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OSC Files Amicus Curiae Brief Opposing Additional Burden on Federal Employee Whistleblowers

FOR IMMEDIATE RELEASE

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Today, the U.S. Office of Special Counsel (OSC) filed an *amicus curiae* (“friend of the court”) [brief](#) in *Chambers v. U.S. Department of Homeland Security*, a whistleblower retaliation case on appeal before the Merit Systems Protection Board (MSPB). In this case, Dwyne Chambers alleged that his employer, the U.S. Coast Guard, retaliated against him for engaging in protected activity and making protected disclosures, including reporting coworkers who sent offensive, sexually explicit messages using their work email accounts.

The MSPB administrative judge concluded that Mr. Chambers had not exhausted his administrative remedies before OSC as required by the Whistleblower Protection Act (WPA) because he had not provided any comments in response to OSC’s preliminary determination letter. However, the plain language of the WPA states that providing comments in response to OSC’s preliminary determination is optional, not required. OSC also argues in its brief that requiring complainants to respond to OSC’s preliminary determination letters would impose additional burdens on complainants and diminish OSC’s administrative efficiency. For these reasons, OSC asks the MSPB to correct this legal error. (Note that currently, the Board [lacks a quorum](#) to consider this issue.)

Notably, this is the second *amicus curiae* brief filed by OSC this year regarding the MSPB’s interpretation of the administrative exhaustion issue. OSC’s earlier [brief](#) was filed in April 2017 in the Court of Appeals for the Ninth Circuit in *Johnen v. Merit System Protection Board and Department of the Army*. The decision in that case has not been issued yet.

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 and Reemployment Rights Act. OSC’s primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially whistleblower retaliation, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.