

United States Senate

WASHINGTON, DC 20510

September 21, 2023

President Joseph R. Biden
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden,

We write in opposition to the nomination of Suzanne Summerlin to be General Counsel of the Federal Labor Relations Authority (FLRA) and urge you to withdraw the nomination as she has a history of engaging in unethical, third-party communication with the FLRA that calls into question her judgement and impartiality.

Last Congress, you nominated former FLRA Chairman Ernest W. DuBester to another term in the same position. During his confirmation hearing, emails obtained through a Freedom of Information Act request were entered into the record showing a pattern of off-the-record communication with union officials who had business before the FLRA. These emails included communications between Chairman DuBester and Ms. Summerlin, who was Associate General Counsel at the National Federation of Federal Employees at the time.

In response to a letter from Members of the United States Senate Homeland Security and Governmental Affairs Committee, the U.S. Department of Treasury (Treasury), Office of Inspector General (OIG) initiated an investigation on behalf of the FLRA OIG Inspector General. While the Treasury OIG did not find evidence of *ex parte* communication that would constitute a violation of 5 C.F.R. § 2414 or 5 C.F.R. § 2635.703, the OIG noted the exchanges created an appearance of impropriety, which is prohibited under 5 C.F.R. § 2365.101(b)(14). The inquiry concluded that this “pattern of transitioning to telephone communication and examples of sharing information with union officials who have business before the FLRA gives the appearance of impropriety.”^[1] This resulted in the withdrawal of Chairman DuBester’s nomination.

In response to the nomination of Ms. Summerlin, I requested the Treasury OIG review the communications between Ms. Summerlin and Chairman DuBester as to whether the emails exchanged between Mr. DuBester and Ms. Summerlin contributed to the Treasury OIG’s conclusion noting the appearance of impropriety.

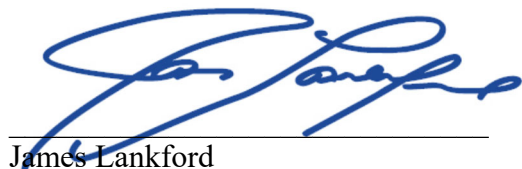
On July 25, 2023, Treasury Acting Inspector General Richard Delmar responded that the email in question “is an example of the kind of message that contributed to our conclusion that the former FLRA Chairman engaged in a pattern of activity that created the appearance of

^[1] Memorandum from Sally Luttrell, U.S. Dep’t of Treasury Assistant Inspector Gen. for Investigations, to Richard K. Delmar, U.S. Dep’t of Treasury Deputy Inspector Gen. (Aug. 23, 2022).

impropriety under 5 C.F.R. § 2635.101(b) (14), a regulation that only applies to executive agency employees.”^[2]

If confirmed, Ms. Summerlin would be tasked with upholding the legal and ethical integrity of the FLRA. The FLRA General Counsel holds broad authority to investigate and prosecute unfair labor practices, we must be assured that someone holding such a position exercise that authority in a lawful and unbiased manner. Because her communications with a member of the FLRA led to the appearance of impropriety and were a part of Mr. DuBester’s unethical communications, Ms. Summerlin’s knowing involvement proves her disqualification for the position. Former Chairman DuBester withdrew his nomination due to unethical communications, the same standard should apply to those on the other end of the emails. We urge you to withdraw her nomination.

Sincerely,



James Lankford
Ranking Member
Senate Committee on Homeland
Security and Governmental Affairs,
Subcommittee on Government
Operations and Border Management



Rick Scott
United States Senator



Bill Hagerty
United States Senator

^[2] Letter from Richard K. Delmar, Acting Inspector General, U.S. Department of the Treasury to Senator James Lankford (July 25, 2023).