

Dear House Conferees:

As you begin to reconcile the differences between the House and Senate versions of the National Defense Authorization Act for Fiscal Year 2017 (NDAA, H.R. 4909 and S. 2943), the undersigned organizations, concerned with openness and accountability, urge you to maintain the integrity of specific military whistleblower provisions.

While military whistleblowers play an important role in safeguarding our nation from fraud, waste and abuse, speaking out against wrongdoing is particularly challenging for servicemembers. A 2015 Government Accountability Office report exposed deficiencies in the protections offered to military whistleblowers and widespread whistleblower retaliation¹. Two 2014 Office of Personnel Management surveys revealed that a fifth of Department of Defense employees² and a quarter of Department of Defense Inspector General employees³ could not disclose a suspected violation of the law without fear of reprisal. The stakes could not be higher for military whistleblowers. Recognizing this issue's importance, the following House and Senate provisions provide responsible and overdue reforms that should be included in the final NDAA:

House Section 545. Burdens of Proof Applicable to Investigations and Reviews Related to Protected Communications of Members of the Armed Forces and Prohibited Retaliatory Actions. When compared to civilian employees, whistleblower protections for servicemembers are severely limited. The burdens of proof that military whistleblowers must meet are particularly oppressive. In military reprisal cases, servicemembers must prove retaliation was illegal; in civilian cases, the agency must prove retaliation was *not* illegal. Burdens are greater for military personnel than for civilians. Consequently, the Department of Defense and Service Inspectors General are unable to substantiate the vast majority of allegations they receive. This section applies the Whistleblower Protection Act burdens of proof language, found in every other whistleblower law since 1989, to the Military Whistleblower Protections Act. The Department of Defense Office of Inspector General (DODIG) supported this recommendation in 2014 as a step toward consistent legal standards across whistleblower investigations.

House Section 546. Improved Investigation of Allegations of Professional Retaliation. This provision would require the Secretary concerned to ensure that individuals investigating alleged whistleblower reprisal have whistleblower retaliation training. Additionally, if the investigation involves alleged retaliation in response to a communication regarding rape, sexual assault, or other sexual misconduct, then the training shall include specific instruction regarding such violations.

Senate Subtitle D. Whistleblower Protections for Members of the Armed Forces. This subtitle strengthens military whistleblower rights in a number of ways by: categorizing new reprisal tactics, such as retaliatory investigations, as prohibited personnel actions (*Sec. 961*); granting the

¹ Government Accountability Office, Whistleblower Protection: DOD Needs to Enhance Oversight of Military Whistleblower Reprisal Investigations, May 7, 2015 <http://www.gao.gov/assets/680/670067.pdf>

² Office of Personnel Management, Department of Defense 2014 Federal Employee Viewpoint Survey, 2014.

³ Office of Personnel

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Sincerely,

American Civil Liberties Union
American Library Association
Bill of Rights Defense Committee/Defending Dissent Foundation
Blue Star Families
Bogdan Dzakovic, FAA Whistleblower
Center for Defense Information
Center for Financial Privacy and Human Rights
Demand Progress
Federal Law Enforcement Officers Association
Government Accountability Project
Human Rights Watch
Just Foreign Policy
Law Office of Elaine Mittleman
Liberty Coalition
Martin E. Anderson, DoJ and DoD Whistleblower
Marvell D. Lavy, DVA Whistleblower
National Center for Transgender Equality
National Taxpayers Union
National Workrights Institute
OpenTheGovernment.org
Project on Government Oversight
Protect Our Defenders
Public Citizen
Public Employees for Environmental Responsibility (PEER)
Restore The Fourth
Service Women's Action Network
Sunlight Foundation
Taxpayers Protection Alliance
TechFreedom
The James Madison Project
The Rutherford Institute
Vietnam Veterans of America
X-Lab