



February 16, 2017

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Via U.S. Mail and Email

**Re: Request Under Freedom of Information Act
(Fee Waiver/Limitation Requested)**

To Whom It May Concern:

The Campaign Legal Center submits this Freedom of Information Act (“FOIA”) request (the “Request”) for records pertaining to the Election Assistance Commission (“EAC”), including recent proposals to eliminate the Commission and requests that the EAC alter the federal voter registration form to allow for documentary-proof-of-citizenship voter registration requirements.

Background

The Department of Homeland Security has labeled our electoral system “critical infrastructure” because our election infrastructure is “vital to our national interests.”¹ The Election Assistance Commission is the only federal agency tasked with certifying voting systems and providing vital resources to states to ensure that our electoral system is accurate, accessible, and secure.² The 2016 election season made clear that the threat of cyberattack has never been so great. In addition to the hacking of emails by Russian actors,³ there is also evidence that hackers

¹ Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector, Dep’t Homeland Sec. (Jan. 6, 2017), <https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical>.

² Election Assistance Commission, <https://www.eac.gov/default.aspx>; see, e.g., Matthew Weil, Why We Need the Election Assistance Commission, Bipartisan Pol’y Ctr. (Feb. 9, 2017), <http://bipartisanpolicy.org/blog/why-we-need-the-election-assistance-commission/>; Russel Berman, The Federal Voting Agency Republicans Want to Kill, The Atlantic (Feb. 13, 2017), <https://www.theatlantic.com/politics/archive/2017/02/election-assistance-commission-republicans-congress/516462/>; Ari Berman, House Republicans Just Voted to Eliminate the Only Federal Agency That Makes Sure Voting Machines Can’t Be Hacked, The Nation (Feb. 7, 2017), <https://www.thenation.com/article/house-republicans-just-voted-to-eliminate-the-only-federal-agency-that-makes-sure-voting-machines-cant-be-hacked/>.

³ Massimo Calabresi & Pratheek Rebala, Here’s the Evidence Russia Hacked the Democratic National Committee, Time (Dec. 13, 2016), <http://time.com/4600177/election-hack-russia-hillary-clinton-donald-trump/>.

attempted to penetrate state voter registration systems.⁴ Now, more than ever, our nation needs the EAC's resources to secure and improve our electoral infrastructure.⁵ Nonetheless, on February 7, 2017, the Committee on House Administration voted 6-3 (along party lines) to eliminate the Election Assistance Commission.⁶ The bill, HR 634, does not provide for any replacement agency that would provide the resources or perform many of the vital functions that the Election Assistance Commission currently provides and performs.⁷ The public has a right to know, pursuant to FOIA, what communications, legal opinions, and memoranda from the EAC, Office of Legal Counsel, and Office of Management and Budget may have informed the Committee's decisions and what other alternatives officials are considering to protect our electoral infrastructure's cybersecurity.

Alongside cybersecurity functions, the EAC develops and distributes the national mail voter registration form that any voter in any state can use to register to vote.⁸ This form requires all voters to sign under penalty of perjury that they are U.S. citizens.⁹ But in recent years, several states have sought to eliminate this one-step voter registration process by requiring new registrants to submit documentary proof of citizenship in addition to their voter registration form. A new documentary requirement for voter registration could have a profound effect on potential new voters.¹⁰ Such an additional burden on voter registration—particularly in light of the lack of any credible evidence of either significant noncitizen voting or the inadequacy of current procedures¹¹—runs counter to Congress's explicit purpose in enacting the National Voter Registration Act: to “promote the exercise” of the “fundamental right” to vote by “establish[ing] procedures that will increase the number of citizens who register to vote.”¹² The public has a right to know, pursuant to FOIA, what communications, legal opinions, and memoranda from the EAC, Office of Legal Counsel, and Office of Management and Budget say about this potential sea change in our voter registration model.

⁴ Mike Levine & Pierre Thomas, Russian Hackers Targeted Nearly Half of States' Voter Registration Systems, Successfully Infiltrated 4, ABC News (Sep. 29, 2016), <http://abcnews.go.com/US/russian-hackers-targeted-half-states-voter-registration-systems/story?id=42435822>; Ellen Nakashima, Russian Hackers Targeted Arizona Election System, Washington Post (Aug. 29, 2016), https://www.washingtonpost.com/world/national-security/fbi-is-investigating-foreign-hacks-of-state-election-systems/2016/08/29/6e758ff4-6e00-11e6-8365-b19e428a975e_story.html.

⁵ Robert Schlesinger, Not the Time to Make Voting Less Secure, U.S. News & World Report (Feb. 8, 2017), <http://www.usnews.com/opinion/thomas-jefferson-street/articles/2017-02-08/congress-considers-making-us-elections-less-secure>.

⁶ Berman, *House Republicans Just Voted to Eliminate*, *supra* note 2.

⁷ HR 634 – Election Assistance Commission Termination Act, Congress.gov (Jan. 24, 2017), <https://www.congress.gov/bill/115th-congress/house-bill/634/text>.

⁸ National Mail Voter Registration Form, U.S. Election Assistance Comm'n, https://www.eac.gov/voter_resources/register_to_vote.aspx (last visited Feb. 15, 2017).

⁹ *Id.*

¹⁰ John Whitesides, Thousands of voters in limbo after Kansas demands proof they're American, Reuters (June 2, 2016), <http://www.reuters.com/article/us-usa-votingrights-kansas-insight-idUSKCN0YN4AQ>.

¹¹ Wendy Weiser & Douglas Keith, Non-Citizens Are Not Voting. Here Are the Facts, Brennan Center (Feb. 13, 2017), <http://www.brennancenter.org/blog/actual-true-and-provable-facts-about-non-citizen-voting>.

¹² 52 U.S.C. § 20501.

Requested Records

The Campaign Legal Center seeks the release of the following records created on or between November 9, 2016 and the present:

1. Legal opinions, memoranda, emails, or advisories that contain information regarding:
 - a. HR 634, the Election Assistance Commission Termination Act,
 - b. any other proposal, informal or otherwise, to eliminate the EAC,
 - c. any proposal, informal or otherwise, to alter the mandate of the EAC,
 - d. any proposal, informal or otherwise, to transfer EAC responsibilities to the FEC or any other federal agency,
 - e. any proposal, informal or otherwise, to increase the EAC's budget or mandate to address cybersecurity in election administration,
 - f. any other proposal, informal or otherwise, to address cybersecurity in election administration,
 - g. any individual state or nationwide policy requiring documentary proof of citizenship to accompany a federal or state voter registration form under the NVRA, or
 - h. amendments to the NVRA to allow for state or federal documentary-proof-of-citizenship voter registration requirements.
2. Policy, educational, or program-management memoranda, advisories, or evaluations addressing:
 - a. HR 634, the Election Assistance Commission Termination Act,
 - b. any other proposal, informal or otherwise, to eliminate the EAC,
 - c. any proposal, informal or otherwise, to alter the mandate of the EAC,
 - d. any proposal, informal or otherwise, to transfer EAC responsibilities to the FEC or any other federal agency,
 - e. any proposal, informal or otherwise, to increase the EAC's budget or mandate to address cybersecurity in election administration,
 - f. any other proposal, informal or otherwise, to address cybersecurity in election administration,
 - g. any individual state or nationwide policy requiring documentary proof of citizenship to accompany a federal or state voter registration form under the NVRA, or
 - h. amendments to the NVRA to allow for state or federal documentary-proof-of-citizenship voter registration requirements.
3. Communications, including but not limited to emails,¹³ letters, social-media posts, and Twitter direct messages to or from members of the Committee on House Administration: Representatives Gregg Harper, Robert Brady, Rodney Davis, Zoe Lofgren, Barbara Comstock, Jamie Raskin, Mark Walker, Adrian Smith, and Barry Loudermilk.

¹³ Please note that this request applies to all emails, sent and received, on governmental email addresses, as well as to all emails, sent and received, on all other email addresses and accounts used to conduct official business.

4. Communications, including but not limited to emails,¹⁴ letters, social-media posts, and Twitter direct messages regarding HR 634 or any other proposal, informal or otherwise, to eliminate the EAC or alter its mandate, to or from:
 - a. any member of Congress,
 - b. any member of the White House staff, or
 - c. any member of the presidential transition team.
5. Communications, including but not limited to emails,¹⁵ letters, social-media posts, and Twitter direct messages regarding any proposal, informal or otherwise, to increase EAC's budget or mandate to address cybersecurity in election administration, to or from:
 - a. any member of Congress,
 - b. any member of the White House staff, or
 - c. any member of the presidential transition team.
6. Communications, including but not limited to emails,¹⁶ letters, social-media posts, and Twitter direct messages regarding any other proposal, informal or otherwise, to address cybersecurity in election administration, to or from:
 - a. any member of Congress,
 - b. any member of the White House staff, or
 - c. any member of the presidential transition team.
7. Communications, including but not limited to emails,¹⁷ letters, social-media posts, and Twitter direct messages regarding any individual state or nationwide policy requiring documentary proof of citizenship to accompany a federal or state voter registration form under the NVRA, to or from:
 - a. any member of Congress,
 - b. any member of the White House staff, or
 - c. any member of the presidential transition team.
8. Communications, including but not limited to emails,¹⁸ letters, social-media posts, and Twitter direct messages regarding amendments to the NVRA to allow for state or federal documentary-proof-of-citizenship voter registration requirements, to or from:
 - a. any member of Congress,
 - b. any member of the White House staff, or
 - c. any member of the presidential transition team.

With respect to the form of production, *see* 5 U.S.C. § 552(a)(3)(B), CLC requests that responsive electronic records be provided electronically in their native file format, if possible. Alternatively, CLC requests that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

Application for Waiver or Limitation of Fees

CLC requests a waiver of document search, review, and duplication fees on the grounds that disclosure of the requested records is in the public interest and because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

As discussed above, and as the cited news reports demonstrate, Mr. Trump’s baseless allegations of fraud – and how he plans to pursue them with federal governmental resources – are matters of vital public interest and has been the subject of widespread news coverage. Very little information is publicly available about the specifics of any plans for a commission or investigation, or about any federal agency conclusions about Mr. Trump’s public statements. The documents sought will contribute to the public’s understanding of these important issues.

CLC is not filing this request to further its commercial interest. CLC is a nonprofit, nonpartisan 501(c)(3) organization. Any information disclosed to CLC by way of this request will be made available to the public at no cost. CLC will also use documents responsive to the request to create analytical content—from op-eds to reports to blogs—that will further educate the public about these matters. Thus, CLC satisfies all the criteria for a fee waiver. A fee waiver would further Congress’s intent in providing for waivers for noncommercial requesters. *See Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (“Congress amended FOIA to ensure that it be liberally construed in favor of waivers for noncommercial requesters.”).

CLC also requests a fee waiver on the grounds that CLC qualifies as a “representative of the news media” and the records are not sought for commercial use. 5 U.S.C. § 552(a)(4)(A)(ii)(II). The CLC meets the statutory and regulatory definitions of a “representative of the news media” because it is an “entity that gathers information of potential interest to a segment of the public uses its editorial skills to turn the raw materials into a distinct work and distributes that work to an audience.” 5 U.S.C. § 552(a)(4)(A)(ii)(III).

As the D.C. Circuit has held, the “representative of the news media” test is focused on the requestor rather than the specific FOIA request. *Cause of Action v. FTC*, 799 F.3d 1108, 1121 (D.C. Cir. 2015). CLC satisfies this test. CLC maintains a website¹⁹ that provides a wealth of editorial content about democracy law issues, including campaign finance, voting rights, redistricting, and ethics. CLC also publishes a regularly updated blog with original editorial and educational content,²⁰ and communicates its research analysis through multiple social media platforms such as Facebook, Twitter, and Medium.²¹ CLC also disseminates original editorial and educational content to the public through op-eds,²² press releases,²³ email newsletters, public

¹⁹ Campaign Legal Center, www.campaignlegalcenter.org.

²⁰ Blog, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/262>.

²¹ Campaign Legal Center, Facebook, <https://www.facebook.com/CampaignLegalCenter/>; Campaign Legal Center, Twitter, <https://twitter.com/CampaignLegal>; Campaign Legal Center, Medium, <https://medium.com/clc-blog>.

²² *See e.g.* Trevor Potter, *Donald Trump Hasn’t Solved Any of His Conflicts of Interest*, WASH. POST (Jan. 11, 2017), https://www.washingtonpost.com/posteverything/wp/2017/01/11/donald-trump-hasnt-solved-any-of-his-conflicts-of-interest/?utm_term=.0e80b538fb8f.

²³ Press Releases, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/286>.

reports²⁴, fact sheets,²⁵ videos,²⁶ and other materials. CLC staff is frequently interviewed for news stories.²⁷ CLC additionally applies editorial skill to analyze and disseminate materials to other news media outlets, which regularly cite and rely upon CLC's work.

The D.C. Circuit has held that a requester may qualify as a news media entity if it “‘distribute[s] [its] work’ by issuing press releases to media outlets in order to reach the public indirectly.” *Cause of Action*, 799 F.3d. at 1125-26. Courts have found that other organizations with functionally similar missions engaged in similar public education activities qualify as “representatives of the news media,” even if engaged in litigation or other advocacy beyond educating the public about the operations of government. *See, e.g., id.* at 1121-25 (finding a public interest advocacy organization that comments to other media outlets about documents it obtains under FOIA a news media requester); *Elec. Privacy Info. Ctr. v. DOD*, 241 F. Supp. 2d 5, 10-15 (D.D.C. 2003) (finding nonprofit public interest group that published a biweekly email newsletter a news media requester); *Judicial Watch, Inc. v. DOJ*, 133 F. Supp. 2d 52, 53-54 (D.D.C. 2000) (finding “public interest law firm” Judicial Watch a news media requester).

“It is critical that the phrase ‘representative of the news media’ be interpreted broadly if the act is work as expected In fact, *any person or organization which regularly publishes or disseminates information to the public . . . should qualify for waivers as a ‘representative of the news media.’*” 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986), cited in *Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989). Given the foregoing, there can be no doubt that CLC performs important functions as a “representative of the news media,” as defined by the relevant statute and regulations.

In the event the fee waiver is not granted, I may not be charged for the first two hours of search time, or for the first hundred pages of duplication. Please contact me and advise me of the cost of this request if processing costs exceed \$100. You can contact me at 202-736-2200 or at dlang@campaignlegalcenter.org.

Conclusion

Pursuant to statute, CLC expects a response to this Request within twenty working days. 5 U.S.C. § 552(a)(6)(A). If the Request is denied in total or in part, CLC asks that you justify all deletions by reference to specific FOIA exemptions. If some portions of the requested records are exempt from disclosure, please disclose any reasonably segregable non-exempt portions of

²⁴ *See e.g.*, Make Democracy Count: Ending Partisan Gerrymandering, Campaign Legal Center (Aug. 10, 2016), <http://www.campaignlegalcenter.org/document/make-democracy-count-ending-partisan-gerrymandering>; Ruth Greenwood, Analysis: Partisan Gerrymandering in the 2016 Election, Campaign Legal Center (Jan. 9, 2017), <http://www.campaignlegalcenter.org/news/blog/analysis-partisan-gerrymandering-2016-election>; Funding the Presidential Nominating Conventions: How a Trickle of Private Money Turned Into a Flood, Campaign Legal Center (June 14, 2016), <http://www.campaignlegalcenter.org/document/funding-presidential-nominating-conventions-how-trickle-private-money-turned-flood>.

²⁵ *See e.g.*, Backgrounder: Record of Supreme Court Nominee Neil Gorsuch on Democracy Law, Campaign Legal Center (Feb. 2, 2017), <http://www.campaignlegalcenter.org/news/update/backgrounder-record-supreme-court-nominee-neil-gorsuch-democracy-law>.

²⁶ *See e.g.*, Meet the Victims of Texas’ Voter ID Law, Campaign Legal Center (Apr. 28, 2015), <http://www.campaignlegalcenter.org/news/press-releases/meet-victims-texas-voter-photo-id-law>.

²⁷ Media Coverage, Campaign Legal Center, <http://www.campaignlegalcenter.org/news/241>.

the requested records. 5 U.S.C. § 552(b). If any portion of the requested records is exempt from disclosure, please provide an index of the withheld materials as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973).

Thank you for your prompt attention to this matter. Where possible, please send the requested records electronically via email to dlang@campaignlegalcenter.org or on a data disk to the address listed below. Please furnish all applicable paper records to: Campaign Legal Center, c/o Danielle Lang, 1411 K Street NW, Suite 1400, Washington, DC 20005.

Respectfully,

A handwritten signature in blue ink, appearing to read "Danielle Lang", with a long, sweeping flourish extending to the right.

Danielle Lang
Deputy Director of Voting Rights
Campaign Legal Center