

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Sean M. Spicer

2308 Mt. Vernon Avenue #415
Alexandria, VA 22301; and

Russell T. Vought

300 Independence Avenue SE
Washington, DC 20003,

Plaintiffs,

v.

Joseph R. Biden Jr., in his official capacity as
President of the United States
1600 Pennsylvania Avenue NW
Washington, DC 20500;

Catherine M. Russell, in her official capacity
as director of the White House Presidential
Personnel Office
Eisenhower Executive Office Building
1650 Pennsylvania Avenue NW
Washington, DC 20502;

Katherine L. Petrelius, in her official capacity
as Special Assistant to the President in the
White House Presidential Personnel Office
Eisenhower Executive Office Building
1650 Pennsylvania Avenue NW
Washington, DC 20502;

Charles A. “Dutch” Ruppertsberger III, in
his official capacity as Chairman of the United
States Naval Academy Board of Visitors
121 Blake Road
Annapolis, MD 21402;

Raphael J. Thalakkottur,
in his official capacity as Designated Federal
Officer of the United States Naval Academy
Board of Visitors
121 Blake Road
Annapolis, MD 21402; and

United States of America
950 Pennsylvania Avenue NW
Washington, DC 20530,

Defendants.

Case No. 1:21-cv-02493

COMPLAINT
(For Injunctive and Declaratory Relief)

STATEMENT OF THE CASE

1. Plaintiffs Sean Spicer and Russ Vought were appointed to the United States Naval Academy Board of Visitors by former President Donald J. Trump. Mr. Spicer served for 22 years in the United States Navy Reserve and earned a master's degree in national security and strategic studies from the Naval War College. He has held leadership positions in multiple presidential administrations. Mr. Vought previously served as the Director of the Office of Management and Budget.

2. By statute, the Naval Academy Board of Visitors includes six presidential appointees with three-year terms. The terms are staggered so that each year, the President may appoint two people to succeed the two members whose terms expire. The statute makes no provision or allowance for at-will presidential removal. *See* 10 U.S.C § 8468(a)-(c).

3. In 2019, President Trump appointed Mr. Spicer to a term ending on December 30, 2021. In 2020, President Trump appointed Mr. Vought to a term ending on December 31, 2023.

4. On September 8, 2021, Mr. Spicer and Mr. Vought received e-mails from the White House Presidential Personnel Office asking, "on behalf of President Biden," that they each resign from the Board by 6:00 p.m. that day. The e-mails warned Mr. Spicer and Mr. Vought that if they did not resign by that time, their "position with the Board will be terminated."

5. President Biden, however, has no authority to terminate Mr. Spicer's and Mr. Vought's appointments to the Board. They therefore seek a temporary restraining order and preliminary injunction to prevent this unlawful removal.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 2201.

7. Venue is proper under 28 U.S.C. §§ 1391(b)(1) and (2).

PARTIES

8. Plaintiff Sean Spicer is a member of the United States Naval Academy Board of Visitors.

9. Plaintiff Russ Vought is a member of the United States Naval Academy Board of Visitors.

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

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

12. Defendant Katherine L. Petrelius is Special Assistant to the President in the White House Presidential Personnel Office. Ms. Petrelius is sued in her official capacity.

13. Defendant Charles A. “Dutch” Ruppertsberger III is Chairman of the United States Naval Academy Board of Visitors. Mr. Ruppertsberger is sued in his official capacity.

14. Defendant Raphael J. Thalakkottur is the Designated Federal Officer of the United States Naval Academy Board of Visitors. Mr. Thalakkottur is sued in his official capacity.

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

FACTS

16. The United States Naval Academy Board of Visitors is an independent agency of the federal government.

17. The Board does not wield any executive power. It also does not exercise “quasi-legislative” or “quasi-judicial” powers. Its mission is to “inquire into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and

other matters relating to the Academy” and submit an annual report of its views and recommendations. 10 U.S.C §§ 8468(d)-(f). To fulfill these mandates, the Board conducts regular visits to the Academy. *Id.*

18. The Board’s Charter is attached as Exhibit 1. *See* Detail, FACADatabase.gov, <https://bit.ly/2VXQd4w> (<https://perma.cc/TTE9-R33W>) (linking to the Board’s 2020-22 Charter). Pursuant to that Charter, the Board “shall provide independent advice and recommendations.” Charter ¶ 3; *see id.* ¶ 2 (describing the Board as “a non-discretionary advisory committee”).

19. The Board consists of 15 members, including “(1) the chairman of the Committee on Armed Services of the Senate, or his designee; (2) three other members of the Senate designated by the Vice President or the President pro tempore of the Senate, two of whom are members of the Committee on Appropriations of the Senate; (3) the chairman of the Committee on Armed Services of the House of Representatives, or his designee; (4) four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the Committee on Appropriations of the House of Representatives; and (5) six persons designated by the President.” 10 U.S.C § 8468(a); Charter ¶ 12.

20. Each Board “member, based upon his or her individual experiences, exercises his or her own best judgment concerning matters before the Committee, does not represent any particular point of view, and discusses and deliberates in a manner that is free from conflicts of interest.” Membership Balance Plan ¶ 3, United States Naval Academy Board of Visitors (Exhibit 2); *see* Detail, FACADatabase.gov, <https://bit.ly/2VXQd4w> (<https://perma.cc/TTE9-R33W>) (linking to the Board’s 2020-22 Membership Balance Plan); *accord* Charter ¶ 12.

21. The Board members select the Chairman. Charter ¶ 12. The Chairman has responsibilities over the Board’s operations and meetings, including to certify all meeting minutes. *See*

Detail, FACADatabase.gov, <https://bit.ly/2VXQd4w> (<https://perma.cc/TTE9-R33W>); 5 U.S.C. Appendix, Federal Advisory Committee Act § 10(c).

22. The Board’s Designated Federal Officer is designated by the Department of Defense. Charter ¶ 8. The Designated Federal Officer (or his approved alternate) must attend all Board meetings. *Id.* He “approves and calls all Board meetings; prepares and approves all meeting agendas; and adjourns any meeting when [he] determines adjournment to be in the public interest or required by governing regulations or DoD policy and procedures.” *Id.*; *see* 5 U.S.C. Appendix, Federal Advisory Committee Act § 10(e)-(f).

23. The Board currently has meetings scheduled on September 27, 2021, and December 6, 2021.

24. Plaintiff Spicer was appointed to the Board by former President Donald J. Trump in 2019 to a term ending December 30, 2021. *See* Members, United States Naval Academy Board of Visitors, FACADatabase.gov, <https://bit.ly/3ED1nNC> (<https://perma.cc/A523-RZ8Y>).

25. Plaintiff Vought was appointed to the Board by former President Donald J. Trump in 2020 to a term ending December 31, 2021. *See* Members, United States Naval Academy Board of Visitors, FACADatabase.gov, <https://bit.ly/3ED1nNC> (<https://perma.cc/A523-RZ8Y>).

26. The statute governing the Board provides that the six presidential appointees serve three-year terms, and the President may appoint “two persons each year to succeed the members whose terms expire that year.” 10 U.S.C. § 8468(b). By staggering the three-year terms of office, the statute enables the President to make two appointments each year. The statute makes no provision or allowance for at-will presidential removal.

27. Under the statute, “any member whose term of office has expired shall continue to serve until his successor is appointed.” 10 U.S.C. § 8468(b). And “[i]f a member of the Board dies

or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member.” *Id.* § 8468(c).

28. On September 8, 2021, Mr. Spicer and Mr. Vought received materially identical e-mails from Katherine L. Petrelius, Special Assistant to the President in the White House Presidential Personnel Office. Those emails said:

I am writing to request your resignation from the Board of Visitors to the United States Naval Academy. If we do not receive your resignation by end of day today, you will be terminated. Attached is a formal letter.

On behalf of the Office of Presidential Personnel, thank you for your service.

29. The emails each included an attached letter from Catherine M. Russell, director of the White House Presidential Personnel Office. The letters said:

On behalf of President Biden, I am writing to request your resignation as a Member of the Board of Visitors to the U.S. Naval Academy. Please submit your resignation to me by the close of business today. Should we not receive your resignation, your position with the Board will be terminated effective 6:00 pm tonight. Thank you.

Exhibit 3 and Exhibit 4.

30. Mr. Spicer and Mr. Vought have not resigned and will not resign in response to President Biden’s request, and they are facing a threat of imminent termination.

CLAIMS FOR RELIEF

31. President Biden has no statutory authority to terminate Mr. Spicer’s and Mr. Vought’s appointments to the Board. The statute governing the Board provides for staggered three-year terms, and it makes no provision or allowance for at-will presidential removal based on political affiliation or otherwise. *See Wiener v. United States*, 357 U.S. 349 (1958); *Humphrey’s Executor v. United States*, 295 U.S. 602, 623–24 (1935); *In re Hennen*, 38 U.S. 230, 260 (1839).

32. President Biden has no constitutional authority under Article II to terminate Mr. Spicer’s and Mr. Vought’s appointments to the Board because it is a purely advisory nonpartisan

entity that does not wield *any* executive power. See *Humphrey's Executor*, 295 U.S. 602; *Seila Law LLC v. Consumer Financial Protection Bureau*, 140 S. Ct. 2183, 2199–2200 (2020).

33. President Biden's threatened terminations of Mr. Spicer and Mr. Vought are therefore *ultra vires*, unlawful, violate plaintiffs' due process rights, and should be enjoined.

34. Mr. Spicer and Mr. Vought bring their claims for relief under, *inter alia*, 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 RELIEF

35. Mr. Spicer and Mr. Vought respectfully request the following relief:

- a. A declaration that defendants lack authority to terminate Mr. Spicer's and Mr. Vought's appointments to the Board.
- b. An order holding unlawful and setting aside any action that terminates or threatens to terminate Mr. Spicer's and Mr. Vought's appointments.
- c. A temporary restraining order and preliminary and permanent injunctions preventing defendants from removing Mr. Spicer and Mr. Vought from the Board and restoring their appointments to the Board if the President purports to remove them before this Court has the opportunity to act.
- d. An award of their costs and attorneys' fees.
- e. Such other and further relief the Court deems just, proper, or equitable.

Respectfully submitted,

/s/ Christopher E. Mills

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