

FEDERAL WORKERS ALLIANCE

COLLECTIVELY REPRESENTING OVER 300,000 FEDERAL WORKERS

April 10, 2019

Hon. Elijah Cummings, Chairman
Oversight & Government Reform Committee
U.S. House of Representatives
2157 Rayburn House Office Building
Washington, DC 20515

Hon. Richard Neal, Chairman
Ways and Means Committee
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Hon. Danny Davis, Chairman
Worker & Family Support Subcommittee
U.S. House of Representatives
2018 Rayburn House Office Building
Washington, DC 20515

Hon. Brian Fitzpatrick
U.S. House of Representatives
1722 Longworth House Office Building
Washington, DC 20515

Dear Representatives Cummings, Neal, Davis and Fitzpatrick:

On behalf of the Federal Workers Alliance (FWA), representing upwards of 300,000 workers from across the federal government, we are writing in support of The *ALJ Competitive Service Restoration Act*. Your much-needed legislation is in response to President Trump's Executive Order 13843 that removes federal Administrative Law Judges (ALJs) from the competitive service to the excepted service. This Executive Order allows political appointees at agencies throughout the federal government to pick and choose inexperienced political friends to serve as ALJs who could move forward the partisan agenda of whoever may be occupying the White House.

The Administration has incorrectly claimed that this Executive Order is needed to address last year's Supreme Court decision, *Lucia v SEC*. However, the decision in that case was very narrowly tailored to apply only to the SEC, not other government agencies such as SSA where over 80% of our federal ALJs are working, and at the National Labor Relations Board (NLRB) where over 30 ALJs hear cases involving matters such as protected union activities, discrimination and unfair labor practice claims. Yet, the Administration took the opportunity of the *Lucia* ruling to all but do away with Administrative Procedures Act (APA) protections that guarantee ALJ independent decisions, and thereby threaten the due process protections of those appearing before federal ALJs.

Regardless of who happens to be occupying the White House at any particular time, this Executive Order opens the door for the awarding of ALJ jobs to ideologically aligned friends and supporters of political appointees. What exactly will this mean? The rebirth of the Spoils System where disability benefit determinations, Medicaid determinations, and worker safety and pay complaints, among others, will be decided based on ideology, and not the law. As the independent, impartial adjudicator goes away, so will the due process protections for the American public.

The Administration is contending that even though ALJs are being moved from the competitive service to the excepted service, they will nonetheless continue to enjoy Title V civil service protections. While this may be true on paper, the reality tells a different story, as ‘excepted’ employees can be put on probation/trial work periods for up to two years, or more. During this time an ALJ has no worker protections, including through the Merit Systems Protection Board (MSPB), and can be fired for no reason at all. Furthermore, if ALJs can be hired based on politics, all it takes is another stroke of a pen to ensure they can be fired the exact same way.

Another way around the Title V protections is for an agency to hire political friends and, when the caseload declines, subject the “competitive” ALJs to a Reduction in Force (RIF). The Administration made clear in last year’s May 25th anti-labor EO’s that the concept of seniority will no longer apply in any collective bargaining agreement, so a RIF can be used to pick and choose the ALJs the agency wants to remove. Who will be first: Union Officials? Judges who award benefits too often? Judges who do their jobs with integrity and won’t be influenced by abusive and unethical management directives?

Lastly, the Administration is contending that the EO will only apply to newly hired ALJs. Here again, that is misleading and inaccurate, as James Sherk, special assistant to the president for domestic policy, was quoted in a July 10th, 2018 Government Executive article as saying that, “agency heads can ratify existing judges under the new rules...”.

Regardless of political party or ideology, lawmakers across the political spectrum should be alarmed at the impact that this Executive Order will have on the due process protections for the American public. FWA thanks you for introducing the *ALJ Competitive Service Restoration Act*, and urges all House members to cosponsor it.

If you have any questions, contact FWA legislative co-chairs Steve Lenkart or Matt Biggs at (202) 216-4458.

Sincerely,

American Federation of State, County, and Municipal Employees (AFSCME)
American Federation of Teachers, AFL-CIO (AFT) Federal Education Association/National Education Association (FEA/NEA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAMAW)
International Brotherhood of Teamsters (IBT)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Organization of Masters, Mates and Pilots (MM&P)
Marine Engineers’ Beneficial Association (MEBA)
Metal Trades Department, AFL-CIO (MTD)
National Association of Government Employees, SEIU (NAGE)
National Federation of Federal Employees (NFFE)

National Weather Service Employees Organization (NWSEO)
Overseas Federation of Teachers, AFT, AFL-CIO
Professional Aviation Safety Specialists (PASS)
Patent Office Professional Association (POPA)
Seafarers International Union of North America (SIU)
Service Employees International Union (SEIU)
Sheet Metal, Air, Rail and Transportation Workers (SMART)
SPORT Air Traffic Controllers Organization (SATCO)
United Power Trades Organization (UPTO)

Cc: U.S. House of Representatives