

The Honorable Charles Schumer
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

December 1, 2021

Dear Leader Schumer and Leader McConnell:

The undersigned civil society organizations urge you to allow the full Senate to consider and vote on pending nominations to all three vacancies on the Merit Systems Protection Board (MSPB), which serves millions of federal employees as the primary adjudicative agency for worker claims of whistleblower retaliation and other prohibited personnel practices.

While this letter does not take a position for or against specific Board nominations, we are united in our advocacy of whistleblower protections as a crucial safeguard against waste, fraud, and misconduct in government. That is why we are alarmed by the fact that since January 2017, the Board has been unable to perform critical functions and responsibilities due to the unfilled vacancies preventing a statutorily-required quorum of Senate-confirmed Members. These Board responsibilities include providing relief to whistleblowers, issuing final rulings, promulgating new regulations to address changes in the law, and overseeing U.S. Office of Personnel Management rules and activities. As a result, government whistleblowers waiting for Board review of their retaliation claims remain in limbo while the largest-ever backlog of more than 3,500 cases continues to grow.

We urge you to go beyond these abstract descriptions to consider the devastating impact on people's livelihoods and careers, as well as the corrosive toll on the public interest and the public purse. Behind these cases are individuals and their families desperately seeking legal relief, often from reprisal like job termination and loss of income after they patriotically sought to expose governmental waste or wrongdoing at great personal and professional risk to themselves. Paralysis on the Board is even creating perverse incentives for federal agencies to appeal the most meritorious whistleblower claims that won in earlier stages to the full Board, knowing that those claims will then be forced to sit unresolved. Furthermore, the longer that federal employees' merits system cases are forced to wait for resolution, the larger the back pay ordered to be paid could be to federal employees with wrongful termination or demotion claims.

As a broader matter, it should raise your profound concerns that the Board's lack of a quorum due to lack of Senate-confirmed Members leading it is jeopardizing the existence of meaningfully enforceable employment rights for millions of Americans, including whistleblowers. That is contrary to our shared values and our most cherished principles about how our government should work. We hope that surely you would agree these concerns merit the Senate's attention and time.

This is a crisis that the U.S. Senate can and should rectify as soon as possible. Now that the Senate Homeland Security and Governmental Affairs Committee has considered and reported nominations to fill all MSPB vacancies to the full Senate, the next step is clear: bring the nominations to the Senate floor.

It is time for the U.S. Senate to meet its advice-and-consent obligations under the Constitution and make the final decision in the confirmation process for all the Board nominations. Doing so is vital not only to advance the rights of whistleblowers and to make good on bipartisan calls for greater accountability in government, but also to ensure that current law can be implemented and upheld as envisioned.

For these reasons, we ask you to bring all the MSPB nominations already on the Senate Executive Calendar to the Senate floor for consideration by the full chamber as soon as possible. Should you have any questions, we stand ready to assist you.

Sincerely,

ACORN8
American Civil Liberties Union
Demand Progress
Government Accountability Project
Government Information Watch
National Taxpayers Union
Open The Government
Project On Government Oversight
Protect Democracy
Public Citizen
Public Employees for Environmental Responsibility (PEER)
Revolving Door Project
Senior Executives Association
Transparency International U.S. Office
Truman Center for National Policy
Whistleblowers of America