

STATE OF FLORIDA

ASHLEY MOODY
ATTORNEY GENERAL

April 20, 2021

The Honorable Joseph R. Biden, Jr.
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

RE: Executive Order 14023

Dear President Biden:

I was disappointed to read your April 9, 2021 Executive Order (“EO 14023”) regarding packing the United States Supreme Court. The Court’s job is to interpret the law, not to implement the political will of one party.

During the campaign, you indicated that you would let voters know your position on court-packing after the election. For the last one hundred and sixty-four days, the American people have been anxiously awaiting your answer. If EO 14023 is not an outright endorsement of court-packing, then your failure to explain your views on the matter is a broken campaign promise.

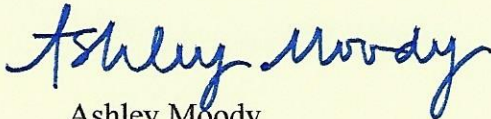
Given this lack of transparency, I wanted to remind you of your obligations under the Federal Advisory Committee Act (“FACA”). FACA is designed to ensure public access to meetings of advisory committees like the one EO 14023 created. *See* 5 U.S.C. app. 2 § 10(a)(1) (requiring that “[e]ach advisory committee meeting shall be open to the public”). This is especially important here, where your contemplated actions threaten the rule of law and institutional norms, and where you have intentionally hidden your views on the matter from the American people immediately before an election.

Further, your executive order casts doubt on whether you even believe FACA applies. *See* EO 14023 § 4(c) (casting doubt on the matter by stating “[i]nsofar as the Federal Advisory Committee Act . . . may apply to the Commission” (emphasis added)). EO 14023 also requires a written report “within 180 days of the date of the Commission’s first *public* meeting,” leaving

open whether the Commission will hold non-public meetings. *See* EO 14023 § 3(c) (emphasis added). Your press release on the matter is similarly vague, stating that the Commission will “hold public meetings to hear the views” of various groups in order “[t]o ensure that the Commission’s report is comprehensive,” but remaining silent on whether all Commission-meetings will be open to the public.¹ Also, it is questionable that the Commission’s composition is fair and balanced as required by 5 U.S.C. app. 2 § 5(b)(2). *See Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 447 (1989) (“Advisory committees established by... the President...must also be ‘fairly balanced in terms of the points of view represented and the functions’ they perform.”).

I ask that you now publicly commit to making all such meetings—including phone calls and video conferences—open to the public. Individuals from Florida’s government, for example, wish to observe the meetings on behalf of the people of Florida, to whom the rule of law is of the utmost importance. I also ask that you publicly commit to complying with all other requirements of FACA. Please respond with your commitment within seven days of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Ashley Moody". The signature is written in a cursive, flowing style.

Ashley Moody
Florida Attorney General

¹ <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/09/president-biden-to-sign-executive-order-creating-the-presidential-commission-on-the-supreme-court-of-the-united-states/>.