

March 16, 2022

The Honorable Henry C. “Hank” Johnson
Chairman, House Judiciary Committee,
Subcommittee on Courts, Intellectual Property,
and the Internet
2240 Rayburn House Office Building
Washington, DC 20515

The Honorable Darrell Issa
Ranking Member, House Judiciary Committee,
Subcommittee on Courts, Intellectual Property,
and the Internet
2300 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Johnson and Ranking Member Issa:

We, the undersigned organizations, represent a broad cohort of civil society groups, each with our own perspectives and ideological preferences on a wide range of public policy issues. However, we all share a commitment to protecting government whistleblowers as a key means of promoting a more accountable government and cracking down on waste, fraud, abuse, and corruption.

Whistleblowers are often on the front lines when it comes to exposing problems in the government, ranging from misuse of COVID-19 funding to deadly secret wait-lists for veterans seeking medical care.¹ One of the perpetual problems whistleblowers face is a lack of adequate protections from retaliation and intimidation from those who stand to be embarrassed (or worse) by a whistleblower’s revelations.²

While our organizations may have differing positions on H.R. 4827, the Judiciary Accountability Act of 2021,³ and this letter is not an endorsement of the bill in its entirety, we all strongly support efforts to enact protections for whistleblowers in the government, no matter which branch of government those individuals happen to serve. We are thus writing to express our support for the substance of Section 3 of H.R. 4827, which we also note closely mirrors similar whistleblower protection language contained in a previous bill championed by Senate Judiciary Committee Ranking Member Chuck Grassley (R-IA).⁴ The bipartisan and bicameral interest in protecting federal judiciary whistleblowers is encouraging and should provide a strong impetus for action on this issue.

Many of our organizations have fought for years to promote enhanced protections for different types of whistleblowers, including federal government employees as a whole and, more narrowly, employees in

¹ Roxanna Gonzalez, “False Claims Act Anti-Retaliation Claim Leveled at PPP Recipient,” JDSupra, March 16, 2021, <https://www.jdsupra.com/legalnews/false-claims-act-anti-retaliation-claim-5985381/>; Melissa Wasser, “Protecting Whistleblowers and Promoting Accountability,” Project On Government Oversight, May 19, 2021, <https://www.pogo.org/testimony/2021/05/protecting-whistleblowers-and-promoting-accountability/>.

² Nicole Ogrysko, “Federal employees have some of the worst whistleblower protections in the country, advocates say,” *Federal News Network*, August 2, 2021, <https://federalnewsnetwork.com/workforce-rights/governance/2021/08/federal-employees-have-some-of-the-worst-whistleblower-protections-in-the-country-advocates-say/>.

³ Judiciary Accountability Act of 2021, H.R. 4827, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/4827/text?r=81&s=1>.

⁴ Judicial Transparency and Ethics Enhancement Act of 2017, S. 2195, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/senate-bill/2195?s=1&r=83>.

the intelligence community.⁵ Different circumstances call for different kinds of protections, but an untenable reality remains: Across all levels of the federal government, whistleblowers do not have the protections they need in order to reveal hard truths without fear of reprisal. This creates a chilling effect on those who could blow the whistle on government malfeasance and, in turn, produces a less accountable and more corrupt government. But as some pro-whistleblower stakeholders have noted, Congress is in prime position to do something about this troubling situation.⁶

All of this applies to the federal judiciary just as much as it does to any other branch or entity within the federal government. Therefore, we write to applaud the committee for considering the bipartisan Judiciary Accountability Act, which would extend best practice whistleblower protections for all employees, irrespective of employment category, within the judicial branch. The lack of such existing protections is another manifestation of the government-wide problem of impunity for those who act improperly and retaliation against those who bravely attempt to shine a light on that misconduct from within. The judiciary is no exception. Ensuring that whistleblowers in the judiciary have appropriate and robust protections will only benefit the judicial branch as a whole by deterring misconduct and promoting accountability. Several instances in recent years lay bare the accountability problem in the courts.

First, in 2018, the Judicial Council of the U.S. Court of Appeals for the Tenth Circuit was alerted to several instances of sexual harassment by District of Kansas Judge Carlos Murguia. Pursuant to the Judicial Conduct and Disability Act, Chief Judge Timothy Tymkovich appointed a Special Committee to investigate these allegations, which found that “Murguia gave preferential treatment and unwanted attention to female employees of the Judiciary in the form of sexually suggestive comments, inappropriate text messages, and excessive, non-work-related contact, much of which occurred after work hours and often late at night.”⁷ The council added, “All of the harassed employees stated that they were reluctant to tell Judge Murguia to cease his behavior because of the power he held as a federal judge.”⁸ This grave concern about retaliation contributed to an environment that deterred victims from coming forward, prolonging a cycle of harassment as Murguia kept his job far longer than he should have.

And in 2020, Olivia Warren, a North Carolina-based attorney and former law clerk to Ninth Circuit Judge Stephen Reinhardt, testified before your subcommittee about the harassment she was subjected to by Reinhardt. She said, “[A] barrier to reporting harassment for law clerks [is] the possibility of immediate retaliation by the judge,” which “is supplemented by the possibility of long-term retaliation by those

⁵ Government Accountability Project, “Make It Safe Coalition Praises New Legislation to Protect Whistleblowers,” Press Release, August 4, 2020, <https://whistleblower.org/press-release/press-release-make-it-safe-coalition-praises-new-legislation-to-protect-whistleblowers/>; Melissa Wasser, “Fact Sheet: Strengthening Protections for Intelligence Community Whistleblowers,” Project On Government Oversight, January 3, 2022, <https://www.pogo.org/resource/2022/01/strengthening-protections-for-intelligence-community-whistleblowers/>.

⁶ Andrew Lautz, “House Oversight Should Advance Three Bills to Improve Oversight of Taxpayer Dollars,” National Taxpayers Union, June 28, 2021, <https://www.ntu.org/publications/detail/house-oversight-should-advance-three-bills-to-improve-oversight-of-taxpayer-dollars>.

⁷ Order at 2 in re: Complaint under the Judicial Conduct and Disability Act (No. 10-18-90022), Judicial Council of the Tenth Circuit, September 30, 2019, <https://www.ca10.uscourts.gov/sites/ca10/files/misconduct/10-18-90022.J.pdf>.

⁸ Order at 2-3 in re: Complaint under the Judicial Conduct and Disability Act (No. 10-18-90022), Judicial Council of the Tenth Circuit, September 30, 2019, <https://www.ca10.uscourts.gov/sites/ca10/files/misconduct/10-18-90022.J.pdf>.

devoted to protecting his reputation and remaining in his good graces.”⁹ This includes not only future employers in the private sector, but also judges and officials elsewhere in the judicial branch, since law clerks often have multiple clerkships or take positions as staff attorneys later in their careers.

We believe that the substance of Section 3 of H.R. 4827 would greatly protect whistleblowers in the judiciary, which would help promote a more accountable government, with fewer opportunities for corruption and abuse to go unchecked. We thank you for your vital work on this matter. We stand ready to support these efforts and look forward to engaging with your offices further.

Sincerely,

Accountability Lab
Alabama Black Women's Roundtable
Alliance to Counter Crime Online
Blue Ridge Environmental Defense League
Blue Wave Postcard Movement
Broward for Progress
Center for Justice & Democracy
Center for Media and Democracy
Center for Progressive Reform
Chapel Hill Organization for Clean Energy
Clean Elections Texas
Community Science Institute, Inc.
Constitutional Alliance
Consumer Action
Corruption Kills
Council for a Livable World
Defending Rights & Dissent
Demand Progress
Fight for the Future
Fix the Court
Government Accountability Project
Government Information Watch
Indivisible Santa Fe
International Association of Whistleblowers (IAW)
Kentucky Equal Justice Center
Kohn, Kohn and Colapinto, LLP
Law Enforcement Action Partnership

⁹ *Protecting Federal Judiciary Employees from Sexual Harassment, Discrimination, and Other Workplace Misconduct: Hearing before the Subcommittee on Courts, Intellectual Property, and the Internet, 116th Cong.* (February 13, 2020)(testimony of Olivia Warren), <https://www.congress.gov/116/meeting/house/110505/witnesses/HHRG-116-JU03-Wstate-WarrenO-20200213-U2.pdf>.

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Mariposa Legal, program of COMMON Foundation
National Center for Health Research
National Employment Law Project
National Employment Lawyers Association
National Freedom of Information Coalition
National Judicial Conduct and Disability Law Project, Inc
National Taxpayers Union
National Whistleblower Center
Ohio Fair Courts Alliance
Open The Government
PRESS4WORD2020
Pride at Work
Project On Government Oversight
Protect All Children's Environment
Protect Democracy
Public Citizen
Public Employees for Environmental Responsibility
R Street Institute
Revolving Door Project
Safe Harbor Law, LLC
Shriver Center on Poverty Law
Stand Up America
The Digital Democracy Project
The Signals Network
Transparency International U.S. Office
UNITED SIKHS
Washington Coalition for Open Government
Whistleblower Network News
Whistleblowers of America
WhistleblowersUK
Woodhull Freedom Foundation
Workplace Fairness
X-Lab