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Post Editorial Misses Mark on Whistleblowers: Protections in Stimulus Bill Help Workers Hold Government Accountable

A Joint Statement from a Coalition of Public Interest Groups

Monday's Washington Post editorial, "Wrong Way to Protect," did a disservice to its readers and the taxpayers when it opposed provisions in the economic stimulus bill that are designed to empower federal whistleblowers.

The editorial argues that the reform should be pursued through ordinary legislative channels rather than included in the stimulus, stating "This is not the way it's supposed to work." This is exactly how it is supposed to work: Federal whistleblower protection legislation has had the benefit of hearings, and has been vetted in both chambers for several years. This is not an extraneous measure, as the editorial suggests. In both chambers, the original stimulus bills included whistleblower protections for state and local employees. Members of the House had the good sense to recognize that the massive stimulus package creates an urgent need for federal employees, who are the taxpayers' first line of defense against waste and fraud, to be given the same protections afforded state and local employees.

Congress has diligently built a record to strengthen federal whistleblower protections through a robust legislative history (see fact sheet below). Identical whistleblower protections overwhelmingly passed the House as a stand-alone measure, 331-94, in 2007. Despite eight years of hearings, committee meetings, mark-ups, and four House and Senate votes, federal employees who expose waste, fraud and abuse remain vulnerable to intimidation, reassignment and termination, with no effective means to fight retaliation. Even so, whistleblowers each day risk their careers and come forward with evidence of

misconduct, much to the benefit of *The Washington Post* and other newspapers that have earned prizes for their reporting on information whistleblowers provided.

In addition, the editorial cites curious concerns about disclosures of classified information (which could have been cleared up with a careful reading of the text). There is nothing in the bill to condone any “breach” – “unilateral” or otherwise. However, after some members of Congress raised legitimate concerns about the procedure for disclosure of classified information, the House managers agreed on the floor to work together with the Intelligence Committee to address those concerns. The members who raised the concerns were satisfied, and voted for the whistleblower amendment. We too are confident that those issues will be resolved. In fact, because the law will allow for only lawful disclosures to those with the appropriate security clearances, it actually will *prevent* leaks and so-called “breaches.”

But it is important to recognize the central purpose behind protecting federal employees in the stimulus: Taxpayers need their help in detecting fraud and waste. The stimulus bill authorizes the expenditure of billions of taxpayer dollars; as taxpayers, we need the best oversight possible. Countless studies have verified that whistleblowers are the most effective weapon against fraud. This includes recent statistics by the U.S. Department of Justice, which announced that whistleblowers were responsible for returning over \$1 billion to the U.S. Treasury in 2008 alone. In addition, PriceWaterhouseCoopers recently surveyed more than 5,000 corporations worldwide and found that whistleblowers, by far, were the most effective means for the initial detection of corporate fraud, besting internal auditors and law enforcement. The editorial asserts that it is somehow “disingenuous” to claim that whistleblowers will “enhance accountability.” But the evidence shows that there is no better means of enhancing accountability. We believe there is no excuse to spend another \$888 billion without first locking in this proven accountability safeguard. Lastly, whistleblower protections, unlike every other provision in the stimulus, will save money, not spend it.

If lawmakers reject these provisions, they will be sending federal employees a very strong signal: Keep your head down and don’t rock the boat. Employees know what happens to colleagues who step forward and expose waste, fraud and abuse in government. Federal workers who have reported wrongdoing have lost more than 98.5 percent of cases at the Federal Circuit Court of Appeals since 1994, when Congress last unanimously strengthened the law. During the entire Bush administration, the U.S. Merit Systems Protection Board ruled only twice that the whistleblower law was violated.

It’s time to end the culture of secrecy and guarantee that the federal workforce has our support in making sure our stimulus dollars are spent honestly and effectively.

Whistleblower Legislative History Fact Sheet

The chronology below highlights the recent legislative history of federal whistleblower protections reform. To summarize, it has the benefit of four hearings, eight markups where authorizing committees with the relevant expertise approved it, and four House or Senate votes. Its final enactment has been blocked once by an unrelated filibuster and three times by secret holds.

October 2000: Whistleblower Protection Act legislation introduced in Senate.

July 2001: Whistleblower Protection Act legislation introduced in House.

August 2001: Senate conducts first hearings.

September 2001: September 11th attacks and anthrax scares halt legislative progress.

August 2002: House Government Reform Committee marks up a version of legislation, as part of legislation to create a Department of Homeland Security (DHS). The provision fails by six votes on the House floor after being merged with a controversial measure to provide collective bargaining rights for DHS employees.

October 2002: Senate Governmental Affairs Committee approves the bill in markup as part of the DHS legislation, but a filibuster over other issues prevents the committee-approved version of the DHS bill from being voted on, and the WPA is not in the substitute later enacted.

November 2003: Senate Homeland Security and Governmental Affairs Committee (HSGAC) conducts second set of hearings.

July 2004: Senate HSGAC marks up the legislation again.

September 2004: House Government Reform Committee marks up legislation.

September/October 2004: A secret legislative hold blocks a Senate vote of committee-approved bill.

May 2005 – Senate HSGAC Committee marks up the bill again, but floor votes are blocked by secret holds until adjournment. Senate leadership does not schedule floor time to overcome secret holds.

September 2005: House Government Reform committee marks up the legislation again.

June 2006 – Senate approves the WPA legislation as part of the FY2007 Defense Authorization bill.

October 2006 – Agreement reached among conferees and by relevant committee chairmen, but whistleblower language disappears from text of final bill after being sent for publication. Congressional sources traced the action back to orders from House leadership at the request of the Justice Department and the White House.

February 2007 – House Oversight and Government Reform Committee holds hearings on whether to add protection for national security whistleblowers in the legislation.

March 2007 – House Oversight and Government Reform Committee holds hearings and marks up legislation.

March 2007 – House passed the legislation, H.R. 985, 331-94, despite a veto threat issued by the Bush administration.

November 2007 – Senate HSGAC committee again marks up the legislation, S. 274.

December 2007 – Senate again passes the legislation, S. 274, by unanimous consent.

September 2008 – Informal agreement reached for a compromise between H.R. 985 and S. 274, and another bill is offered, but secret holds by two offices block votes in the Senate again. Advocates subsequently learned that the two Senators did not have subject matter expertise or prior involvement

with the legislation, but rather placed their holds as a courtesy to requests by the Department of Justice and CIA, respectively.

January 2009 – The same WPA legislation approved by the House in 2007 again is approved as an amendment to the American Recovery and Reinvestment Act without dissent. The whistleblower amendment is the only bipartisan amendment considered and approved on the House floor during debate of the underlying stimulus legislation, H.R. 1.

Revised February 3, 2009