

November 19, 2013

Dear Senators:

We, the undersigned whistleblowers and organizations, write to urge you to support the Warner-Collins-Kaine-Grassley Amendment to strengthen the provisions to protect both military whistleblowers and victims of sexual assault. Our troops have been promised protections for reporting wrongdoing, but those have not materialized. It has been well-documented that the law that is supposed to protect them is disgracefully inadequate. GAO reports that from FY 2006-mid-2011, only 20 whistleblowers obtained relief out of 2227 reprisal complaints—less than one percent.¹ Experts warn it creates more reprisal victims than it helps.

While the National Defense Authorization Act for FY 2014 (NDAA, S. 1197, Sections 511 and 542) goes a long way to close arbitrary loopholes for military whistleblowers and victims of sexual assault, the bipartisan amendment offered by Senators Mark Warner (D-VA), Susan Collins (R-ME), Tim Kaine (D-VA), and Charles Grassley (R-IA) provides technical, but important improvements.

One technical provision in the amendment perfects the intent of the Senate Armed Services Committee to create the right to Board of Correction of Military Records administrative due process hearings. Since 1988 service BCMR's never have granted a hearing, despite discretionary authority. Alternative fact finding through informal Office of Inspector General (OIG) investigations has been inconsistent and unreliable.

The amendment also increases the statute of limitations to challenge retaliation from 60 days to one year. It takes time for a whistleblower to find counsel, since few lawyers have expertise both in military and whistleblower law. Other federal and contractor whistleblowers have at least a three year statute of limitations.

The Warner-Collins-Kaine-Grassley Amendment also requires that a higher level service Inspector General (IG) investigate reprisal charges, not the level where the whistleblower is stationed. The Department of Defense OIG routinely delegates cases to service IG's, which assign them to agents working at the whistleblower's facility. Since service IG's do not have structural independence, agents who conduct fact finding may working for or be subject to authority by the defendant. This conflict of interest further illustrates why current MWPA rights can be dangerous. In one example, the base IG agents told a whistleblower challenging harassment to gather evidence supporting his disclosure of a maintenance breakdown on military aircraft. When he complied, the IG opened an investigation for theft of government property that was the basis for further charges.²

The current bar for our troops to prove retaliation for whistleblowing is just too high. The MWPA also controls the Public Health Service, where life and death stakes are common. To have confidence the new rights will make a difference there must not be discriminatory standards

¹ 2012 Government Accountability Office report

² March 10, 2009 letter from Government Accountability to Major Dana McCown, U.S. Air Force, Offutt Air Force Base, Nebraska

for how much evidence whistleblowers must produce to win their cases. Unfortunately, the Senate bill does not offer the standard for proving retaliation that was included in the House version of the NDAA, the original bill introduced by Senators Warner and Tim Kaine (D-VA), and the original draft Amendment. However, we will continue to urge Congress to include it in the final reconciled NDAA, since the Whistleblower Protection Act burdens of proof found in every whistleblower law and directive since 1988—including those for the intelligence community.

It is familiar to hear from a few (usually the ones in charge) that more protections will encourage exploitation of the system. This has not been the experience with any of the more than 20 federal laws on the books—not even with the laws that offer a potential monetary reward like the hugely successful False Claims Act.

The truth is that even with the best protections, blowing the whistle on wrongdoing is extremely risky. We believe that is even truer for our service men and women, given the military culture. Certainly, our men and women in the military deserve better than the third-rate rights they currently have.

Better protections for those seeking to fix what's wrong in our military will increase accountability for those who undermine our military readiness. With authentic protections for those who report wrongdoing, problems will more often be addressed as they arise, and many will be averted altogether.

Please support the Warner-Collins-Kaine-Grassley Amendment.

Sincerely,

Whistleblowers

Gabe Bruno, Former Manager of the Orlando Flight Standards District Office, FAA
Kevin Robert Downing, Former Captain, U.S. Army Reserves
Bogdan Dzakovic, Former Team Leader, Air Marshal Service
Kim A. Farrington, Former Safety Inspector, FAA
Matthew Fogg, Chief Deputy (retired), U.S. Marshal Service
Franz Gayl, Major (retired), U.S. Marine Corps; Senior Science Advisor to U.S. Marine Corps
Michael German, Former Special Agent, FBI
Cathy Harris, Former Senior Inspector, U.S. Customs
Mike Holmes, LtCol (retired), U.S. Army
Robert MacLean, Former Federal Air Marshal, Air Marshal Service; Veteran, U.S. Air Force (active duty & reserve)
Michael McCray, Former Community Development Specialist, USDA
Marcel Reid, Former DC Chair and National Board Member, ACORN; Whistleblower Liaison, Pacifica Radio
Tony Shaffer, LtCol (retired), U.S. Army, Former Senior Intelligence Officer
James W. Weirick, Major, U.S. Marine Corps

Organizations

ACORN 8
American Booksellers Foundation for Free Expression (ABFFE)
Californians Aware
Center for Effective Government
Center for Financial Privacy and Human Rights
Concerned Citizens of America
Concerned Citizens of Petersburg
Defending Dissent Foundation
Drum Majors for Truth
Essential Information
Federal Aviation Administration Whistleblowers Alliance
Federally Employed Women (FEW)
Government Accountability Project
International Association of Whistleblowers
Iraq Veterans Against the War
Liberty Coalition
National Forum On Judicial Accountability
National Judicial Conduct and Disability Law Project, Inc.
National Taxpayers Union
National Whistleblower Center
No FEAR Coalition
Organizations Associating for the Kind of Change America Really Needs (OAK)
OpenTheGovernment.org
Peace Action
Power Over Poverty Under Laws of America Restored (POPULAR)
Project On Government Oversight (POGO)
Protect Our Defenders
Public Citizen
Public Employees for Environmental Responsibility (PEER)
Society of Professional Journalists
Simmelweis Society International
Service Women's Action Network (SWAN)
Taxpayers Protection Alliance
The Coalition For Change, Inc. (C4C)
The Plea For Justice Program
Union of Concerned Scientists
Voices for Corporate Responsibility
Whistleblower Summit for Civil and Human Rights