

MSPB NOMINATION HEARING TESTIMONY

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MEMBER

U.S. MERIT SYSTEMS PROTECTION BOARD

SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENT AFFAIRS

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Chairman Akaka, Ranking Member Johnson and members of the Committee:

I appreciate this opportunity to present my qualifications and respond to your questions regarding my nomination to be a Member of the U.S. Merit Systems Protection Board. I want to thank the President for the honor and privilege of his nomination, Senator McConnell for his recommendation to the President, and Senator Collins for her early and very gracious support. If confirmed, I will prove my worthiness of this appointment by carrying out my responsibilities with the highest degree of professionalism and integrity.

As a historian by both education and avocation, I am particularly pleased to be nominated to a position once occupied by a young Theodore Roosevelt, who served at the then-U.S. Civil Service Commission from 1889-1895 under Presidents Benjamin Harrison and Grover Cleveland. As he wrote to a friend upon assuming his duties in 1889, "I have pretty hard work, and work of a sometimes rather irritating kind; but I am delighted to be engaged in it. \* \* \* I intend to hew the line and let the chips fall where they will." And Mr. Chairman, I think we all agree that those chips fell pretty well for Theodore Roosevelt.

The future president brought to this position a passion for and dedication to the concept of a spoils-free, merit based Federal civil service. However, he brought little in the way of practical experience with the Federal workforce. Like the colleagues I hope to join, Chairman Susan Tsui Grundman and Vice chairman Anne Wagner, and the Member I would succeed, Mary McNally Rose, I bring to the MSPB a career of experience with the issues I will face if confirmed.

I began my career as a Legislative Assistant to my hometown California members of the House of Representatives from 1981-1984. My portfolio included civil service issues, and this was shortly after passage of the *Civil Service Reform Act of 1978*. I have worked twice for the White House Office of Presidential Personnel with my portfolio including the Federal human resources agencies, including the Office of Personnel Management (OPM), Merit Systems Protection Board (MSPB), Federal Labor Relations Authority (FLRA), Office of Government Ethics (OGE) and Office of Special Counsel (OSC). These are all successor agencies to the old U.S. Civil Service Commission (1883-1978). From 2001-2006, I was privileged to serve as General Counsel of OPM. One of my responsibilities was to coordinate OPM's exercise of its Title 5, Chapter 77 statutory rights to intervene in or seek reconsideration of MSPB decisions. Following 19 months of service with the State Department in Iraq and one year conducting officer training with the U.S. Army, I am again the General Counsel of a Federal agency, the U.S. Election Assistance Commission, and dealing with Federal human resources and personnel policy issues.

My early experience with the *Civil Service Reform Act*, along with my later tenure at OPM, gives me good insight into the respective roles and responsibilities of the successor agencies to the old Civil Service Commission. If read too broadly, the Title 5 responsibilities of these agencies could be seen to overlap or conflict. This is neither desirable nor helpful to an efficient administration of the Federal Civil Service. But if Title 5 is read narrowly, and with due consideration given to the intent of Congress when the Act was passed, each organization has an important mission to pursue, that neither overlaps nor conflicts with those of its sister agencies. If confirmed, I will bring with me to this position a clear understanding of the MSPB's role in the grand scheme of Federal civil service management and policy development envisioned by the *Civil Service Reform Act*, and an appropriate deference to the roles and responsibilities of the other agencies.

If confirmed I will also bring significant management and administrative skills to the MSPB, which I will place at the Chairman's disposal to assist whenever and wherever she believes my services would be helpful and prudent. I have briefly reviewed the Board's FY 2011 Final Performance Plan (December 20, 2010) and the subsequent FY 2011 Performance and Accountability Report (November 15, 2011). I am pleased the Board exceeded its decision quality and alternative dispute resolution performance goals. And I fully understand the conflicting tensions that exist in meeting the goal of timely but high quality work product in the form of Board decisions. In my meetings with stakeholders and practitioners prior to this hearing, I have been consistently informed that the timeliness of Board decisions is extremely important. But no one wants the quality of those decisions to suffer as a result of focus on speed. And most understand and appreciate the effort the Board is making in this regard. If confirmed, I look forward to working with my colleagues to continue addressing this matter.

The next few years will be an exciting time to serve on the MSPB. The last Congress passed updates to the *Uniformed Services Employment and Reemployment Rights Act (USERRA)*, although I note from recent press reports that enforcement issues, particularly with regard to the Federal government as an employer, remain. Senator Akaka, I know the importance you place in enhancing Federal whistleblower protections and note that both the Senate Homeland Security and Government Affairs and the House Oversight and Government Reform committees have passed with bipartisan support versions of the Whistleblower Protection Enhancement Act. I am also aware that the Office Special Counsel has proposed a legislative initiative to update the *Hatch Act*.

My previous experiences with these and other relevant issues have either been as an attorney advocate or in the public policy and administration spheres. I fully understand that if confirmed I will be taking on a new and unique role as an impartial, objective adjudicator. I believe I'm qualified for that responsibility and I am excited at the possibility.

During this confirmation process I have been asked several times whether I bring to public service generally, and this appointment specifically, a governing philosophy. I suppose I do, and no one states it better than then-President Theodore Roosevelt toward the end of his presidency in 1909 when he wrote: "[t]he National Government should be a model employer. It should demand the highest quality of service from each of its employees and it should care for all of

them properly in return." The MSPB is a modern, necessary component of that philosophy. I'm honored to be considered for appointment to it.

Before concluding, I would like to thank those who have assisted me in this process: my family, friends and colleagues who have given me their moral support; Senate and White House staff; my future colleagues at the MSPB who provided logistical support, most especially Rosalyn Coates and Katherine Smith; and the stakeholders I reached out to who generously gave me their time and thoughts. I will always be grateful for the public service mentoring of two men who have assisted me with my career over the years: the late Congressman John H. Rousselot of California, and Ambassador Robert H. Tuttle. And finally, I especially want to thank, and gratefully note the presence of, my parents Neal and Janet Robbins, who are visiting from Phoenix, Arizona. They have been supportively behind me my entire life. So it is natural that they are here with me today.

Mr. Chairman, again, thank you, and I look forward to responding to any questions the members of this Committee may have.