

Mauro Albert Morales, Staff Director
U.S. Commission on Civil Rights

January 24, 2023

Dear Mr. Morales,

We are writing to request that the U.S. Commission on Civil Rights withdraw its November 2021 appointment of Cleta Mitchell to the U.S. Election Assistance Commission’s Board of Advisors. As you are aware, Mitchell testified before the congressional January 6 committee in 2022 that no one in the American public has a constitutional right to vote for President of the United States. This view is incompatible with the missions of both the Commission on Civil Rights and the Election Assistance Commission.

Background

Under the Help America Vote Act of 2002, the Election Assistance Commission (EAC) is charged with serving as a national clearinghouse and resource for the compilation of information on election administration, including “promot[ing] the effective administration of Federal elections.” 52 U.S.C. § 20922. The EAC relies on a Board of Advisors to assist it in certain key efforts, including developing “program goals, long-term plans, mission statements, and related matters”; selection of the Election Assistance Commission’s Executive Director; and reviewing the Commission’s proposed voluntary voting system guidelines and proposed voluntary guidance to states. 52 U.S.C. §§ 20922, 20942.

Under 52 U.S.C. § 20944(a)(10), the Commission on Civil Rights appoints two members to the EAC’s Board of Advisors.

Cleta Mitchell

As you know, Ms. Mitchell was deeply enmeshed in the disgraced former President Trump’s efforts to overturn the 2020 federal election. Her involvement, as detailed in the January 6th Committee’s final report, includes her participation in a January 2, 2021 phone call in which she and Trump made false statements in an attempt to convince the Georgia Secretary of State to “find” enough votes for Trump to (falsely) win the state.¹ A disciplinary complaint before the D.C. bar is already pending against her for this misconduct.²

¹ Final Report of the Select Committee to Investigate the January 6th Attack on the United States Capitol, H. Rep. 117-663, <https://www.govinfo.gov/app/details/GPO-J6-REPORT/>.

² The 65 Project, *Ethics Complaint Against Cleta Mitchell* (Mar. 7, 2022), <https://the65project.com/ethics-complaint-against-trump-attorney-cleta-mitchell/>.

The January 6th Committee’s final release of documents adds new information. In her sworn deposition, Ms. Mitchell stated her personal view that the American public has *no right* to vote for the President of the United States, and that the public’s vote in the most important federal election is merely “advisory” as state legislatures make the actual choice. As she explained:

The Constitution of the United States grants plenary power to state legislatures to [choose] the electors of the state. . . . There’s nothing in the Constitution about allowing people, citizens to vote on electors. Now, that is something that legislatures have over time decided they want to do. But in my view, according to the Constitution, that’s an advisory role that happens because the legislature has created a mechanism to conduct the election.

. . . [T]he legislature can use -- choose to use what the people have decided. But that’s not in the Constitution. And so I think that that is one of the things that we hadn’t really -- as a country, we haven’t focused on that. But that is what the Constitution says. . . . The legislature has the authority to choose the electors. And they don’t have to ask anybody’s position, in my view. And that’s my position and I think that that’s what the Constitution says, and I think there’s ample authority to support that view.³

These views are unacceptable for a member of the EAC’s Board of Advisors, or for a designee of the Commission on Civil Rights. The fundamental mission of the Commission on Civil Rights is to investigate deprivations of “the right of citizens of the United States to vote and have votes counted.” 42 U.S.C. § 1975a(a)(1). And the Board of Advisors assists the EAC in its mission of “promot[ing] the effective administration of Federal elections.” 52 U.S.C. § 20922.

But in Ms. Mitchell’s view, “effective administration of Federal elections” is irrelevant because arguably the most important federal election—the vote for president—is merely “advisory.” And in her view, deprivations of “the right of citizens of the United States to vote” for president cannot possibly exist, because there *is* no right to vote in this critical election. In her view, the vote for which generations have fought and died is merely “advisory,” and the American public has less of a voice in presidential elections than in selecting the next winner of *American Idol*.

Mitchell’s appointment should be revoked

We recognize that there are differing views on precisely which actions constitute a deprivation of the right to vote. But Ms. Mitchell does not even believe that there *exists* a right to vote.

The Commission on Civil Rights must uphold its own mission and integrity. Here, the Commission has appointed to a key federal advisory board an individual whose sworn views, stated under oath, are repugnant to those of the Commission itself, the EAC advisory board to which the Commission appointed her, and the very concept of democracy and fair elections.

³ Cleta Mitchell Depo., May 18, 2022, at 20-21, <https://www.govinfo.gov/content/pkg/GPO-J6-TRANSCRIPT-CTRL0000083769/pdf/GPO-J6-TRANSCRIPT-CTRL0000083769.pdf>.

They are incompatible with her continued service on the EAC's Board of Advisors or representation, even indirectly, of the Commission. In that respect, they are at *least* as serious as, e.g., a violation of the Office of Government Ethics' guidelines for federal advisory committee members.

Other federal agencies have recognized the need to replace advisory committee members when they can no longer serve in the capacity for which they were appointed. For example, the U.S. Department of Transportation's order on committees subject to the Federal Advisory Committee Act specifies that "[a] member's status as a representative of a designated party or interest terminates if the member's status or relationship with the designated party or interest materially changes after appointment," unless four specific criteria (including that "the member's continued participation is deemed essential for the fulfillment of the committee's mission") are satisfied.⁴ Here, Ms. Mitchell's ability to represent the interest for which she was appointed is irrevocably compromised.

We urge you to revoke Ms. Mitchell's appointment and replace her, for the balance of her term, with a candidate who acknowledges that the American people have the right to vote for President of the United States.

Sincerely,

Ron Fein, Legal Director
John Bonifaz, President
Ben Clements, Chairman and Senior Legal Advisor
Free Speech For People

⁴ U.S. Dep't of Transportation, Committee Management Policy and Procedures (July 6, 2022), DOT 1120.3D, § 10(f)(1), at 13, *available at* bit.ly/3kcgUhv. For committee members who are designated as Special Government Employees, even more stringent requirements would apply. *See id.* § 10(f)(2).