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July 16, 2021

The Honorable Gary Peters, Chairman
The Honorable Rob Portman, Ranking Member
Committee on Homeland Security and Governmental Affairs
Washington, D.C. 20510

Dear Chairman Peters, Ranking Member Portman, and Members of the Committee:

On behalf of the Senior Executives Association (SEA) – which represents the interests of career federal executives in the Senior Executive Service (SES), those in Senior Level (SL), Scientific and Professional (ST) and equivalent positions and other senior career federal leaders – I write to urge the immediate advancement and confirmation of the current nominees for members of the U.S. Merit Systems Protection Board (MSPB) to restore a quorum.

The MSPB has lacked a quorum for over four years and has lacked a single Senate-confirmed Member for over two years. The negative impacts of these vacancies are far reaching for federal employees, agencies, and taxpayers alike. We urge the committee to bring these nominees forward as soon as possible. It is past time for the Senate to act and restore a quorum to the board. Each day the Board remains member-less, the backlog of cases grows. Today, 3,290 cases remain unresolved.

This means, in over 3,000 cases, the agency lacks finality for their personnel actions and employee rights are unenforced. As the backlog grows, so does the amount of backpay agencies will be required to provide reinstated employees. In over 80 percent of cases, the MSPB affirms the agency's decision. In another nearly 16 percent, employees are reinstated, and taxpayers must pay to rectify the agency's mistake. As the backlog grows and cases are pushed into further delay, this cost grows.

Once confirmed, the two Board Members President Biden has proposed can immediately begin whittling down this backlog.

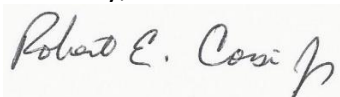
Further, as constitutional challenges mount regarding the legitimacy of federal adjudicative bodies without Senate-confirmed members, the Board faces a serious and valid risk of being inoperable soon. At that point, Congress has no plan for how to address the situation and no plan for how to protect federal employee rights. Most importantly, Congress has no plan for how to protect the merit-based civil service system. More than likely, these cases will be moved to federal courts where Department of Justice attorneys will be adjudicating questions of administrative employment law, rather than focusing their efforts on their core mission. As champions for good government, this should be unacceptable.

Congress is ill-prepared and seemingly uninterested in addressing the constitutional issues that will shut down the MSPB in its current state so it must take the only route available at this time: confirm the nominees.

Cathy Ann Harris and Raymond Limon are qualified, competent, and well-respected in the federal community. With such urgent and critical issues at hand as outlined above, there is no reason for further delay.

Federal employees, agencies, and taxpayers need a functioning MSPB. We urge the Committee and the full Senate to advance and confirm the nominees. Thank you for your consideration of SEA's perspective. Please have your staff contact SEA Director of Policy and Outreach Jason Briefel (jason.briefel@seniorexecs.org; 202-971-3300) for further information.

Sincerely,

A handwritten signature in black ink that reads "Robert E. Corsi, Jr." The signature is written in a cursive style and is placed on a light-colored rectangular background.

Robert E. Corsi, Jr.
President

CC: Senate Majority Leader Chuck Schumer
Senate Minority Leader Mitch McConnell