

United States Senate

WASHINGTON, DC 20510

July 25, 2018

David Fabian Black
Social Security Administration
6401 Security Blvd.
Baltimore, MD 21235

Dear Mr. Black:

The Senate is currently considering your nomination to be Deputy Commissioner of Social Security. Social Security is the bedrock of economic security for American families, providing retirement benefits, disability insurance, and life insurance for surviving spouses and dependents. The federal employees at the Social Security Administration (SSA) are responsible for providing the fairness and efficiency that Americans expect and deserve from Social Security, which is why we strongly oppose recent actions by SSA leadership to undermine SSA's workforce. We are writing to ask for your assurance that if the Senate confirms your nomination, that SSA will treat its workers and their unions more fairly under your leadership.

On June 19, 2018, we signed a letter joined by 45 Senators to urge President Trump to rescind three Executive Orders regarding the federal workforce, and we have attached that letter for your reference. We remain deeply concerned about how these orders undermine lawful civil service protections for federal employees throughout the government. Since signing that letter, it has come to our attention that SSA leadership has demonstrated particular hostility towards its workforce in the way it is implementing the Executive Orders.

We are also concerned about protecting the independence of Administrative Law Judges (ALJs), in light of President Trump's more recent Executive Order removing these positions from the competitive civil service. The integrity of Social Security depends on a merit-based process for selecting and managing ALJs that is free of political influence.

President Trump's Executive Orders regarding the federal workforce currently face serious legal challenges, but SSA leadership has exceeded even the dubious authority provided by these orders. The Executive Order on official time provided to unions makes clear that, "Nothing in this order shall abrogate any collective bargaining agreement in effect on the date of this order."¹ It is our understanding that some workers at SSA are covered by collective bargaining agreements that have not expired, and that even expired agreements provide for the continuation of key provisions until a new agreement is reached.

SSA leadership has abrogated its collective bargaining agreements by slashing the official time available to unions to fulfill their statutory duties for SSA workers. SSA leadership has further abrogated these agreements by refusing to provide agreed-upon reimbursement for union members to travel for arbitrations and negotiations – even cancelling existing reservations – and SSA leadership has moved to evict unions from office space that SSA agreed to provide in collective bargaining.

¹ Executive Order 13837.

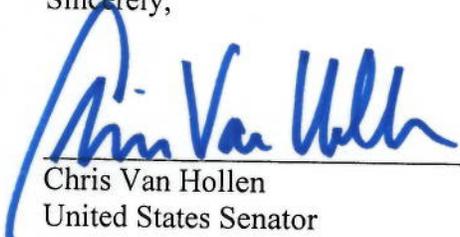
Federal law requires agencies to bargain in good faith with the unions representing their workforce – an obligation that President Trump cannot overturn by Executive Order (5 U.S.C. 7114). If confirmed, we expect you to follow the law. Therefore, as the Senate considers your nomination, we request the following assurances from you regarding how SSA will function under your leadership:

1. SSA will honor its collective bargaining agreements by rescinding the unilateral changes that SSA has already made, and will not make further unilateral changes.
2. SSA will honor the terms of expired collective bargaining agreements until reaching a new agreement, by rescinding unilateral changes and not making further unilateral changes.
3. If SSA and its workforce seek to negotiate a new collective bargaining agreement, that you will bargain in good faith with the unions representing SSA's workforce, and do everything in your power to reach an agreement without resorting to the Federal Service Impasses Panel to impose terms.
4. SSA will continue to use a merit-based process for hiring and managing ALJs that is not influenced by politics or pressure from elsewhere in the Executive Branch.

Additionally, please describe the formal or informal role you have played, if any, regarding the implementation of these executive orders at SSA.

Thank you for your attention to this matter. We look forward to your reply.

Sincerely,


Chris Van Hollen
United States Senator


Benjamin L. Cardin
United States Senator

Attachment: Letter to President Donald Trump

United States Senate

WASHINGTON, DC 20510

June 19, 2018

President Donald Trump
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500

Dear President Trump:

We write to express our serious concerns about recent actions to undermine the foundations of our civil service system. We respectfully request that you reconsider and rescind Executive Orders 13836, 13837, and 13839, which undermine the lawful rights and protections afforded to federal employees. At a minimum, we hope you will ensure that managers at federal agencies do not use these executive orders inappropriately to circumvent existing collective bargaining agreements between agencies and federal workers.

The approximately two million men and women in the federal civil service are dedicated and hardworking professionals. They safeguard our national security and food safety, perform lifesaving medical procedures, deliver Social Security and veterans' benefits, and fulfill countless other responsibilities on behalf of our citizens.

The recent executive orders undermine the decades-old rights of federal employees to fair representation in the workplace. These orders significantly reduce the extent to which federal agencies will negotiate collective bargaining agreements with their workforce. Instead, federal agencies or outside panels will impose workplace policies without good faith negotiation.

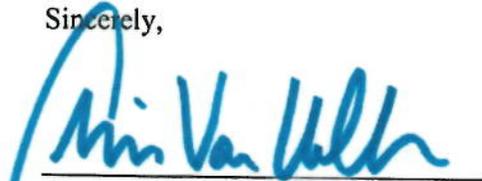
Imposing arbitrary limits on the time that federal employees can carry out statutory duties to represent fellow employees – known as official time – makes it harder to resolve workplace disputes and root out waste, fraud, and abuse. The law already requires federal agencies and unions to negotiate agreements that require official time to be “reasonable, necessary, and in the public interest” (5 U.S.C. § 7131) and official time has helped prevent cover-ups of disease outbreaks, address racial harassment, and expedite benefits for veterans.

We support improving the performance of the federal workforce, but these executive orders will do the opposite. These executive orders discourage federal agencies from using their discretion to create reasonable plans for federal employees to improve their performance if they are at risk of demotion or termination. Firing employees without due process undermines the merit-based civil service system, and opens the door for managers to satisfy their own personal vendettas or political agendas.

Some federal agencies already appear to be abrogating existing collective bargaining agreements by citing these executive orders. We ask that you direct agency and department heads to cease and desist from doing so.

It is time to stop the attacks on our federal workers. These are also attacks on our veterans, who make up roughly one-third of the federal civilian workforce. We need to keep politics out of the civil service, and we urge you to reconsider these executive orders.

Sincerely,


Chris Van Hollen
United States Senator


Tim Kaine
United States Senator


Sherrod Brown
United States Senator


Benjamin L. Cardin
United States Senator


Mazie Hirono
United States Senator


Brian Schatz
United States Senator


Mark R. Warner
United States Senator


Richard Blumenthal
United States Senator


Kirsten Gillibrand
United States Senator


Jeanne Shaheen
United States Senator


Thomas R. Carper
United States Senator


Patty Murray
United States Senator

Edward J. Markey

Edward J. Markey
United States Senator

Tammy Duckworth

Tammy Duckworth
United States Senator

Maria Cantwell

Maria Cantwell
United States Senator

Elizabeth Warren

Elizabeth Warren
United States Senator

Margaret Wood Hassan

Margaret Wood Hassan
United States Senator

Kamala D. Harris

Kamala D. Harris
United States Senator

Sheldon Whitehouse

Sheldon Whitehouse
United States Senator

Gary C. Peters

Gary C. Peters
United States Senator

Angus S. King, Jr.

Angus S. King, Jr.
United States Senator

Bernard Sanders

Bernard Sanders
United States Senator

Tammy Baldwin

Tammy Baldwin
United States Senator

Charles E. Schumer

Charles E. Schumer
United States Senator

Richard J. Durbin

Richard J. Durbin
United States Senator

Jack Reed

Jack Reed
United States Senator

Cory A. Booker

Cory A. Booker
United States Senator

Tina Smith

Tina Smith
United States Senator



Christopher A. Coons
United States Senator



Robert P. Casey, Jr.
United States Senator



Michael F. Bennet
United States Senator



Robert Menendez
United States Senator



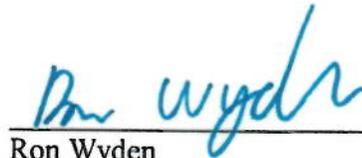
Tom Udall
United States Senator



Jeffrey A. Merkley
United States Senator



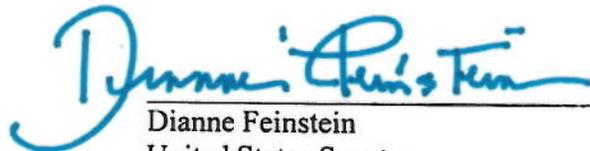
Joe Donnelly
United States Senator



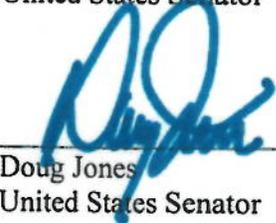
Ron Wyden
United States Senator



Catherine Cortez Masto
United States Senator



Dianne Feinstein
United States Senator



Doug Jones
United States Senator



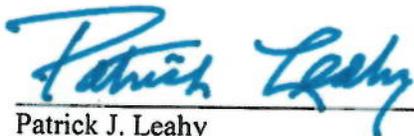
Bill Nelson
United States Senator



Debbie Stabenow
United States Senator



Martin Heinrich
United States Senator



Patrick J. Leahy
United States Senator



Amy Klobuchar
United States Senator



Christopher S. Murphy
United States Senator