

Whistleblower Protections

BACKGROUND:

Whistleblowers who speak out against government abuses of power help to protect against waste, fraud, or abuse and ensure government accountability and effectiveness. Government whistleblowers play a crucial role by alerting outside organizations, including AALL, to problems at their agencies that have the potential to severely affect the public's right to know. Whistleblowers act as a defense, along with the Freedom of Information Act (FOIA) and open meetings laws, to ensure public access and accountability.

Unfortunately, federal law fails to adequately protect government whistleblowers. Congress enacted the *Whistleblower Protection Act of 1989* (P.L. 101-12) to protect federal employees against reprisals for the exposure of government inadequacies. Over the past two decades a series of court decisions in the Federal Circuit Court of Appeals have eviscerated the statutory burden of proof to such a degree that few victims can satisfy the judicial standard.

As highlighted in a [joint letter](#) sent on May 15, 2009 and signed by AALL and more than 200 other organizations, only three out of 53 whistleblowers since 2000 have received final rulings in their favor from the Merit Systems Protection Board (MSPB), where whistleblowers receive their "day in court" through truncated administrative hearings. The Federal Circuit Court of Appeals, the appellate court with exclusive jurisdiction, has ruled against whistleblowers in 209 cases since October 1994 when Congress last strengthened the law, while deciding only 3 cases in their favor during the same period.

AALL supports whistleblower rights through our work with the OpenTheGovernment.org coalition and projects such as the 21st Century Right to Know Project, which developed the report, "[Moving Toward a 21st Century Right-to-Know Agenda: Recommendations to President-elect Obama and Congress.](#)" The report, which AALL helped draft and ten AALL chapters and more than 75 individual law librarians signed on to support, included several key recommendations on much-needed whistleblower protections. We also work with other open government organizations such as the Government Accountability Project (GAP) whose mission is dedicated to defending whistleblowers, and the Make It Safe Coalition, which brings together a diverse set of groups dedicated to ensuring strong whistleblower protections.

CURRENT STATUS IN THE 111th CONGRESS (AS OF JUNE 2009)

Early in the 111th Congress, government accountability advocates were pleased that the *American Recovery and Reinvestment Act of 2009* ([H.R.1](#)) included an amendment on

“best practices” anti-retaliation rights for contractors, grantees, and state and local government employees who work in programs that receive stimulus funding. AALL strongly supported the amendment which was introduced by Representatives Chris Van Hollen (D-MD-8) and Todd Platts (R-PA-19). The House passed the measure unanimously on January 28, 2009, but the amendment was stripped out by the Senate.

After the amendment was dropped from the stimulus bill, Reps. Van Hollen and Platts introduced standalone legislation, the *Whistleblower Protection Enhancement Act of 2009* ([H.R. 1507](#)). Sen. Akaka (D-HI) introduced a similar bill in the Senate ([S. 372](#)) that lacks several important provisions in the House bill, including the right to a jury trial in federal court and coverage of national security employees. These provisions are necessary to ensure adequate protections for whistleblowers, and we will continue to support the full package of whistleblower rights included in the House bill.

AALL has recently joined 292 organizations on a [letter](#) to President Obama and Members of Congress in support of the House bill. On May 14, the House Committee on Oversight and Reform held a hearing on H.R. 1507. During the hearing, Deputy Assistant Attorney General Rajesh De [testified](#) in support of expanding whistleblower protections, but stopped short of supporting H.R. 1507.

As a senator, President Obama voted for legislation to reform the *Whistleblower Protection Act*, and during his presidential campaign, then-candidate Obama supported greater whistleblower protection. AALL was pleased when, during his [weekly radio address](#) on April 18, 2009, President Obama once again expressed his support for whistleblowers, stating, “It means strengthening whistleblower protections for government employees who step forward to report wasteful spending.”

AALL will continue to support legislative efforts to protect government whistleblowers who take personal and professional risks to protect the public against waste, fraud and abuse.