TESTIMONY OF THOMAS DEVINE,
GOVERNMENT ACCOUNTABILITY PROJECT

before the

SENATE HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS COMMITTEE,

on

WHISTLEBLOWER PROTECTION SINCE PASSAGE OF THE WHISTLEBLOWER PROTECTION ENHANCEMENT ACT

June 11, 2015

Mr. Chairman:

Thank you for inviting my testimony. This committee long has played a leadership role in enacting legislation to protect whistleblowers. My name is Thomas Devine, and I serve as legal director of the Government Accountability Project, a nonprofit, nonpartisan, public interest organization that assists whistleblowers, those employees who exercise free speech rights to challenge abuses of power that betray the public trust. GAP has led or been on the front lines of campaigns to enact or defend nearly all modern whistleblower laws passed by Congress, including the Whistleblower Protection Act of 1989 and 1994 amendments.

Our work for corporate whistleblower protection rights includes those in the Sarbanes-Oxley law for some 40 million workers in publicly-traded corporations, the 9/11 law for ground transportation employees, the defense authorization act for defense contractors, and the Consumer Product Safety Improvement Act for some 20 million workers connected with retail sales, the Energy Policy Act for the nuclear power and weapons industries and AIR 21 for airlines employees, among others.

We teamed up with professors from American University Law School to author a model whistleblower law approved by the Organization of American States (OAS) to implement at its Inter American Convention against Corruption. In 2004 we led the successful campaign for the United Nations to issue a whistleblower policy that protects public freedom of expression for the first time at Intergovernmental Organizations, and in 2007 analogous campaigns at the World Bank and African Development Bank. GAP has published numerous books, such as The Whistleblower's Survival Guide: Courage Without Martyrdom, and law review articles analyzing and monitoring the track records of whistleblower rights legislation. See "Devine, *The Whistleblower Protection Act of 1989: Foundation for the Modern Law of Employment Dissent*, 51 Administrative Law Review, 531 (1999); Vaughn, Devine and Henderson, *The Whistleblower Statute Prepared for the Organization of American States and the Global Legal Revolution Protecting Whistleblowers*, 35 Geo. Wash. Intl. L. Rev. 857 (2003); *The Art of Anonymous* Activism (with Public Employees for Environmental Responsibility and the Project on government Oversight)(2002); and *The Corporate Whistleblower's Survival Guide: A Handbook for Committing the Truth (2010).*The latter won the International Business Book of the Year Award at the Frankfurt Book Fair.

Over the last 35 years we have formally or informally helped over 6,000 whistleblowers to "commit the truth" and survive professionally while making a difference, and been leaders in campaigns to pass 32 whistleblowers laws ranging from Washington, DC to the United Nations. This testimony shares and is illustrated by painful lessons we have learned from this experience. We could not avoid gaining practical insight into which whistleblower systems are genuine reforms that work in practice, and which are illusory.

Along with the Project on Government Oversight, GAP also is a founding member of the Make it Safe Coalition, a non-partisan, trans-ideological network of 75 organizations whose members pursue a wide variety of missions that span defense, homeland security, medical care, natural disasters, scientific freedom, consumer hazards, and corruption in government contracting and procurement. We are united in the cause of protecting those in government who

honor their duties to serve and warn the public. Our coalition led the citizen campaign for passage of the Whistleblower Protection Enhancement Act. (WPEA) Our coalition has some 75 members, including good government organizations ranging from Center for American Progress, National Taxpayers Union and Common Cause, environmental groups from Council for a Livable World, Friends of the Earth and the Union of Concerned Scientists, conservative coalitions and organizations such as the Liberty Coalition, Competitive Enterprise Institute, American Conservative Defense Alliance and the American Policy Center, to unions and other national member based groups from American Federation of Government Employees and the National Treasury Employees Union, to the National Organization for Women. But the coalition itself is only the tip of the iceberg for public support of whistleblowers. Some 400 organizations with over 80 million members joined the petition for passage of the WPEA.

Today's hearing is welcome, needed oversight on the marathon struggle required to turn rights on into reality. As a lifelong free speech advocate, one of the most compelling lessons I have learned is that passing these rights is only the first step on a long journey. The companion lesson that I have learned is that retaliation for challenging abuses of power always has and always will occur, because it is the organizational equivalent of animal instinct that transcends concepts like ideology, politics, or even good and evil. Today's witnesses illustrate the third insight. Retaliation seldom ends, because even after the dispute is resolved the hard feelings are permanent. Further, the imperative is permanent to make a negative example out of every whistleblower's life, to scare others into silence.

LESSONS LEARNED FROM WHISTLEBLOWERS' TESTIMONY

Today's witnesses also illustrate more immediate lessons and challenges, which are summarized below along with suggestions for how Congress can contribute to solutions.

1. Whistleblowing through Congress can have the greatest impact against abuses of power.

Every academic or government study has concluded that the primary motivating, or chilling factor for would-be whistleblowers is whether they can make a difference by bearing witness. The secondary factor is whether they will suffer retaliation. My first principle for both criteria is that there is no more effective audience to disclose whistleblowers' evidence than Congress. Working in partnership with Congress, whistleblowers have been able to --

* expose and spark corrective action against routine Pentagon purchases of the world's most expensive nuts, bolts, toilet seats and coffee pots.

* expose blanket domestic surveillance to congressional oversight committees that began the process of restoring accountability long before media leaks made the issue popular, disclosures that led to passage of the USA Freedom Act.

* force delivery of Mine Resistant Armored Protection (MRAP) vehicles to Iraq and Afghanistan that reduced land mines from 90% of casualties and 60% of fatalities, to only 5% of casualties.

* reveal indefensible breakdowns in aviation security such as routine exposure of undercover Federal Air Marshals, who were topic of Committee oversight this week.

* prevent the trillion dollars next phase of Star Wars, after the Army's top scientist blew the whistle on the program's inherent, structural inability to intercept enemy missiles.

* force repairs on nuclear power plants that were accidents waiting to happen, and plug leaks that were spewing millions of gallons of radiation into America's water supplies.

* expose and end the practice of our law enforcement agencies selling weapons to Mexican drug smugglers.

* reveal that federally-funded programs to help abused foster children were diverted while the abuse victims were put in hails with adult criminals.

* disclose evidence how U.S. funded international programs at the United Nations and other Intergovernmental Organizations in practice was financing mass rapes and other human rights abuses by IGO "peacekeepers."

* serve as America's greatest source of evidence to expose waste and fraud in federal spending programs, particularly with respect to government contracts. .

I could continue indefinitely, but the point should be clear. Whistleblowers are the human factor that is the Achilles heel of bureaucratic corruption. When they team up with Congress, they turn the truth into America's most powerful resource.

2. Congress is the highest risk audience for whistleblowers. Behind this lesson is one of the most basic truths that I have learned working with whistleblowers: There is a direct linear relationship between the threat posed by a whistleblower, and the severity of retaliation. This makes Congress the highest risk audience. Some institutions, such as the media, can create a public spotlight. Others, like Offices of Inspector General (OIG), can follow through with in-depth investigations. Their probes, however, generally have a limited bureaucratic spotlight, and they only can make recommendations. Congress not only is a magnet for public attention, it can act both to change the balance of resources and the rules of the game. As a result, in my experience congressional disclosures spark the ugliest retaliation.

There also is curious cause based on cultural conflict. Many government agencies perceive Congress as an enemy. Colleen Rowley, the 9/11 FBI whistleblower, once confided that the Bureau viewed Congress with as much and sometimes more hostility than it did enemy nations. Based on the dynamics of retaliation, this is not surprising. When Congress effectively holds agencies accountable, it can threaten two of every government agency's top priorities – 1) resources, and 2) appearances that sustain public confidence. Agencies where that attitude prevails treat whistleblowers like modern Benedict Arnolds, and engage in extraordinary efforts to make miserable examples of them that will scare others into silence. This dynamic is a direct threat to congressional oversight and taxpayer accountability.

What Congress can do: Perhaps most significant is the dynamic for your partnership with whistleblowers. If you build a relationship of earned trust, whistleblowers will open up to maximize the flow of information for oversight. And they will recruit others to corroborate and expand the evidentiary beach head limited to their personal knowledge. At a minimum, whistleblowers will be sensitive whether the relationship is a two way street, or they are just evidence objects of no interest once their brains have been vacuumed. That means that offices which "stand by their whistleblowers" will get the most evidence. Fighting retaliation against whistleblowers should be an equally significant priority as fighting betrayal of taxpayers. Senator Grassley's Judiciary Committee staff has proved repeatedly that this approach maximizes the flow of evidence for oversight. GAP conducts training for OIG investigators on how build relationships of earned trust with whistleblowers. Relevant materials are included as Exhibit 1. As a first step, I would urge all members of this Committee to join the twelve members of the Senate Whistleblower Protection Caucus, along with Chairman Johnson, Ranking Member Carper, Senator McCaskill and Senator Baldwin from this Committee.

Second, Congress can put teeth into the Lloyd Lafollette Act, 5 USC 7211. Since 1912 that anti-retaliation law has created a "no exceptions" right to communicate with Congress. Unfortunately, there is no statutory due process opportunity to enforce the right, and no remedy. Rights without enforcement or remedies lead to false expectations that generate cynicism. Congress can solve this problem by adding the right to challenge any Lloyd Lafollette violation through a jury trial. The WPEA requires a Government Accountability Office (GAO) study of jury trials for Title 5 actions generally if whistleblower retaliation is alleged. Congress does not need to wait, however, to add teeth to solely legislative disclosures. The Merit Systems Protection Board (MSPB) which adjudicates whistleblower and other civil service cases, neither has the political independence nor the resources for the high stakes, often complex or technical issues that Congress investigates due to whistleblowers. But those are the disputes where whistleblower protection matters most. Adding teeth to the Lloyd Lafollette Act would be an effective interim measure to provide genuine protection for whistleblowing disclosures with the greatest public impact.

3. <u>When retaliation occurs, whistleblowers face a sometimes endless marathon struggle for professional survival</u>.

The late Admiral Rickover used to counsel that if there is a choice between sinning against God or the bureaucracy, pick God. That is because while neither forgets, God forgives and the bureaucracy doesn't. Consistent with that insight, my first duty at GAP with would-be whistleblowers is attempting to talk them out of it. It is not that I want to succeed. But they have a right to know what they are getting into. This is a life's crossroads decision after which their reality will never again be the same, and generally involves a nightmare from which they cannot wake up for years, if they are lucky.

Agencies are motivated to continue retaliation indefinitely, because it creates a chilling effect that silences others. Part of the strategy is not just to fire whistleblowers, but to destroy them. It maximizes fear when the terminated employee cannot find another job and/or goes bankrupt. It is not surprising that retaliation campaigns often include blacklisting and denial of post-employment benefits such as pensions or medical coverage.

What Congress can do: One of the best ways to earn whistleblowers' trust is to convince them that your office has as much or more stamina than the bureaucracy when it comes to fighting ongoing harassment. A second suggestion is to do your homework on how to help them survive, and then seek help from specialists like credible whistleblower support groups if more expertise or reinforcement is necessary. Enclosed as Exhibit 2 are GAP's survival tips from our whistleblower manual.

GENERIC LESSONS LEARNED

Today is the first relevant hearing since passage of the Whistleblower Protection Enhancement Act, the landmark overhaul of civil service free speech rights that Congress spent 13 years considering before unanimous passage. Therefore, my testimony will provide a summary overview of how well the law is working. Hopefully this will be the prelude for in-depth oversight of how the law is working.

4. Since the WPEA, creative harassment tactics are creating greater threats to accountability.

The sensitive jobs loophole. A decision by the Federal Circuit Court of Appeals which the Supreme Court declined to review has created the most significant threat to the civil service merit system in our lifetime. In *Kaplan v. Conyers,* 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied* 134 S. Ct. 1759 (U.S. Mar. 1, 2014), the courts declined to interfere with policies by the last two presidents to create a 'sensitive jobs" loophole that could eliminate independent due process rights for virtually the entire federal workforce. The roots of this doctrine are a McCarthy era regulation creating a prerequisite security check for those who jobs do not currently but some day may need a security clearance for access to classified information. Although the practice had been long dormant, it has been revived by the last two presidents for implementation throughout the Executive branch.

In the aftermath, the government has uncontrolled power to designate any position as "sensitive." The Federal Circuit applied the principle to those who stock sunglasses at commissaries, and proposed OPM regulations will permit the designation for all jobs that require access either to classified or unclassified information. "Sensitive" employees and will no longer be entitled to defend themselves through an independent due process proceeding at the Merit Systems Protection Board (MSPB); and there are no consistent procedures to achieve justice within agencies. Already workers are being removed for old debts or other financial problems, despite having good credit without significant current debt –even if financial hardship were a valid basis to purge the civil service. In effect, we are on the verge of replacing the merit system with a national security spoils system. This would provide absolute authority over nearly two million workers to the most secretive, wasteful bureaucracy in government, whose surveillance abuses already have created a national crisis for freedom. Since 1883 the merit system has kept the federal labor force comparatively non-partisan and professional. The "sensitive jobs" loophole would open the door to replace accountability with a national security spoils system. GAP's associated friend of the court brief to the Federal Circuit, and public comments on the Office of Personnel Management's proposed new rules are attached as Exhibits 3 and 4.

What Congress can do: The foundation for any responsible public policy decision on shrinking the merit system must be in-depth, verifiable research on the alleged problem used to justify change. Even the Administration has not conducted this research yet. It does not know how many employees are in sensitive jobs, and has not offered any empirical basis of any threat posed by their merit system rights. Congress should schedule in-depth oversight hearings that require the administration to defend the grossly audacious premise that the merit system is a threat to America's safety. Nor has it constructed a consistent intra-agency due process structure to replace the merit system. It then should commission a GAO study of the alleged national security threat posed by the merit system and alternatives to address it, along with a request that the Administration defer from unilaterally canceling the civil service system. Just like the WPEA, any civil service restructuring or cancelation should reflect an in-depth record and a partnership consensus between Congress and the Executive.

Criminalizing whistleblowing:

The Obama Administration has been harshly criticized for a "War on Whistleblowers" through unprecedented Espionage Act prosecutions for allegedly leaking or preparing to leak classified information. In reality, the phenomenon is much broader. As a service organization, GAP cannot avoid becoming sensitive to the latest patterns of retaliation. Since passage of the WPEA, we have seen a sharp shift from traditional employment actions to criminal investigations and prosecutive referrals. Increasingly, whistleblowers are given the choice of resigning, or risking jail time. Ernie Fitzgerald once nicknamed whistleblowing as "committing the truth," because you're treated like you committed a crime. Increasingly, instead of isolating or firing whistleblowers, that literally is becoming the new reality for whistleblowers.

That is not surprising. First, criminal investigations are much easier and less burdensome than multi-year litigation with teams of lawyers, depositions, hearings and appeals. All it takes is an investigator who is proficient at bullying. Second, there is no risk of losing. In a worst case scenario, an agency merely closes the investigation (and can open up a new probe on a new pretext at any time). Third, the chilling effect of facing jail is much more severe than facing an adverse action.

Criminal witch hunts are the most effective means available to scare employees into silence, but under current law it is uncertain whether WPA anti-retaliation rights are applicable. In legislative history, 1994 WPA amendments designated retaliatory investigations and prosecutive referrals as threatened personnel actions creating WPA rights, but so far no ruling has applied that legislative history.

What Congress can do: With respect to retaliatory criminal investigations and prosecutions, Congress should extend the Whistleblower Protection Act to any context where retaliation creates a chilling effect. The U.S. is one of the only countries in the world where whistleblower rights do not apply to retaliation in the criminal or civil litigation contexts. This committee can take a good head start by clearly designating retaliatory investigations as prohibited personnel practices.

5. The WPEA is a work in progress: While landmark legislation, the WPEA did not resolve certain high stakes, highly contentious issues that required further research. Their resolution may be more significant than the law that Congress passed. Combined with sluggish training and knowledge of the new rights, the reform has been slow to take root. We have a more work to do on the most significant issues, both for the final legal boundaries and implementation.

Unresolved issues

Three contentious WPEA issues were postponed for resolution until after a four year study by the Government Accountability Office (GAO) – 1) whether the initial two year experiment in normal "all circuits review" should be extended permanently as a substitute for the Federal Circuit Court of Appeals' prior monopoly; 2) whether civil service employees should have access to court, as an alternative to administrative hearings when there is not a timely ruling; and 3) whether the MSPB should have summary judgment authority to rule against whistleblowers without an administrative due process hearing. Over three years have passed, and it is overdue for the GAO to begin serious research.

All circuits review: Last year Congress bought time by passing the All Circuits Review Extension Act, expanding the pilot program to five years so that GAO will have time to complete its study. Notwithstanding responsible rulings in the *MacLean* case, the Federal Circuit still has not ruled in favor or a whistleblower for a final decision on the merits since passage of the WPEA two and a half years ago. Normal appellate due process is a necessity, or Congress may well have to pass the same whistleblower rights a fifth time.

District court access: Since 2002 Congress has passed 13 whistleblower statutes, all providing for *de novo* jury trials in District court if the employee does not receive a timely administrative ruling. This was necessary, because the administrative hearing system does not have the structure, resources or time for cases with the most public policy significance, and/or involving complex or highly technical issues. That applies equally or more to resolution of civil service whistleblower cases, but the widespread mandate for district court access was blocked by threat of a Senate procedural hold. The GAO study should provide the empirical basis for this long overdue, responsible and proven reform. It is unrealistic to expect first class public service from federal employees, if they have second class rights against retaliation for providing it.

Summary judgment authority: The MSPB long has sought this authority to more efficiently manage its docket. Whistleblower groups led by civil rights organizations, however, have strenuously resisted, because it has been badly abused at the EEOC in discrimination cases. The threat of a guaranteed hearing always has been the whistleblower's only significant leverage to settle cases. There never has been a significant chance for success on the merits or settlement after hearing, due to a long, deeply ingrained track record of hostility by Administrative Judges. The current Board leadership is not pressing for this authority, and the issue should be resolved.

6. Oversight and re-authorization of merit system agencies is long overdue.

As seen at the Federal Circuit Court of Appeals, there has not been consistent respect for, and often even recognition of, the WPEA's legislative mandate. To illustrate, the U.S. Office of

Special Counsel, which has overall responsibility to promote and guard the merit system, has begun a program to certify that all federal agencies have conducted adequate training programs in whistleblower rights. At a March town hall meeting, the OSC reported that as of 2014 18 federal agencies out of 400 had been certified, an increase of 13 from the previous year. The OSC also reported that 26 agencies have registered for training and certification. This means that over three years after the WPEA's passage, less than 5% of federal agencies have in-depth knowledge of WPEA's and other merit system rights and responsibilities, let alone a commitment to honor them.

The good news is that leaders of the two primary merit system agencies, MSPB Chair Susan Grundman and Special Counsel Carolyn Lerner, both have a commitment to merit system principles that cannot be credibly questioned. More than ever before in its history, the full Board's precedents have been even-handed and fair. Special Counsel Carolyn Lerner has accumulated an impressive list of achievements, such as --

* a 600% increase in corrective actions from 29 five years ago to 174 last year, which helps to explain the record 6600 reprisal complaints last year, a 53% increase over that time period. Part of the reason for more complaints may be that retaliation is increasing. But another significant factor is that for the first time in many years, employees have hope that they can achieve justice and so are acting on their rights.

* re-birth of an Alternative Dispute Resolution (ADR) system that has set the global gold standard for effective results constructively resolving whistleblower disputes.

* effective advocacy through its new WPEA authority to file *amicus curiae* friend of the court briefs, as occurred in the Supreme Court showdown for Robert MacLean, in which the Supreme Court rejected by a 7-2 majority the most fundamental challenge to statutory whistleblower rights since their creation in 1978.

* effective action to earn a partnership and impressive results with Department of Veterans Affairs (DVA) leadership in cleaning up the government's worst pocket of whistleblower retaliation.

* systematic changes in the OSC Disclosure Unit that make it more accessible for whistleblowers, and more effective achieving taxpayer accountability. For example, the OSC has begun monitoring agencies for implementation of corrective action commitments promised by investigative reports that the OSC orders. It is adopting criteria to evaluate agency reports, so that they can be taken seriously as good faith responses to government breakdowns, or else flunked and sent back to do over.

* a structural overhaul to permit holistic handling of whistleblowing disclosures about fraud waste or abuse that are combined with retaliation complaints.

Unfortunately, these gains must be put in somewhat depressing perspective. While the full Board issues responsible precedents, the Administrative Judges who preside over

whistleblowers' "day in court" remain consistently hostile to the Whistleblower Protection Act, and regularly ignore or rewrite its provisions to rule against employees.

At the OSC, 174 corrective actions out of 6600 complaints is a 2.6 per cent success rate. That means no one should have any expectations of justice. Whistleblowers still are frustrated more often than not when they act on their rights, even at the OSC. GAP regularly receives angry reports from whistleblowers who contend that the OSC Complaints Examining Unit has ignored their evidence, or re-translated the law to create even larger loopholes than the Federal Circuit rulings that sparked the WPEA's passage. This is consistent with my own frustrations.

Further, the OSC has yet to litigate a case to obtain relief for a whistleblower. In fact, no Special Counsel has litigated since once in 1979, the Office's maiden year. While the OSC explains it is because agencies always surrender and accept OSC recommendations, the nonstop series of government scandals since 1979 indicates the OSC's recommendations either are absent or too weak to significantly strengthen accountability or impact patterns of retaliation.

It is unfair and unrealistic to expect that the Special Counsel can help everyone who deserves it, or do more than set examples with high profile precedents that send a message throughout the Executive. To do that, however, it must prove that it is willing and able to litigate and win those showdowns. Agencies will respect the OSC far more if they know the Special Counsel is willing and able to defeat them in litigation.

Finally, in GAP's experience the single most effective way to make a difference is temporary relief. Agencies count on winning through extensive delays, due to appeals or lack of resources for merit system agencies to issue timely rulings. Often whistleblowers are akin to patients who died before the doctor made it to the operating table. After waits of two to three years (or in Mr. MacLean's case nine years) without salary or realistic prospects for new jobs, even whistleblowers who win cannot avoid bankruptcy. The lack of temporary relief also increases the volume of unresolved litigation, and the quality of settlements. In our experience, when there is a "stay" or temporary halt to alleged retaliation, the agency normally negotiates in good faith for an expeditious, fair resolution. Without temporary relief, the agency has won at least until the final outcome and prolongs the conflict indefinitely unless the whistleblower agrees to a nuisance settlement.

Unfortunately, the OSC's record at obtaining temporary relief has been unimpressively stagnant. At the March town hall meeting, the OSC reported that in Ms. Lerner's first year it obtained 27 informal and 8 formal stays for a total of 35 interim corrective actions. For the last two years the totals have been 33 formal or informal stays, despite a 53% caseload increase to some 6600 cases during the last year. We believe the OSC needs to make it a priority to start nipping possible retaliation in the bud through interim relief as its top priority when deserved. If nothing else, this call agency bluffs and expediter resolution of cases that otherwise might require prolonged investigation. For whistleblowers interim relief is far more significant, though: it stops the bleeding.

These shortcomings must be put in perspective. Just four years ago when Ms. Lerner took office, the agency was dysfunctional after leadership that led to a criminal conviction of her

predecessor. Ms. Lerner and her top staff are public servants whose willingness to listen to stakeholders and commitment to the merit system are beyond dispute. The Office has come in a long way due to their leadership. But in terms of the OSC being a reliable vehicle for justice, we're not there yet – or even close.

What Congress can do: While the WPEA clarified and restored rights against retaliation, OSC-MSPB reauthorization is necessary to make the remedial agencies more accessible, and user friendly in practice. Quite simply, in a structural and procedural level, too often they have become dysfunctional since their 1978 creation. In 2007, this committee prepared HR 3551 to begin the makeover, and the bill was marked up in subcommittee. Further action was postponed, however, until passage of the WPEA. It is time to resume serious work on modernizing these agencies to address lessons learned.

For whistleblowers, the most significant provisions in HR 3551 were –

* reforms to permit joinder of related cases with common facts instead of requiring separate proceedings;

* realistic standards to obtain temporary relief, the key to timely and fair settlements, by providing it whenever a whistleblower proves a *prima facie* case of retaliation; and

* an independent process for accountability when Special Counsels abuse their power. Discussions by the OSC and good government organizations Senate staff in the last Congress produced a consensus for further reforms in a renewed effort through –

* mandatory regulations by the OSC, which has not issued them since its 1978 creation;

* a two year statute of limitations for employees to file prohibited personnel practice complaints;

* OSC authority to issue and enforce subpoenas;

* increased employee access to evidence in case files, in exchange for fewer OSC burdens to explain decisions;

* enfranchisement of whistleblowers in framing the issues when OSC orders an agency investigation into their disclosures;

* OSC authority to monitor agency corrective action commitments in response to whistleblowing disclosures; and

* an expanded OSC certification program for agency training in merit system principles.

Mr. Chairman, the WPEA was landmark legislation to restore rights that Congress now has passed four times since 1978. But the pressure to enforce abuses of secrecy through silence is timeless, trans-ideological and bi-partisan. The WPEA's most significant issues have not yet

been resolved, while agency creativity already is producing new, more intimidating forms of harassment. At the same time, the rules that govern practices at merit system remedial agencies increasingly are becoming out of date. We hope that the committee will take advantage of willingness by GAP and other good government organizations in the 75 member Make It Safe Coalition to reach the WPEA's mandate by finishing the toughest reform issues, and modernizing the Act's implementation.