

October 6, 2016



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The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Subject: Support for H.R. 1557 the Federal Employees Anti-discrimination Act of 2015

Dear Chairman Johnson:

The undersigned organizations write to ask that you execute a manager's amendment to ensure the timely passing of measures within HR 1557 (*The Federal Employees Antidiscrimination Act of 2015*) as agreed upon by both the House Oversight and Government Reform Committee and the Committee on Homeland Security and Governmental Affairs (HSGAC). We are pleased that HSGAC steadfastly endorses the amendments of the Notification and Federal Antidiscrimination and Retaliation (No FEAR) Act of 2002 as proposed by H.R. 1557.

As you may already be aware, [H.R. 1557](#) was created with the leadership of the Coalition For Change, Inc. (C4C) and with the strong support of members within Make It Safe Coalition (MISC). Amending the "No FEAR Act" serves to strengthen Equal Employment Opportunity protections for Federal employees who have been discriminated against and to provide accountability within the Federal government for retaliatory acts. Moreover, it serves to ensure that both Federal agencies and supervisors are held accountable for such unlawful violations.

The C4C continues to advocate for disciplinary measures to hold agencies and supervisors accountable for unlawful discriminatory and retaliatory acts in the Federal workplace. For this reason, in particular, we met with you last year to convey our sentiments. We applaud HSGAC for moving in the direction of invoking discipline on supervisors who break the law. However, we find the proposed language and the placement of the added disciplinary provision within HR 1557 disconcerting for the following three (3) reasons.

Primarily, we have concerns about language in the *Lankford* amendment which was added after the House Oversight and Government Reform Committee referred HR 1557 to HSGAC. Unfortunately, the amendment does not provide those accused of reprisal with *due process* within the agency. Intra-agency proceedings have proven highly successful in preventing litigation. In the process they often reduce significant, unnecessary burdens on the employee, agency and the Merit Systems Protection Board. We submit that due process rights exist to protect the merit system as the essential foundation for non-partisan, professional public service.

Secondly, we are of the collective opinion that a modified discipline provision, one that ensures due process, would be better suited within the framework of S.2968 –

[Office of Special Counsel Reauthorization Act of 2016](#). Notably, S. 2968 is also under the purview of the HSGAC.

Thirdly, we the undersigned do not want to prevent the timely passing of other key HR 1557 provisions. We believe that measures as proposed by House Oversight and Government Reform Committee and as agreed upon by HSGAC will address the interests of public servants who have long awaited No FEAR Act amendments, since its passing in 2002. Such critical measures, includes but are not limited to, HR 1557 requirements that:

- restrict non-disclosure (gag orders) in settlement agreements;
- clarify the Equal Employment Opportunity Commission's role in referring findings of discrimination to the Office of Special Counsel; and
- call for agencies to annotate an employee's personnel record if the employee has been found to commit an unlawful act as identified in Section 7: the Notification and Federal Antidiscrimination and Retaliation Act amendments.

Therefore, to ensure that reform measures as agreed upon by both the House and the Senate members can be timely adopted in this session, we request that you remove language in Section 9 of H.R. 1557. By removing in Section 9, the Senate version of HR 1557 would parallel the House version and thereby increase the likelihood of the bill's passage.

In closing, we the undersigned greatly appreciate your committees work to eliminate discrimination and retaliation in the Federal workplace and to enhance whistleblower protections. We hope that you will consider our concerns and recommendations. Should you seek additional information pertaining to this letter, please contact me on (202) 810-5985 or c4c@coalition4change.org.

Sincerely,

[Tanya Ward Jordan](#) President and Founder
[The Coalition For Change, Inc. \(C4C\)](#)

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Karl McDonald. U.S. Marine Corps Veteran (Iraq 1991)
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U.S. Department of Homeland Security [Whistleblower](#)

¹ Reissued from 9/23/16 with
additional signatures.