

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

FOOD & WATER WATCH,

Plaintiff,

vs.

DONALD J. TRUMP, in his official
capacity as PRESIDENT OF THE
UNITED STATES;

and

U.S. DEPARTMENT OF
TRANSPORTATION,

Defendants.

Case No. 1:17-cv-1485 (ESH)

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

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

Preliminary Statement

1. The Trump Administration has made a practice of outsourcing policymaking to private individuals, particularly President Trump’s business associates and friends, who are unfettered by conflict-of-interest rules and other public accountability standards. This practice, by which the Administration uncritically converts private wish lists into government policy, raises a host of ethical and transparency concerns.

2. The Administration has employed this approach to address the nation’s infrastructure needs. In January 2017, President Trump established an Infrastructure Council to

advise himself and DOT on matters related to infrastructure policy. The Infrastructure Council was 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 Council also included two executives—likewise close friends and business partners of President Trump—from an investment firm and a venture capital firm.

3. The Infrastructure Council operated in private—meeting, suggesting policy proposals, and rendering advice. As a result, the Administration has now formally adopted a variety of policy recommendations and put together a 70-page memorandum laying out the Administration's plan on infrastructure.

4. Because the Administration, through the Infrastructure Council, has flouted important transparency laws, not much is known about these new infrastructure policies, the plan outlined in the 70-page memo, or who will benefit or be harmed. Nor do taxpayers and potentially affected communities have any insight into whether and how the Council considered 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. Plaintiff now sues to redress this unlawful lack of transparency. Plaintiff brings this action to enforce the Federal Advisory Committee Act, 5 U.S.C. 2 (“FACA” or “the Act”)—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. When the government fails to adhere to

FACA's requirements, public confidence in the integrity of the U.S government as a whole is diminished.

Parties

6. **Plaintiff Food & Water Watch ("FWW")** is a non-profit membership organization that focuses on corporate and government accountability relating to food, water, and corporate overreach. FWW has over 70,000 members and is based in Washington, D.C. Its mission includes championing healthy food and clean water for all. 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.

7. FWW has a distinct interest in infrastructure related to water resources. FWW believes that profit-motivated private entities should not have control over this, the most important resource. FWW thus works to prevent water privatization and instead increase public control over water, including by encouraging and helping to arrange public-public partnerships. Public-public partnerships allow two or more public water utilities or non-governmental organizations to join forces and leverage their shared capacities. Multiple public utilities are able to pool resources, buying power, and technical expertise. The benefits of scale and shared resources can deliver higher public efficiencies and lower costs. FWW believes that these public partnerships improve and promote public delivery of water through sharing best practices.

8. FWW uses its resources to increase public control over water in a variety of ways. FWW publishes evidence-based reports and fact sheets used to educate members of the public, local governments, and federal policymakers about the harms caused by water privatization. FWW works closely with local governments that are considering privatization options to develop and

implement alternative solutions, including by encouraging public-public partnerships. FWW advocates at the federal level for laws and policies that support public entities controlling water systems. And FWW provides support to its members that are engaged in fighting against water privatization.

9. Many of FWW's 70,000 members are also engaged in efforts to increase public control over water. For example, Charlie Kravotil—an FWW member—is a journalist and editor of the local newspaper *New Brunswick Today*. Mr. Kravotil writes and edits articles on issues related to water and water privatization. He has also ran for local office on the platform of ending water privatization. As a former FWW staff member, Mr. Kravotil engaged in grassroots efforts to end water privatization in New Jersey and Pennsylvania. He also established FWW's Philadelphia office specifically to engage in efforts to end fracking and water privatization.

10. **Defendant Donald J. Trump** is the President of the United States. He is sued in his official capacity.

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

Jurisdiction and Venue

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

13. 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.

Plaintiff's Injuries

14. FWW brings this action on its own behalf because the challenged conduct conflicts with, impairs, and frustrates FWW's organizational mission and priorities. The unlawful operation of the Infrastructure Council behind closed doors has caused FWW to divert and redirect its limited resources away from local community engagement to a more robust effort at the federal level. FWW has also had to divert additional resources to educating its members and local stakeholders about the Trump Administration's efforts—consistent with advice from the Infrastructure Council—to make it easier for private companies to assert control over water in communities across the country. Relatedly, FWW has diverted resources to developing strategies to help public entities continue controlling water resources despite the Trump Administration adopting policies—consistent with advice from the Infrastructure Council—that pave the way for increased private control of water resources. Finally, FWW has spent resources attempting to obtain information—separate from this litigation—from DOT and the Office of American Innovation (“OAI”) about the infrastructure policies developed in partnership with the Infrastructure Council—information that FACA requires to be publicly and readily available. FWW would use this information pursuant to its mission to support public control over water resources.

15. FWW also brings this action on behalf of its members, many of whom are injured by the unlawful operation of the Infrastructure Council behind closed doors. For example, Mr. Kravotil's journalistic efforts are made more difficult by the fact that Defendants are withholding information about infrastructure policy—specifically as it relates to water privatization—to which Mr. Kravotil is, under FACA, lawfully entitled. The policy proposals developed by the Infrastructure Council, in addition to any meeting minutes or preparatory documents, would better enable Mr. Kravotil to report on matters related to water infrastructure issues.

President Trump's Infrastructure Plans

16. President Trump, along with DOT and OAI, appear to be 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.¹ The private investments will take the form of public-private partnerships.² The anticipation of such large-scale privatization has led investors and asset managers to raise billions of dollars to finance potential transactions.³

17. Since January 2017, Defendants have been soliciting proposals to include in the Infrastructure Plan.⁴ As of May 11, 2017, the White House had received more than 500 project requests from governors, consultants, contractors, unions, and advisers.⁵ Many of the project proposals would require billions of dollars in funding.⁶

¹ See Jenny Hopkinson, *DOT eyeing rural title for infrastructure package*, PoliticoPro, June 15, 2017; See Sarah Westwood, *White House officials: Infrastructure bill could pass this year*, Wash. Examiner, June 5, 2017, <http://www.washingtonexaminer.com/white-house-officials-infrastructure-bill-could-pass-this-year/article/2624957>.

² *Id.*

³ See Mark Niquette & David Carey, *Tapping Private Sector for Roads and Bridges Poses Hurdles for Trump*, Bloomberg Pol., Feb. 13, 2017, <https://www.bloomberg.com/news/articles/2017-02-13/trump-tapping-private-sector-for-roads-and-bridges-faces-hurdles>.

⁴ See Tom Scheck, *More than 500 infrastructure projects are pitched to Trump, who will favor private money and speed*, APM Reports, May 11, 2017, <http://www.apmreports.org/story/2017/05/11/trump-infrastructure-projects>.

⁵ *Id.*

⁶ *Id.*

18. 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.⁷ He is thus proposing to reduce the time needed to secure regulatory approvals and permits from ten years to two years.⁸

19. Members of Congress have been critical of Defendants' Infrastructure Plan, calling it a "private money-making operation."⁹

President Trump Establishes the Infrastructure Council

20. In January 2017, Defendant President Trump established an Infrastructure Council to advise the White House and DOT on developing and implementing the Infrastructure Plan.

21. The Infrastructure Council was created to monitor spending on the \$1 trillion Infrastructure Plan. It has reviewed incoming project proposals and advised Defendants on which projects to fund. In addition, the Council's goals included (1) expediting approval processes, (2) re-tooling the procurement process, (3) examining and optimizing financing alternatives, and (4) reducing regulatory burdens.¹⁰ In the words of President Trump, "everything" would be "run

⁷ See Melanie Zanona, *Work begins on \$1T infrastructure plan*, The Hill, Mar. 14, 2017, <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, <http://www.cnbc.com/2017/03/10/trump-ready-to-build-infrastructure-real-estate-mogul-richard-lefrak.html>.

⁸ See Mark Niquette & Shannon Pettypiece, *Trump Says U.S. Can No Longer Accept Crumbling Infrastructure*, Bloomberg Pol., June 7, 2017, <https://www.bloomberg.com/news/articles/2017-06-07/trump-to-outline-infrastructure-plan-that-includes-rural-funding>.

⁹ See Pedro Nicolaci da Costa, *Democrats say Trump's infrastructure plan is 'just a private money-making operation'*, Bus. Insider, June 7, 2017, <http://www.businessinsider.com/democrats-respond-to-trumps-infrastructure-plan-2017-6>.

¹⁰ 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.

by them.”¹¹

22. President Trump named Richard LeFrak and Steven Roth to lead the council.¹² In January 2017, President Trump announced that LeFrak and Roth had “already agreed” to oversee the Council.¹³ A spokesman for LeFrak confirmed that President Trump had made such a request.¹⁴ And Roth later described himself as an “advisor” for the Infrastructure Council.¹⁵

23. 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.

24. Both have significant business interests that may 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.¹⁶ LeFrak is developing multi-billion dollar projects in New Jersey and Florida and has

¹¹ *Partial Transcript: Trump’s Interview with The Times*, N.Y. Times, Apr. 5, 2017, <https://www.nytimes.com/2017/04/05/us/politics/donald-trump-interview-new-york-times-transcript.html>.

¹² See Peter Grant & Ted Mann, *Donald Trump Asks Richard LeFrak, Steven Roth To Monitor Infrastructure Plan’s Costs*, Wall St. J., Jan. 16, 2017, <https://www.wsj.com/articles/donald-trump-asks-richard-lefrak-steven-roth-to-monitor-infrastructure-plans-costs-1484591989?mg=id-wsj>.

¹³ *Id.*

¹⁴ Mark Niquette, *States Send Trump Wish Lists for Promised Infrastructure Plan*, Transp. Topics, Jan. 23, 2017, <http://www.ttnews.com/articles/states-send-trump-wish-lists-promised-infrastructure-plan>.

¹⁵ Christian B. Bautisa, *Vornado’s Roth: ‘Board has a robust succession plan if I get hit by a bus’*, Real Estate Wkly., Feb. 15, 2017, <http://rew-online.com/2017/02/15/vornados-roth-board-has-a-robust-succession-plan-if-i-get-hit-by-a-bus/>.

¹⁶ See Jim Zarroli, *Real Estate Firm With Ties To Trump May Build the New FBI Headquarters*, Nat’l Pub. Radio, June 23, 2017, <http://www.npr.org/2017/06/23/534028094/real-estate-firm-with-ties-to-trump-may-build-the-new-fbi-headquarters>.

questioned how much firms like his should pay for public works that benefit their assets.¹⁷

25. Joshua Harris, cofounder of private equity giant Apollo Global, and William E. Ford, CEO of General Atlantic (another private equity firm), later joined the Infrastructure Council.¹⁸

26. Harris has business connections with the company CIM, which has been involved in at least seven real estate deals benefitting President Trump or Jared Kushner.¹⁹

27. LeFrak characterized the Council as a group of “gentlemen on the little unofficial advisory council.”²⁰

28. Publicly available information, including LeFrak and Roth’s own statements, reveals a close working relationship between the Infrastructure Council and Defendants:

- a. In January, LeFrak described his role: “Part of our assignment is to advise him [President Trump] as best we can on the merits of these different things.”²¹
- 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

¹⁷ 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/.

¹⁸ E.B. Solomont, *New York eyes outsized share of \$1 Trillion prize*, The Real Deal, Mar. 1, 2017, https://therealdeal.com/issues_articles/new-york-eyes-outsized-share-of-1-trillion-prize/.

¹⁸ Kate Kelly & Julie H. Davis, *Lawsuit Challenges Secrecy of White House Advisers on Infrastructure*, N.Y. Times, July 25, 2017, <https://www.nytimes.com/2017/07/25/us/politics/lawsuit-infrastructure-trump.html?mcubz=0>.

¹⁹ Andrea Bernstein & Ilya Marritz, *Trump & Kushner’s Little-Known Business Partner*, WYNC, May 25, 2017, <http://www.wnyc.org/story/trump-kushner-little-known-business-partner/>.

²⁰ Interview with Richard LeFrak, CEO, LeFrak Org., Fox Bus. TV, Mar. 23, 2017, <http://video.foxbusiness.com/v/5357583541001/?#sp=show-clips>.

²¹ Sarah Mulholland & 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>.

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.”²²

c. At a Town Hall meeting, President Trump said that the Infrastructure Council, headed by his “two friends” LeFrak and Roth would be working with Department of Transportation Secretary Chao to “cut a lot of red tape.”²³

29. Secretary Chao acknowledged the existence of the Infrastructure Council in May 2017: “I want to compliment the infrastructure council, you know, because these are leading thought leaders in our country. Richard and others, Steve Roth, Josh Harris, Bill Ford. They are volunteers. They have given up their time and their life’s experience and finding the best way to build our infrastructure for the future.”²⁴

30. Infrastructure Council members have also been consulting with the White House Office of American Innovation, led by Jared Kushner.²⁵ Reed S. Cornish, Assistant to the President for Intergovernmental and Technology Initiatives, is also part of OAI.²⁶

²² Transcript of Vornado Realty Trust’s CEO Steven Roth on Q4 2016 Results Earnings Call (Feb. 14, 2017).

²³ Press Release, The White House, *Remarks by President Trump and Vice President Pence at CEO Town Hall on Unleashing American Business*, Apr. 4, 2017, <https://www.whitehouse.gov/the-press-office/2017/04/04/remarks-president-trump-and-vice-president-pence-ceo-town-hall>.

²⁴ Interview with Elaine Chao, Sec’y, DOT, & Richard LeFrak, CEO, LeFrak Org., CNBC, May 1, 2017, <https://www.cnbc.com/video/2017/05/01/rebuilding-america-with-transportation-sec-chao-and-richard-lefrak.html?play=1+>.

²⁵ *See Trump wants regulations streamlined in infrastructure bill*, The Associated Press, Apr. 11, 2017, <http://abcnews.go.com/amp/Politics/wireStory/trump-regulations-streamlined-infrastructure-bill-46738625>.

²⁶ *See, e.g., John Fritze, Baltimore developer Reed Cordish has big job in the Trump administration: Fix the government*, Baltimore Sun, Apr. 29, 2017, <http://www.baltimoresun.com/news/maryland/politics/bs-md-reed-cordish-20170429-story.html>.

31. The draft executive budget released in March, reflected the importance of the Infrastructure Council, with a proposal to defund established federal infrastructure programs in favor of putting the Infrastructure Council in charge of what could be \$1 trillion of federal infrastructure spending.²⁷

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. The Infrastructure Council did not publish notices 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.

33. Given the failure of the Infrastructure Council to publish notices of its meetings, as required by FACA, the total number of meetings is unknown, other than by Defendants. At least the following encounters and meetings occurred, however:

- a. In February 2017, LeFrak met with President Trump at Mar-a-Lago to discuss infrastructure—specifically, the construction of the border wall.²⁸
- b. On March 8, 2017, the White House held a meeting on infrastructure with President Trump, Secretary Chao, and members of the Infrastructure Council including LeFrak, Roth, Harris, and Ford.²⁹ Mr. Kushner either joined in that

²⁷ See Daniel Geiger, *With Trump's infrastructure council cancelled, what becomes of Gateway?*, Crain's, Aug. 18, 2017, http://www.crainsnewyork.com/article/20170818/REAL_ESTATE/170819877/end-of-trumps-infrastructure-council-casts-doubt-over-gateway-funding; See also Daniel Geiger, *Tunnel mega project hinges on fate of aging bridge*, Crain's, May 22, 2017, http://www.crainsnewyork.com/article/20170522/REAL_ESTATE/170529986/tunnel-mega-project-hinges-on-fate-of-aging-portal-bridge#.

²⁸ Nicholas Confessore, et al., *Trump's 'Winter White House': A Peek at the Exclusive Members' List at Mar-a-Lago*, N.Y. Times, Feb. 18, 2017, <https://www.nytimes.com/2017/02/18/us/mar-a-lago-trump-ethics-winter-white-house.html>.

²⁹ See, e.g., David Shephardson, *Trump talks infrastructure with Musk, developers*, Reuters, Mar. 8, 2017, <http://www.reuters.com/article/us-usa-trump-infrastructure-musk-idUSKBN16F1JI>

meeting, or a separate meeting with the President, Secretary Chao, and members of the Infrastructure Council.³⁰ The meeting that included Mr. Kushner was focused on identifying “regulatory roadblocks that have been killing projects before they’ve even begun.”³¹

c. On June 7, 2017, LeFrak joined Cabinet Secretaries and Special Assistant to the President for Infrastructure DJ Gribbin at a speech given by the President on infrastructure. A fact sheet provided at that speech set forth plans to reduce project permitting time and to speed up the decision-making process.³²

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

35. The Infrastructure Council has provided advice to the President, the Department of Transportation, and the executive branch, generally. As Lefrak stated in an interview alongside Secretary Chao: “I know the advisory council is working hard to give some suggestions to the government.”³³ Given the operation of the Infrastructure Council in secret, the extent of the

(describing a meeting between President Trump, §LeFrak, Roth, Secretary of Transportation Elaine Chao, and others about infrastructure related issues.); Dan Merica, *Elon Musk, other business leaders to talk infrastructure with Trump Wednesday*, CNN Money, Mar. 8, 2017, <http://money.cnn.com/2017/03/08/news/companies/elon-musk-donald-trump/index.html>; Emily Babay, *76ers owner Josh Harris met with President Trump this week*, Phila. Inquirer, Mar. 10, 2017, <http://www.philly.com/philly/blogs/real-time/76ers-owner-Josh-Harris-Donald-Trump-meeting-infrastructure.html>; Belvedere, *supra* note 7.

³⁰ Hiroko Tabuchi, *Trump Cuts Leave Bridge & Rail Projects Hanging*, N.Y. Times, Apr. 5, 2017, <https://www.nytimes.com/2017/04/05/business/dealbook/bridge-rail-infrastructure-trump.html>.

³¹ *Id.*

³² Tanya Snyder, *Trump offers few details in Cincinnati infrastructure speech*, PoliticoPro, June 7, 2017, <https://www.politicopro.com/transportation/whiteboard/2017/06/trump-offers-few-details-in-cincinnati-infrastructure-speech-088775>.

³³ Interview with Chao & LeFrak, *supra* note 24.

council's policy recommendations is unknown, except by Defendants. At least the following recommendations have been made:

- a. In March 2017, LeFrak explained that the Council was recommending ways to improve and expedite the infrastructure permitting process.³⁴
- b. After the March 8, 2017 meeting, LeFrak stated that the Council was reviewing the bankruptcy court arbitration process as a model for how to expedite infrastructure permitting, saying “[w]e’re asking them to try it.”³⁵ This process would designate one individual with the final decision on all project issues.³⁶
- c. In May 2017, “a group of” the Infrastructure Council expressed support for a gas tax as part of the infrastructure plan, which the President considered, and initially expressed support for.³⁷
- d. Upon information and belief, LeFrak specifically recommended that the President revoke Executive Order 13690, the Federal Flood Risk Management Standard, which had created a flood risk reduction standard for federally funded projects. Revocation of this Executive Order was an issue on which the LeFrak Organization had previously lobbied.³⁸

³⁴ Interview with LeFrak, *supra* note 20.

³⁵ Herbert Lash & Luciana Lopez, *Trump advisers see arbitration as way to speed infrastructure plans*, Reuters, Mar. 14, 2017, <https://www.reuters.com/article/us-usa-trump-infrastructure/trump-advisers-see-arbitration-as-way-to-speed-infrastructure-plans-idUSKBN16L2VE>.

³⁶ *Id.*

³⁷ Sarah Ferris & Jennifer Scholtes, *Trump attempts omnibus glory-gab*, PoliticoPro, May 2, 2017, <https://www.politicopro.com/tipsheets/budget-appropriations-brief/2017/05/trump-attempts-omnibus-glory-gab-022641>.

³⁸ Winning Strategies Washington, *Lobbying Report* (Jan. 19, 2017), <https://soprweb.senate.gov/index.cfm?event=getFilingDetails&filingID=BD8197BE-4B2E-4054-8CB6-FEAE61F8350D&filingTypeID=78>.

36. The Trump Administration's actions mirror the advice provided by the Infrastructure Council.

a. In June 2017, the White House released a fact sheet detailing ways it intended to reduce project permitting time from ten years to two years.³⁹

b. In August 2017, Defendant President Trump signed Executive Order 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure ("EO 13807"), which aimed, according to the White House, to reduce permitting time for big infrastructure projects.⁴⁰

c. EO 13807 includes a section setting forth requirements that there be "one federal decision" which requires that a lead agency coordinate with the heads of all other agencies involved in the project to expedite it through permitting.⁴¹ This policy is consistent with the proposal LeFrak announced following the March 8, 2017 meeting.⁴²

d. EO 13807 also requires all permitting decisions to be made within ninety days after all agencies sign a Record of Decision⁴³—a requirement that is consistent with LeFrak's critiques of the time required to obtain a permit.⁴⁴

³⁹ Press Release, The White House, *President Donald J. Trump Works to Rebuild American Infrastructure* (June 7, 2017), <https://www.whitehouse.gov/the-press-office/2017/06/07/president-donald-j-trump-works-rebuild-american-infrastructure>.

⁴⁰ Exec. Order No. 13807, 82 Fed. Reg. 40463 (Aug. 24, 2017).

⁴¹ *Id.* at 40466.

⁴² Kim Slowey, *Will Trump's order to speed up infrastructure approvals work?*, Construction Dive, Sept. 7, 2017, <https://www.constructiondive.com/news/will-trumps-order-to-speed-up-infrastructure-approvals-work/504384/>.

⁴³ 82 Fed. Reg. at 40466.

⁴⁴ *See* Belvedere, *supra* note 7.

e. EO 13807 also revoked Executive Order 13690, the Federal Flood Risk Management Standard.⁴⁵

37. In another example of alignment between the Infrastructure Council's preferences and the Administration's policies, the Infrastructure Council was planned to foster public-private development projects,⁴⁶ a method of development that Secretary Chao later promoted.⁴⁷

38. In addition, the White House has recently announced—following the seven months in which the Infrastructure Council was operating and providing recommendations on infrastructure policy—a 70-page memorandum detailing the Administration's infrastructure plan.⁴⁸ Mr. Cordish has said: “[t]he White House has a 70-page memo of principles for a \$200 billion infrastructure plan and intends to submit proposed legislation to Congress early next year after tax reform is settled.”⁴⁹ This document is not available to the public.

Executive Order Announcing the Presidential Advisory Council on Infrastructure

39. In an effort to formalize the Infrastructure Council, on July 19, 2017, President Trump issued Executive Order No. 13805 announcing the existence of the Presidential Advisory Council on Infrastructure (EO 13805).⁵⁰

⁴⁵ 82 Fed. Reg. at 40469.

⁴⁶ See Belvedere, *supra* note 7.

⁴⁷ Transcript of Elaine Chao, Sec'y, DOT, at Am. Pub. Transp. Ass'n Annual Conference, Oct. 11, 2017, <https://www.transportation.gov/briefing-room/american-public-transportation-association-annual-conference>.

⁴⁸ See Steven Overly, *Cordish: White House talking with Musk, prepping infrastructure plan*, PoliticoPro, Nov. 13, 2017, <https://www.politicopro.com/technology/article/2017/11/cordish-white-house-talking-with-musk-prepping-infrastructure-plan-164945>.

⁴⁹ *Id.*

⁵⁰ See Exec. Order No. 13,805, 82 Fed. Reg. 34383 (July 19, 2017).

40. However, in August 2017, following the President’s remarks on a white supremacy march in Charlottesville, Virginia, the White House announced that the Infrastructure Council—along with two other councils of business leaders—would not move forward.⁵¹

41. On September 29, 2017, President Trump revoked EO 13805.

42. Still, President Trump has reportedly continued to have discussions with LeFrak and Roth after the White House announced the disbanding of the Infrastructure Council.⁵²

Statutory Framework

43. In 1972, Congress enacted FACA, 5 U.S.C. 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. app. 2 § 2(a).

44. 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,

⁵¹ See Ted Mann, *White House Pulls Plug on Infrastructure Advisory Panel*, Wall St. J., Aug. 17, 2017, <https://www.wsj.com/articles/white-house-pulls-plug-on-infrastructure-advisory-panel-1503003805>.

⁵² See, e.g., Jeremy W. Peters & Maggie Haberman, *Bannon was Set for a Graceful Exit. Then Came Charlottesville.*, N.Y. Times, Aug. 20, 2017, https://www.nytimes.com/2017/08/20/us/politics/steve-bannon-fired-trump-departure.html?mcubz=0&_r=1; Glenn Thrush & Maggie Haberman, *Forceful Chief of Staff Grates on Trump, and the Feeling is Mutual*, N.Y. Times, Sept. 1, 2017, <https://www.nytimes.com/2017/09/01/us/politics/john-kelly-trump.html>; Katherine Clark, *How loyal is LeFrak?*, The Real Deal, Sept. 1, 2017, https://therealdeal.com/issues_articles/how-loyal-is-lefrak/.

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), 10(b)-(c).

45. 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. app. 2 § 3(2).

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

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

48. 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.⁵³

⁵³ See Letter from Citizens for Responsibility & Ethics in Wash. to Donald F. McGahn, White House Counsel (Feb. 1, 2017), <https://s3.amazonaws.com/storage.citizensforethics.org/wp-content/uploads/2017/02/01203132/DOC170201-20170201152716.pdf> (advisory committee on judicial nominations); Letter from Citizens for Responsibility & Ethics in Wash. to Donald F. McGahn, White House Counsel (Feb. 3, 2017), <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 Has Violated FACA

49. The Infrastructure Council operated in violation of FACA since January 2017.

50. 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.

51. 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 and investors.⁵⁴

52. The Infrastructure Council has not complied with the openness requirements of FACA in multiple ways:

a. Notice of Council meetings has not been published in the Federal Register, in violation of 5 U.S.C. 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. app. 2 § 10(b).

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

53. 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.”

⁵⁴ See supra note 12.

Claim for Relief

COUNT ONE (For relief under the APA, and for Mandamus Relief under 28 U.S.C. § 1361, declaring that Defendants and the Infrastructure Council failed to comply with their non-discretionary duties under Section 5 and Section 10 of FACA, 5 U.S.C. app. 2 §§ 5, 10)

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

55. By failing to appoint members who represent alternative viewpoints, Defendants failed to “require the membership of the advisory committee . . . be fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee,” which is a non-discretionary duty under FACA, 5 U.S.C. app. 2 § 5(b)(2).

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

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

58. 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, Defendants and the Infrastructure Council have failed to carry out the non-discretionary openness requirements of FACA, 5 U.S.C. app. 2 § 10(b).

59. Plaintiff has been injured by this failure in the manner alleged above.

WHEREFORE, Plaintiff prays that this Court:

1. Declare that the Infrastructure Council operated 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 Defendants 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. Compel 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), including but not limited to the 70-page memo detailing the Administration's infrastructure plan; and
6. Award Plaintiff attorney's fees and costs of suits, as well as any and all other relief this Court deems appropriate.

Dated: 11/20/2017

Respectfully submitted,

/s/ Javier M. Guzman

Javier M. Guzman

(D.C. Bar No. 462679)

Karianne M. Jones* (*pro hac vice*)

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