

3 May 2021

Honorable Carolyn Maloney
Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives

Dear Chairwoman Maloney:

The undersigned organizations in the Make It Safe Coalition Steering Committee write to express appreciation for your leadership introducing legislation to finish what Congress started in the Whistleblower Protection Act of 1989 (WPA) and the Whistleblower Protection Enhancement Act of 2012. (WPEA) The Whistleblower Protection Improvement Act will restore America to its former role as the global leader in free speech rights. MISC is a bi-partisan, trans-ideological coalition of individuals and 75 NGO's united by their commitment to protect whistleblowers and help them make a difference.

The 1989 and 2012 laws were a powerful mandate for federal employees who lawfully use freedom of speech to challenge abuses of power that betray the public trust. By restoring provisions gutted by hostile interpretations, Congress repeatedly reaffirmed its marathon commitment to the free speech rights created in the Civil Service Reform Act of 1978. Unfortunately, political compromises necessary to earn rights in principle sometimes undermined rights in reality. Decisions whether to include normal due process enforcement were postponed, and loopholes still leave some of the most significant whistleblowers defenseless against common forms of retaliation. For key teeth, the laws protecting federal whistleblowers have fallen far behind those available to corporate employees, as well as globally including the European Union and even nations like Ukraine and Serbia.

Your legislation would restore the rights of federal whistleblowers to global best practices by –

* providing access to court and jury trials to seek justice, a due process right already available to nearly all other whistleblowers in the U.S. labor force, and indispensable since the Merit Systems Protection Board administrative remedy has been paralyzed since January 2017 and faces a 2,500 plus case backlog that will take years to overcome after it becomes functional again.

* protecting whistleblowers from retaliatory investigations, which can frighten them into silence for years or lead to criminal referral, a protection already available to the rest of the U.S. labor force, including even soldiers.

* providing a realistic chance to obtain temporary relief, which is essential to shrink unnecessary conflict, and for whistleblowers to remain functional long enough to win a decision in proceedings that frequently take 2-5 years to complete, and sometimes over a decade.

* strengthening channels to communicate with Congress, necessary to overcome steadily increasing Executive branch barriers that threaten constitutional checks and balances.

* detailing standards for protection of whistleblowers' confidentiality, necessary because current vague protections have proven unreliable.

* restoring accountability for Offices of Inspector General (OIG's), necessary because a loophole has rendered unenforceable the Office of Special Counsel's orders to investigate abuses by OIGs.

* closing loopholes that deny WPA coverage for non-career Senior Executive Service and Public Health Service employees, necessary because the former are the most significant whistleblowers for Executive branch abuses and the latter because they are the whistleblowers for accountability in the government's response to the COVID 19 pandemic.

* closing loopholes that mean whistleblowers still are not made whole and lose when they "win" their cases, such as lost promotions during periods of illegal termination.

* expanding attorney fees to cover court representation, necessary to reinforce the right to counsel when it is needed most.

* creating due process rights to challenge violations of the WPA's anti-gag provisions, necessary because that tactic has intensified sharply and prevents disclosures, even more threatening to the merit system than retaliation after making disclosures.

* mandatory certification of Whistleblower Protection Act training for MSPB Administrative Judges, necessary because this training has made a significant difference in other nations, and because AJ's have issued significantly more hostile interpretations of the Act since 2017 in the absence of administrative appellate review.

Accountability is the foundation to reverse voters' intensifying loss of public confidence in the federal government. Through this legislation, the Committee on Oversight and Reform is doing its share to restore legitimacy in public service from institutions our nation relies on.

Sincerely,

Government Accountability Project
National Taxpayers Union
Project on Government Oversight
Taxpayer Protection Alliance
Whistleblowers of America