

November 13, 2017

Dear Representative:

The undersigned labor organizations, representing hundreds of thousands of federal workers nationwide and across the globe, are writing in response to an effort led by Rep. Brad Wenstrup (R. OH) to encourage federal government agencies to adopt the Veterans Administration's (VA) draconian personnel practices that resulted from the so-called *VA Accountability & Whistleblower Protection Act*. Such an action would be a grave mistake and urge you to oppose this effort.

First, the *VA Accountability & Whistleblower Protection Act* was legislation that had very little to do with accountability and more to do with eliminating systematic protections for VA workers. As predicted, it has transformed the VA from an apolitical agency to one that prioritizes the ideological beliefs of elected leaders versus serving our nation's Veterans. In the four months since it was signed into law, it has been a failure, already silencing whistleblowers and leading to unjust firings throughout the VA, and leaving workers with no ability to challenge their terminations. These are workers who, in many cases, are being scapegoated for the failed macro-level management decisions by VA political leaders and upper management.

With the erosion of collective bargaining protections and little to no due process protections left at the VA, whistleblowers and others who would otherwise report wrongdoing are no longer protected to speak freely. As reported in an October 30th Washington Post articleⁱ, VA workers such as Katherine Mitchell, a VA nurse from Phoenix, are already seeing the negative ramifications from the law, saying that, "In my opinion, based on my experiences and conversations with other VA whistleblowers..., it appears to be open season across the nation on VA whistleblowers despite the passage of the VA Accountability and Whistleblower Protection Act of 2017." This is bad news for our nation's Veterans, the taxpayers and VA workers, and is not the kind of work environment that should be expanded throughout the remainder of the federal government.

It is unfortunate that Rep. Wenstrup and others supporting his effort fail to understand that imposing these measures at other agencies will do nothing to improve efficiency and accountability. On the contrary, such measures would be counterproductive, and will harm the services provided by the federal government to taxpayers, including defense, homeland security and other very critical work performed by federal employees for the American public. It would eviscerate the due process rights and undercut the collective bargaining protections for the very people who work every day to support our nation's fighting men and women, prevent cyber-attacks from Chinese and Russian hackers, teach our children at military bases around the world, deliver our mail, and refuel our nuclear submarines, just to name a few.

Specifically, Rep. Wenstrup is asking federal agencies to do the following:

- Erode the evidentiary standards for discharge proceedings, including for rank and file employees being retaliated against because they have blown the whistle when it comes to waste, fraud and abuse. The burden of proof standard for whistleblowers and others who have been accused of misconduct would be weakened from a *preponderance of the evidence* to *substantial evidence*. In other words, workers who have been both correctly and incorrectly disciplined - including

whistleblowers and others who have been targets of unjust retaliation - will be left without a realistic ability to defend themselves;

- Undercut the ability of federal unions to represent their members by essentially removing their access to union and management negotiated grievance procedure processes, which fairly and effectively work through adverse action situations;
- Gut the ability of a worker to have their case properly heard and decided by an independent Merit Systems Protection Board (MSPB) administrative judge, leaving the worker with the sole, expensive and mostly unattainable alternative of appealing to the Court of Appeals for the Federal Circuit.

Current law provides for ample authority to remove federal employees for performance or wrongdoing, and thousands of federal employees are removed every yearⁱⁱ Yet, these facts are ignored by those with questionable motives who seek to politicize the Executive Branch through the destruction of systematic protections and the silencing of whistleblowers. The VA Accountability and Whistleblower Protection Act of 2017 already failed, accomplishing the exact opposite of what its name implies. Now is not the time to spread this flawed legislation or its damaging anti-government ideology any further. Please reject this misguided effort led by Rep. Wenstrup.

Sincerely,

American Federation of State, County, and Municipal Employees (AFSCME)
American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)
American Federation of Government Employees (AFGE)
International Association of Fire Fighters (IAFF)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional & Technical Engineers (IFPTE)
Metal Trades Department, AFL-CIO (MTD)
National Association of Government Employees (NAGE)
National Association of Letter Carriers, (NALC)
National Association of Postal Supervisors (NAPS)
Federal Education Association/National Education Association (FEA/NEA)
National Federation of Federal Employees (NFFE)
National Weather Service Employees Organization (NWSEO)
Professional Aviation Safety Specialists (PASS)
Patent Office Professional Association (POPA)
Seafarers International Union/NMU (SIU)
Sheet Metal, Air, Rail and Transportation Workers (SMART)

ⁱ 10/30/2017, The Washington Post, [Victims say VA whistleblower retaliation growing under Trump, despite rhetoric](#)

ⁱⁱ U.S. Merit Systems Protection Board (2015 May). *What is Due Process in the Federal Civil Service*, <https://www.mspb.gov/mspbsearch/viewdocs.aspx?docnumber=1166935&version=1171499&application=ACROBAT>