

Congress of the United States
Washington, DC 20515

June 14, 2018

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

Dear Mr. President:

We are writing to request that you rescind three Executive Orders you issued on May 25, 2018.¹

Your Executive Orders are the most direct and systematic attack on whistleblower protections in a generation. They strip federal employees of procedures that were put in place to protect them against retaliation by their superiors—who are often political appointees—and they deny whistleblowers assistance from their union representatives when they are punished for speaking the truth. Your Executive Orders also degrade existing protections against undue partisanship in the federal workforce, allowing political appointees to terminate employees arbitrarily and without the checks assured through meaningful collective bargaining.

The goal of your Executive Orders appears to be to completely eradicate unions from the federal workplace. This approach contradicts decades of federal law based on hard lessons learned after a history of abuses, and moving ahead in this way would have severe, negative consequences for the American people and the effective and efficient functioning of our government.

The Executive Orders Strip Whistleblowers of Key Protections

More than twenty years ago, Congress enacted protections for whistleblowers who report waste, fraud, and abuse. Before that, whistleblowers risked discipline, transfer, and termination in retaliation for their acts of patriotism. Collective bargaining and union representation provide the first line of defense to federal whistleblowers, along with established procedures to protect the non-partisan professionals who make up the U.S. civil service.

Your Executive Orders eliminate the ability of federal employees to challenge their firing in grievance proceedings before a neutral arbitrator certified by the Federal Mediation and Conciliation Service.² Eliminating this arrangement, which is a key feature of collective

¹ Exec. Order No. 13836, 83 Fed. Reg. 25329 (June 1, 2018); Exec. Order No. 13837, 83 Fed. Reg. 25335 (June 1, 2018); Exec. Order No. 13839, 83 Fed. Reg. 25343 (June 1, 2018).

² Exec. Order No. 13839, Sec. 3: “[A]gency heads shall endeavor to exclude from the application of any grievance procedures negotiated under section 7121 of title 5, United States Code, any dispute concerning decisions

bargaining agreements, will degrade an important protection against political appointees who abuse whistleblowers.

Your Executive Orders cut off whistleblowers from receiving union representation by restricting the use of “official time” by union volunteers.³ Official time is the legally authorized use of duty time by certain federal employees to represent coworkers in disciplinary and grievance proceedings, meetings requested by management, and collective bargaining negotiations.

Your Executive Orders seek to physically expel unions from the workplace by denying employees the use of office space in federal facilities unless those spaces are also provided to charities or employees pay market-rate rent to the agency for the space.⁴

You issued your Executive Orders unilaterally, without input from Congress. Congress, in fact, has shown overwhelming bipartisan support for protecting collective bargaining rights and strengthening whistleblower protections. In just one recent example, both the House and Senate unanimously passed S. 1869, The Whistleblower Protection Coordination Act, sponsored by Senator Chuck Grassley, which established agency coordinators to improve whistleblower rights and is now on its way to your desk for your signature.

The Executive Orders Dilute Protections Against Arbitrary Political Firings

Forty years ago, Congress passed civil service reforms to strengthen laws preventing political favoritism. The public’s interest in a merit-based, non-partisan, and effective workplace depends on procedures to protect employees from arbitrary personnel decisions and to resolve workplace disputes fairly. Allowing employees to choose their own representatives contributes to that goal. For these reasons, Congress authorized collective bargaining and union representation in the federal workplace.⁵

to remove any employee from Federal service for misconduct or unacceptable performance.”

³ Exec. Order No. 13837, Sec. 4(v)(1): “Employees may not use taxpayer-funded union time to prepare or pursue grievances (including arbitration of grievances) brought against an agency under procedures negotiated pursuant to section 7121 of title 5, United States Code, except where such use is otherwise authorized by law or regulation.” The Executive Order makes an exception for whistleblowers, but not for other employees to provide assistance or representation to whistleblowers.

⁴ Exec. Order No. 13837, Sec. 4(iii): “No employee, when acting on behalf of a Federal labor organization, may be permitted the free or discounted use of government property or any other agency resources if such free or discounted use is not generally available for non-agency business by employees when acting on behalf of non-Federal organizations. Such property and resources include office or meeting space, reserved parking spaces, phones, computers, and computer systems.”

⁵ 5 U.S.C. §7101(a): “The Congress finds that (1) experience in both private and public employment indicates that the statutory protection of the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them—(A) safeguards the public interest, (B) contributes to the effective conduct of public business, and (C) facilitates and encourages the amicable settlements of disputes between employees and their employers involving conditions of employment.”

Your Executive Orders overrule longstanding protections against arbitrary firing and subject federal employees to political favoritism and corruption.⁶ Your Executive Orders risk turning the federal workplace into a reality show environment in which employees can be fired for raising concerns with potentially illegal orders, unsafe work conditions, sexual harassment, or waste, fraud, and abuse.

Your Executive Orders pay lip service to the legal requirement to bargain in good faith, but their long list of new restrictions reverses in one stroke decades of agreements reached by agency managers with their employee representatives.⁷ Your Executive Orders direct agency managers to reopen all collective bargaining agreements for renegotiation as soon as possible.⁸

Current law allows agencies and unions to determine mutually how much “official time” will be available for authorized uses, including collective bargaining. The resulting government-wide average is very small, about 40 seconds per employee per day—less than the time it takes to drink a cup of coffee. But your Executive Orders cut that average drastically and unilaterally to about 14 seconds. While managers face no such limitations, these arbitrary limits for employees will discourage employees from participation in collective bargaining.⁹

Your Executive Orders also impose arbitrary deadlines for the collective bargaining process, without regard to the size or complexity of the bargaining unit. While small agency facilities may be able to abide by these time limits, larger and more complex agencies may not.¹⁰

⁶ Exec. Order No. 13839, Sec. 2(c): “Conduct that justified discipline of one employee at one time does not necessarily justify similar discipline of a different employee at a different time—particularly where the employees are in different work units or chains of supervision—and *agencies are not prohibited from removing an employee simply because they did not remove a different employee for comparable conduct*” (emphasis added).

⁷ Exec. Order No. 13836, Sec 5 (f): “Pursuant to section 7114(c)(2) of title 5, United States Code, the agency head shall review all binding agreements with collective bargaining representatives to ensure that all their provisions are consistent with all applicable laws, rules, and regulations. When conducting this review, the agency head shall ascertain whether the agreement contains any provisions concerning subjects that are non-negotiable, including provisions that violate Government-wide requirements set for in any applicable Executive Order or any other applicable Presidential directive.”

⁸ Exec. Order No. 13839, Sec. 7(b): “To the extent consistent with law, each agency head shall:...(ii) renegotiate, as applicable, any collective bargaining agreement provisions that are inconsistent with any part of this order or any final OPM regulations promulgated pursuant to this order. Each agency shall give any contractually required notice of its intent to alter the terms of such agreement and reopen negotiations.”

⁹ Exec. Order No. 13837, Sec. 3 (a): “Agencies shall commit the time and resources necessary to strive for a negotiated union time rate of 1 hour or less.” The Office of Personnel Management found that the government-wide average rate of official time usage, per bargaining unit member, per year was 2.97 hours in 2016. See Office of Personnel Management, *Official Time Usage in the Federal Government, Fiscal Year 2016* (May 2018) (online at www.opm.gov/policy-data-oversight/labor-management-relations/reports-on-official-time/reports/2016-official-time-usage-in-the-federal-government.pdf). Exec. Order No. 13837 would cut that government-wide average by two-thirds.

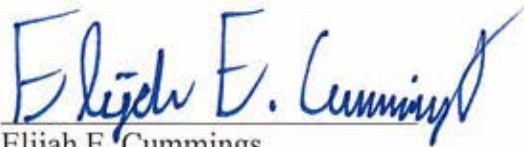
¹⁰ Exec. Order No. 13836, Sec. 5(a): “For collective bargaining negotiations, a negotiating period of 6 weeks or less to achieve ground rules, and a negotiating period of between 4 and 6 months for a term CBA under those ground rules, should ordinarily be considered reasonable and to satisfy the ‘effective and efficient’ goal set forth in section 1 of this order.”

Finally, your Executive Orders authorize agency managers to dictate contract terms that will not be subject to independent review. Your Executive Orders allow agency managers to bypass mediation processes in the law, without agreement from the employees. If bargaining does not resolve matters in line with the employer's demands, agency management can now unilaterally impose their own terms.¹¹

Request to Rescind Executive Orders

Your new Executive Orders will mark the end to meaningful contract bargaining in the federal government. They will incentivize agency managers and political appointees to impose their will and flout the legal requirement to negotiate mutually agreeable solutions. We believe the harms caused by your Executive Orders constitute an unprecedented attack on good governance and a professional, non-partisan civil service. For all of these reasons, we ask that you rescind them immediately.

Sincerely,



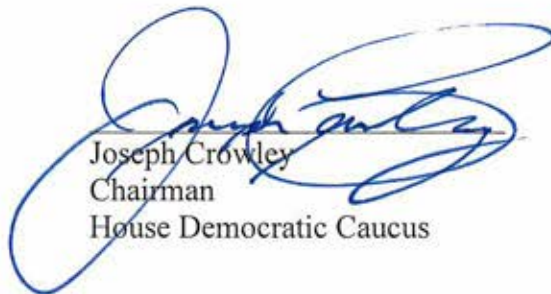
Elijah E. Cummings
Ranking Member
Committee on Oversight and
Government Reform



Steny Hoyer
Democratic Whip

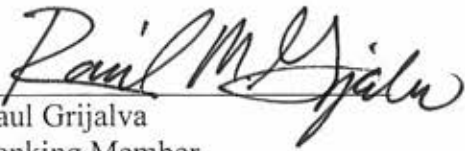


Bobby Scott
Ranking Member
Committee on Education
and the Workforce



Joseph Crowley
Chairman
House Democratic Caucus

¹¹ Exec. Order No. 13836, Sec. 5(c): "If the commencement or any other stage of bargaining is delayed or impeded because of a collective bargaining representative's failure to comply with the duty to negotiate in good faith pursuant to section 7114(b) of title 5, United States Code, the agency shall, consistent with applicable law consider whether to: ... propose a new contract, memorandum, or other change in agency policy and implement that proposal if the collective bargaining representative does not offer counter proposals in a timely manner."



Raul Grijalva
Ranking Member
Committee on Natural Resources



Linda Sanchez
Vice Chair
House Democratic Caucus




Adam Smith
Ranking Member
Committee on Armed Services



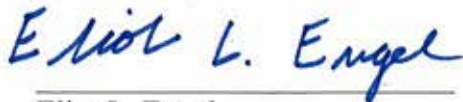
John Yarmuth
Ranking Member
Committee on the Budget



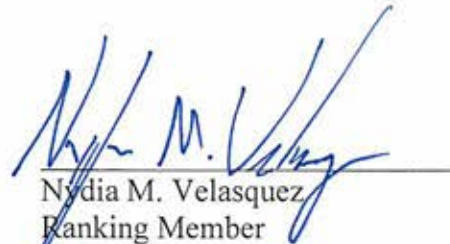
Bennie G. Thompson
Ranking Member
Committee on Homeland Security



Frank Pallone
Ranking Member
Committee on Energy and Commerce



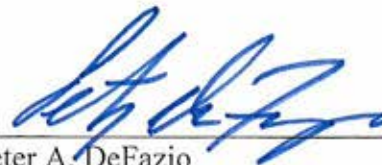
Eliot L. Engel
Ranking Member
Committee on Foreign Affairs



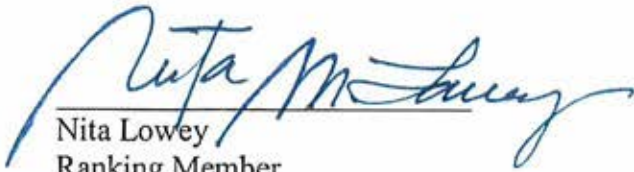
Nydia M. Velasquez
Ranking Member
Committee on Small Business



Richard E. Neal
Ranking Member
Committee on Ways and Means



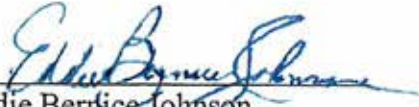
Peter A. DeFazio
Ranking Member
Committee on Transportation
and Infrastructure



Nita Lowey
Ranking Member
Committee on Appropriations



Robert Brady
Ranking Member
Committee on House Administration



Eddie Berrice Johnson
Ranking Member
Committee on Science, Space
And Technology



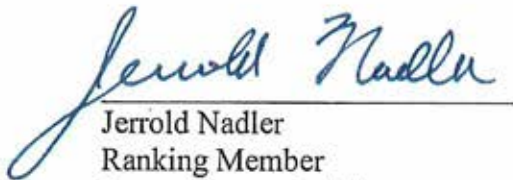
Tim Walz
Ranking Member
Committee on Veterans Affairs



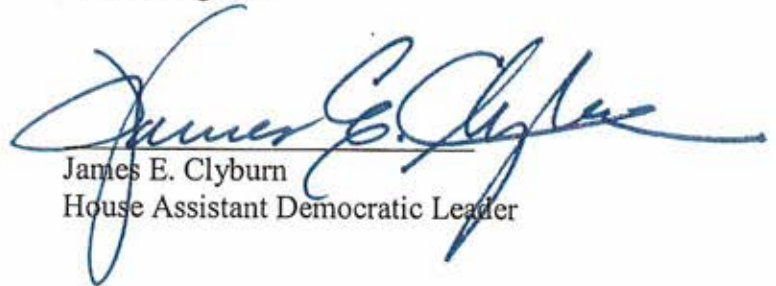
James P. McGovern
Ranking Member
Committee on Rules



Adam Schiff
Ranking Member
House Permanent Select Committee
on Intelligence



Jerrold Nadler
Ranking Member
Committee on Judiciary



James E. Clyburn
House Assistant Democratic Leader



Nancy Pelosi
House Minority Leader