

Wyden, Grassley, Speier Push for Continued Protections Against Whistleblower Retaliation

In amicus brief, members urge Department of Labor to avoid making it harder for whistleblowers to defend their cases

Friday, August 5, 2016

WASHINGTON, D.C. – U.S. Sens. Ron Wyden, D-Ore., and Chuck Grassley, R-Iowa, and Rep. Jackie Speier, D-Calif., filed an amicus brief this week with the Department of Labor (DOL) urging the agency to not weaken existing whistleblower protections in cases of retaliation against private-sector employees.

Wyden, Grassley and Speier filed the brief with the DOL's Administrative Review Board as it reconsiders the case of *Palmer v. Canadian National Railway/Illinois Central Railroad Company*. Overturning the decision would undermine almost 40 years of law protecting whistleblowers from retaliation.

Currently, a two-part test used in whistleblower retaliation cases allows a whistleblower to first provide evidence to prove the claim that he or she was retaliated against for whistleblower activities based on a preponderance of the evidence. The employer must then show that it would have taken action against the whistleblower regardless of the whistleblower activities. The employer must meet a more demanding standard by providing clear and convincing evidence that there was no retaliation against the employee for whistleblowing.

If the DOL overturns the *Palmer* case, it would merge the two-part test into a one-part test, making it more difficult for whistleblowers to prove their cases and potentially allowing more retaliation against whistleblowers to occur without legal consequences.

“Congress has taken the side of whistleblowers for decades by writing laws to better protect private-sector workers who shine a light on wrongdoing that betrays the public trust,” Wyden said. **“Sen. Grassley and Rep. Speier and I are urging the Department of Labor to avoid eroding those protections and instead to continue giving whistleblowers a real chance at defending themselves when they are retaliated against.”**

“Time and again, we’ve seen whistleblowers face retaliation from within their own ranks for simply trying to correct failures or misconduct,” Grassley said. **“Then when they seek relief, they have fewer resources and access to information to help prove their case. It's like David trying to fight Goliath. Requiring these patriotic people to prove in the first instance that they are the victim of reprisal only adds insult to injury. That’s why Congress placed the burden on the employer to prove that any adverse action it may have taken against a whistleblower was not the result of the disclosure itself. This brief reiterates Congress’ intent that the employer, not its employees should bear the burden of proof in whistleblower retaliation cases.”**

“Defending all whistleblowers’ ability to expose various kinds of malicious behavior without fear of reprisal is absolutely necessary,” Speier said. **“If whistleblowers fear that they will be retaliated**

against for simply coming forward, Congress will lose a source of information that we depend on to speak up when no one else will.”

[In a letter to Department of Labor Secretary Thomas Perez last year](#), Wyden, Grassley and other members of the Senate Whistleblower Protection Caucus commended the department for upholding the two-part test and protecting private-sector whistleblowers in the *Palmer* case. The current proceeding could overturn the very decision the senators commended the Labor Department for making.

Grassley and Wyden are the chair and vice chair of the bipartisan Senate Whistleblower Protection Caucus, and Speier is the co-chair of the House Whistleblower Protection Caucus. They have long supported the role of whistleblowers in protecting the public interest.

Grassley co-authored the Whistleblower Protection Act of 1989, from which the two-part test derives. He also was an original co-sponsor of the Whistleblower Protection Enhancement Act of 2012.

In 1991, Wyden wrote the bill that lead to protections for Department of Energy contractor employees who blow the whistle on wrongdoing and applied the two-part test to private-sector whistleblower retaliation cases for the first time.

Congresswoman Speier founded the House Whistleblower Protection in April 2016 with Congresswoman Rice, Congressman Coffman, and Congressman Blum. She has been a longtime advocate for whistleblower protections on the Armed Services Committee, and fields whistleblower cases from around the world through her whistleblower hotline.

Since passing the Whistleblower Protection Act in 1989, Congress has strengthened it in 13 separate whistleblower laws enforced by the Department of Labor. It has been the model for whistleblower legislation ever since.

###