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September 20, 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 three qualified nominees for members of the Merit Systems Protection Board (MSPB).

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.

The Committee now has three extremely well-qualified and universally commended nominees to serve on the Board. 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.

Specifically, President Biden’s final nominee, Tristan Leavitt, is a long-time partner of SEA in pursuit of stronger employee rights and more efficient agency operations. During his time on the Hill, Leavitt worked closely with SEA to promote good government reforms that balance employee protections and taxpayer accountability. These initiatives garnered broad bipartisan and stakeholder support. Leavitt’s nomination has similarly garnered broad bipartisan and stakeholder support. SEA emphatically supports Leavitt’s nomination, as well as those of Cathy Harris and Raymond Limon.

As SEA has consistently articulated, each day the Board remains member-less, the backlog of cases grows. Today, over 3,000 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 the other nearly 16 percent of cases, 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 Board Members President Biden has nominated can immediately begin whittling down this backlog. With three qualified, competent, and widely praised nominees, it is fiscally irresponsible to continue allowing the backlog to grow.

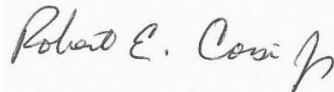
Further, as constitutional challenges mount regarding the legitimacy of federal adjudicative bodies without Senate-confirmed members, the Board faces a serious and valid risk of being inoperable soon. At that point, Congress has no plan for how to address the situation. Congress has no plan for how to 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 on this committee, this should be unacceptable.

Cathy Harris, Raymond Limon, and Tristan Leavitt are extremely qualified, capable, 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. American taxpayers deserve an accountable government. 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](mailto: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 centered on the page.

Robert E. Corsi, Jr.  
President

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