

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Roger Severino,

Plaintiff,

v.

Joseph R. Biden Jr., in his official capacity as President of the United States; **Catherine M. Russell**, in her official capacity as director of the White House Presidential Personnel Office; **Gautam Raghavan**, in his official capacity as deputy director of the White House Presidential Personnel Office; **United States of America,**

Defendants.

Case No. 1:21-cv-00314

COMPLAINT

Plaintiff Roger Severino was recently appointed to the Council of the Administrative Conference of the United States (ACUS) by President Donald J. Trump. Mr. Severino received his Commission on January 16, 2021. The statute governing ACUS provides that Mr. Severino's term on the Council lasts for three years, and the statute makes no provision or allowance for at-will Presidential removal. *See* 5 U.S.C. § 595(b).

Yesterday, Mr. Severino received an e-mail from Gautam Raghavan, the deputy director of the White House Presidential Personnel Office. The e-mail was sent "on behalf of President Biden," and it asked Mr. Severino to resign from the Council by 5:00 P.M. today. Mr. Raghavan warned Mr. Severino that if he did not resign by that time, his "appointment to the Council will be terminated."

President Biden has no authority to terminate Mr. Severino's appointment to the Council under 5 U.S.C. § 595(b) or Article II of the Constitution. Mr. Severino seeks a temporary restraining order and preliminary injunction to prevent this unlawful removal.

JURISDICTION AND VENUE

1. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this case arises under federal law.

2. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Mr. Severino's claims occurred in this district.

PARTIES

3. Plaintiff Roger Severino is a member of the Council of the Administrative Conference of the United States (ACUS).

4. Defendant Joseph R. Biden Jr. is President of the United States. President Biden is sued in his official capacity.

5. Defendant Catherine M. Russell is director of the White House Presidential Personnel Office. Ms. Russell is sued in her official capacity.

6. Defendant Gautam Raghavan is deputy director of the White House Presidential Personnel Office. Mr. Raghavan is sued in his official capacity.

7. Defendant United States of America is the federal government of the United States.

THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

8. The Administrative Conference of the United States (ACUS) is an independent agency of the federal government.

9. The Administrative Conference does not wield any executive power. It also does not exercise "quasi-legislative" or "quasi-judicial" powers. Its mission is to study

administrative procedures in federal programs and recommend improvements. *See* 5 U.S.C. § 594 (describing the powers and duties of the Administrative Conference).

10. The statute governing ACUS is called the Administrative Conference Act, and it is attached to this complaint as Exhibit 1.

11. A copy of the ACUS bylaws may be found on the Conference's website at <https://www.acus.gov/policy/administrative-conference-bylaws>.

12. The Administrative Conference consists of 75 to 101 members, as well as a small, full-time staff. *See* 5 U.S.C. § 593.

13. The chair of the Administrative Conference is appointed by the President, subject to Senate confirmation. *See* 5 U.S.C. § 593(b)(1). The chair serves a five-year term. *See id.*

14. The Council of the Administrative Conference functions as the Conference's board of directors. *See* 5 U.S.C. § 595(b) (describing the powers of the Council). The Council comprises the Chairman plus ten additional members appointed by the President for three-year terms. *See id.*

15. The Council's statutory powers are to:

(1) determine the time and place of plenary sessions of the Conference and the agenda for the sessions. The Council shall call at least one plenary session each year;

(2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly;

(3) make recommendations to the Conference or its committees on a subject germane to the purpose of the Conference;

(4) receive and consider reports and recommendations of committees of the Conference and send them to members of the Conference with the views and recommendations of the Council;

(5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman;

(6) designate such additional officers of the Conference as it considers desirable;

(7) approve or revise the budgetary proposals of the Chairman; and

(8) exercise such other powers as may be delegated to it by the Assembly.

5 U.S.C. § 595(b).

16. The Council has additional powers described in the ACUS bylaws, which include the powers to:

Approve or deny Conference membership of non-Government persons proposed for appointment by the Chairman. Bylaws § 302.2(b); 5 U.S.C. § 593(b)(6).

Approve or deny any Chairman request to the head of an appointing Government agency to designate a replacement member who is unwilling or unable to devote the necessary attention to Conference duties and approve or deny any Chairman proposal or attempt to terminate a non-Government member's appointment. Bylaws § 302.2(a).

Approve or deny proposed Chairman appointments of persons who have served as members of or liaisons to the Conference for six or more years, former members who have served as members of the federal judiciary, or former Chairmen of the Conference, to the position of senior fellow and renewals of such appointments. Bylaws § 302.2(e).

Approve or deny proposed Chairman appointments of persons who do not serve under any of the other official membership designations to the position of special counsel and renewals of such appointments. Bylaws § 302.2(f).

Approve or deny additional standing committees proposed by the Chairman or proposals to rename, modify, or terminate any standing committee. Bylaws § 302.3(a).

Approve or deny the Chairman establishing special ad hoc committees and assigning special projects to such committees and renewals or terminations of such committees. Bylaws § 302.3(b).

Approve or deny the Chairman making liaison arrangements with representatives of the Congress, the judiciary, federal agencies that are not represented on the Conference, and professional associations, and the extension of such arrangement. Bylaws § 302.4(a), (b).

17. No more than five members of the Council may be employees of federal regulatory agencies or executive departments. *See* 5 U.S.C. § 595(b). The remaining Council members must be drawn from outside the federal government. *See id.*

18. The President may, if he wishes, designate one of the Council members as Vice Chair. *See* 5 U.S.C. § 595(b).

19. The Assembly of the Conference consists of the membership of ACUS meeting in plenary session. *See* 5 U.S.C. § 595(a). The Assembly has ultimate authority over all activities of the Administrative Conference. *See id.*

20. The Assembly of the Conference is an “advisory committee” subject to the Federal Advisory Committee Act (FACA), Pub. L. 92-463 (October 6, 1972). Accordingly, the public must be given notice in the Federal Register of meetings of the Assembly, its meetings are open to the public, and any documents provided to the Assembly are available to the public.

FACTS

21. Plaintiff Roger Severino is a member of the Council of the Administrative Conference. Mr. Severino was appointed to the Council by former President Donald J. Trump, and he received his Commission on January 16, 2021.

22. The statute governing ACUS provides that Mr. Severino’s term on the Council lasts for three years, and the statute makes no provision or allowance for at-will Presidential removal. *See* 5 U.S.C. § 595(b) (“The term of each member, except the Chairman, is 3 years.”).

23. On February 2, 2021, Mr. Severino received an e-mail from Gautam Raghavan, the deputy director of the White House Presidential Personnel Office, that said:

Good afternoon,

I am writing on behalf of President Biden to request your resignation from the Administrative Conference of the United States Council by 5:00 p.m. ET tomorrow, Wednesday, February 3. If you do not resign by that time, your appointment to the Council will be terminated.

Thank you for your time and service.

Exhibit 2.

24. Mr. Severino replied to this e-mail and wrote:

Hello Gautam,

Was surprised by your note. What are the grounds for the request for my resignation so early in my appointed term?

Thanks,

Roger

Exhibit 2.

25. Neither Mr. Raghavan nor anyone else from the White House has responded to Mr. Severino's e-mail.

26. Mr. Severino has not resigned and will not resign in response to President Biden's request, and he is facing a threat of imminent termination.

27. On information and belief, Mr. Raghavan has sent similar e-mails to ACUS Council members Jennifer Dickey, Andrew Kloster, and Daniel Epstein, asking them to resign and threatening them with termination if they do not resign by 5:00 P.M. eastern time today.

CLAIM FOR RELIEF

28. President Biden has no statutory authority to terminate Mr. Severino’s appointment to the Council. The statute governing ACUS provides that Mr. Severino’s term “is 3 years,” at it makes no provision or allowance for at-will presidential removal. *See Wiener v. United States*, 357 U.S. 349 (1958).

29. President Biden has no constitutional authority under Article II to terminate Mr. Severino’s appointment to the Council. The Council does not wield *any* executive power—indeed, it does not wield any power at all as a purely advisory entity—so President Biden has no constitutional power to terminate Mr. Severino or any other member of the Council. *See Humphrey’s Executor v. United States*, 295 U.S. 602 (1935); *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183, 2199–2200 (2020) (acknowledging that the President has no constitutional prerogative to remove members of “multimember expert agencies that do not wield substantial executive power”).

30. President Biden’s threatened termination of Mr. Severino and his fellow members is therefore unlawful and should be promptly enjoined.

31. Mr. Severino brings his claim under the causes of action established in 5 U.S.C. § 704, 28 U.S.C. § 2201, and *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 689–91 (1949).

DEMAND FOR JUDGMENT

32. Mr. Severino respectfully requests that the court:
- a. declare that the defendants have no authority to terminate Mr. Severino’s appointment to the Council;
 - b. hold unlawful and set aside any action that terminates or threatens to terminate Mr. Severino’s appointment;
 - c. issue a temporary restraining order and preliminary and permanent injunctions that prevent the defendants from removing Mr. Severino

or his colleagues from the Council, and that restores their appointments to the Council if the President purports to remove them before this Court has opportunity to act;

- d. award costs and attorneys' fees;
- e. grant other and further relief that the Court may deem just, proper, or equitable.

Respectfully submitted.

/s/ Jonathan F. Mitchell
JONATHAN F. MITCHELL
DC Bar No. 496344
Mitchell Law PLLC
111 Congress Avenue, Suite 400
Austin, Texas 78701
(512) 686-3940 (phone)
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Dated: February 3, 2021

Counsel for Plaintiff



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Administrative Conference Act

United States Code

Title 5. Government Organization and Employees (Refs & Annos)

Part I. The Agencies Generally

Chapter 5. Administrative Procedure (Refs & Annos)

Subchapter V. Administrative Conference of the United States (Refs & Annos)

§ 591. Purposes

The purposes of this subchapter are--

- (1) to provide suitable arrangements through which Federal agencies, assisted by outside experts, may cooperatively study mutual problems, exchange information, and develop recommendations for action by proper authorities to the end that private rights may be fully protected and regulatory activities and other Federal responsibilities may be carried out expeditiously in the public interest;
- (2) to promote more effective public participation and efficiency in the rulemaking process;
- (3) to reduce unnecessary litigation in the regulatory process;
- (4) to improve the use of science in the regulatory process; and
- (5) to improve the effectiveness of laws applicable to the regulatory process.

§ 592. Definitions

For the purpose of this subchapter--

- (1) “administrative program” includes a Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rule making, adjudication, licensing, or investigation, as those terms are used in subchapter II of this chapter, except that it does not include a military or foreign affairs function of the United States;
- (2) “administrative agency” means an authority as defined by section 551(1) of this title; and
- (3) “administrative procedure” means procedure used in carrying out an administrative program and is to be broadly construed to include any aspect of agency organization, procedure, or management which may affect the equitable consideration of public and private interests, the fairness of agency decisions, the speed of agency action, and the relationship of operating methods to later judicial review, but does not include the scope of agency responsibility as established by law or matters of substantive policy committed by



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

law to agency discretion.

§ 593. Administrative Conference of the United States

(a) The Administrative Conference of the United States consists of not more than 101 nor less than 75 members appointed as set forth in subsection (b) of this section.

(b) The Conference is composed of--

(1) a full-time Chairman appointed for a 5-year term by the President, by and with the advice and consent of the Senate. The Chairman is entitled to pay at the highest rate established by statute for the chairman of an independent regulatory board or commission, and may continue to serve until his successor is appointed and has qualified;

(2) the chairman of each independent regulatory board or commission or an individual designated by the board or commission;

(3) the head of each Executive department or other administrative agency which is designated by the President, or an individual designated by the head of the department or agency;

(4) when authorized by the Council referred to in section 595(b) of this title, one or more appointees from a board, commission, department, or agency referred to in this subsection, designated by the head thereof with, in the case of a board or commission, the approval of the board or commission;

(5) individuals appointed by the President to membership on the Council who are not otherwise members of the Conference; and

(6) not more than 40 other members appointed by the Chairman, with the approval of the Council, for terms of 2 years, except that the number of members appointed by the Chairman may at no time be less than one-third nor more than two-fifths of the total number of members. The Chairman shall select the members in a manner which will provide broad representation of the views of private citizens and utilize diverse experience. The members shall be members of the practicing bar, scholars in the field of administrative law or government, or others specially informed by knowledge and experience with respect to Federal administrative procedure.

(c) Members of the Conference, except the Chairman, are not entitled to pay for service. Members appointed from outside the Federal Government are entitled to travel expenses, including per diem instead of subsistence, as authorized by section 5703 of this title for individuals serving without pay.

§ 594. Powers and duties of the Conference

To carry out the purposes of this subchapter, the Administrative Conference of the United States may--



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- (1) study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and make recommendations to administrative agencies, collectively or individually, and to the President, Congress, or the Judicial Conference of the United States, in connection therewith, as it considers appropriate;
- (2) arrange for interchange among administrative agencies of information potentially useful in improving administrative procedure;
- (3) collect information and statistics from administrative agencies and publish such reports as it considers useful for evaluating and improving administrative procedure;
- (4) enter into arrangements with any administrative agency or major organizational unit within an administrative agency pursuant to which the Conference performs any of the functions described in this section; and
- (5) provide assistance in response to requests relating to the improvement of administrative procedure in foreign countries, subject to the concurrence of the Secretary of State, the Administrator of the Agency for International Development, or the Director of the United States Information Agency, as appropriate, except that--
 - (A) such assistance shall be limited to the analysis of issues relating to administrative procedure, the provision of training of foreign officials in administrative procedure, and the design or improvement of administrative procedure, where the expertise of members of the Conference is indicated; and
 - (B) such assistance may only be undertaken on a fully reimbursable basis, including all direct and indirect administrative costs.

Payment for services provided by the Conference pursuant to paragraph (4) shall be credited to the operating account for the Conference and shall remain available until expended.

§ 595. Organization of the Conference

(a) The membership of the Administrative Conference of the United States meeting in plenary session constitutes the Assembly of the Conference. The Assembly has ultimate authority over all activities of the Conference. Specifically, it has the power to--

- (1) adopt such recommendations as it considers appropriate for improving administrative procedure. A member who disagrees with a recommendation adopted by the Assembly is entitled to enter a dissenting opinion and an alternate proposal in the record of the Conference proceedings, and the opinion and proposal so entered shall accompany the Conference recommendation in a publication or distribution thereof; and
- (2) adopt bylaws and regulations not inconsistent with this subchapter for carrying out the functions of the Conference, including the creation of such committees as it considers necessary for the conduct of studies and the development of recommendations for



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consideration by the Assembly.

(b) The Conference includes a Council composed of the Chairman of the Conference, who is Chairman of the Council, and 10 other members appointed by the President, of whom not more than one-half shall be employees of Federal regulatory agencies or Executive departments. The President may designate a member of the Council as Vice Chairman. During the absence or incapacity of the Chairman, or when that office is vacant, the Vice Chairman shall serve as Chairman. The term of each member, except the Chairman, is 3 years. When the term of a member ends, he may continue to serve until a successor is appointed. However, the service of any member ends when a change in his employment status would make him ineligible for Council membership under the conditions of his original appointment. The Council has the power to--

(1) determine the time and place of plenary sessions of the Conference and the agenda for the sessions. The Council shall call at least one plenary session each year;

(2) propose bylaws and regulations, including rules of procedure and committee organization, for adoption by the Assembly;

(3) make recommendations to the Conference or its committees on a subject germane to the purpose of the Conference;

(4) receive and consider reports and recommendations of committees of the Conference and send them to members of the Conference with the views and recommendations of the Council;

(5) designate a member of the Council to preside at meetings of the Council in the absence or incapacity of the Chairman and Vice Chairman;

(6) designate such additional officers of the Conference as it considers desirable;

(7) approve or revise the budgetary proposals of the Chairman; and

(8) exercise such other powers as may be delegated to it by the Assembly.

(c) The Chairman is the chief executive of the Conference. In that capacity he has the power to--

(1) make inquiries into matters he considers important for Conference consideration, including matters proposed by individuals inside or outside the Federal Government;

(2) be the official spokesman for the Conference in relations with the several branches and agencies of the Federal Government and with interested organizations and individuals outside the Government, including responsibility for encouraging Federal agencies to carry out the recommendations of the Conference;

(3) request agency heads to provide information needed by the Conference, which information shall be supplied to the extent permitted by law;



ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

- (4) recommend to the Council appropriate subjects for action by the Conference;
- (5) appoint, with the approval of the Council, members of committees authorized by the bylaws and regulations of the Conference;
- (6) prepare, for approval of the Council, estimates of the budgetary requirements of the Conference;
- (7) appoint and fix the pay of employees, define their duties and responsibilities, and direct and supervise their activities;
- (8) rent office space in the District of Columbia;
- (9) provide necessary services for the Assembly, the Council, and the committees of the Conference;
- (10) organize and direct studies ordered by the Assembly or the Council, to contract for the performance of such studies with any public or private persons, firm, association, corporation, or institution under title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251-260), and to use from time to time, as appropriate, experts and consultants who may be employed in accordance with section 3109 of this title at rates not in excess of the maximum rate of pay for grade GS-15 as provided in section 5332 of this title;
- (11) utilize, with their consent, the services and facilities of Federal agencies and of State and private agencies and instrumentalities with or without reimbursement;
- (12) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding and facilitating the work of the Conference. Gifts and bequests of money and proceeds from sales of other property received as gifts, devises, or bequests shall be deposited in the Treasury and shall be disbursed upon the order of the Chairman. Property accepted pursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gifts, devises, or bequests. For purposes of Federal income, estate, or gift taxes, property accepted under this section shall be considered as a gift, devise, or bequest to the United States;
- (13) accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31;
- (14) on request of the head of an agency, furnish assistance and advice on matters of administrative procedure;
- (15) exercise such additional authority as the Council or Assembly delegates to him; and
- (16) request any administrative agency to notify the Chairman of its intent to enter into any contract with any person outside the agency to study the efficiency, adequacy, or fairness of an agency proceeding (as defined in section 551(12) of this title).



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The Chairman shall preside at meetings of the Council and at each plenary session of the Conference, to which he shall make a full report concerning the affairs of the Conference since the last preceding plenary session. The Chairman, on behalf of the Conference, shall transmit to the President and Congress an annual report and such interim reports as he considers desirable.

§ 596. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter not more than \$3,200,000 for fiscal year 2009, \$3,200,000 for fiscal year 2010, and \$3,200,000 for fiscal year 2011. Of any amounts appropriated under this section, not more than \$2,500 may be made available in each fiscal year for official representation and entertainment expenses for foreign dignitaries.

From:Roger Severino <[REDACTED]>
Sent:Tuesday, February 2, 2021 5:33 PM
To:Raghavan, Gautam EOP/WHO <Gautam.Raghavan@who.eop.gov>
Cc:MWiener@acus.gov <MWiener@acus.gov>
Subject:Re: Resignation request

Hello Gautam,

Was surprised by your note. What are the grounds for the request for my resignation so early in my appointed term?

Thanks,

Roger

From:Raghavan, Gautam EOP/WHO <Gautam.Raghavan@who.eop.gov>
Sent:Tuesday, February 2, 2021 5:05 PM
To:[REDACTED] <[REDACTED]>
Cc:MWiener@acus.gov <MWiener@acus.gov>
Subject:Resignation request

Good afternoon,

I am writing on behalf of President Biden to request your resignation from the Administrative Conference of the United States Council by 5:00 p.m. ET tomorrow, Wednesday, February 3. If you do not resign by that time, your appointment to the Council will be terminated.

Thank you for your time and service.

Gautam Raghavan
Deputy Assistant to the President & Deputy Director
Office of Presidential Personnel | The White House

CIVIL COVER SHEET

JS-44 (Rev. 11/2020 DC)

I. (a) PLAINTIFFS Roger Severino (b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>Fairfax</u> (EXCEPT IN U.S. PLAINTIFF CASES)	DEFENDANTS Joseph R. Biden Jr., in his official capacity as President of the United States; Catherine M. Russell, in her official capacity as director of the White House Presidential Personnel Office; Gautam Raghavan, in his official capacity as deputy director of the White House Presidential Personnel Office; United States of America COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY) <small>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED</small>
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(c) ATTORNEYS (FIRMNAME, ADDRESS, AND TELEPHONE NUMBER) Jonathan F. Mitchell Mitchell Law PLLC 111 Congress Avenue, Suite 400 Austin, Texas 78701 (512) 686-3940	ATTORNEYS (IF KNOWN)
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II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY) <table style="width:100%; border:none;"> <tr> <td><input type="radio"/> 1 U.S. Government Plaintiff</td> <td><input type="radio"/> 3 Federal Question (U.S. Government Not a Party)</td> </tr> <tr> <td><input checked="" type="radio"/> 2 U.S. Government Defendant</td> <td><input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)</td> </tr> </table>	<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)	<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) FOR DIVERSITY CASES ONLY! <table style="width:100%; border:none;"> <thead> <tr> <th></th> <th>PTF</th> <th>DFT</th> <th></th> <th>PTF</th> <th>DFT</th> </tr> </thead> <tbody> <tr> <td>Citizen of this State</td> <td><input type="radio"/> 1</td> <td><input type="radio"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="radio"/> 4</td> <td><input type="radio"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="radio"/> 2</td> <td><input type="radio"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="radio"/> 5</td> <td><input type="radio"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="radio"/> 3</td> <td><input type="radio"/> 3</td> <td>Foreign Nation</td> <td><input type="radio"/> 6</td> <td><input type="radio"/> 6</td> </tr> </tbody> </table>		PTF	DFT		PTF	DFT	Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4	Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5	Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6
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IV. CASE ASSIGNMENT AND NATURE OF SUIT

(Place an X in one category, A-N, that best represents your Cause of Action and one in a corresponding Nature of Suit)

<input type="radio"/> A. Antitrust <input type="checkbox"/> 410 Antitrust	<input type="radio"/> B. Personal Injury/Malpractice <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> C. Administrative Agency Review <input type="checkbox"/> 151 Medicare Act <u>Social Security</u> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <u>Other Statutes</u> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input checked="" type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input checked="" type="radio"/> D. Temporary Restraining Order/Preliminary Injunction Any nature of suit from any category may be selected for this category of case assignment. *(If Antitrust, then A governs)*
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<input type="radio"/> E. General Civil (Other)	OR	<input type="radio"/> F. Pro Se General Civil	
<p><u>Real Property</u></p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property <p><u>Personal Property</u></p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<p><u>Bankruptcy</u></p> <input type="checkbox"/> 422 Appeal 27 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <p><u>Prisoner Petitions</u></p> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Conditions <input type="checkbox"/> 560 Civil Detainee – Conditions of Confinement <p><u>Property Rights</u></p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent – Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<p><u>Federal Tax Suits</u></p> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609 <p><u>Forfeiture/Penalty</u></p> <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <p><u>Other Statutes</u></p> <input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 465 Other Immigration Actions <input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)

<input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	<input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)*	<input type="radio"/> I. FOIA/Privacy Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)*	<input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans)
<input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education	<input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act)

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 5 U.S.C. § 704 and 28 U.S.C. § 2201. Challenging President's attempted removal of ACUS Council member

VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$ JURY DEMAND:	Check YES only if demanded in complaint YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>
VIII. RELATED CASE(S) IF ANY	(See instruction)	YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	If yes, please complete related case form

DATE: <u>February 3, 2021</u>	SIGNATURE OF ATTORNEY OF RECORD <u>/s/ Jonathan F. Mitchell</u>
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INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil coversheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.