

# United States Court of Appeals For the First Circuit

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No. 21-1177

ROBERT R. CUSHING, individually and in his capacity as the Minority Leader of the NH House of Representatives; DAVID COTE; KATHERINE D. ROGERS; KENDALL SNOW; PAUL BERCH; DIANE LANGLEY; CHARLOTTE DILORENZO; NH DEMOCRATIC PARTY,

Plaintiffs - Appellants,

v.

SHERMAN PACKARD, in his official capacity as Speaker of the House for the N.H. House of Representatives,

Defendant - Appellee.

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Before

Howard, Chief Judge,  
Lynch, Thompson,  
Kayatta and Barron, Circuit Judges,

## ORDER OF COURT

Entered: June 1, 2021

A majority of the active judges who are not disqualified have voted to hear this case en banc. Accordingly, the petition for rehearing en banc is granted. In accordance with customary practice, the panel opinion released on April 8, 2021 is withdrawn, and the judgment entered the same date is vacated. See 1st Cir. I.O.P. X(D).

The en banc court will have copies of the parties' previously filed briefs. The parties are also directed to file simultaneous supplemental briefs on or before **July 13, 2021**. Such briefs should not exceed 30 pages, and shall otherwise comply with applicable rules concerning format, service and other requirements.

Amici are welcome to file amicus briefs, also not to exceed 30 pages per brief, no later than 7 days after the principal supplemental briefs are filed, but must seek prior leave of court. The en banc court believes it would be useful to obtain the views of the government as amicus per the attached letter from the Clerk to the Attorney General.

Any reply supplemental briefs must be filed by the parties no later than 21 days after the amici briefing deadline. Reply briefs are limited to 15 pages.

In addition to any other questions the parties may wish to address in their principal supplemental briefs, counsel are directed to:

1. Describe the contours of the common law doctrine of legislative immunity, and any exceptions to the doctrine; and
2. Address whether, to the extent legislative immunity may attach in the circumstances of this matter, the immunity applies to an action for injunctive relief such as the plaintiffs have requested in this case.

The en banc hearing will be scheduled for **Friday, September 10, 2021 at 10:00 a.m.**

By the Court:

Maria R. Hamilton, Clerk

cc:

Paul J. Twomey  
Israel F. Piedra  
William E. Christie  
Suzanne Amy Spencer  
Daniel Edward Will  
Anthony J. Galdieri  
Samuel R. V. Garland  
Jennifer Ramsey