



U.S. MERIT SYSTEMS PROTECTION BOARD
1615 M Street, NW
Washington, DC 20419-0001

August 1, 2014

The President
The White House
Washington, D.C. 20500

Re: Section 707 of the Veterans Access, Choice, and Accountability Act of 2014

Dear Mr. President:

We are writing to express our concern with Section 707 of the Veterans Access, Choice, and Accountability Act of 2014 ("Act"). As you may know, Section 707 prohibits the undersigned Members of the Merit Systems Protection Board ("MSPB" or "Board"), sitting as a three-person panel, from participating in the adjudication of any appeal filed with our agency by certain employees of the Department of Veterans Affairs.

As the federal agency responsible for adjudicating appeals filed by veterans in connection with the Uniformed Services Employment and Reemployment Rights Act and the Veterans Employment Opportunities Act, and as a small agency that employs more than 20 veterans, we support and applaud the enactment of any law that seeks to improve conditions for veterans. We also understand that Section 707 is only one provision of a more comprehensive piece of legislation, that the Act was approved on a bipartisan basis by Congress, and that a presidential veto is unlikely. Nevertheless, we feel it is important to share what we believe are very serious concerns with Section 707.

The MSPB is an independent quasi-judicial agency and part of the executive branch. Each of the undersigned Board members was appointed by you and confirmed by the United States Senate to adjudicate appeals filed with our agency by federal employees. We believe that Section 707 which, as noted above, prohibits presidentially-appointed, Senate-confirmed officers of the executive branch from performing the responsibilities for which those officers were appointed and confirmed to carry out, is on weak constitutional footing. Indeed, the Supreme Court has made clear that significant governmental duties, exercised pursuant to public law, must be performed by "Officers of the United States," within the meaning of Article II of the Constitution. Moreover, various courts have suggested that Congress is not permitted to infringe on the right of the executive branch to enforce the laws, nor on the president's appointment or removal powers with respect to executive branch appointees, once confirmed.

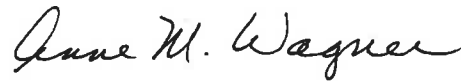
Constitutional concerns aside, we also believe that, once enacted, Section 707 could set a very dangerous precedent, under which it is viewed permissible for Congress to undermine – through must-pass legislation similar to the Act – the ability of presidentially-appointed, Article II Officers of the United States to carry out the mission of the agency to which they were appointed to lead.

Again, we understand that this is one provision of a more comprehensive piece of legislation, and more importantly, understand the sensitive nature of any legislation seeking to improve conditions for veterans. However, we hope that you will consider these concerns, and also the possible long-term impact of such a provision of law on your office.

Respectfully,



Susan Tsui Grundmann
Chairman



Anne M. Wagner
Vice Chairman



Mark A. Robbins
Member