



Blacks In Government®

2009 National Delegates Assembly

Baltimore, Maryland



Financial Support for the City and Citizens of New Orleans, Louisiana Affected by the Devastation Originated by Hurricane Katrina

WHEREAS, Blacks In Government (BIG) was organized in 1975 and incorporated as a non-profit organization under the District of Columbia jurisdiction in 1976 to address the collective needs of African Americans in public service and to organize around issues of mutual concern and use collective strengths in confronting workplace and community issues; and

WHEREAS, BIG is the nation's oldest and largest public service employee advocacy organization dedicated to the eradication of all vestiges of racism and disparate treatment practices perpetrated upon people, and its goals are to promote equity in all aspects of America life, excellence in public service, and opportunity for all Americans; and

WHEREAS, in 2008, Blacks In Government held its 30th annual national training conference in the city of New Orleans, Louisiana and visited the areas affected by Hurricane Katrina and found that the city is still dealing with affects of having more than 80% of its housing stock destroyed or severely damaged, with the ruined residential properties and empty lots heavily concentrated in areas still severely impacted by the flooding following Hurricane Katrina; and

WHEREAS, The City of New Orleans, Louisiana continues to work with less than its promised Federal funding allocation for its recovery projects, primarily due to an overwhelming delay in the processing of applications to receive this funding; and

WHEREAS, it was determined that this catastrophe caused damages exceeding \$50 billion dollars and generated six times as much debris as the 911 disaster while taking the lives of more than 1,800 people; and

WHEREAS, it is estimated that three years after the storm, nearly 40,000 former New Orleans families are still living outside of Louisiana, many as far as California, Oregon, Montana, Texas, Illinois, New York, Washington, D.C., etc. with minimal or no finances for transportation to return to their home city, and thousands of displaced residents in Mississippi and Louisiana are still living in trailers, and approximately 85,000 former New Orleans residents are still displaced throughout the state; and

WHEREAS, it is estimated that it will take approximately 20 years for the city to fully recover without the funding that is immediately necessary to expeditiously return New Orleans residents to their neighborhoods, communities, and homes; and

WHEREAS, it is unthinkable that the citizens of an American city should experience the level of suffering wrought upon New Orleans without the Federal government meaningfully demonstrating its unwavering commitment to the citizens, taxpayers and business owners who call that place home,

BE IT RESOLVED, during the 2008 National Delegates Assembly, we expressed our concern for the city of New Orleans, its residents (present and displaced) and all advocacy groups and stakeholders who are still working to help guide rebuilding efforts and for developing action plans to address the underlying issues of poverty, inequality, and weak social infrastructures that have been persistent in the city for generations, and

BE IT RESOLVED, any funds so appropriated for the City of New Orleans should be made subject to accountability and transparency provisions similar to those included in the American Recovery and Reinvestment Act of 2009. Specifically, any agency obligating or expending covered funds should be required to submit quarterly recipient reports that would, among other things, include a detailed list of all projects or activities for which funds were expended or obligated, an evaluation of the completion status of the project or activity, and an estimate of the number of jobs created or former residents restored by the project or activity. Moreover, the Governor, Mayor or other appropriate chief official would be required to certify that each proposed obligation has been fully vetted and reviewed and that the chief executive officer accepts full responsibility that the expenditure is an appropriate use of taxpayer dollars. Finally, a separate recovery and transparency board, similar to the one established under the aforementioned Act, will be established for the City of New Orleans to, among other things, identify and earmark residual funds for projects of a critical need to help citizens relocate back to New Orleans.

FURTHER BE IT RESOLVED, that within 90 days after this resolution is passed, the National President of Blacks In Government will send a letter to the President of the United States, Majority Leader of the Senate and the Speaker of the House of Representatives on behalf of Blacks In Government's 2009 Delegates Assembly showing our overwhelming support for Congress to pass legislation that will immediately provide the City of New Orleans' Office of Recovery and Development Administration, State and other local entities with the appropriate funding levels necessary to rejuvenate, restore, and return this American city residents to their homes.

Submitted by:

New Kemet Harambe Chapter, Region 5
EPA - William D. Barber, Jr., Chapter, Region 11
Blacks In Government®

Supported by:

Blacks In Government Regional Council, Region 5
Blacks In Government Regional Council, Region 11



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2009 National Delegates Assembly

Baltimore, Maryland



Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001

USA Patriot Act

WHEREAS, Blacks In Government (BIG) was organized in 1975 and incorporated as a non-profit organization under the District of Columbia jurisdiction in 1976 to address the collective needs of African Americans in public service and to organize around issues of mutual concern and use collective strengths in confronting workplace and community issues; and

WHEREAS, BIG is the nation's oldest and largest public service employee advocacy organization dedicated to the eradication of all vestiges of racism and disparate treatment practices perpetrated upon people, and its goals are to promote equity in all aspects of America life, excellence in public service, and opportunity for all Americans; and

WHEREAS, The **USA PATRIOT Act**, commonly known as the "Patriot Act", is a statute enacted by the United States Government, signed into law on October 26, 2001 by President George W. Bush. The contrived acronym stands for **Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001**; and

WHEREAS, BIG understands and supports the needs for protecting any and all classified documentation and information pertaining to the United States government and its affiliations against terrorism; and

WHEREAS, BIG believes the intent of Congress based on the Patriot Act has been compromised to the extent, that issues having nothing to do with terrorism and foreign threat are being used to invade U.S. citizen's civil liberties; and

WHEREAS, BIG also recognizes the disproportionate number of individuals by race, national origin and religion that are removed from federal employment by those federal agencies that may abuse the authority and the scope of the Patriot Act. These background checks invade individual privacy rights. The checks are being used specifically to rescind or deny federal employees' security clearances; and

WHEREAS, the authority and decision to terminate an employee remains non-transparent, when clearance investigations are conducted, they disproportionately affect Blacks. The statute does not include any control mechanisms, checks and balances, or metrics to govern its implementation, which therefore fails to prevent abuse of civil liberties and disparate adverse impact; and

WHEREAS, the USA Patriot Act lacks provisions for Congressional or judicial oversight. The USA Patriot Act created sweeping changes to U.S. law wherein the effects of the Act with enhanced electronic surveillance and authority to compel the production of financial records disproportionately yields abuses to civil rights and civil liberties; and

WHEREAS, many legal challenges have been brought against the Act, and federal courts have ruled that a number of provisions are unconstitutional, no one has fully concluded what should be considered removable actions from federal employment except person(s) making termination decisions based specifically on credit worthiness, a narrow designation for termination, therefore ignoring the complexities of our human experiences.

BE IT RESOLVED, During the 2009 National Delegates Assembly, we agree to contact our 111th Congress and petition for an inquiry into the misuse and abuse of the provisions under the Patriot Act and an investigation regarding federal employees who has been terminated or forced to resign because of security clearance issues. Furthermore, the terminations and forced resignations due to security clearances are not an appropriate use of the Patriot Act if used against American citizens who have proven to be good long-time public servants. The Act is intended to safeguard our nation's citizens and not to persecute them.

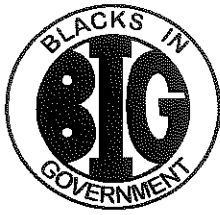
FURTHER BE IT ALSO RESOLVED, That within 90 days after this resolution is passed the National President of Blacks In Government will send a letter to the President of the United States, Majority Leader of the Senate, the Speaker of the House of Representatives and the Director of the U.S. Office of Personnel Management, on behalf of Blacks In Government's 2009 Delegates Assembly showing our support for this resolution.

Submitted by:

Yolanda M. Brown-Harris
Chair, Legislative and Review Committee
Regional Council Secretary, Region 5

Supported by:

Blacks In Government® Regional Council, Region 5
Blacks In Government® Regional Council, Region 11



Blacks In Government®

2009 National Delegates Assembly

Baltimore, Maryland

BIG signs on to 'Make It Safe Coalition' Petition to U.S. Congress & President Barack Obama supporting the 'Whistleblower Protection Enhancement Act of 2009' (U.S. House of Representatives Bill H.R. 1507 & U.S. Senate Bill S. 372)

WHEREAS, The National Organization of Blacks In Government (BIG), was incorporated in 1976 as a non-profit organization to advocate and educate and, today, BIG seeks to represent 3.4 million public and private civil servants by continuing to address discrimination in the workplace and its effect on public service; and

WHEREAS, the United States government, utilizing both public and private industry employs over 2.5 million people according to OPM statistics; and

WHEREAS, understanding such a massive workforce known as the Federal Government administered by three branches of government known as Executive, Legislative and Judicial and each having co-equal United States Constitutional authority were designed as a system of checks and balances to "provide for the common defense, promote the general welfare and secure individual liberty" in accordance with the Declaration of Independence; and

WHEREAS, Federal workers are uniquely situated to provide essential information to Congress that allows the Legislative branch to perform its oversight functions and conduct congressional investigations; and

WHEREAS, those Federal workers who dare to expose waste, fraud and abuse commonly known as "*Whistleblowers*" do so at great personal risk to their careers, livelihoods, familial standings and personal safety and it's in the public interest to protect these courageous patriots who risk all to inform Congress and protect the public good; and

WHEREAS, this year Congress introduced separate versions of the Whistleblower Protection Act (WPA) officially known as the 'Whistleblower Protection Enhancement Act of 2009' identified as H.R. 1507 in the House of Representatives and S. 372 in the U.S. Senate providing specific protections for Scientific Whistleblowers and Baggage Screener Whistleblowers. H.R. 1507 extends protections to National Security Whistleblowers and Contractor Whistleblowers; and

WHEREAS, a coalition of public interest organizations and groups reflecting a bi-partisan constituency advocating and promoting government accountability known as the Make It Safe Coalition (MISC) is spearheading Whistleblower Protections in Congress, and issued a press release on July 29, 2009 praising the hard work of Democratic and Republican leaders of the

Homeland Security and Governmental Affairs Committee by Senators Daniel Akaka (D-HI), Susan Collins (R-ME), Joseph Lieberman (I-CT), George Voinovich (R-OH), and Claire McCaskill (D-MO), along with White House, to move the Senate to a place it has never gone before in providing Whistleblower protections for federal workers; and

WHEREAS, the MISC press release further stated that several improvements in S. 372 brings it much closer to the current "best-practices" House version H.R 1507 by giving many federal workers access to a jury of their peers should the administrative process fail to settle their claims of retaliation, and this legislative coverage is extended to federal scientists and transportation security officers (airport passenger and baggage screeners), and we pray that equal due process rights will be extended to national security employees through strong language included in the House bill (H.R. 1507); and

WHEREAS, members of various groups supporting the MISC petition including Blacks In Government, Region XI Heritage Chapter have worked for years to secure vital legal protections for whistleblowers and currently, a majority of whistleblower cases have not been allowed to be heard by an impartial jury and the current flawed federal judicial process has rarely brought justice or vindication for brave acts of whistleblowers who expose misconduct or fraud and abuse in the federal workplace; and

WHEREAS, to date MISC has secured the names of 324 organizational leaders and corporations from all across America in bi-partisan support of a final bill incorporating best-practices whistleblower protections, as included in H.R. 1507.

THEREFORE BE IT RESOLVED, the National President of Blacks In Government will sign onto the Make It Safe Coalition petition (attached) addressed to Congress and the President of the United States, not to exceed 30 days, following the BIG National Delegates Assembly and National Training Conference in support of a final and meaningful Whistleblower Protection Bill expected to be signed into law by the 111th Congress and the President of the United States of America.

Submitted by:

MATTHEW F. FOGG

Matthew F. Fogg

President, Heritage BIG Chapter, Region XI

August 7, 2009

Attachments:

Make It Safe Coalition sign on letter

Information Paper from the National Whistleblowers Center, Government Accountability Project

Website - <http://www.makeitsafecampaign.org/>

324 Organizations and Corporations Support Swift Action to Restore Strong, Comprehensive Whistleblower Rights

August 10, 2009

An Open Letter to President Obama and Members of Congress

The undersigned organizations and corporations write to support the completion of the landmark, nine-year legislative effort to restore credible whistleblower rights for government employees. We offer our support to expeditiously pass legislation that includes the critical reforms listed below. Whistleblower protection is a foundation for any change in which the public can believe. It does not matter whether the issue is economic recovery, prescription drug safety, environmental protection, infrastructure spending, national health insurance, or foreign policy. We need conscientious public servants willing and able to call attention to waste, fraud and abuse on behalf of the taxpayers.

Unfortunately, every month that passes has very tangible consequences for federal government whistleblowers, because none have viable rights. Last year, on average, 16 whistleblowers a month lost initial decisions from administrative hearings at the Merit Systems Protection Board (MSPB). Since 2000, only three out of 53 whistleblowers have received final rulings in their favor from the MSPB. The Federal Circuit Court of Appeals, the only court which can hear federal whistleblower appeals of administrative decisions, has consistently ruled against whistleblowers, with whistleblowers winning only three cases out of 202 since October 1994 when Congress last strengthened the law.

It is crucial that Congress restore and modernize the Whistleblower Protection Act by passing all of the following reforms:

- Grant employees the right to a jury trial in federal court;
- Extend meaningful protections to FBI and intelligence agency whistleblowers;
- Strengthen protections for federal contractors, as strong as those provided to DoD contractors and grantees in last year's defense authorization legislation;
- Extend meaningful protections to Transportation Security Officers (screeners);
- Neutralize the government's use of the "state secrets" privilege;
- Bar the MSPB from ruling for an agency before whistleblowers have the opportunity to present evidence of retaliation;
- Provide whistleblowers the right to be made whole, including compensatory damages;
- Grant comparable due process rights to employees who blow the whistle in the course of a government investigation or who refuse to violate the law; and
- Remove the Federal Circuit's monopoly on precedent-setting cases.

We know you share the commitment of every group signing the letter below to more transparency and accountability in government. Please let us know how we can participate to make this good government reform law to protect federal whistleblowers and taxpayers.

Sincerely,

Marcel Reid, Chair
ACORN 8

Adele Kushner, Executive Director
Action for a Clean Environment

David Swanson, co-founder
AfterDowningStreet

Pamela Miller, Director
Alaska Community Action on Toxics

Dan Lawn, President
**Alaska Forum on Environmental
Responsibility**

Cindy Shogun, Executive Director
Alaska Wilderness League

Ruth Caplan
Alliance for Democracy

Nan Aron, President
Alliance for Justice

Susan Gordon, Director
Alliance for Nuclear Accountability

Rochelle Becker, Executive Director
Alliance for Nuclear Responsibility

Gil Mileikowsky, M.D.
Alliance for Patient Safety

Linda Lipsen, Senior Vice President for Public
Affairs
American Association for Justice (AAJ)

Mary Alice Baish, Director, Government
Relations Office
American Association of Law Libraries

F. Patricia Callahan, President and General
Counsel
**American Association of Small Property
Owners**

John W. Curtis, Ph.D., Director of Research and
Public Policy
**American Association of University
Professors**

Christopher Finan, President
**American Booksellers Foundation for Free
Expression**

Caroline Fredrickson, Director, Washington
Legislative Office
American Civil Liberties Union

Michael D. Ostrolenk
American Conservative Defense Alliance

Dr. Paul Connett, Executive Director
**American Environmental Health Studies
Project, Inc.**

John Gage, National President
**American Federation of Government
Employees**

Charles M. Loveless, Director of Legislation
**American Federation of State, County &
Municipal Employees (AFSCME)**

Mary Ellen McNish, General Secretary
American Friends Service Committee

Roy Speckhardt, Executive Director
American Humanist Association

Caitlin Love Hills, National Forest Program
Director
American Lands Alliance

Jessica McGilvray, Assistant Director
American Library Association

Tom DeWeese, President
American Policy Center

Alexandra Owens, Executive Director
American Society of Journalists and Authors

Charlotte Hall, President
American Society of Newspaper Editors

Patricia Schroeder, President and CEO
Association of American Publishers

Patricia A. Friend, International President
**Association of Flight Attendants-CWA, AFL-
CIO**

Prudence Adler, Associate Executive Director
Association of Research Libraries

Ms. Bobbie Paul, Executive Director
Atlanta WAND (Women's Action for New Directions)

Samuel H. Sage, President
Atlantic States Legal Foundation, Inc.

Jay Stewart, Executive Director
Better Government Association

Jay Feldman, Executive Director
Beyond Pesticides

Edva Harbin-Battle, Executive Vice-President
Blacks In Government Heritage Chapter

Shahid Buttar, Executive Director
Bill of Rights Defense Committee

Diane Wilson, President
Calhoun County Resource Watch

Jane Williams, Executive Director
California Communities Against Toxics

Peter Scheer, Executive Director
California First Amendment Association

Terry Franke, Executive Director
Californians Aware

Ms. L. Wilson, Founder and Executive Director
C.A.S.O.O.
Citizens Against Sexually Oriented Offenders

Reece Rushing, Director of Regulatory and Information Policy
Center for American Progress

William Snape, Senior Counsel
Center for Biological Diversity

Charlie Cray, Director
Center for Corporate Policy

Gregory T. Nojeim, Senior Counsel and Director, Project on Freedom, Security & Technology
Center for Democracy and Technology

J. Bradley Jansen, Director
Center for Financial Privacy and Human Rights

Joseph Mendelson III, Legal Director
Center for Food Safety

Paul Kurtz, Chairman
Center for Inquiry

Robert E. White, President
Center for International Policy

Robert S. Lawrence, MD, Director
Center for a Livable Future, Johns Hopkins Bloomberg School of Public Health

Lawrence S. Ottinger, President
Center for Lobbying in the Public Interest

Michael Jacobson, Ph.D., Executive Director
Center for Science in the Public Interest

John Richard
Center for Study of Responsive Law

Linda Lazarus, Director
Center to Advance Human Potential

Craig Williams, Director
Chemical Weapons Working Group & Common Ground

Mike Tidwell, Director
Chesapeake Climate Action Network

Phil Fornaci, Counselor
C.H.O.I.C.E.S.

Leonard Akers
Citizens Against Incineration at Newport

Evelyn M. Hurwich, President and Chair
Circumpolar Conservation Union

David B. McCoy, Executive Director
Citizen Action New Mexico

Doug Bandow, Vice President for Policy
Citizen Outreach

Deb Katz, Executive Director
Citizens Awareness Network

Barbara Warren, Executive Director
Citizens' Environmental Coalition

Elaine Cimino
Citizens for Environmental Safeguards

Don Kraus, Chief Executive Officer
Citizens for Global Solutions

James Turner, Chairman of the Board
Citizens for Health

Michael McCormack, Executive Director
Citizens for Health Educational Foundation

Gerard Beloin
Citizens for Judicial Reform

Laura Olah, Executive Director
Citizens for Safe Water Around Badger

Anne Hemenway, Treasurer
Citizen's Vote, Inc.

Rick Piltz
Climate Science Watch

John Judge
Coalition on Political Assassinations

Zena Crenshaw, 2nd Vice-Chair
3.5.7 Commission on Judicial Reform

Sarah Dufendach, Vice President for Legislative
Affairs
Common Cause

David Deal, CEO
Community IT Innovators

Greg Smith, Co-Founder
Community Research

Clarissa Duran, Director
Community Service Organization del Norte

Neil Cohen, Publisher
Computer Law Reporter, Inc.

Joni Arends, Executive Director
Concerned Citizens for Nuclear Safety

Lokesh Vuyyuru, MD, Founder
Concerned Citizens of Petersburg

Daniel Hirsch, Member, Executive Committee
Concerned Foreign Service Officers

Matthew Fogg, President
**Congress Against Racism & Corruption in
Law Enforcement (CARCLE)**

Mitch Friedman, Executive Director
Conservation Northwest

Linda Sherry, Director of National Priorities
Consumer Action

Ellen Bloom, Director of Federal Policy
Ami Gadhia, Policy Counsel
Consumers Union

Bob Shavelson, Director
Cook Inlet Keeper

Neil Takemoto, Director
CoolTown Betta Communities

Tonya Hennessey, Project Director
CorpWatch

Louis Wolf, Co-Founder
CovertAction Quarterly

Erica L. Gordon
**Council for Citizens Against Government
Waste**

John Issacs, Executive Director
Council for a Livable World

Anne Weismann, Chief Counsel
**Citizens for Responsibility and Ethics in
Washington (CREW)**

Cathy Harris, Founder and Executive Director
**Customs Employees Against Discrimination
Association**

Miho Kim, Executive Director
DataCenter

Melvina C. Ford, Executive Director
DC Employment Justice Center

Karen Murphy
**DC Charter Chapter of Federally Employed
Women**

Mary Elizabeth Beetham, Director of Legislative
Affairs
Defenders of Wildlife

Sue Udry, Director
Defending Dissent Foundation

Bob Fertik, President
Democrats.com

Miles Rapoport, President
Demos

Paul E. Almeida, President
**Department for Professional Employees,
AFL-CIO**

Courtney Dillard, Founder
Dillard-Winecoff Boutique Hotel

Ben Smilowitz, Director
Disaster Accountability Project

Dr. Shirley Moore, National President
Disclosure Watch

John DiBiase
Divorced Men's Association of Connecticut

Dr. Patrick Campbell
Doctors against Fraud

Dr. Disamodha Amarasinghe
Doctors for National Healthcare

James J. Murtagh, Jr., President
Doctors for Open Government

Dr. John Raviotta
Doctors for Reform of JCAHO

Marco Simons, Legal Director
EarthRights International

Bruce Baizel, Senior Staff Attorney
Earthworks

Larry Chang, Founder
EcologyDC

Thea Harvey, Executive Director
Economists for Peace and Security

Lisa Walker, Executive Director
Education Writers Association

Mike Ewoll, Founder and Director
Energy Justice Network

Gregory Hile
EnviroJustice

Chuck Broschious, President
Environmental Defense Institute

Carol Werner
Environmental and Energy Study Institute

Judith Robinson, Director of Programs
Environmental Health Fund

Eric Shaeffer, Executive Director
Environmental Integrity Project

Peter Montague, Ph.D, Director
Environmental Research Foundation

Jason Zuckerman
The Employment Law Group

Rob Weissman
Essential Information

George Anderson
Ethics in Government Group (EGG)

Bob Cooper
Evergreen Public Affairs

Gabe Bruno
FAA Whistleblowers Alliance

Robert Richie, Executive Director
FairVote

Chad Gist, President
William Dunn, Florida President
Fathers Supporting Fathers

Janet Kopenhaver, Washington Representative
Federally Employed Women (FEW)

Steven Aftergood
Federation of American Scientists

Marilyn Fitterman, Vice President
Feminists for Free Expression

Ellen Donnett, Administrative Director
Fluoride Action Network

Andrew D. Jackson
Focus-On-Indiana for Judicial Reform

Wenonah Hauter, Executive Director
Food and Water Watch

Bob Darby, Coordinator
Food Not Bombs/Atlanta

Andy Stahl
**Forest Service Employees for Environmental
Ethics (FSEEE)**

Tom Ferguson
Foundation for Global Community/Atlanta

Ruth Flower, Legislative Director
**Friends Committee on National Legislation
(Quakers)**

Brent Blackwelder, President
Friends of the Earth

Conrad Martin, Executive Director
Fund for Constitutional Government

Gail Naftalin, Owner
Gail's Vegetarian Catering

Karyn Jones, Director
G.A.S.P.

Gwen Marshall, Co-Chairman
Georgians for Open Government

Neil Tangri
Global Anti-Incinerator Alliance

Denny Larson, Executive Director
Global Community Monitor

Reede Stockton
Global Exchange

Paul F. Walker, Ph.D., Legacy Program Director
Global Green USA
(The US Affiliate of Green Cross International,
Mikhail Gorbachev, Chairman)

Bill Owens, President
The Glynn Environmental Coalition

Tom Devine, Legal Director
Government Accountability Project

Bill Hedden, Executive Director
Grand Canyon Trust

Molly Johnson, Area Coordinator
**Grandmothers for Peace, San Luis Obispo
County Chapter**

Alexis Baden-Mayer
Grassroots Netroots Alliance

Luci Murphy
Gray Panthers of Metropolitan Washington

Alan Muller
Green Delaware

Jenefer Ellington
Green Party of the United States

Tracy Frisch
Greenwich Citizens Committee

James C. Turner, Executive Director
**HALT, Inc. -- An Organization of Americans
for Legal Reform**

Tom Carpenter, Executive Director
Hanford Challenge

Arthur S. Shoor, President
Healthcare Consultants

Roberta Mikles, Director
Health Care Patient Advocates

Helen Salisbury, M.D.
Health Integrity Project

Vanessa Pierce, Executive Director
**Healthy Environment Alliance of Utah
(HEAL Utah)**

Gerry Pollet
Heart of America Northwest

Ernie Reed, Council Chair
Heartwood

Liz Havstad, Chief of Staff
Hip Hop Caucus

Doug Tjapkes, President
Humanity for Prisoners

Dr. Don Racheter, Founder
Iowa Wednesday Group

Keith Robinson, Interim President
Indiana Coalition for Open Government

Tom Goldtooth, Executive Director
Indigenous Environment Network

Scott Armstrong, Executive Director
Information Trust

Arjun Makhijani, Ph.D., President
**Institute for Energy and Environmental
Research**

Brenda Platt, Co-Director
Institute for Local Self-Reliance

Donald Soeken, President
Integrity International

Michael McCray, Esq., Co-Chair
International Association of Whistleblowers

Mory Atashkar, Vice President
Iranian American Democratic Association

Mark S. Zaid
James Madison Project

John Metz, Executive Director
JustHealth

Brett Kimberlin, Director
Justice Through Music

Elizabeth Crowe, Director
Kentucky Environmental Foundation

David Adams, Publisher
Kentucky Progress

Tom FitzGerald, Director
Kentucky Resources Council, Inc.

Kit Wood, Owner
Kit's Catering

James Love
Knowledge Ecology International

Josephine Carol Cicchini
LeapforPatientSafety

Jonathon Moseley, Executive Director
Legal Affairs Council

James Plummer
Liberty Coalition

Greg Mello, Executive Director
Los Alamos Study Group

Marie Dennis, Director
Maryknoll Office for Global Concerns

John McBride
**"MCS" Beacon Of Hope Foundation, New
Jersey Chapter**

Dr. Janette Parker
Medical Whistleblower

Ayize Sabater, Organizer
**Mentors of Minorities in Education's Total
Learning Cic-Tem**

Jill McElheney, Founder
Micah's Mission
**Ministry to Improve Childhood & Adolescent
Health**

Ellen Smith, Owner and Managing Editor
Mine Safety and Health News

Mary Treacy, Executive Director
**The Minnesota Coalition on Government
Information**

Helen Haskell
Mothers Against Medical Error

Mark Cohn, President
MPD Productions, Inc.

James Landrith, Founder
The Multiracial Activist

Tiffiniy Cheng
A New Way Forward

Larry Fisher, Founder
National Accountant Whistleblower Coalition

Matthew Ziemkiewicz, President
National Air Disaster Alliance/Foundation

Tinsley H. Davis, Executive Director
National Association of Science Writers

Jim L. Jorgenson, Deputy Executive Director
National Association of Treasury Agents

Dominick DellaSala, Ph.D., Executive Director
of Programs and Chief Scientist
**National Center for Conservation Science &
Policy**

Joan E. Bertin, Esq., Executive Director
National Coalition Against Censorship

Eileen Dannemann, Director
National Coalition of Organized Women

Russell Hemenway, President
National Committee for an Effective Congress

Sally Greenberg, Executive Director
National Consumers League

Susan Scanlan, Chair
National Council of Women's Organizations

Terisa E. Chaw, Executive Director
National Employment Lawyers Association

Andrew Jackson
**National Judicial Conduct and Disability Law
Project, Inc.**

Kim Gandy, President
National Organization for Women

Paul Brown, Government Relations Manager
**National Research Center for Women &
Families**

Sibel Edmonds, President and Founder
National Security Whistleblowers Coalition

Pete Sepp, Vice President for Policy &
Communications
National Taxpayers Union

Colleen M. Kelley, National President
National Treasury Employees Union

Steve Kohn, President
National Whistleblower Center

Amy Allina
National Women's Health Network

Lewis Maltby, President
National Workrights Institute

Terrie Smith, Director
National Nuclear Workers For Justice

Tim Hermach, President
Native Forest Council

Doug Kagan, Chairman
Nebraska Taxpayers for Freedom

Sr. Simone Campbell, SSS, Executive Director
**NETWORK, A National Catholic Social
Justice Lobby**

Ron Marshall, Chairman
New Grady Coalition

Rick Engler, Director
New Jersey Work Environment Council

Douglas Meiklejohn, J.D., Executive Director
New Mexico Environmental Law Center

Caroline Heldman Ph.D., Director
New Orleans Women's Shelter

Marsha Coleman-Abedayo, Chair
No FEAR Coalition

Nina Bell, J.D., Executive Director
Northwest Environmental Advocates

Alice Slater, Director
Nuclear Age Peace Foundation, New York

David A. Kraft, Director
Nuclear Energy Information Service (NEIS)

Michael Mariotte, Executive Director
Nuclear Information and Resource Service

Jay Coghlan, Executive Director
Nuclear Watch New Mexico

Roz McAllister, President
Ohio Family Rights

Gwen Lachelt, Executive Director
Oil & Gas Accountability Project

Sean Moulton, Director, Federal Information
Policy
OMB Watch

Nikuak Rai, Arts Director
One Common Unity

Rob Kall
Op Ed News

Patrice McDermott, Executive Director
OpenTheGovernment.org

Paul Loney, President
Oregon Wildlife Federation

Ellen Paul, Executive Director
The Ornithological Council

P. Jeffrey Black, Co-Chair
OSC Watch Steering Committee

Judy Norsigian, Executive Director
Our Bodies Ourselves

Betsy Combier, President and Editor
Parentadvocates.org

Ashley Katz, MSW, Executive Director
Patient Privacy Rights

Blake Moore
Patient Quality Care Project

Dianne Parker
Patient Safety Advocates

Former Special Agent Darlene Fitzgerald
Patrick Henry Center

Paul Kawika Martin, Organizing, Political and
PAC Director
Peace Action & Peace Action Education Fund

Bennett Haselton, Founder
Peacefire.org

Rev. Paul Alexander, Ph.D., Director
**Pentecostals & Charismatics for Peace &
Justice**

Michael McCally, MD, PhD, Executive Director
Physicians for Social Responsibility
Dale Nathan, J.D., President
POPULAR, Inc.

Vina Colley, President.
**Portsmouth/Piketon Residents for
Environmental Safety and Security (PRESS)**

Lisa Lavine Nagy M.D., President
**Preventive and Environmental Health
Alliance**

David Banisar, Director, FOI Project
Privacy International

Evan Hendricks, Editor/Publisher
Privacy Times

Robert Bulmash, President
Private Citizen, Inc.

Ronald J Riley, President
Professional Inventor's Alliance

Dr. Paul Lapidés
Professors for Integrity

Tim Carpenter, Director
Progressive Democrats of America

Danielle Brian, Executive Director
Project On Government Oversight

Ellen Thomas, Executive Director
Proposition One Committee

David Arkush, Director, Congress Watch
Public Citizen

Jéff Ruch, Executive Director
**Public Employees for Environmental
Responsibility**

Robert L. FitzPatrick, President
Pyramid Scheme Alert

Dr. Diana Post, President
Rachel Carson Council, Inc.

Lucy A. Dalglish, Executive Director
**The Reporters Committee for Freedom of the
Press**

Kirsten Moore, President and CEO
Reproductive Health Technologies Project

Tim Little, Executive Director
**Rose Foundation for Communities and the
Environment**

John W. Whitehead, president
The Rutherford Institute

Adrienne Anderson, Coordinator
**Safe Water Colorado and Nuclear Nexus
Projects**
Rocky Mountain Peace and Justice Center
(Whistleblower Anderson v Metro Wastewater)

John Bouman, President
**The Sargent Shriver National Center on
Poverty Law**

Ken Krajewski
Save Our Kids First

Angela Smith, Coordinator
**Seattle Healthy Environment Alliance (Seattle
HEAL)**

Blake Moore
The Semmelweis Society International (SSI)

Rufus Kinney
**Serving Alabama's Future Environment
(SAFE)**

Rabbi Arthur Waskow
The Shalom Center

Ed Hopkins, Director of Environmental Quality
Program
Sierra Club

Shane Jimerfield, Executive Director
Siskiyou Project

Gillian Caldwell, Campaign Director
ISky

Andrea Shipley, Executive Director
Snake River Alliance

Matthew Petty, Executive Director
The Social Sustenance Organization

Denny Dobbin, President
**Society for Occupational and Environmental
Health**

Dave Aekens, National President
Society of Professional Journalists

Laureen Clair
SOL Communications Inc

Amy B. Osborne, President
**Southeastern Chapter of the American
Association of Law Libraries**

Don Hancock, Director of Nuclear Waste Safety
Program
Southwest Research and Information Center

Donna Rosenbaum, Executive Director
S.T.O.P.
Safe Tables Our Priority

Mauro Oliveira
StopClearCuttingCalifornia.org

Kevin Kuritzky
The Student Health Integrity Project (SHIP)

Daphne Wysham, Co-Director
**Sustainable Energy and Economy Network
(SEEN)**

Jeb White, Executive Director
Taxpayers Against Fraud

Alec McNaughton
Team Integrity

Ken Paff, National Organizer
Teamsters for a Democratic Union

Thad Guyer, Partner
T.M. Guyer & Ayers & Friends

Peter Barnes
Tomales Bay Institute

Marylia Kelley, Executive Director
Tri-Valley CAREs
Communities Against a Radioactive
Environment

Paul Taylor
Truckers Justice Center

Francesca Grifo, Ph.D., Director
Scientific Integrity Program
Union of Concerned Scientists

Dane von Breichenruchardt, President
U.S. Bill of Rights Foundation

Cheryl Martone
US Concerned Parents

Dr. Joseph Parish
U.S. Environmental Watch

Gary Kalman, Director, Federal Legislative
Office
**U.S. Public Interest Research Group
(U.S.PIRG)**

Nick Mangieri, President
Valor Press, Ltd.

Brad Friedman, co-founder
Velvet Revolution

Dr. Jeffrey Fudin, Founder
Veterans Affairs Whistleblowers Coalition

Sonia Silbert, Co-Director
Washington Peace Center

Nada Khader, Foundation Director
WESPAC Foundation

Janine Blaeloch, Director
Western Lands Project

Gloria G. Karp, Co-Chair
Westchester Progressive Forum

Greg Costello, Executive Director
Western Environmental Law Center

Mabel Dobbs, Chair
Livestock Committee
Western Organization of Resource Councils

Ann Harris, Executive Director
We the People, Inc

Janet Chandler, Co-Founder
Whistleblower Mentoring Project

Dan Hanley
Whistleblowing United Pilots Association

Linda Lewis, Director
Whistleblowers USA

John C. Horning, Executive Director
WildEarth Guardians

George Nickas, Executive Director
Wilderness Watch

Tracy Davids, Executive Director
Wild South

Scott Silver, Executive Director
Wild Wilderness

Kim Witzak
WoodyMatters

Paula Brantner, Executive Director
Workplace Fairness

Tom Z. Collina, Executive Director
20/20 Vision

Re: Due Process Rights for National Security Whistleblowers
From: National Whistleblowers Center, Government Accountability Project

The Make Is Safe Coalition believes that district court access and jury trials in whistleblower cases for national security and FBI employees is critical for employees to have a fair chance at justice when they assert their rights. Exclusively administrative remedies without full court access as a backup inherently are vulnerable to political pressure and in cases involving significant political abuses of power. Decades of experience with full court access for national security whistleblowers in other contexts demonstrates that predicted objections are bluffs, without empirical support where they have been tested.

ADMINISTRATIVE PROCESS ALONE WON'T WORK

The Merit Systems Protection Board (MSPB) is not a viable system for intel and FBI whistleblower cases as an exclusive fact finding forum. In 1994, the House Committee on Post Office and Civil Service concluded that jury trials in district court were needed to provide a healthy competition with the MSPB remedy, which already had a dismal track record on whistleblower cases.

Currently, attorneys representing federal employees consistently advise clients that filing a whistleblower claim is counterproductive, due to the Board's consistent track record of approving almost any retaliation whistleblowers challenge. For decisions on the merits, its track record is 3-53 against whistleblowers since the millennium, and 1-44 under the current Chair.

Without court access as a backup, the Board or a less independent administrative scheme likely will be even more hostile to FBI/intel whistleblowers. The Board has most actively avoided complex cases, or politically charged disputes with national consequences. This is because it has neither the judicial independence nor the resources to credibly resolve conflicts over major government breakdowns for which the Whistleblower Protection Act is most important. Those vulnerabilities would be magnified for FBI/intel whistleblower cases.

COURT ACCESS ALREADY EXISTS FOR INTEL AND FBI WORKERS UNDER OTHER LAWS

For more than 18 years, all federal employees, including at the FBI and intelligence agencies, have had the right to go to federal district court on claims of retaliation, with jury trials and seek compensatory damages, under Title VII. Since 1974 all federal employees also have had district court access under the Privacy Act to seek damages, and they can go to district court for pre-enforcement injunctive relief against constitutional violations. Since 2005 Nuclear Regulatory Commission and Department of Energy employees have had the right to jury trials when retaliated for challenging violations of the Energy Policy Act. There are no exceptions for those DOE or NRC offices with intelligence functions. Since 2007 all defense contractors have had the right to jury trials, including those retained by offices whose primary duties are intelligence. In this year's stimulus law all federal contractors have access to jury trials, including those hired by the FBI, CIA, NSA and any other government intelligence agency to perform government functions. FBI and intelligence employees in the District of Columbia can obtain injunctive relief against First Amendment violations as well.

NO RISK TO NATIONAL SECURITY IF COURT ACCESS PERMITTED

There is nothing in H.R. 1507 that permits a court or an employee to disclose classified information. In fact, the bill provides for a procedure to prevent the disclosure of classified information. If the government invokes the state secrets privilege on a material issue, the relevant Inspector General conducts associated fact finding for the court.

There is no evidence that under any of the laws (civil rights, Privacy Act, First Amendment, etc.) where national security and FBI employees have full access to federal court that it has led to exposure of evidenced that compromises national security. There is no empirical track record or analysis why this problem would occur from the same access under HR 1507.

One reason is that where national security is related to a case, district courts have many protective measures available to prevent disclosure of classified information. For example, in Title VII cases federal courts use pseudonyms and protective orders to protect national security interests. The rules of civil procedure and rules of evidence have protective procedures, such as in-camera proceedings, and redaction of classified information. For criminal cases, the Classified Information Procedures Act has detailed procedures to safely consider classified evidence.

GAO REPORT FROM 1996 CONFIRMS NO RISK TO NATIONAL SECURITY FROM COURT ACCESS

In 1996 the General Accounting Office studied this issue and found that intelligence agencies already have in place numerous safeguards to protect against the disclosure of classified information, and that these agencies are fully equipped to protect national security interests in employee cases that proceed to federal court and in jury trials.

The GAO concluded, "If Congress wants to provide CIA, NSA, and DIA employees with standard protections that most other federal employees enjoy, it could do so without unduly compromising national security." It noted that --

- o information on "sensitive intelligence operations can be converted into unclassified publicly available documents."

- o based on experience with these EEO laws "that intelligence agencies can provide their employees with standard protections against adverse actions."

- o intelligence agency "adverse action files generally contain no national security information." Of the files reviewed by GAO, 98% of the adverse action files contained no such information.

- o case files at federal courts demonstrate declassified and redacted documents were capable of providing sufficient information to litigate cases.

THE CONSEQUENCES OF NOT PROVIDING A STRONG ANTI-REPRISAL REMEDY

Employees in intel agencies and FBI will not report wrongdoing within their chains of command. Instead, they will continue relying on the option most safe currently – leaking data to the press.

Congress will not receive evidence about wrongdoing in intel/FBI areas. After 9/11 national security whistleblowers' knowledge was needed to learn the causes of associated homeland security breakdowns. More recently, they know the truth about the extent of illegal government surveillance, secret prisons, torture and other human rights abuses. That knowledge is critical for the President's policy for full disclosure of the truth, as an alternative to punishment. They are particularly significant currently, when there is public disagreement over the integrity of CIA congressional briefings.

Attorneys will continue to be reluctant to pursue cases if there is only an administrative remedy without court access. Attorneys will continue to advise clients that remaining silent or not fighting retaliation is the best legal option.

OTHER INEQUITIES

Contractor employees who work for intel agencies and the FBI will have more whistleblower rights than government employees who oversee the work of contractors. Contractor employees will have access to jury trials, but intel/FBI employees will not. This will hamper the reporting of wrongdoing in the intel/FBI agencies.

Under current law, alleged criminals and terrorists will have more rights to court for redress of government misconduct than our intelligence agency and law enforcement officers who blow the whistle on serious misconduct and fraud.

For nearly 140 years all state and local government employees, including those with the most sensitive law enforcement and intelligence duties, have had access to jury trials for violations of their constitutional rights.

Corporate workers have access to jury trials in twelve whistleblower laws, including all relevant federal statutes since 2002.

President Obama's recent comments on reforming the state secrets privilege to provide for allowing litigation by redacting classified/privileged information, if enacted, will provide private citizens who sue the government more rights than intel and FBI employees. Private citizens who sue the government for infringement of constitutional rights (over wiretapping, etc.) will have access to courts with redacted information, etc. following reform of state secrets, but intel and FBI employees won't.

