

September 9, 2016

The Honorable Jeff Miller
Chairman
Committee on Veterans' Affairs
United States House of Representatives
Washington, DC 20515

Dear Chairman Miller,

The undersigned organizations and whistleblowers support the inclusion of robust whistleblower protections for U.S. Department of Veterans Affairs (VA) employees in the VA Accountability First and Appeals Modernization Act of 2016 (H.R. 5620).

The cultural shift that is required inside the VA must be accompanied by statutory mandates that protect whistleblowers and witnesses inside the agency. Section 8 of H.R. 5620 is a major breakthrough in the struggle for VA whistleblowers to gain credible rights when defending the integrity of the agency mission and disclosing quality of care concerns. Further, it would provide a system to hold employees accountable for their actions when they retaliate against those exposing waste, fraud, or abuse.

More specifically, this section could make a real difference, as it -- 1) closes the loophole for VA's primary vehicle to retaliate against agency professionals – retaliatory investigations, including actions disguised as peer reviews; 2) imposes stepped up personal accountability through requiring heightened penalties after findings that merit system has been violated; 3) strengthens accountability by forcing merit system violators to repay their bonuses; 4) challenges camouflaged retaliation by reinforcing protection against agency efforts to purge whistleblowers from contractor ranks; and 5) fosters prevention by integrating Office of Special Counsel and OIG Whistleblower Ombudsman into stepped-up training that spotlights the Whistleblower Protection Enhancement Act's new “anti-gag” provisions. We are also glad to see the removal of a proposed central VA Whistleblower Office. Too often, internal agency oversight mechanisms that lack structural independence turn into traps for the individuals they are intended to serve.

We greatly appreciate your consideration of these much-needed whistleblower protections for VA employees. We also ask that you consider the adequacy of due process protection for those accused of retaliation. Those provisions can be a two-edged sword, because a cynical, but common tactic is to accuse whistleblowers themselves of engaging in retaliation as a pretext for their removal.

We have analogous concerns for weakening due process rights generally in the broader legislation. Those rights are not mere red tape to protect bureaucrats. Along with whistleblowing, due process rights exist to protect the merit system as the essential foundation for non-partisan,

professional public service. The new standards would permit termination or other discipline based on mere “substantial evidence,” which means “more than a scintilla,” or crumb. A *de facto* “at will” employment system could create vulnerability to political patronage and corruption greater than any time since 1882 when the civil service system was created.

We look forward to working with your Committee to advance protections for VA whistleblowers and to hold retaliators accountable.

Sincerely,

Organizations

Alliance for Whistleblowers, Inc.
Bill of Rights Defense Committee & Defending Dissent Foundation
Center for Science and Democracy, Union of Concerned Scientists
Demand Progress
Government Accountability Project
Gun Owners of America
International Association of Whistleblowers
Liberty Coalition
National Medical Malpractice Advocacy Association
Peace Action
Project On Government Oversight
Public Citizen
Sunlight Foundation
Taxpayers Protection Alliance
VA Truth Tellers, Inc.
Whistleblower Support Fund

Whistleblowers

CDR Ben Strickland, Department of Homeland Security, United States Coast Guard (Retired)
Elaine Mittleman, Department of Treasure
Gabe Bruno, Federal Aviation Administration, (Vietnam era Veteran)
James Murtagh MD, Department of Veterans Affairs
Martin Edwin Andersen, Criminal Division, U.S. Department of Justice U.S. Southern Command
Marvell D. Lavy, Department of Veterans Affairs
Paula Leligdon, Louis Stokes Cleveland VA Medical Center
Robert MacLean, Federal Air Marshal, Transportation Security Administration, Department of Homeland Security (Air Force veteran)