All” helps “communities resist pressure to sell and outsource their public water systems to private corporations” by advocating against water privatization on both the grassroots and federal level.⁴ At the federal level, FWW has been a vocal proponent of the Water Affordability, Transparency Equity and Reliability (“WATER”) Act, legislation introduced in 2016 to increase federal funding for U.S. water infrastructure modernization.⁵

² *About*, FOOD & WATER WATCH, <https://www.foodandwaterwatch.org/about>.

³ *Id.*

⁴ *Public Water for All*, FOOD & WATER WATCH (June 23, 2016), <https://www.foodandwaterwatch.org/campaign/public-water-all>.

⁵ *U.S. Water Systems Need Sustainable Funding: The Case for the WATER Act*, FOOD & WATER WATCH (June 23, 2016), <https://www.foodandwaterwatch.org/insight/us-water-systems-need-sustainable-funding-case-water-act>.

10. FWW has been an outspoken critic of the Administration's infrastructure privatization plans. On June 5, 2017, FWW issued a statement calling on Congress to reject any infrastructure privatization proposal, citing concerns that privatization would result in costlier and less reliable water service for many Americans.⁶

11. Given FWW's clear interest in infrastructure policy and demonstrated advocacy against infrastructure privatization, Defendants' violation of FACA has harmed and will harm FWW in several ways.

12. First, FWW has a distinct interest in ensuring that the membership of the Infrastructure Council represents the viewpoints of those who are skeptical of the privatization of infrastructure.

13. Second, by violating the openness requirements of FACA, the Infrastructure Council has deprived FWW of its statutory right to itself participate in the meetings and represent to the Infrastructure Council its non-privatization viewpoint.

14. Third, by violating the public records requirements of FACA, the Infrastructure Council has denied FWW its statutory right to review the Council's documents and meeting minutes.

15. Defendant Donald J. Trump is being sued in his official capacity as President of the United States.

⁶ *Trump's Water Infrastructure Plans in Two Words: Higher Rates*, FOOD & WATER WATCH (June 5, 2017), <https://www.foodandwaterwatch.org/news/trump%E2%80%99s-water-infrastructure-plans-two-words-higher-rates>.

16. Defendant DOT is a federal agency within the meaning of 5 U.S.C. § 551 and is headquartered in Washington, D.C.

17. Defendant Commerce is a federal agency within the meaning of 5 U.S.C. § 551 and is headquartered in Washington, D.C.

Jurisdiction and Venue

18. This Court has jurisdiction over this action under 28 U.S.C. § 1331 and 28 U.S.C. § 1361.

19. Venue is proper under 28 U.S.C. § 1391(e), as Defendants are located in Washington, D.C. and a substantial part of the events or omissions giving rise to plaintiff's claims occurred here.

President Trump's Infrastructure Plans

20. President Trump, along with DOT and Commerce, are putting together a 10-year, \$1 trillion infrastructure plan ("the Infrastructure Plan" or "the Plan"). The Plan is anticipated to commit \$200 billion in federal spending to encourage another \$800 billion in private investment.⁷ The private investments will take the form of public-private partnerships.⁸ The anticipation of such large-scale privatization has led investors and asset managers to raise billions of dollars to finance potential transactions.⁹

⁷ See Jenny Hopkinson, *DOT Eyeing Rural Title for Infrastructure Package*, POLITICOPRO (June 15, 2017).

⁸ *Id.*

⁹ See Mark Niquette & David Carey, *Tapping Private Sector for Roads and Bridges Poses Hurdles for Trump*, BLOOMBERG POLITICS (Feb. 13, 2017), available at <https://www.bloomberg.com/news/articles/2017-02-13/trump-tapping-private-sector-for-roads-and-bridges-faces-hurdles>.

21. Since January 2017, Defendants have been soliciting proposals to include in the Infrastructure Plan.¹⁰ As of May 11, 2017, the White House had received more than 500 project requests from governors, consultants, contractors, unions, and advisers.¹¹

22. Many of the project proposals would require billions of dollars in funding.¹²

23. The President has said that he will favor projects that can begin immediately and has suggested a 90-day deadline for projects to get off the ground.¹³ He is thus proposing to reduce the time needed to secure regulatory approvals and permits from 10-years to 2-years.¹⁴

24. Defendants have already made important decisions regarding infrastructure. For example, DOT recently announced that it would withdraw from the board of the Gateway Program Development Corporation.¹⁵ The Gateway Program is the largest infrastructure project in the Northeast, aiming to double rail

¹⁰ See Tom Scheck, *More Than 500 Infrastructure Projects Are Pitched to Trump, Who Will Favor Private Money and Speed*, APM REPORTS (May 11, 2017), available at <http://www.apmreports.org/story/2017/05/11/trump-infrastructure-projects>.

¹¹ *Id.*

¹² *Id.*

¹³ See Melanie Zanona, *Work Begins on \$1 Trillion Infrastructure Plan*, THE HILL (March 14, 2017), available at <http://thehill.com/policy/transportation/323784-work-begins-on-1t-infrastructure-plan>; see also Matthew J. Belvedere, *Trump Only Wants Projects That Can Break Ground Immediately, Says Billionaire Infrastructure Adviser*, CNBC (Mar. 10, 2017), available at <http://www.cnbc.com/2017/03/10/trump-ready-to-build-infrastructure-real-estate-mogul-richard-lefrak.html>.

¹⁴ See Mark Niquette & Shannon Pettypiece, *Trump Says U.S. Can No Longer Accept Crumbling Infrastructure*, BLOOMBERG POLITICS (June 7, 2017), available at <https://www.bloomberg.com/news/articles/2017-06-07/trump-to-outline-infrastructure-plan-that-includes-rural-funding>.

¹⁵ See Paul Berger & Ted Mann, *U.S. Transportation Department Quits Gateway Group*, WALL STREET JOURNAL (July 3, 2017), available at <https://www.wsj.com/articles/u-s-transportation-department-quits-gateway-group-1499089647>.

capacity between New York City and Newark, New Jersey.¹⁶ Additionally, President Trump has introduced a plan to privatize air traffic control.¹⁷

25. Members of Congress have been critical of Defendants' Infrastructure Plan, calling it a "private money-making operation."¹⁸

President Trump Establishes the Infrastructure Council

26. Despite the size and import of the Infrastructure Plan, President Trump to date has failed to nominate any individuals to fill certain important infrastructure-related positions throughout the Executive Branch. These positions include (1) Assistant Secretary for Transportation Policy, Department of Transportation; (2) Assistant Secretary for Research and Technology, Department of Transportation; (3) Administrator, Federal Highway Administration; (4) Administrator, Federal Motor Carrier Safety Administration; (5) Administrator, Federal Transit Administration; (6) Administrator, National Highway Traffic Safety Administration; and (7) Administrator, Pipeline and Hazardous Materials Safety Administration.

27. Instead, Defendant President Trump established an Infrastructure Council to advise himself, DOT, and Commerce on developing and implementing the Infrastructure Plan.

28. The Infrastructure Council was created to monitor spending on the \$1 trillion Infrastructure Plan. It is currently reviewing the incoming project proposals

¹⁶ *Id.*

¹⁷ See Video: *Trump Introduces Plan To Privatize Air Traffic Control*, CBSNEWS (June 5, 2017), available at <http://www.cbsnews.com/news/trump-infrastructure-1-trillion-plan>.

¹⁸ See Pedro Nicolaci da Costa, *Democrats Say Trump's Infrastructure Plan Is 'Just a Private Money-Making Operation'*, BUSINESS INSIDER (June 7, 2017), available at <http://www.businessinsider.com/democrats-respond-to-trumps-infrastructure-plan-2017-6>.

and advising Defendants on which projects to fund. The Council's goals include (1) expediting approval processes, (2) re-tooling the procurement process, (3) examining and optimizing financing alternatives, and (4) reducing regulatory burdens.¹⁹ In the words of President Trump, "everything is going to be run by them."²⁰

29. The Infrastructure Council is headed by Richard LeFrak and Steven Roth.²¹ LeFrak is a billionaire New York real estate developer. Roth is the CEO of Vornado Realty Trust—one of New York's largest landlords. Both LeFrak and Roth are long-time friends of President Trump.

30. Both have significant business interests that stand to benefit from decisions and recommendations made by the Infrastructure Council. It is reported that Vornado is part owner with President Trump of two major office buildings in San Francisco and New York City, and an investor in a Manhattan office building owned by the family of the President's son-in-law, Jared Kushner.²² LeFrak is developing

¹⁹ See Michael Laris, *Trump Advisers Call for Privatizing Some Public Assets To Build New Infrastructure*, WASHINGTON POST (May 23, 2017), available at https://www.washingtonpost.com/local/trafficandcommuting/trump-advisers-call-for-selling-off-old-assets-to-build-new-infrastructure/2017/05/23/657aa2c6-2f53-11e7-9534-00e4656c22aa_story.html?utm_term=.7ea22d5e2592.

²⁰ *Partial Transcript: Trump's Interview with the Times*, NEW YORK TIMES (April 5, 2017), <https://www.nytimes.com/2017/04/05/us/politics/donald-trump-interview-new-york-times-transcript.html>.

²¹ Peter Grant & Ted Mann, *Donald Trump Asks Richard LeFrak, Steven Roth To Monitor Infrastructure Plan's Costs*, WALL STREET JOURNAL (Ja. 16, 2017), <https://www.wsj.com/articles/donald-trump-asks-richard-lefrak-steven-roth-to-monitor-infrastructure-plans-costs-1484591989?mg=id-wsj>.

²² See Jim Zarroli, *Real Estate Firm with Ties to Trump May Build the New FBI Headquarters*, National Public Radio (June 23, 2017), available at, <http://www.npr.org/2017/06/23/534028094/real-estate-firm-with-ties-to-trump-may-build-the-new-fbi-headquarters>.

multi-billion dollar projects in New Jersey and Florida and has questioned how much firms like his should pay for public works that benefit their assets.²³

31. President Trump, LeFrak, and Roth have all described a close working relationship between the Infrastructure Council and the Federal Government:

- a. In January, LeFrak described his role: “Part of our assignment is to advise [President Trump and the Administration] as best we can on the merits of these different things.”²⁴
- b. In February, Roth described his role: “I’m honored that [President Trump] has asked me together with Richard LeFrak to be an advisor to him and the administration with respect to infrastructure matters.... I’m an advisor. I’m not a line executive. I’m not in any way an employee of the government.... I will hope that this President, I know this President means business, and I would hope that I and Richard LeFrak can make a difference.”²⁵
- c. And at a Town Hall meeting, President Trump said of the Infrastructure Council: “I’m working with Steve Roth and with Richard LeFrak—two friends of mine that are very good builders. They’re great builders. And they know how to get things done. They

²³ E.B. Solomont, *New York Eyes Outsized Share of \$1 Trillion Prize*, *The Real Deal* (March 1, 2017), available at, https://therealdeal.com/issues_articles/new-york-eyes-outsized-share-of-1-trillion-prize/.

²⁴ Sarah Muholland & Mark Niquette, *Trump Ties to Infrastructure Advisers Roth, LeFrak Run Deep*, *BLOOMBERG NEWS* (Feb. 15, 2017), <https://www.bloomberg.com/news/articles/2017-02-15/trump-ties-to-infrastructure-advisers-roth-and-lefrak-run-deep>.

²⁵ Transcript: Vornado Realty Trust’s CEO Steven Roth on Q4 2016 Results Earnings Call (Feb. 14, 2017).

know how to cut red tape. We're going to give them the advantage of having what we have."²⁶

32. Upon information and belief, the Infrastructure Council has met on numerous occasions since January 20, 2017 to provide advice and recommendations on infrastructure policy to Defendants.²⁷

33. The Infrastructure Council did not publish notice of these meetings in the Federal Register. Nor is there any record that the Infrastructure Council made available any material that it has generated or received.

34. Had notice of the Infrastructure Council's meetings been published, Plaintiff would have attended and participated.

**Executive Order Announcing the Presidential Advisory Council on
Infrastructure**

35. Despite the fact that the Infrastructure Council has been operating since January 2017, Defendant President Trump issued Executive Order No. 13,805 on July 19, 2017 formally announcing the existence of a Presidential Advisory Council

²⁶ *Remarks by President Trump and Vice President Pence at CEO Town Hall on Unleashing American Business*, THE WHITE HOUSE (April 4, 2017), <https://www.whitehouse.gov/the-press-office/2017/04/04/remarks-president-trump-and-vice-president-pence-ceo-town-hall>.

²⁷ *See, e.g.*, Nicholas Confessore, Maggie Haberman, and Eric Lipton *Trump's 'Winter White House': A Peek at the Exclusive Members' List at Mar-a-Lago*, NEW YORK TIMES (Feb. 18, 2017), <https://www.nytimes.com/2017/02/18/us/mar-a-lago-trump-ethics-winter-white-house.html> (describing a meeting between President Trump and LeFrak about the construction of the border wall); David Shepardson, *Trump Talks Infrastructure with Musk, Developers*, REUTERS (Mar. 8, 2017), *available at* <http://www.reuters.com/article/us-usa-trump-infrastructure-musk-idUSKBN16F1JI> (describing a meeting between President Trump, LeFrak, Roth, Secretary of Transportation Elaine Chao, and others about infrastructure related issues.).

on Infrastructure (the “Executive Order”). *See* Executive Order No. 13,80582 Fed. Reg. 34383 (July 19, 2017).

36. The Executive Order states that the Presidential Advisory Council on Infrastructure will operate under the Department of Commerce. *Id.*

37. The stated mission is to:

[s]tudy the scope and effectiveness of, and make findings and recommendations to the President regarding, Federal Government funding, support, and delivery of infrastructure projects in several sectors, including surface transportation, aviation, ports and waterways, water resources, renewable energy generation, electricity transmission, broadband, pipelines, and other such sectors as determined by the Council. *Id.*

38. The Executive Order also specifies that “[i]n pursuing its mission, the Council shall make findings and recommendations concerning the following:

- a. prioritizing the Nation’s infrastructure needs;
- b. accelerating pre-construction approval processes;
- c. developing funding and financing options capable of generating new infrastructure investment over the next 10 years;
- d. identifying methods to increase public-private partnerships for infrastructure projects, including appropriate statutory or regulatory changes;
- e. identifying best practices in and opportunities to improve procurement methods, grant procedures, and infrastructure delivery systems; and

f. promoting advanced manufacturing and infrastructure-related technological innovation. *Id.*

39. Within 60 days, the Secretary of Commerce must “submit questions to the Council for consideration in its work and report.” *Id.*

40. The Executive Order states: “Insofar as the Federal Advisory Committee Act ... may apply to the Council, any function of the President under that Act ... shall be performed by the Secretary of Commerce, in accordance with the guidelines that have been issued by the Administrator of General Services. *Id.*”

Statutory Framework

41. In 1972, Congress enacted FACA, 5 U.S.C.A. App. 2, to promote transparency into the workings of the “numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government.” 5 U.S.C.A. App. 2 § 2(a).

42. FACA requires, *inter alia*, that: (1) before acting or meeting, an advisory committee must file a charter with the Administrator or head of the agency that created the committee, (2) the make-up of the committee must “be fairly balanced in terms of the points of view represented and the functions to be performed,” (3) all meetings must be open to the public, (4) notice of each meeting must be published in the Federal Register, (5) all interested persons must be allowed to attend, appear before, or file statements with the advisory committee, (6) all records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agendas, and other

documents made available to or prepared for or by the advisory committee must be made available to the public, and (7) detailed minutes of each meeting must be kept.

Id. §§ 5(b)(2), 9(c), 10(a)(1-3), (b)-(c).

43. FACA defines an “advisory committee” 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.A. App. 2 § 3(2).

44. FACA excludes from its coverage a committee that is composed wholly of government employees. *Id.*

45. Advisory committees are subject to FACA’s requirements, unless specifically exempted by statute. *Id.* § 4.

46. FACA applies to presidential advisory commissions in the same way as it applies to agency-created advisory commissions. The Administration, however, has disregarded FACA in creating and operating other advisory committees. ²⁸

²⁸ See Ltr. from Citizens for Responsibility and Ethics in Washington to White House Counsel Donald F. McGahn (Feb. 1, 2017), *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/02/01203132/DOC170201-20170201152716.pdf> (advisory committee on judicial nominations); Ltr. from Citizens for Responsibility and Ethics in Washington to White House Counsel Donald F. McGahn (Feb. 3, 2017), *available at* <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/04/05174050/McGahn-Letter-2-3-17.pdf> (CEO advisory committee).

The Infrastructure Council Is Violating FACA

47. The Infrastructure Council has been operating in violation of FACA since January 2017.

48. There is no record of the Infrastructure Council having filed a charter, as it is required to do by Section 9(c) of the Federal Advisory Committee Act before it can meet or take any action.

49. Upon information and belief, the membership of the Infrastructure Council as it has existed to date has not been fairly-balanced, in violation of Section 5 of FACA, as it is overwhelmingly if not exclusively comprised of real estate developers.²⁹

50. The Infrastructure Council has not complied with the openness requirements of FACA in a number of ways:

- a. Notice of Council meetings has not been published in the Federal Register, in violation of 5 U.S.C.A. App. 2 § 10(a)(2).
- b. Records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda or other documents which have been made available to or prepared for or by the Infrastructure Council have not been made available for public inspection and copying, in violation of 5 U.S.C.A. App. 2 § 10(b).

²⁹ See Peter Grant & Ted Mann, *Donald Trump Asks Richard LeFrak, Steven Roth to Monitor Infrastructure Plans Costs*, Wall Street Journal (Jan. 16, 2017), available at, <https://www.wsj.com/articles/donald-trump-asks-richard-lefrak-steven-roth-to-monitor-infrastructure-plans-costs-1484591989> (describing council of “15 to 20 builders and engineers”).

- c. Upon information and belief, detailed minutes of each Council meeting have not be kept, in violation of 5 U.S.C.A. App. 2 § 10(c).

51. The July 19 Executive Order does not direct the Presidential Advisory Council on Infrastructure to comply with FACA. Instead, the Order states simply that “[i]nsofar as the Federal Advisory Committee Act ... may apply to the Council, any functions of the President under that Act ... shall be performed by the Secretary of Commerce.”

Claims for Relief

COUNT ONE (For Mandamus Relief under 28 U.S.C. § 1361, declaring all actions taken by President Trump and the Infrastructure Council before filing a charter null and void)

52. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

53. The Infrastructure Council led by LeFrak and Roth is an advisory committee subject to the requirements of FACA.

54. An advisory committee cannot meet or take any action until it files a charter with the appropriate agency. 5 U.S.C. app. 2 § 9(c).

55. No charter has been filed to formally establish the Infrastructure Council.

56. Defendant President Trump and the Infrastructure Council have thus been operating ultra vires, and any action taken by Defendant President Trump and the Infrastructure Council prior to the filing of a charter is null and void.

57. Plaintiff has been harmed in the manner alleged in paragraphs 11-14.

COUNT TWO (For Declaratory and Injunctive Relief under 5 U.S.C. § 706, declaring all actions taken by Defendants DOT and Commerce and the Infrastructure Council before filing a charter null and void)

58. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

59. The Infrastructure Council led by LeFrak and Roth is an advisory committee subject to the requirements of FACA.

60. An advisory committee cannot meet or take any action until it files a charter with the appropriate agency. 5 U.S.C. app. 2 § 9(c).

61. No charter has been filed to formally establish the Infrastructure Council.

62. Defendants DOT and Commerce have thus been operating ultra vires and any action taken by Defendants DOT and Commerce and the Infrastructure Council is null and void.

63. Plaintiff has been harmed in the manner alleged in paragraphs 11-14.

COUNT THREE (For Mandamus Relief under 28 U.S.C. § 1361, compelling Defendant President Trump and the Infrastructure Council to comply with their non-discretionary duties under Section 5 and Section 10 of FACA, 5 U.S.C. app. 2 §§ 5, 10)

64. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

65. By failing to appoint members who represent alternative viewpoints, President Trump has failed to “require the membership of the advisory committee ... be fairly balanced in terms of the points of view represented and the function to

be performed by the advisory committee,” which is a non-discretionary duty under FACA, 5 U.S.C. app. 2 § 5(b)(2).

66. By failing to publish notice of Infrastructure Council meetings in the Federal Register and allow interested parties to attend those meetings, the Infrastructure Council and President Trump have failed to carry out the non-discretionary openness requirements of FACA, 5 U.S.C. app. 2 § 10(a)(1)-(3).

67. By failing to create “[d]etailed minutes” of any meeting of the Infrastructure Council, the Council and President Trump have failed to carry out the non-discretionary openness requirements of FACA, 5 U.S.C. app. 2 § 10(c).

68. By failing to make available “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 Infrastructure Council since its inception in January 2017, the Infrastructure Council and Defendant President Trump have failed to carry out the non-discretionary openness requirements of FACA, 5 U.S.C. app. 2 § 10(b).

69. Plaintiff has been injured by this failure in the manner alleged in paragraphs 11-14.

COUNT FOUR (For Declaratory and Injunctive Relief, to enjoin Defendants DOT and Commerce from acting in a way that violates the APA, 5 U.S.C. § 706)

70. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

71. By failing to publish notice of Infrastructure Council meetings in the Federal Register and allow interested parties to attend those meetings, Defendants DOT and/or Commerce have (a) acted in a manner which is arbitrary, capricious, and otherwise not in accordance of law (5 U.S.C. § 706(2)(A)), and (b) acted without observance of procedure required by law (5 U.S.C. § 706(2)(B)).

72. By failing to create “[d]etailed minutes” of any meeting of the Infrastructure Council, Defendants DOT and/or Commerce have (a) acted in a manner which is arbitrary, capricious, and otherwise not in accordance of law (5 U.S.C. § 706(2)(A)), and (b) acted without observance of procedure required by law (5 U.S.C. § 706(2)(B)).

73. By failing to make available “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 Infrastructure Council since its inception in January 2017, Defendants DOT and/or Commerce have (a) acted in a manner which is arbitrary, capricious, and otherwise not in accordance of law (5 U.S.C. § 706(2)(A)), and (b) acted without observance of procedure required by law (5 U.S.C. § 706(2)(B)).

74. Plaintiff has been injured by this failure in the manner alleged in paragraphs 11-14.

COUNT FIVE (For Declaratory Judgment under 28 U.S.C. § 2201-02 that the Presidential Advisory Council on Infrastructure announced in the July 19 Executive Order is an advisory committee subject to FACA)

75. Plaintiff incorporates by reference the foregoing paragraphs as if fully set forth herein.

76. The Presidential Advisory Council on Infrastructure announced in the July 19 Executive Order is an advisory committee as defined by FACA, 5 U.S.C. app. 2 § 3(2).

77. It will be composed of non-governmental employees.

78. Its mission is to provide advice and recommendations on infrastructure policy to Defendants President Trump, DOT, and Commerce.

79. Based on the Administration's pattern and practice of disregarding the requirements of FACA with respect to other advisory committees, a declaration that the Presidential Advisory Council on Infrastructure is an advisory committee subject to FACA is necessary.

80. In the absence of such a declaration, there is no assurance that Plaintiff or other interested members of the public will have access to meetings, materials, or the opportunity to express their views.

WHEREFORE, Plaintiff prays that this Court:

1. Declare that the Infrastructure Council has been operating since its inception in January 2017 in violation of FACA;

2. Vacate and set aside as unlawful any action taken by the Infrastructure Council, or by President Trump, DOT, or Commerce in reliance on advice given by

the Infrastructure Council, during the time period in which the Infrastructure Council has been operating in violation of FACA;

3. Permanently enjoin Defendants to provide to Plaintiff, within ten working days and at no cost to Plaintiff, a full and complete copy of all records, reports, transcripts, minutes, appendixes, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by the Infrastructure Council, irrespective of whether any such document otherwise is or could be exempt from disclosure under 5 U.S.C. §§ 552(b)(2), (4), (5), or (7)-(9);

4. Declare that the Presidential Advisory Council on Infrastructure announced in the July 19 Executive Order is an advisory committee subject to FACA's requirements;

5. Permanently enjoin Defendants from allowing the Presidential Advisory Council on Infrastructure to operate in a manner that is not fully compliant with FACA; and

6. Award Plaintiff attorney's fees and costs of suits, as well as any and all other relief this Court deems appropriate.

Dated: 07/25/2017

Respectfully submitted,

/s/ Javier M. Guzman

Javier M. Guzman

(D.C. Bar No. 462679)

Karianne M. Jones* (*pro hac vice
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