

CHAIRMAN CHEH AND COUNCIL MEMBERS:

Thank you for your leadership to modernize the District of Columbia whistleblower protection law for government employees and contractors.

Until recently, it was recognized as the standard of excellence in free speech rights for government workers and contractors who challenge abuses of power that betray the public trust.

Unfortunately, this anti-corruption shield is deteriorating fast due to spillover effects from court rulings under the discredited Whistleblower Protection Act for federal employees. Congress is on the verge of completing a ten year process to overhaul and modernize the federal law. This hearing means the District is serious about keeping pace to upgrade its free speech law, down to the nuts and bolts level. That is welcome news for District taxpayers. With modest fine tuning, the Whistleblower Protection Amendment Act of 2009 will restore D.C.'s status as the gold standard at the state and local level for accountability through whistleblowers.

There should be no question about the importance of this law for District taxpayers and their families. During its first decade, it has been the only source of defense for whistleblowers who challenged government breakdowns ranging from maggots in school lunch warehouses, illegal diversion of educational funds, negligence in responding to fires, corruption and conflict of interest in agency internal affairs, to list just a few illustrative highlights.

As proposed, the legislation --

* protects whistleblowers against retaliatory investigations. This is highly significant, because almost all retaliation starts with investigative witch hunts as a

smokescreen to build a record for smear campaigns to discredit and distract from the employee's dissent, and as a basis for formal removal. This provision will allow employees to nip harassment in the bud.

* restores protection for disclosures that challenge fraud, waste or abuse made in the course of an employee's job duties. Since the Supreme Court's decision in *Garcetti v. Ceballos*, this is a necessity for any credible whistleblower law to be relevant.

* increases the statute of limitations for employees to assert their rights. Along with related provisions on employee outreach, this is necessary because employees frequently are not aware of their rights until it is too late.

* increases civil fines against employers who retaliate against whistleblowers from \$1,000 to \$10,000. The \$1,000 penalty is so low that it has sent a signal the District will be satisfied with token accountability for those who cover up government misconduct through repression.

* extends employee anti-retaliation protection to honest contractors who blow the whistle on District fraud, waste or abuse. For too long, the District has had to fight an accumulated, Third World perception that there is no room here for contractors who do not engage in bribery and kickbacks. Expanding whistleblower rights from employees to contractors themselves is a significant good government breakthrough. Hopefully, the District's actions will be a significant precedent for other state and local governments.

While an excellent, serious work in progress, this legislation needs several additional amendments for the law to be functional when it is needed.

1) Comprehensive language mirroring current federal legislation to close all relevant judicially-created loopholes that erase protection legislated any the Council. For example, last year a DC court held that the law does not cover any whistleblowing about misconduct previously revealed. That means it is irrelevant for everyone but the

Christopher Columbus of a scandal. Any supporting witnesses proceed at their own risk, and it is irrelevant for ingrained corruption.

2) Explicitly protect against psychiatric fitness for duty examinations. The ugliest, most common tactic against whistleblowers is to challenge their sanity, and remove them from government service as mentally unfit. Since 1994 coerced fitness for duty examinations have been a listed action eligible for Whistleblower Protection Act suits. This is a common tactic in the District, as illustrated by the case of DC firefighter Vanessa Coleman. It is long past time for the District to update the law as a specific mandate against this harassment.

3) Tighten existing language that allows whistleblowers to counterclaim for discipline against managers in retaliation lawsuits. To date, the courts simply have refused to recognize this language in the 1998 law. Accountability with teeth is essential to prevent retaliation. Otherwise, bureaucratic bullies have nothing to lose.

4) Make technical modifications to the notice requirements for lawsuits, so they do not undermine the law's statute of limitations.

Thank you again for your leadership. GAP is on call however it would be helpful to work with the Council to finish the serious reform you have started.