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## Obama, Gates at Odds Over New Whistleblower Protections

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During an election featuring Democratic allegations that U.S. intelligence was distorted to justify a misbegotten war, Barack Obama endorsed new protections for national security officers who blow the whistle on abusive, corrupt or illegal behavior, by offering them the right to sue for damages and challenge denials of their security clearances.

But by keeping a Republican-appointed secretary of defense strongly opposed to those changes, President Obama is finding the path to a new policy on federal whistleblowing much more complicated.

Defense Secretary Robert M. Gates and other top Bush appointees wrote an unusually tough letter to Congress last year asserting that the bill protecting whistleblowers would threaten national security, violate the Constitution and undermine the government's ability to safeguard legitimate secrets.

The legislation, passed this year by the House, is still being reviewed by the White House, according to the Office of the Director of National Intelligence. "We understand this is an important issue, and we're committed to addressing it in a manner that is consistent with national security," said spokeswoman Wendy Morigi, declining to comment further.

The bill has evoked strong feelings on both sides because it would extend a series of rights held by most federal workers to dissident employees at the CIA, the National Security Agency, the Defense Intelligence Agency, the FBI and other intelligence agencies. Unlike their counterparts elsewhere, they cannot now appeal adverse administrative decisions outside their agencies, either to a special civil service board or to a federal court. Along with others, they also cannot win compensatory damages for improper job decisions or sue to regain their clearances.

Advocacy groups were cheered when an Obama aide promised the National Whistleblower Center in May 2007 that the candidate supported protecting whistleblowers "under the framework" of the House bill.

The bill passed the House once in 2007 with the support of 102 Republicans and again last month on a bipartisan voice vote attaching it to the economic stimulus legislation. But its key provisions were dropped before the legislation was signed by Obama yesterday, after [Sen. Susan Collins](#) (Maine) and other Republicans objected to their inclusion and the White House did not insist on it.

A spokesman for Collins, Kevin Kelley, said she "remains committed to whistleblower protections." But another aide said that she mostly supports adding new protections for federal workers outside the

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intelligence community, as do other Senate Republicans; including employees at intelligence agencies needs to be "carefully explored," the aide said.

Gates's broadside against the bill last year was joined by then-Director of National Intelligence Mike McConnell, then-Attorney General Michael B. Mukasey and then-Secretary of Homeland Security Michael Chertoff. Provisions allowing judicial review of clearance decisions, Gates and the others wrote, would "interfere with the President's constitutional authority" and "create protections for disgruntled employees whose jobs would not otherwise be secure."

Whistleblower advocates say these views mostly reflect hostility among senior officials to creating new channels for grievances, which could open the door to a loss of control over personnel decisions and to embarrassing public disclosures. They further say that protecting whistleblowers is important at a moment when sharply increased federal spending under the economic stimulus provides opportunities for new abuses.

"This is an issue that every political appointee supports in theory and none can tolerate when the dissent is directed at them," said Tom Devine, legal director of the nonprofit Government Accountability Project, which has lobbied for the bill's passage for a decade. "They don't want to have to defend the cases in court, and they don't want to lose."

Veteran CIA analyst Franz Boening is among many whistleblowers from national security agencies who say they are waiting to see if Obama follows through on his promised support. Boening rattled his supervisors in the 1990s by filing memos questioning what he regarded as the agency's tolerance of human rights abuses by friendly governments in Latin America and elsewhere. But he says his career really soured in 2001, after he wrote internal letters accusing the agency of improper dealings with Vladimir Montesinos, at the time the top security adviser to Peru's president.

Peru later accused Montesinos of numerous crimes, including fraud, money laundering, and drug and arms trafficking. But after Boening, who had worked in the agency's declassification office, made his complaints -- based, he says, on public information -- he was denied promotions and accused of having unauthorized access to secret files.

"I made some tough allegations against the agency and said there should be prosecutions. I've been told by officials that it really got under their skin. I was mistreated and always blacklisted after that," Boening, 53, said in an interview.

CIA spokesman Paul Gimigliano said: "It's agency practice to look carefully at any concerns our employees may raise. That's what fairness demands." He added that he could not offer more detailed comments on matters that may be in litigation.

Worries at the top ranks of the intelligence community have centered on a provision in the House bill allowing national security employees to contact a range of lawmakers directly about actions they believe are illegal or corrupt. Supporters say this provides a much-needed check on the community's habitual desire to hide its dirty laundry, an effort that they say has sometimes been joined by the House and Senate intelligence committees, which generally hold hearings in secret.

But high-ranking agency veterans say they recall the immense political turmoil that followed then-Rep. Robert G. Torricelli's public disclosure in 1995 of CIA payments to a Guatemalan colonel accused of

murdering an American citizen and the husband of an American citizen -- ties that the New Jersey Democrat, who was not an intelligence committee member, learned of through unofficial channels.

Two CIA officials were fired and eight others were disciplined in ensuing government probes, and a presidential panel concluded that the agency not only broke the law but acted unacceptably on human rights matters. Then-CIA Director John M. Deutch ordered more than 100 informants accused of abuses or criminal acts dropped from the agency's payrolls -- and said no more could be hired without case-by-case reviews.

Deutch's decision was wrenching and controversial, but it governed agency actions for years until his successor, George J. Tenet, quietly overturned it after the Sept. 11, 2001, terrorist attacks to allow more widespread recruiting of informants with checkered histories. To avert additional discussion of such sensitive relationships, President Bill Clinton -- like his successor -- opposed proposals allowing wider direct reporting of classified information by national security employees to lawmakers.

The House, which has held multiple hearings showcasing whistleblower complaints, sees it differently. Under its bill, whistleblowers would be protected for the first time for tattling to superiors and, under certain circumstances, to members of at least five other committees besides intelligence, including those responsible for armed services and homeland security. Gates complained that this would allow federal workers to decide on their own "to disclose classified information to a broad universe" not entitled to hear it.

Devine responds that the committee members have relevant clearances and "should not be treated as second-class citizens." Opposition to this is, he says, "just an excuse to avoid oversight."

The new bill also broadens the definition of abusive conduct that could be legally disclosed or protested, and allows whistleblower appeals to be heard in any federal circuit, instead of a single designated appellate court where, plaintiffs' attorneys say, only three such cases -- from federal workers outside the national security field -- have prevailed in the past 15 years.

The government would retain its right to respond by invoking a "state secrets" privilege to block a trial, but for the first time it would be forced to brief lawmakers on the complaint and allow an inspector general's classified probe of the allegations.

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