

# Presidential Commission on the Supreme Court of the United States

## By-laws

Adopted on May 19, 2021

The following By-Laws (“By-Laws”) will govern the operations of the Presidential Commission on the Supreme Court of the United States (“Commission”).

### **Section I: Purpose**

Pursuant to Executive Order (EO) 14023 of April 9, 2021, the Commission, being advisory in nature, shall produce a report for the President, due within 180 days of the date of the Commission’s first public meeting. The report will provide:

- (i) An account of the contemporary commentary and debate about the role and operation of the Supreme Court in our constitutional system and the functioning of the constitutional process by which the President nominates and, by and with the advice and consent of the Senate, appoints Justices to the Supreme Court;
- (ii) The historical background of other periods in the Nation’s history when the Supreme Court’s role and the nominations and advice-and-consent process were subject to critical assessment and prompted proposals for reform; and
- (iii) An analysis of the principal arguments in the contemporary public debate for and against Supreme Court reform, including an appraisal of the merits and legality of particular reform proposals.

### **Section II: Authority**

The Commission is established in accordance with EO 14023, titled “Establishment of the Presidential Commission on the Supreme Court of the United States”, issued on April 9, 2021, and is governed by the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App.

### Section III: Membership

**(A) In General.** The Commission shall be composed of not more than 36 members appointed by the President.

**(B) Chair.** The President shall designate two members of the Commission to serve as Co-Chairs.

**(C) Vacancies.** Any vacancies that occur during the course of the Commission's work may be filled in the same manner as the original appointment.

**(D) Terms.** Members will serve for the duration of the Commission.

### Section IV: Staff

**(A) In General.** To the extent permitted by law and subject to the availability of appropriations, the General Services Administration (GSA) (Office of Government-wide Policy) shall provide/coordinate administrative services, including facilities, staff, equipment, and other support services as may be necessary to carry out the objectives of the Commission.

**(B) Designated Federal Officer.** The Designated Federal Officer ("DFO") will be a full-time GSA officer or employee appointed by the GSA Administrator. The DFO will approve or call all meetings, prepare all meeting agendas, attend all meetings, and adjourn any meeting when the DFO determines adjournment to be in the public interest at both the Commission and subcommittee level. The DFO is the central point of contact for the administrative operation of the Commission and its subcommittees, and is responsible for assuring the Commission complies with FACA. The DFO works closely with Commission members on administrative support needed for the duration of the Commission.

### Section V: Meetings

**(A) In General.** It is estimated that the Commission will meet six times in six months, subject to members' schedules and other considerations. Subcommittees will meet as deemed necessary by the Commission co-chairs and subcommittee chairs.

**(B) Notice.** A notice of each Commission meeting will be published in the *Federal Register* at least 15 calendar days before the meeting, except in exceptional circumstances. The notice will include (1) the name of the Commission; (2) the time, date, place, and purpose of the meeting; (3) a summary of the agenda; (4) a statement as to whether all or part of the meeting is open to the public and, if any part is closed, a statement as to why, citing the specific exemption(s) of the Government in the Sunshine Act (5 U.S.C. § 552b(c)) as the basis for closure; and (5) the name and telephone number of the DFO who may be contacted for additional information concerning the meeting.

**(C) Agenda.** The Co-Chairs, in consultation with the DFO, shall establish the agenda for all Commission meetings. The DFO will prepare and distribute the agenda to the members before each meeting. Commission agendas will be made available to members of the public on the Commission website. Items for the agenda may be submitted to the Co-Chairs by any member and may also be suggested by any member of the public.

**(D) Quorum.** Commission and subcommittee meetings will be held only when a quorum is present. For purposes of this Commission, a quorum is defined as a simple majority of the members (including the Co-Chairs) serving on the Commission or subcommittee.

**(E) Open Meetings.** Commission meetings will be open to the public unless the GSA Administrator, in consultation with GSA's Office of General Counsel, makes a determination in advance that a meeting may be fully or partially closed per an exclusion in the Government in the Sunshine Act, 5 U.S.C. 552b(c). All materials brought before, or presented to, the Commission during the conduct of an open meeting will be available to the public at the time of the scheduled meeting. All such materials also will be made available on the Commission's website as soon as practicable.

**(F) Minutes.** Meeting minutes will be prepared for each Commission meeting, certified by the Co-Chairs within 90 calendar days of the meeting to which they relate, distributed to the members, and posted to the Commission website. Minutes of open or closed meetings will be available to the public, subject to the withholding of matters which are exempt from disclosure under the Freedom of Information Act (5 U.S.C. §552) (FOIA) and the Presidential Records Act. The minutes will include: (1) the time, date, and place of the Commission meeting; (2) a list of the persons who were present at the meeting; (3) an accurate description of each matter discussed and the resolution, if any, made by the Commission

regarding such matter; and (4) copies of each report or other document received, issues, or approved by the Commission at the meeting.

**(G) Public Comment.** The Commission encourages public input. Members of the public may attend any open meeting and may submit written statements to the Commission at any time for consideration by the members.

## **Section VI: Voting**

**(A) In General.** When a decision of the Commission is required, the Co-Chairs shall request or accept a motion for a vote. Any member, including the Co-Chairs, may make a motion for a vote. No second after a proper motion will be required to bring any issue or recommendation to a vote. A quorum must be present when a vote is taken.

**(B) Voting Eligibility.** Only the members, including the Co-Chairs, may vote on a motion.

**(C) Voting Procedures.** Votes will be taken and tabulated by a roll call of Commission members present or, in the discretion of the co-chairs, by voice vote.

**(D) Reporting of Votes.** In reporting the results of Commission voting, the following terms will apply:

- **Unanimous Decision.** Results when every Commission member, except abstentions, is in favor of, or opposed to, a particular motion;
- **General Consensus.** Results when two-thirds of the total vote cast are in favor of, or are opposed to, a particular motion; and
- **General Majority.** Results when a majority of the total votes cast are in favor of or are opposed to a particular motion.

## **Section VII: Subcommittees**

The Commission is authorized to create subcommittees, in consultation with GSA, as necessary to support the Commission's work. Subcommittee membership will be composed solely of members from the Commission. The DFO will notify GSA's Committee Management Officer (CMO) upon the establishment of each subcommittee

and will provide the CMO with information on its name, membership, function, and estimated frequency of meetings. Subcommittees must not incur costs or expenses without prior consultation with the DFO and express written authorization of the Co-Chairs. The subcommittees report back to the Commission and must not provide advice or submit work products directly to the President or any official within GSA or the executive branch.

### **Section VIII: Recordkeeping**

The records of the Commission and any subcommittees will be maintained pursuant to the Presidential Records Act of 1978 and FACA.

### **Section IX: Compensation**

Members of the Commission shall serve without compensation for their work on the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, to the extent permitted by law for persons serving intermittently in the Government service.

### **Section X: Termination**

The Commission shall terminate 30 days after it submits its report to the President, consistent with EO 14023.

### **Section XI: Amendment of By-Laws**

Amendments to the By-Laws must conform to the requirements of the EO, charter establishing the Commission, and FACA, and be agreed to by two-thirds of the members. The DFO must ensure that all members receive a copy of the proposed amendment before any vote is taken on it.