

May 12, 2015

The Honorable John Boehner
Speaker
United States House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Minority Leader
United States House of Representatives
H-204, The Capitol
Washington, DC 20515

The Honorable Pete Sessions
Chairman, Committee on Rules
H-312 The Capitol
Washington, DC 20515

The Honorable Louise Slaughter
Ranking Member, Committee on Rules
H-312 The Capitol
Washington, DC 20515

Dear Speaker Boehner, Leader Pelosi, Chairman Sessions, and Ranking Member Slaughter:

As organizations concerned with openness and accountability in all parts of government, we urge the Rules Committee to make in order Congresswoman Speier's amendment (Amendment #12) to H.R. 1735, the National Defense Authorization Act for Fiscal Year 2016. This amendment provides overdue reforms for military whistleblowers, as well as members of the Public Health Service, to create credible whistleblower protection rights for members of the Armed Forces.

Over the past 27 years, the Military Whistleblower Protection Act has been periodically updated to provide greater protections for whistleblowers. However, these changes have not kept pace with similar increases in protections in civilian whistleblower statutes, and as a result, servicemembers are more likely to face retaliation for reporting illegal activities. That is unacceptable.

This amendment does not expand the contexts for legally-protected whistleblowing. Rather, it is a comprehensive overhaul of existing law so that its due process structure for enforcement is on parity with other whistleblower laws. A recently released Government Accountability Office report found significant due process deficiencies for military whistleblowers, with the average reprisal investigation taking 526 days, nearly three times the Department of Defense's internal 180-day requirement.¹ This amendment addresses this deficiency by providing a temporary remedy to military whistleblowers when the Department of Defense Inspector General has a reasonable belief that an illegal reprisal has occurred by allowing a 90-day "stay" of alleged retaliation that provides undue hardship until an investigation is complete. In addition, this amendment:

- permits legal challenges to retaliatory investigations;
- guarantees an administrative due process hearing at the Board of Correction of Military Records for fully investigated whistleblower claims;
- strengthens independence by allowing servicemembers to have an investigation by the Department of Defense Office of Inspector General (OIG), instead of by a Service Inspector General;
- requires OIG investigative reports to consider discipline for retaliation; and

¹ Government Accountability Office, "Whistleblower Protection: DOD Needs to Enhance Oversight of Military Whistleblower Reprisal Investigations," May 7, 2015, Executive Summary, <http://gao.gov/assets/680/670067.pdf>.

- establishes general military administrative justice due process reforms.

These reforms are critical and long overdue. Our servicemembers should not live in fear of retaliation for speaking out. We hope you will make this amendment in order to provide them the credible whistleblower protections they deserve.

Sincerely,

ACORN 8

American Civil Liberties Union (ACLU)

Center for Science and Democracy at the Union of Concerned Scientists

Federally Employed Women Legal Education Fund (FEW-LEF)

Government Accountability Project

Human Rights Watch

International Association of Whistleblowers

Liberty Coalition

MuckRock

National Taxpayers Union

National Whistleblowers Center

OpenTheGovernment.org

Project On Government Oversight (POGO)

Public Citizen

Rural Coalition/Coalición Rural

Sunlight Foundation

Taxpayers Protection Alliance

Kevin R. Downing, former Captain, US Army Reserves