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February 12, 2021

The President  
 The White House  
 1600 Pennsylvania Ave NW  
 Washington, D.C. 20500

Re: Comments of the Section of Administrative Law and Regulatory Practice of the American Bar Association on the Administrative Conference of the United States

Dear Mr. President:

On behalf of the ABA Section of Administrative Law and Regulatory Practice, I write to share the Section’s views on the need for swift action to nominate and confirm a chair to lead the Administrative Conference of the United States<sup>1</sup>. The views expressed herein are presented on behalf of the Section and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association. Accordingly, they should not be construed as representing the policy of the ABA.

By way of background, the ABA Administrative Law Section has been a prominent voice in the field of administrative law since the 1930s. The Section played a critical role in the development of the Administrative Procedure Act of 1946, and it regularly comments on legislation, agency rules, agency guidance, and other regulatory proposals. The Section is composed of specialists in administrative law and regulatory practice. Both politically and geographically diverse, they include private practitioners, government attorneys, judges, law professors, and members of nonprofit organizations. We look forward to working with your administration, and we stand ready to share our members’ expertise.

We write to urge you to move promptly to nominate, and call on the Senate to confirm, a chair to head the Administrative Conference of the United States—an agency that has lacked a Senate-confirmed chair since 2015. Established in 1964, the Administrative Conference serves as the federal government’s in-house advisor on, and coordinator of, administrative procedural reform. Throughout the years, the Administrative Conference has been a valuable resource for providing information on the efficiency, adequacy, and fairness of

<sup>1</sup> Abstain: Daniel Flores, Christina McDonald. Recuse: Reeve Bull.

the administrative procedures used by federal agencies in carrying out their programs.

The hallmark of the Administrative Conference's work has been its ability to provide expert and nonpartisan advice to the three branches of government. Drawing on a large number of volunteer public members, as well as representatives from a wide spectrum of federal agencies, the agency has fostered a conversation among all interested persons and agencies. Relying on academics and other experts for empirical research, which is reviewed first by subject matter committees staffed by members of the Conference and then by the full Conference, the Administrative Conference has been able to recommend improvements in the administrative process that are evidence based, consensus driven, and nonpartisan.

Over the last four years, the Administrative Conference has been fortunate to have had an effective acting chair, Matthew Wiener. Prior to his elevation to acting chair, Mr. Wiener had been serving for four years as the agency's executive director. During his service as acting chair, he ably advanced the agency's mission. Indeed, I witnessed Mr. Wiener's excellent leadership firsthand in my service as a public member of the Conference since 2016 and in my completed work as an academic consultant on two Conference reports. The lack of a Senate-confirmed chair, however, has limited the Administrative Conference's ability to perform its functions. Additionally, Mr. Wiener's acting capacity hampered his ability to effectively represent the agency with internal and external constituencies.

In considering how to fill this vacancy, we stress that throughout the decades the Administrative Conference has maintained a reputation for nonpartisan, expert recommendations for improvements to administrative processes. The agency has no power but the power to persuade, and no political constituency other than those interested in improving administrative governance. Accordingly, we hope the chair nominee will possess the requisite reputation, experience, and management skills to advance the Administrative Conference's important work.

Thank you for considering the views of the Section on this important issue. If you would like to discuss the Section's views in greater detail, please feel free to contact me (phone: 614-247-1898; email: [walker.1432@osu.edu](mailto:walker.1432@osu.edu)).

Many thanks,

A handwritten signature in black ink, appearing to read 'C. Walker', with a long horizontal flourish extending to the right.

Christopher J. Walker  
Chair, ABA Section of Administrative Law and Regulatory Practice