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**Cheri Cannon, a partner at Tully Rinckey PLLC, discusses potential legislation that would take away certain job protections from VA staffers.**

**Congress wants to make it easier for VA executives' heads to roll**

**By Joe Davidson**

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**Now that Eric Shinseki's head has rolled, will those of top civil servants in Veterans Affairs be next? Shinseki quit as Department of Veterans Affairs secretary last week after repeated reports of mismanagement, faked waiting lists and cooked books designed to cover up the long waiting times for service at VA facilities. The scandal cost him his job, but no one pretends that is enough to solve the problem. It involves a web of systemic issues, including too-few doctors for an expanded caseload and unrealistic performance goals even with VA's growing budget. Next in the dock are VA's Senior Executive Service members. Congress is considering legislation that would treat them like second-class federal employees by stripping them of certain civil service protections or weakening those protections almost to the point of meaninglessness. The House and a Senate panel have approved legislation that would allow the secretary to fire or demote the department's SES staffers, who would have no appeal rights. On Thursday, the Senate Veterans' Affairs Committee will hold a hearing on somewhat more reasonable legislation that would provide for appeals, albeit significantly truncated. This episode is a lesson in how civil service reform should not be done. The guilty should be punished. But their due process rights should not be eviscerated in the name of serving veterans. Resolving appeals to the Merit Systems Protection Board (MSPB) process can be**

frustratingly long — more than a year, on average. That needs to be reexamined. Treating one group of employees differently from another in similar circumstances, however, is bad policy. It's vindictive, demoralizing and counterproductive. It's important to understand why federal civil servants have protections generally not provided in the private sector. Elected politicians and their appointees come and go. Civil servants are the foundation of government. The protections, such as appeal rights, are there to guard against political favoritism in the work of government and to prevent politicians and their cronies from firing workers thought not to be sufficiently red or blue. The House bill would undo that long-standing tradition. Gutting employment protections would allow each incoming administration to kick out VA SES members not to the politicians' liking. Sen. Marco Rubio (R-Fla.), sponsor of companion legislation in the Senate, says the secretary should have the same power to fire senior executives as senators have in firing their staffers. That's the wrong idea. Members of Congress hire people only of like minds. Republicans need not apply to Democrats; Democrats need not apply to Republicans. That's fine for political offices, but it's a disastrous way to run a government that should provide good service to all. But when access to service becomes as rotten as it has been in VA, it provides an opportunity for bad legislation to advance. In this case, many Democrats have jumped on the bad-bill bus and joined Republicans in throwing senior executives under it. The House bill, sponsored by House Veterans' Affairs Committee Chairman Jeff Miller (R-Fla.), passed with a 390 to 33 vote. The Appropriations Committee in the Democratic-controlled Senate approved a like measure with a voice vote. The House bill "essentially returns us to a centuries-old spoils system," said Max Stier, president and CEO of the Partnership for Public Service. Sen. Bernie Sanders (I-Vt.) knows the Miller-Rubio approach is a bad idea. But he also can count. Given the frenzy of the moment, that bill could become law if an alternative is not presented. His alternative is better, but only a little. His proposed legislation says employees can appeal firings and demotions to the MSPB "not later than 7 days after such removal or transfer." the MSPB would be required to expedite the appeal and "issue a decision not later than 21 days after the date of the appeal." Taking a year to resolve claims is too long, but the bill's time frame is just not realistic. The bill calls for funding "as may be necessary for the Merit Systems Protection Board to expedite appeals." But

does anyone really expect Congress to provide enough money for MSPB to hire enough people to make those quick deadlines a reality? Even if MSPB could move that fast, is it reasonable to require employees to gather all they need for a proper appeal in just seven days? The answer to both questions is no. That's why Carol Bonosaro, president of the Senior Executives Association, calls Sanders's plan "a sham of a process." She's had harsher words for the House bill. Cheri L. Cannon, a partner with the Tully Rinckey firm who specializes in federal employment law, said Sanders's bill improves on the House version. Yet she still thinks "a legitimate challenge could be made that the [Senate] bill is unconstitutional" because it would not provide employees with adequate notice before being punished "as has been historically required of public employers by well-established case law." Make no mistake — senior executives and others who cooked the books or covered that up should be punished. Congress should use this opportunity to make the system work better for customers, taxpayers and employees across the government. But the politicians — Democrats and Republicans — don't have time for that.