

July 27, 2023

Senator Chuck Schumer
Senate Majority Leader
322 Hart Senate Office Building
Washington, D.C. 20510

Re: Significant oversight issue for confirmation of Cathy Harris, PN 66, Senate Executive Calendar No. 78.¹

Dear Senator Schumer,

Summary: The undersigned individuals and organizations request that you seek an answer from Cathy Harris prior to her confirmation vote as Chairman of the US Merit Systems Protection Board (MSPB) whether she will fulfill one of her fundamental duties of the Board and its Chair: assessing the state of the merit system.

Background to this Request:

Vote Common Good, along with many other faith-based and secular public policy organizations, believes the common good is advanced in and through merit-based federal agency employment practices. We view merit-based federal agency employment practices as necessary for federal agencies to be adequately trustworthy in their respective missions for protecting and advancing Americans health, safety, security and welfare. Our common good relies, in essential part, on trustworthy federal agency employees being able to perform their duty without fear or favor. There is significant evidence that civil servants feel that they cannot or will not make whistleblower disclosures; there is also substantial evidence that they will not be adequately protected from reprisal if they do. These conditions prompt our deep concern that “the public interest in a civil service free of whistleblower reprisal (and other unlawful agency employment practices, which are collectively termed “prohibited personnel practices”) is NOT being adequately protected.”

Like the President for our country, the MSPB Chair has a duty to assess the state of the merit system.² For 44 years, however, MSPB leaders have failed to honor this responsibility in good faith. The vacuum has helped perpetuate a long-term merit systems breakdown that has become catastrophic in recent years. It also violates the public’s right to know how and why the civil service has become increasingly political, and why the merit system and the Whistleblower Protection Act have become the targets of consistent cynicism due to a track record of consistent failure.

¹ Ms. Harris’ nomination to become the Chairman of MSPB was voted out of the Senate Homeland Security and Governmental Affairs Committee (HSGAC) by an 8-4 vote on March 15, 2023.

² 5 U.S.C. 1204(a)(3).

Unfortunately, to date Ms. Harris has reinforced the tradition. She will not even ask the Justice Department to do the job the Board has been avoiding for over four decades. Recently she declined the request from experienced federal employment lawyer Douglas Harnett to seek a review by the Attorney General and his Office of Legal Counsel.³ There is no barrier to Ms. Harris as Acting Chairman of MSPB to make this request of Attorney General Garland. Like other Board Chairs,⁴ she simply has declined to exercise her discretion.

Given our perception that federal agency employees may well not be adequately protected from whistleblower reprisal, and, therefore, the public interest in a civil service free of prohibited personnel practices is also not being adequately protected, we find the apparent refusal of past and current leaders of MSPB to comprehensively evaluate the health of the merit system to be alarming.

The organizations below believe the record will be incomplete on a fundamental issue for confirmation if Ms. Harris does not commit to fulfilling her statutory responsibility prior to a final Senate vote.

Respectfully,⁵



Doug Pagitt, Executive Director
Vote Common Good

Louis Clark, President
Government Accountability Project

Cc: Senate Minority Leader Mitch McConnell
HSGAC Chair Gary Peters
HSGAC Ranking Member Rand Paul

³ See <https://whsknox.blogs.com/2022/mspb/Hartnett-mspb-wb-Carson-10-11-22.pdf> and <https://whsknox.blogs.com/2022/mspb/MSPB-to-hartnett-11-7-22.pdf>.

⁴ Fourteen years ago, under oath in her Senate confirmation hearing, Ms. Harris' predecessor, Susan Tsui Grundmann, committed to making this report. She did not. See https://whsknox.blogs.com/mspb_watch/grundmann-testimony-2009.pdf.⁵ When indicated by an (*), the signer's organizational affiliation is made for identification purposes only.

August 21, 2023

Additional organizations that have joined the request to Senator Schumer:

- Common Good Coalition, <https://cgcoalition.org/>
- Demand Progress, <https://demandprogress.org/>
- Death Penalty Action, <https://deathpenaltyaction.org/>
- FAA Whistleblowers Alliance
- Faithful America, <https://faithfulamerica.org/>
- Greater Things Foundation, <https://greaterthingsfoundation.org/>
- Project On Government Oversight, <https://www.pogo.org/>
- Red Letter Christians, <https://www.redletterchristians.org/>