**[Addressing the ‘Crisis’ at the MSPB](https://www.fedsmith.com/2019/05/09/addressing-crisis-mspb/" \o "Permanent Link to Addressing the ‘Crisis’ at the MSPB" \t "_blank)**

[Ian Smith](https://www.fedsmith.com/author/ian-smith/) May 9, 2019

Legislation introduced this week would allow the general counsel at the Merit Systems Protection Board to block retaliation against whistleblowers in the event there is no quorum at the agency.

Introduced by Congressman Gerry Connolly (D-VA), the Interim Stay Authority to Protect Whistleblowers Act ([H.R. 2530](https://www.govtrack.us/congress/bills/116/hr2530)) is designed to prevent what he called “questionable personnel actions brought by agencies against whistleblowers.”

The bill is fairly broad in its reach since it grants the power to one individual to do what the three-member board would normally do. It would delegate temporary authority to the MSPB general counsel to stay these types of personnel actions in the event there is no quorum.

Congressman Elijah Cummings (D-MD) is a co-spnosor of the bill. The two Congressmen called the current situation at the MSPB “a completely avoidable crisis” as evidence that their bill is needed.

“This was a completely avoidable crisis,” said the Congressmen. “Whistleblowers shouldn’t be held hostage by the failures of the political system. Our legislation would, at a minimum, keep the lights on and allow the MSPB general counsel to prevent an agency from taking a retaliatory or prohibited personnel action against those who disclose wrongdoing.”

## What is Happening at the MSPB?

So what is this “crisis” at the agency that Connolly and Cummings are referring to?

Currently, there is no quorum of board members at the MSPB. The term for the last remaining Board member, Mark Robbins, expired on March 1, 2018, but he continued to serve in a holdover capacity limited by statute to one year until this past March.

Two other board members were nominated, but the Senate declined to confirm the nominations until a third was appointed. That happened recently when [B. Chad Bungard was nominated](https://www.fedsmith.com/2019/05/01/third-mspb-member-finally-nominated/) by President Trump. Presumably, this means things will now get back to normal at the MSPB in the near future.

The lack of a quorum led to a [backlog of pending cases before the MSPB](https://www.fedsmith.com/2018/05/22/federal-employees-wait-mspb-vacancies-remain-unfilled/) for any Petition for Review (PFR) filed with the agency.

Anytime there is a disruption of some sort within an agency, it’s a chance for Congress to get involved and propose legislation to take credit for fixing the situation.

Cummings previously introduced legislation that proposed a fix for the situation. It would have extended the term of MSPB board members, but it did [come with a political catch](https://www.fedsmith.com/2019/02/28/mspb-nominations-congress-politics-usual/) as FedSmith author Ralph Smith noted in a recent article. It would presumably have been advantageous for Cummings and his party by limiting the number of agencies at which MSPB Acting Chairman Mark Robbins could serve. However, the bill passed the House with this stipulation removed.

Another bill was introduced in the Senate that would extend the term of an MSPB board member if the person “is the sole member appointed to the Board.” That bill has thus far not advanced.

It seems doubtful that any of these bills will make it through Congress now that a third member has been nominated to serve at the MSPB, but that doesn’t mean Congress won’t continue to take advantage of the unusual situation to introduce bills to help their constituents.