

April 1, 2009

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President,

We write on behalf of organizations representing hundreds of thousands of concerned Americans to respectfully call upon you to make your campaign promise for stronger whistleblower protections the unequivocal policy of your administration and the law of the land.

As our country faces an economic crisis of historic proportions, one reform could save billions of taxpayer dollars and help fulfill your mandate for more transparency and accountability: authentic whistleblower protections for all federal employees. Whether the issue is stimulus spending, a financial bailout of the banking or auto industry, fraud at a Wall Street firm, prescription drug safety, environmental protection, national health care, homeland security, national defense or foreign policy – federal workers are charged with safeguarding the public trust. They must have the confidence that if they do so, they will not face repression and retaliation.

As you well know, the once landmark Whistleblower Protection Act is broken. For years, federal employees who expose cronyism in contracting, political interference in the science at the Environmental Protection Agency, or malfeasance at the Federal Bureau of Investigation have faced intimidation, threats, demotion and firings for their service to the public. Flawed procedures for reviewing whistleblower complaints combined with overwhelmingly negative decisions by the one court authorized to hear whistleblower complaints have made the current federal laws virtually useless. Since 2000, the Merit Systems Protection Board, which adjudicates federal worker claims, has found only one case of illegal retaliation in 56 decisions on the merits. Moreover, only three whistleblowers out of 211 have prevailed in decisions on the merits in the Federal Circuit Court of Appeals since October 1994, when the law last was modified.

The lack of protection means that federal workers – our most effective deterrent against fraud and waste, and best assurance that taxpayer dollars are spent wisely and government works effectively – must sit on the sidelines or risk their careers.

We recognize and commend your longtime commitment to helping whistleblowers. As a young attorney you wrote briefs for a landmark Supreme Court case under the False Claims Act. As a senator you voted for legislation to reform the

Whistleblower Protection Act. We further were very encouraged by your strong statement of support for whistleblowers during your presidential campaign and the transition:

Often the best source of information about waste, fraud, and abuse in government is an existing government employee committed to public integrity and willing to speak out. Such acts of courage and patriotism, which can sometimes save lives and often save taxpayer dollars, should be encouraged rather than stifled as they have been during the Bush administration. We need to empower federal employees as watchdogs of wrongdoing and partners in performance. Barack Obama will strengthen whistleblower laws to protect federal workers who expose waste, fraud, and abuse of authority in government. Obama will ensure that federal agencies expedite the process for reviewing whistleblower claims and whistleblowers have full access to courts and due process.

The need for whistleblower protections that you articulated is supported in study after study. For example, the Ethics Resource Center in 2007 concluded that misconduct and employee retaliation in the federal government is unacceptably high. The study found that fraud occurs in government as much as it does in the private sector, and that more than half of the federal workforce observes misconduct on the job. Furthermore, one-quarter of government employees who observed wrongdoing did not report it because they feared retaliation; and only 7 percent of employees reported wrongdoing outside the management chain, such as to Inspectors General. Other studies, such as a PriceWaterhouseCoopers survey of more than 5,400 companies in 40 countries, show that whistleblowers detect more corporate fraud than internal auditors, corporate compliance officers and law enforcement agencies.

With the need for whistleblowers never greater, we were disappointed that a signing statement on H.R. 1105, the omnibus spending bill, qualified a small provision in the massive bill that would deny a salary to a federal manager who “interferes with or prohibits certain communications between federal employees and Members of Congress.” While we recognize that the signing statement is open to varying interpretations, it unnecessarily asserted that the president retains the authority to direct his agency heads to prevent the communication of certain confidential information to Congress. We are concerned that this statement could also be interpreted as a warning to federal workers against communicating unclassified information and could have a chilling effect on the exposure of wrongdoing.

Other measures you have taken as president have been more encouraging. We have been gratified by your announcement of a “new era of openness” and the steps you have taken towards that goal with the creation of a Transparency Team and the position of Chief Information Officer. Both have been charged, along with the Executive Office of Science and Technology Policy and other offices, with expanding transparency, citizen participation, and collaboration through the Open Government Directive. We plan to actively participate in this initiative. Also, your recent executive orders on transparency

and scientific integrity signify your intent to have your administration end the culture of secrecy in the federal government. Likewise, we strongly support your promise to strictly scrutinize the spending of federal funds to ensure that tax dollars are not wasted.

But while encouraging, unfortunately these measures are not enough. Ensuring true transparency and accountability requires enforcing a zero-tolerance policy for repression and retaliation, and providing leadership for guaranteeing the legal rights of every federal employee.

We continue to have faith in your long-held support of federal whistleblower rights. Now is the time for a strong demonstration of your support with the following actions:

- 1) **Commitment:** Reaffirm your strong endorsement of reforms for federal whistleblower rights, made in your campaign statements and transition policy, reforms providing best-practice free speech rights, including full court access for all whistleblowers funded by taxpayers and coverage of government contractors, and also the appointment of a liaison responsible for interacting with whistleblower advocates as set forth in your response to the survey of the presidential candidates signed by your campaign on May 8, 2007.
- 2) **Change:** Actively support the swift enactment of strong whistleblower protections, such as those in the bipartisan H.R. 1507, sponsored by Rep. Chris Van Hollen (D-MD) and Rep. Todd Platts (R-PA), in advance of congressional hearings this year, and communicate that message specifically to Attorney General Holder. Your help will ensure that Congress enacts strong, comprehensive federal whistleblower protection legislation that gives all federal employees a functional administrative process, and access to jury trials.
- 3) **Leadership:** Issue and enforce a directive to all agency managers that they must not tolerate any retaliation against federal employees who expose waste, fraud, abuse, suppression of federal research, threats to public health and safety, and illegality. While this directive alone will not resolve the need for improvements to the law, it will help to send a strong message of support for federal employees and help to end the culture of secrecy.

With each passing day, more taxpayer dollars are at risk and more federal workers are threatened. Now is the time to realize your promise of openness and support for the protection of the civil servants who will implement out your policies. True transparency and accountability cannot be achieved without your commitment, leadership and support for legislative change.

Thank you for the steps that you have already taken and we look forward to meeting with representatives from your administration soon to discuss how together we can continue to move the country in the right direction.

Sincerely,

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