



U.S. Office of Special Counsel
1730 M St., N.W., Suite 218
Washington, D.C. 20036-4505

OSC Files Two *Amicus Curiae* Briefs Opposing Restrictions on Federal Employee Whistleblower Rights

FOR IMMEDIATE RELEASE

CONTACT: Mark Cohen, (202) 254-3602; mcohen@osc.gov

WASHINGTON, D.C./April 18, 2017

The U.S. Office of Special Counsel (OSC) recently filed two *amicus curiae* (“friend of the court”) briefs seeking to overturn decisions that restrict whistleblower protections for federal workers.

The [first brief](#) was filed in the U.S. Court of Appeals for the Ninth Circuit in *Johnen v. Merit System Protection Board and Department of the Army*. In that case, Michael Johnen alleged in a complaint to OSC that the Army terminated him from civilian employment in retaliation for his disclosures about nepotism to Army officials and the Inspector General. Mr. Johnen subsequently filed this claim with the Merit Systems Protection Board (Board). The Board, however, refused to consider his disclosures to Army officials, concluding that because Mr. Johnen had not informed OSC of the “precise” details of these disclosures, including exact dates and all recipients, he did not exhaust his administrative remedies for these disclosures.

In its brief, OSC asks the Ninth Circuit to reverse the Board’s decision, which creates unwarranted procedural hurdles for federal employees alleging whistleblower retaliation. According to the brief, the Board’s requirement that complainants provide “precise” details of each element of their whistleblower retaliation claims is contrary to the statute and Congress’s clear intent to provide whistleblowers with strong protections backed by effective remedies. OSC argues that the Board’s approach also fails to recognize that most whistleblowers are not represented by attorneys during the administrative process and they lack access to agency information needed to provide precise details. Additionally, OSC argues that the Board’s approach undermines efficiency by making the administrative process more difficult, and by inducing whistleblowers to refile claims that OSC has previously considered. This is the first time the Ninth Circuit has considered the requirements for exhausting administrative remedies in a federal whistleblower retaliation case.

The [second brief](#) was filed with the Board in *Ryan v. Department of Defense*. In that case, James Ryan alleged that the Defense Department retaliated against him for blowing the whistle. The administrative judge concluded that some of Mr. Ryan’s disclosures were not protected because he was motivated to make them by “interpersonal squabbling,” not a genuine desire to report government wrongdoing. However, the Whistleblower Protection Enhancement Act of 2012 clearly states that disclosures are not to be excluded from protection based on a whistleblower’s motive. Since the administrative judge’s decision is inconsistent with the statute, OSC asks the Board to correct this legal error in its resolution of the case. (Note that currently, the Board lacks a quorum to consider this issue.)

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: The Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC’s primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.