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Congress of the United States
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COMMITTEE ON
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SUBCOMMITTEES:
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INFORMATION TECHNOLOGY
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEES:
MIDDLE EAST AND NORTH AFRICA
ASIA AND THE PACIFIC

July 16, 2018

The Honorable Trey Gowdy
Chairman
Committee on Oversight and
Government Reform
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Mark R. Meadows
Chairman
Subcommittee on Government
Operations
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Gowdy and Chairman Meadows:

We write to respectfully request a Committee or Subcommittee hearing regarding the Executive Order Excepting Administrative Law Judges from the Competitive Service issued by President Donald J. Trump on July 10, 2018.

In justifying the Executive Order, President Trump cited the Supreme Court's decision in *Lucia v. Securities and Exchange Commission* as the reason for making immediate, unilateral, and sweeping changes to how 1,900 Administrative Law Judges (ALJs) are appointed. These are individuals we trust in administrative proceedings that impact public health, labor relations, national security, and other matters that come before agencies of the federal government.

Under the previous system, ALJs were hired through a competitive service appointment process administered by the Office of Personnel Management (OPM) in which agencies chose a preferred candidate from a list of three candidates provided by OPM. It was generally accepted this process ensured that impartial and qualified individuals were placed into these important positions.

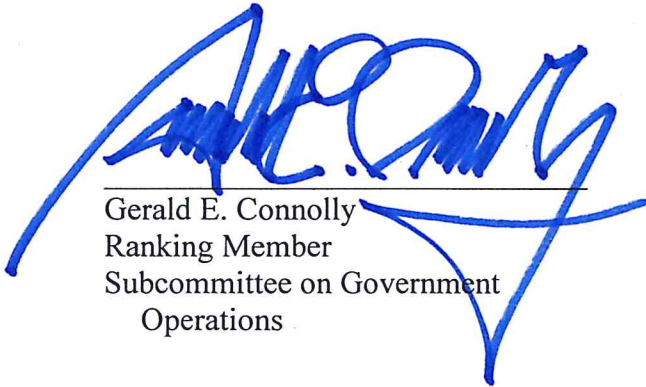
Pursuant to standards established by previous Court decisions in *United States v. Germaine* and *Buckley v. Valeo*, the Supreme Court found that ALJs "occupy a continuing position established by law" and exercise "significant authority pursuant to the laws of the United States." The Supreme Court, therefore, held that ALJs are inferior Officers of the United States subject to the Appointments Clause in Article II of the United States Constitution.

The Appointments Clause authorizes Congress to "vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments." Therefore, Congress has a vital role to play in responding to the Court's decision in *Lucia*. Additionally, the Oversight Committee's *Oversight Plan* states that "the Committee will conduct oversight of Executive Branch directives and Executive Orders to ensure that they do not exceed their legal authority and that they adhere to the requirements of the U.S. Constitution and federal law. The Committee will also examine directives and executive orders to assess their effects."


We believe the Executive Order would give politically-appointed agency heads nearly unlimited discretion to stack the ALJ corps with partisan individuals, whose only qualification is they are licensed attorneys.

We request that the Committee examine the impact of President Trump's Executive Order and explore any alternative, Congressionally-directed appointment structures that preserve the integrity of decisions issued by ALJs and ensures ALJs are qualified for their positions.

Sincerely,



Gerald E. Connolly
Ranking Member
Subcommittee on Government
Operations



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