

The Washington Times

<http://www.washingtontimes.com/news/2009/sep/03/ex-bush-whistleblower-pans-dems/?page=1>

Ex-Bush Whistleblower Pans Dems

September 3, 2010

Bunny Greenhouse, the Army contract director lionized by Democrats for exposing corruption during the George W. Bush administration, is now complaining that her efforts to win more protections for federal whistleblowers are being undermined by the Obama White House and Democrats in the Senate.

In a letter being sent Thursday to whistleblower activists, Mrs. Greenhouse, who exposed millions of dollars in no-bid contracts delivered to the giant contractor Halliburton, said she was angry to find out that she would be denied a jury trial under legislation passed by the Senate Homeland Security and Governmental Affairs Committee in July.

"It is time the Senate and the White House stop paying lip service to strong whistleblower protections for federal employees and pass a whistleblower law that meets their commitments," Mrs. Greenhouse wrote in the letter, which was obtained by The Washington Times.

Click [here](#) to see the letter.

Mrs. Greenhouse's fight against a Pentagon demotion during the Bush administration became a cause celebre for leading Democrats, including Barack Obama, who was a senator from Illinois, and Rep. Rahm Emanuel, now Mr. Obama's White House chief of staff, who used her case as ammunition in the successful fight to retake Congress in 2006.

Attorneys for the National Whistleblowers Center planned to distribute the letter to activists as they fight for changes to the Senate legislation.

"If the Senate passes the bill as currently drafted most federal employees, including myself, will still never obtain court access," Mrs. Greenhouse wrote.

The Obama White House, negotiating with Democratic lawmakers on Capitol Hill, said the thrust of the proposal is to strengthen legal protections for federal workers who expose waste or fraud. The Senate Homeland Security and Governmental Affairs Committee passed the measure on a unanimous voice vote in July, and the full Senate is set to take up the legislation when it returns next week.

White House spokesman Ben LaBolt defended the overall bill, saying it attracted unanimous bipartisan support in the Senate committee and "will make major advances in whistleblower

protections for federal employees - including allowing many federal employee whistleblowers access to jury trials for the first time."

Mr. LaBolt added that "courageous whistleblowers like Mrs. Greenhouse deserve protections, vibrant and impartial agency investigations, and a reformed Merit Systems Protection Board - all components of the Senate bill."

Bill supporters dispute Mrs. Greenhouse's contention that the bill would weaken her right to a jury trial. They say Mrs. Greenhouse is covered by existing definitions in the law, which the Senate bill would amend to allow for courtroom access.

But attorneys for the National Whistleblowers Center tested that assertion in court in September and lost, when a judge ruled that Mrs. Greenhouse's demotion from the Senior Executive Service did not qualify her for a trial.

Sen. Daniel K. Akaka, Hawaii Democrat and the bill's lead sponsor in the Senate, said his measure would correct that problem.

"The bipartisan Senate compromise bill would dramatically improve protections for federal whistleblowers, overturning a number of court decisions that created loopholes in the original Whistleblower Protection Act and left workers vulnerable to retaliation for disclosing waste, fraud and abuse," he said in a statement provided to The Times.

But some whistleblower advocates insist that a provision in the bill, for which the White House lobbied, would create a loophole wide enough to deny court trials to more than 90 percent of federal employees.

Access to court trials -- something whistleblowers have been fighting for 30 years to gain -- has become a sticking point in the legislation, just one month after passage of the Senate bill was hailed as a victory for greater government openness.

White House attorneys have agreed to drop separate provisions in the draft bill that critics warned would have weakened protections for FBI whistleblowers, after The Times reported on the controversy last month.

But Mrs. Greenhouse and others worry that, as the bill stands, the majority of federal employees -- known as Title 5 workers -- would be denied jury trials as well, through the combination of a loophole in the bill and tighter legal requirements.

The Senate bill would not give potential whistleblowers the same legal protections for exposing "minor, inadvertent violation(s) that occur during the conscientious carrying-out of the violators' assigned duties." Deciding what's minor and what's not, however, could prove tricky.

Specialists in corporate whistleblower cases said the "minor violations" clause most likely would discourage workers from risking their careers to expose fraud and corruption.

Donna Boehme, a corporate ethics consultant who crafted the internal whistleblower guidelines for oil giant BP PLC, said the clause would keep employees guessing just what constitutes "minor."

"No whistleblower legislation is going to achieve its goal if you handicap it or really sabotage it with this kind of exception," Ms. Boehme said.

Critics say one flaw in the draft bill is that it would also grant jury trials only to employees who are fired outright or suspended from work for more than 14 days for whistleblowing. Workers like Mrs. Greenhouse, who was demoted after she exposed the no-bid military contracts, would not have the right to a trial.

The Senate's Whistleblower Protection Enhancement Act of 2009, which initially drew praise for the new Obama administration from whistleblower advocacy groups, has increasingly become a thorny issue as more details of the bill have come to light.

"The whistleblowers don't need a celebration; they need a law that will work," said Stephen M. Kohn, executive director of the National Whistleblowers Center.

Attorneys for the center say the problems with the Senate bill extend well beyond national security workers and affect the vast majority of federal employees, including Mrs. Greenhouse.

Federal workers who claim they face retaliation for exposing fraud and corruption currently are barred from taking their cases to federal court. Instead, their cases are heard by the Merit Systems Protection Board (MSPB), a group of three presidential appointees, that decides the merits of a claim.

Whistleblower advocates say the MSPB serves more to protect the executive branch from bad press than to protect federal employees.

The solution, advocates say, is to provide federal whistleblowers access to courts to guard against unfair retaliation. Mr. Obama and Mr. Emanuel supported that argument while in Congress.

Mr. Emanuel, then the chairman of the Democratic Congressional Campaign Committee, made the George W. Bush administration's treatment of whistleblowers - including Mrs. Greenhouse - a top political issue.

"We teach our children to tell the truth. We should expect the same thing from our public officials. But in this administration, the only thing the truth will get you is fired," Mr. Emanuel said in 2005.

Whistleblower advocates have favored a separate bill moving in the House, but the White House has largely allied itself with the Senate version.

