

15 September 2021

## Politics and the Academy Boards of Visitors

### 10 US Code §8468. Board of Visitors

- (a) A Board of Visitors to the Naval Academy is constituted annually of-
- (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.

(b) The persons designated by the President serve for three years each except that any member whose term of office has expired shall continue to serve until his successor is appointed.

The public law cited above establishes the Board of Visitors for the United States Naval Academy. Similar provisions of law establish similar boards for the United States Military Academy and the United States Air Force Academy. On February 2, 2021 Secretary of Defense Lloyd Austin suspended the 3 Academy BOV's without legal authority and those boards have been inactive since that date and unable to perform their Congressionally mandated duties. On 8 September 2021, President Biden demanded all the President Trump appointed members of the BOV's, including Heidi Stirrup, a member of the USAFA BOV, resign by 5 PM that day or be terminated as a member of the BOV at 6 PM that day.

On 15 July 2021, Heidi Stirrup filed a lawsuit in federal court challenging the suspension of the USAFA BOV. On 17 August 2021, additional plaintiffs were added to that lawsuit, including Congressmen Mark Green and Ralph Norman, and four cadets and their parents, to challenge also the suspension of the BOVs at West Point and the Naval Academy. On 8 September 2021, Sean Spicer, former White House Press Secretary for President Trump, became a Plaintiff as a member of the NA BOV.

The duties of the BOV's are as follows:

**The Board shall inquire into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy that the Board decides to consider.** The Naval Academy Board of Visitors has been in existence since 1879. Dozens of Congresses over a 140+ year time span have supported their missions and functions as a necessary independent body to provide advice and counsel on the

well-being of Naval Academy midshipmen. Yet, in 2021, the current President has decided to unilaterally ignore Congressional intent and the non-partisanship that spans much of the nation's history to inject politics into the oversight of the military academies. When the press inquired as to why such an unprecedented firing of 18 Trump appointees had occurred so abruptly and without any advance warning, the President's press secretary answered that the President needed members on the boards that were "qualified to serve" and represented his values. Apparently, General Jack Keane a former Vice Chief of Staff of the Army and Lt Gen H. R. McMaster, the former National Security Advisor were among those the President questioned as being qualified to serve and whose values are somehow not compatible with his.

As a matter of law, the action against legally appointed and serving BOV members is most troubling. Without a doubt, appropriate legal authorities within the administration are well aware of court rulings on the matter of BOV tenure. A recent Supreme Court decision reaffirms, citing two previously Supreme Court decisions, that the US Constitution allows "tenure protection, meaning that the President must honor the terms of office set by Congress for lower-level officers who are appointed by the President but have little authority. That point is more fundamental than the mere fact that Congress passed a statute setting the terms of BOV members, because the threshold issue is whether the President is required by the Constitution to abide by those terms if set by Congress. The answer is "yes," the President must abide by those terms, according to the Supreme Court. Yet, in this instance, it appears that the President is deliberately ignoring settled law that provides for lawfully appointed BOV members of the previous President to serve out their terms. It smacks of political gamesmanship at its worst and those who put the President up to it should be identified and rooted out of government. No President of any party should put up with such nonsense. Not only are the lives and reputations of 18 distinguished Americans needlessly sullied and tarnished, but the important role they have been playing for years to help and attend to the needs of our academy cadets and midshipmen has been eliminated, replaced with confusion and acrimony. The cadets at West Point must be especially demoralized and confused as the publicly maligned General McMaster was presented with West Point's highest award and recognition last weekend.

This ignoring of the law and the attempted removal of lawfully appointed BOV members is another example of politics invading the US military. Politics has no place in the military. The military must be free of all politics in order to do its job of defending the nation. If military members are swayed by the ebb and flow of politics, election to election, it will irreparably damage its effectiveness as a warfighting organization. The military should have a single-minded focus on supporting and defending the constitution of the United States and nothing else.

A copy of Heidi Stirrup's answer to the request that she resign is quoted in full below:

"September 12, 2021

Catherine M. Russell Assistant to the President Director, White House Office of Presidential Personnel

Dear Ms. Russell:

I am responding to your email and letter to me dated September 8, 2021, requesting my resignation as a Member of the Air Force Academy Board of Visitors, and stating that if you have not received that resignation by the close of business on that date, my position with the Board will be terminated effective 6:00 pm on that date. Please be advised that I have not resigned and will not do so. Moreover, I have received no official notification that my position with the Board has been terminated, and therefore consider that it has not been terminated. I understand that the resignations of other academy Board of Visitor members also have been requested and termination of their Board positions also threatened. These resignation demands and threatened terminations are unprecedented and, I believe, bad policy because they are divisive, destroy the politically balanced structure of the Boards of Visitors as created by Congress and deprive the academies of the diversity of experience, knowledge and perspectives the academies traditionally have had and need in order for the academies to fulfill their missions competently and in a manner reflective of all of the American people. Moreover, and most importantly, termination of membership on an academy Board of Visitors would be illegal. Congressional statutes expressly provide the dates of expiration for academy Boards of Visitors membership positions. For example, my tenure as a Member of the Air Force Academy Board of Visitors is governed by 10 U.S.C. § 9455(b), (c), which when applied requires that my tenure does not expire until after December 30, 2021. This result is supported by a recent United States Supreme Court decision reaffirming that Congress can continue to provide “tenure protection,” recognized for decades as valid by the courts, for Presidential appointments of inferior officers with narrowly defined duties, which would include Members of academy Boards of Visitors who have no authority but can only make recommendations and issue reports as narrowly defined by statute. See *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2192, citing *United States v. Perkins*, 116 U. S. 483, 6 S. Ct. 449, 29 L. Ed. 700, 21 Ct. Cl. 499 (1886); *Morrison v. Olson*, 487 U. S. 654, 108 S. Ct. 2597, 101 L. Ed. 2d 569 (1988). Please identify to me any legal authority believed to authorize the termination of my Membership to the Air Force Academy Board of Visitors.

Sincerely,

Heidi Stirrup”