Watt	Wexler	Wynn
Waxman	Whitfield	Yarmuth
Weiner	Wilson (OH)	Young (AK)
Welch (VT)	Woolsey	
Weller	Wu	

NOT VOTING—33

Ackerman	Forbes	Meehan
Boyda (KS)	Granger	Miller (FL)
Brown (SC)	Hastings (WA)	Miller, George
Camp (MI)	Hulshof	Olver
Capps	Jefferson	Radanovich
Davis, Jo Ann	Johnson, Sam	Rogers (AL)
Deal (GA)	LaHood	Ryan (WI)
Delahunt	Larson (CT)	Saxton
Dicks	Linder	Shadegg
Farr	Mack	Stark
Flake	McCrery	Weldon (FL)

□ 1428

Messrs. KUHL of New York, BAIRD, SCOTT of Georgia, MCNERNEY, PAYNE, RAHALL, ISSA, POMEROY and FRANK of Massachusetts changed their vote from ''aye'' to ''no.''

Mr. BOEHNER changed his vote from ''no'' to ''aye.''

So the motion to adjourn was rejected.

The result of the vote was announced as above recorded.

WHISTLEBLOWER PROTECTION ENHANCEMENT ACT OF 2007

The SPEAKER pro tempore. Pursuant to House Resolution 239 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 985.

□ 1429

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 985) to amend title 5, United States Code, to clarify which disclosures of information are protected from prohibited personnel practices; to require a statement in nondisclosure policies, forms, and agreements to the effect that such policies, forms, and agreements are consistent with certain disclosure protections, and for other purposes, with Mr. PASTOR in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered read the first time.

General debate shall not exceed 1 hour and 20 minutes, with 1 hour equally divided and controlled by the chairman and ranking minority member of the Committee on Oversight and Government Reform and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Homeland Security.

The gentleman from Iowa (Mr. BRALEY) and the gentleman from Virginia (Mr. TOM DAVIS) each will control 30 minutes, and the gentleman from Pennsylvania (Mr. CARNEY) and the gentleman from Connecticut (Mr. SHAYS) each will control 10 minutes.

The Chair recognizes the gentleman from Iowa.

□ 1430

Mr. BRALEY of Iowa. Mr. Chairman, I yield myself such time as I may consume.

I am proud to be here today to bring to the floor of the House of Representatives, H.R. 985, the Whistleblower Enhancement Protection Act of 2007. A month ago today this important bill passed the House Committee on Oversight and Government Reform unanimously by a vote of 28–0. I strongly support the bill, and I hope it will receive a similar level of bipartisan support on the floor of the House of Representatives today. We need to send a strong message that protecting the rights of whistleblowers is not a Democratic issue, it is not a Republican issue, it is an issue that impacts the lives and the safety of every American citizen.

Whistleblowers have long been instrumental in alerting the public and the Congress to wrongdoing in Federal agencies. In many cases, the brave actions of whistleblowers have led to positive changes that have resulted in more responsible, safe and ethical practices. In some instances, the actions of whistleblowers have even saved lives.

Unfortunately, despite the importance of whistleblowers in ensuring government accountability and integrity, court decisions by the U.S. Court of Appeals for the Federal Circuit have undermined whistleblower protections and have unreasonably limited the scope of disclosures protected under current law.

The hearings that Chairman WAXMAN and Ranking Member DAVIS have been holding in the Committee on Oversight and Government Reform in the 110th Congress have highlighted the need for expanded protections for workers who shed light on wrongdoing by government agencies and departments. Several hearings held by the committee have helped uncover waste and fraud in government contracting, both here in the United States, and in Iraq, waste and fraud which has led to the loss of billions of taxpayer dollars and has jeopardized the safety of Americans here at home and those serving abroad.

At another hearing, we learned that some officials in the Bush administration have sought to manipulate Federal climate science, compromising the health and safety of American families and the future of the planet solely for political gain.

Perhaps the starkest reminder of the need to protect those who remain silent in the face of government wrongdoing came at last week's hearing at Walter Reed, at which we learned about the terrible living conditions and bureaucratic hurdles that soldiers have endured there.

At the hearing, it became clear that nobody dared to complain about the squalid living conditions and inadequate care at what is supposed to be the best military facility in the world because of fear of retribution.

Because of this fear, it took an expose by a newspaper in order for action to be taken on these severe and systemic problems, and many of our Nation's heroes had to suffer there for far too long.

The Whistleblower Protection Enhancement Act of 2007 makes important changes to existing law that will strengthen protections for government workers who speak out against illegal, wasteful and dangerous practices.

The bill protects all Federal whistleblowers by clarifying that any disclosure pertaining to waste, fraud or abuse, ''without restriction as to time, place, form, motive, context or prior disclosure,'' and including both formal and informal communications, is protected.

The bill also gives whistleblowers access to timely action on their claims, allowing them access to Federal district courts if the Merit Systems Protection Board does not take action on their claims within 180 days.

In addition, the bill clarifies that national security workers, employees of government contractors, and those who blow the whistle on actions that compromise the integrity of Federal science are all entitled to whistleblower protection.

As we continue to fight terrorism and other national security threats, this landmark legislation will give whistleblower protections to national security whistleblowers for the first time. It may be hard to believe, but currently employees at key government agencies in charge of protecting the United States, including the FBI, the CIA, and the Transportation Security Administration, are excluded from whistleblower protections.

These are the employees who work every day to keep our country safe and secure. These workers deserve to have the same protection as other Federal employees, and the American public deserves to know that workers who come forward with information that is essential to national security will not be punished for helping to keep us safe.

A good example is former FBI agent Coleen Rowley, Time magazine's Person of the Year in 2002. Special Agent Rowley graduated from Wartburg College in Waverly, Iowa, which is located in my district. Like me, she received her law degree from the University of Iowa College of Law. She is married and has four children.

After the terrorist attacks on 9/11, Special Agent Rowley wrote a paper for the Director of the FBI, which laid out in detail how personnel at FBI headquarters failed to take action on concerns raised by the Minneapolis field office concerning its investigation of suspected terrorist Zacarias Moussaoui. These failures, identified by Special Agent Rowley, could have left the United States vulnerable to September 11 attacks in 2001. Special Agent Rowley later testified before the Senate and the 9/11 Commission about these very same concerns.

Following those hearings, Iowa Senator CHUCK GRASSLEY, a Republican

who has been a proponent of whistleblower protection, pushed for a major reorganization at the FBI, resulting in the creation of the Office of Intelligence, which significantly expanded FBI personnel with counterterrorism and foreign language skills.

Senator GRASSLEY commended the actions of Rowley, saying on the floor of the Senate last June, ''in typical FBI fashion, the missteps from 9/11 would have been swept under the rug if it weren't for whistleblowers like Coleen Rowley . . . it looks to me like she's the only one who did anything to make sure the FBI was held responsible for its lack of responsiveness.''

The Whistleblower Protection Enhancement Act also ensures that employees who work for companies that have government contracts are protected when they report waste, fraud, and abuse of taxpayer dollars. This provision is especially important, considering the use of private contractors by the United States Government has reached an all-time high, and that spending on Federal contracts has almost doubled since 2000, reaching $400 billion in 2006.

Private companies with government contracts are now performing some of the most important work of the government, including protecting civilian workers in Iraq and ensuring the safety of American citizens in the United States. This bill will help ensure that employees of government contractors, who report on the abuse of taxpayer dollars or other wrongdoing, do not have to fear the loss of their jobs or other retribution.

Finally, Mr. Chairman, this bill clarifies that employees who blow the whistle on political interference in Federal scientific research and reports are also entitled to whistleblower protections. It is essential that we have the best and most accurate scientific research and information that is possible.

Americans trust that their tax money is funding thorough and adequate scientific studies that are free from political interference or manipulation. As lawmakers, we also depend on accurate and unbiased scientific information to make policy decisions that will impact the lives and futures of American families.

Protecting government researchers who report actions or policies that compromise the accuracy and integrity of Federal science is critical to ensuring the public and the lawmakers are able to make wise and informed decisions that affect our lives now and will have repercussions far into the future.

I would like to thank Chairman WAXMAN and Ranking Member DAVIS for their work on this bill in the Committee on Oversight and Government Reform.

Again, I strongly urge my colleagues to support the passage of the Whistleblower Enhancement Protection Act today.

Mr. Chairman, I reserve the balance of my time.

Mr. TOM DAVIS of Virginia. Mr. Chairman, today, we take up the Whistleblower Protection Enhancement Act of 2007. This legislation would modernize, clarify, and expand the laws protecting Federal employees who blow the whistle on waste, fraud, and mismanagement in the Federal Government.

At the outset, I think it is important to thank my colleague from Pennsylvania (Mr. PLATTS). Throughout this process, Mr. PLATTS has been an unwavering advocate for Federal employees. This bill would not exist today in this form if not for his steady leadership.

Almost immediately following the 1994 changes in the Whistleblower Protection Act, it became clear that the Federal Circuit Court of Appeals would continue to create loopholes where no loopholes were intended and dilute protections for whistleblowers Congress clearly intended to protect.

This bill we are considering today develops a new regime governing whistleblower protections and offers fresh solutions to the continuing problem of employee retaliation. I am proud this legislation would allow Federal employees and contractor personnel to pursue their claims in the Federal district court, to be heard before a jury of their peers, if no action is taken by the Merit Systems Protection Board within 180 days.

Under current law, cases filed by employees who believe they have been retaliated against for blowing a whistle can sometimes end up languishing before the MSPB for years before a final decision is issued. H.R. 985 would change the process and allow Federal employees to reach resolution on this issue one way or the other.

I am disappointed, however, the Rules Committee did not make in order my amendment to remove from the bill language which would provide for an ''all circuits'' review of whistleblower claims.

My amendment would have tried to maintain the uniformity in the consideration of whistleblower cases in the Federal courts by keeping in place the current requirement that all whistleblower appeals go through the United States Court of Appeals for the Federal Circuit, rather than opening up appeals to all circuits.

Without my amendment, Federal employee whistleblowers could end up possessing a different set of rights and protections based on where they file their claim. For example, a Border Patrol agent in Texas could be protected by a different set of whistleblower protections than a Border Patrol agent in Maine.

I think the underlying legislation already provides sufficient reforms to the whistleblower protection laws by revising the statute under which the Federal Circuit reviews whistleblower claims. Going further in this legislation, removing the requirement that all appeals must go through one Federal appeals court, is going to, in the long term, be counterproductive to our policies governing Federal employment.

I am also interested in the amendment dealing with national security whistleblowers Mr. HOEKSTRA filed at Rules, but was not made in order. While I supported the language Mr. HOEKSTRA's amendment sought to strike, I understand many members from the intelligence-related committees and officials in the intelligence community have concerns which I believe need to be addressed before this bill moves on to the Senate.

One additional concern I would like to mention is with section 13 of the bill. Section 13 would open a whole new area of personnel conflicts to whistleblower protections. This new language, added to the bill this year, would make influencing federally funded scientific research a prohibited personnel practice by specifically identifying the dissemination of false or misleading scientific or medical or technical information as an ''abuse of an authority'' that is actionable in Federal court.

Rather than acknowledging the natural and perfectly healthy tension that exists between science and policymaking, this section would submit the ''science versus ethics'' issue to the Federal courts to be litigated as a personnel issue.

Unlike many on the Democratic side of the aisle who believe only scientific findings should serve as the foundation for public policy and decisionmaking, I believe science is just one cog in the policy decisionmaking process. Science must be balanced against factors such as the morals of our society and the ethics of individual policymakers, as well as countless other policy considerations. As I have said before, I don't believe we should turn the tension between science and policymaking into a personnel matter that gets litigated by the courts.

In closing, I believe the underlying legislation makes a number of important positive contributions to Federal whistleblower policy, and I support this bill.

While I believe we can still make a few refinements to the bill to make it better, I applaud Mr. PLATTS' and Mr. WAXMAN's efforts to move this bill forward.

Mr. Chairman, I reserve the balance of our time.

Mr. BRALEY of Iowa. Mr. Chairman, I yield 5 minutes to the chairman of the committee, Mr. WAXMAN of California.

Mr. WAXMAN. I thank the gentleman from Iowa for yielding me the time and for managing this bill. He has played a very important role in the committee in the formulation of this legislation and is far more knowledgeable than many of us because he has had experience in bringing whistleblower lawsuits as an attorney.

Mr. Chairman, this bill that we are considering at this time would

strengthen one of our most important weapons against waste, fraud and abuse, and that is Federal whistleblower protections. Protecting whistleblowers is a key component of government accountability.

Federal employees are on the inside. They can see where there is waste going on or if there is corruption going on. They can see the signals of incompetent management, and what we want is to enable them to let us know, those of us in Congress, about these kinds of problems. So this bill would give them the protections to come forward and, in effect, blow the whistle on what they know is going on and is not right to be continued.

But I want to emphasize that one of the most important provisions of H.R. 985 protects national security whistleblowers.

□ 1445

It is impossible to overstate how essential this provision will be. Now, there may be an attempt to try to strike this provision, and I want to make clear to my colleagues why they should not be misled into voting for such a motion.

There are a lot of Federal officials who knew the intelligence on Iraq was wrong. Officials in the CIA and the State Department knew that Iraq did not try to import uranium from Niger. Officials in the Energy Department knew the aluminum tubes were not suitable for nuclear centrifuges. Other officials knew the information from ''Curveball,'' the so-called informant that turned out to be inaccurate, but the information that he was spreading about so-called mobile weapons labs were completely bogus.

But none of these officials would come forward. In fact, none of them could come forward to Congress and share their doubts. If they did, they could have been stripped of their security clearances, or they could have been fired.

And we all know what the result has been. Nobody blew the whistle on the phony intelligence that got us into the Iraq war.

It is imperative that national security employees be protected against retribution so they will not be afraid to report national security abuses to Members of Congress. When the intelligence is wrong, the consequences for our Nation can be immense.

H.R. 985 also extends whistleblower protections to employees of Federal contractors. Every year, Federal contractors do more and more of the government's work. In 2005, nearly 40 cents of every Federal dollar, outside of the entitlements, went to private companies. We need to encourage the employees of these private companies to report wasteful spending.

We heard testimony in our Oversight Committee about a Halliburton truck driver, not just one but many of them, who were told, if they had a flat tire or some mechanical problem, not to worry about it, torch the truck. They will just go and buy another one. After all, these were cost-plus contracts.

Well, this abuse was so wanton that one of the truck drivers finally blew the whistle. But rather than being protected for speaking out for the American taxpayer, he was fired.

Finally, passage of this bill would stop this kind of intimidation. This legislation includes an important provision that will help check the growing problem of political interference with science. It gives explicit provisions to protect the Federal employee who reports instances where Federal scientific research is suppressed or distorted for political reasons.

Don't buy the argument that this should be struck. We ought to protect scientists from those that would try to suppress or distort their scientific work.

The bill is bipartisan. It was cosponsored by Ranking Member and former Chairman TOM DAVIS of the Oversight Committee and former subcommittee Chair TODD PLATTS. It passed unanimously last month by the Committee on Oversight and Government Reform.

It is carefully crafted legislation that protects both our national security and the interests of the American taxpayer, and I urge its adoption.

Mr. Chairman, I am including with my statement copies of letters between my Committee, Oversight and Government Reform, and the Committee on Homeland Security regarding jurisdiction.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
Washington, DC, March 14, 2007.

Hon. HENRY WAXMAN,
Chairman, Oversight and Government Reform Committee, Washington, DC.

DEAR HENRY: I am writing you considering the jurisdictional interest of the Commttee on Homeland Security in H.R. 985, the ''Whistleblower Protection Enhancement Act of 2007.'' Section 12 of this legislation provides whistleblower protections to Transportation Security Administration (TSA) employees. Under House Rule X, the Committee on Homeland Security has jurisdiction over the ''[t]ransportation security activities'' of the Department of Homeland Security and ''[o]rganization and administration of the Department of Homeland Security.'' As a result, the Committee on Homeland Security has a jurisdiction interest in section 12 of the bill. Moreover, the Committee on Homeland Security received a sequential referral of a nearly identical bill, H.R. 1317, the Federal Employee Protection of Disclosures Act, legislation that was introduced by Rep. Todd Platts (R–PA) in the 109th Congress. Although the Committee on Homeland Security has sought a sequential referral of H.R. 985, the Committee agrees to discharge the legislation in the interest of clearing this measure as expeditiously as possible for consideration in the House.

As a condition to our agreement to forgo a markup of this legislation, you have agreed to include report language to accompany the bill that clarifies the congressional intent behind that the term ''public safety'' in 5 U.S.C. 2302 (b)(1),(8), and (9), as amended by H.R. 985, is meant to cover ''national security'' and ''homeland security.'' This clarification will ensure that TSA employees who report security risk, in addition to safety risks or mismanagement issues, will still receive the whistleblower protections granted under the bill. Additionally, you have agreed to include report language to accompany Section 10 of the bill to ensure Department of Homeland Security employees who work on intelligence and information-sharing matters are covered by the ''National Security Whistleblower Rights'' granted under that section.

Our agreement not to hold a markup is also conditioned upon our mutual understanding that our decision to waive further consideration does not, in any way, reduce or otherwise affect the jurisdiction of the Committee on Homeland Security over provisions of the bill. Additionally, you have agreed to support the request of the Committee on Homeland Security to have its members named as conferees in the event of a conference with the Senate on this bill.

I ask that you please include in the Congressional Record during consideration on the floor, a copy of this letter and a copy of your response acknowledging the Committee on Homeland Security's jurisdictional interest in this bill and indicating your support of our agreement expressed in this letter.

Sincerely,

BENNIE G. THOMPSON,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM,
Washington, DC, March 13, 2007.

The Hon. BENNIE G. THOMPSON,
Chairman, House Committee on Homeland Security,
Washington, DC.

DEAR CHAIRMAN THOMPSON, I am writing regarding your Committee's jurisdictional interest in H.R. 985, the Whistleblower Protection Enhancement Act of 2007. I appreciate your cooperation in waiving consideration of the bill by the Committee on Homeland Security in order to allow consideration of the legislation on the House floor later this week.

I recognize that your Committee has a valid jurisdictional interest in section 12 of H.R. 985, as ordered reported by the Committee on Oversight and Government Reform. Your decision to forego a markup should not prejudice the Committee on Homeland Security with respect to its jurisdictional prerogatives on this or similar legislation. I will support your request for an appropriate number of conferees should there be a House-Senate conference on this or similar legislation.

I have included report language at your request that states that under the bill, Transportation Security Administration workers can report dangers to public health and safety, including those regarding or relating solely to homeland or national security. Also, the report states that the national security whistle blower section of the bill provides whistleblower rights to those individuals whose job functions make them eligible for the protections of this section even though their agencies are not specified, such as intelligence analysts and information sharing employees with access to classified information within the Department of Homeland Security's Office of Intelligence and Analysis.

Finally, I will include a copy of your letter and this response in the Congressional Record when the legislation is considered by the House.

Thank you for your assistance.

Sincerely,

HENRY A. WAXMAN,
Chairman.

Mr. PLATTS. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan (Mr. HOEKSTRA), the distinguished

ranking member of the House Permanent Select Committee on Intelligence.

Mr. HOEKSTRA. Mr. Chairman, I appreciate the efforts to enhance protection for whistleblowers in the intelligence community, a goal that I wholeheartedly endorse. It is important that personnel within the intelligence community have appropriate opportunities to bring matters to Congress so long as the mechanisms to do so safeguard highly sensitive classified information and programs. The bill before us raises significant issues in doing so that need more considered review.

As chairman of the Permanent Select Committee on Intelligence during the last Congress, I learned firsthand from whistleblowers about intelligence programs that the administration had not reported to the Intelligence Committees, despite its statutory duty to keep us fully and currently informed. I communicated my strong concerns directly to the President. I would vigorously defend the individuals who provided me with this important information from even the slightest reprisal.

So I strongly support the underlying intention of the provisions of the bill intended to protect the intelligence community. Unfortunately, however, that part of the bill was not coordinated with HPSCI, and it suffers from a number of problems that I believe need to be fixed.

First, the bill would conflict with the provisions of the existing Intelligence Community Whistleblower Protection Act of 1998, which has already provided specific mechanisms to permit whistleblowers to come to Congress, while simultaneously protecting sensitive national security information from unauthorized disclosure to persons not entitled to receive it.

Second, the bill violates the rules of the House by encouraging intelligence community personnel to report highly sensitive intelligence matters to committees other than the Intelligence Committees, which were created to solely and appropriately deal with and safeguard information regarding sensitive intelligence programs.

This is simply not a jurisdictional issue. The real issue is one of protecting highly classified intelligence programs and ensuring that any oversight is conducted by Members and staff with the appropriate experiences, expertise, and clearances. Our intelligence oversight should be conducted to determine how best to enhance our national security, protect civil liberties, and not to get press coverage.

Third, this bill would make every claim of a self-described whistleblower, whether meritorious or not, subject to extended and protracted litigation. It would also substantially alter the application of the judicially established state secrets privilege in those cases, forcing the government to choose between revealing sensitive national security information to defend itself or losing in court. Judges recognized the privilege precisely because they understood that such a Hobson's choice is fundamentally improper and unfair and could harm national security interests. The current law works to screen frivolous whistleblower claims and recognizes that our national security interest should not be managed by lawsuit. Those considerations must continue to be protected.

I agree very strongly with the principle that intelligence community whistleblowers should be protected from reprisal, and would look forward to working with the Oversight and Government Reform Committee to accomplish this goal. However, until those changes are made, and those issues are addressed, I would encourage my colleagues to vote ''no'' on this bill.

Mr. BRALEY of Iowa. Mr. Chairman, I yield 4 minutes to my distinguished colleague from Maryland, Mr. CUMMINGS.

Mr. CUMMINGS. Mr. Chairman, I rise in support of the Whistleblower Protection Enhancement Act of 2007, which I have cosponsored.

To say the least, this administration has not prioritized openness in government, and I was not surprised to learn that the President is opposed to the Whistleblower Protection Enhancement Act.

I am similarly not surprised to learn that the President and many of his colleagues here in the Congress have threatened that by affording our Federal employees whistleblower protections, we are also threatening national security. This administration has consistently used security threats to strike fear into the public's consciousness.

But let me be clear: Claims that the legislation we are considering here today would threaten national security are baseless. If anything, the opposite is true.

As a member of the House Armed Services Committee, I know how vitally important it is for Federal officials to be able to share their knowledge and their firsthand experience with the Congress. We now know that, going into the Iraq war, Federal officials at the CIA and the State Department were aware that the pre-war intelligence about Iraq purporting to show that the nation had weapons of mass destruction was wrong.

Thousands of Americans and Iraqi lives and billions of American taxpayer dollars could have been saved if these individuals had been able to share their knowledge with a Congress willing to listen to them and protect them from retribution. But, lacking whistleblower protections, they were afraid to do so.

Recognizing the critical need for Federal employees to communicate openly with the legislative branch, Congress in 1912 enacted the Lloyd-LaFollette Act. And that act, which has never been repealed, by the way, affords all Federal employees, including employees at the national security agencies, the right to contact Members of Congress.

The statute states as follows: ''The right of employees, individually or collectively, to petition the Congress or a Member of Congress or to furnish information to either House of Congress or to a committee or Member thereof may not be interfered with or denied.''

The statute's language was intentionally drafted to be broad because Congress recognized in 1912, as we recognize today, the compelling need for Federal employees to exercise their rights to free speech.

But the law clearly does not go far enough. Consider the case of FBI Special Agent Bassem Youssef. According to a Washington Post article from July 18, 2006, an internal investigation conducted by the United States Justice Department concluded that Youssef, the FBI's highest ranking Arabic speaker, was blocked from a counterterrorism assignment in 2002 after he had met with U.S. Representative WOLF and met with FBI Director Mueller to discuss Youssef's complaints with regards to the way the war on terror was being conducted.

Mueller had approved a transfer for Youssef just days before the meeting, but it never occurred and Youssef was never informed of Mueller's decision, according to the report.

Investigators also said that the FBI has provided no rationale or basis for its failure to promote Youssef, although one former senior FBI manager said Mueller was appalled that Youssef had complained to a Congressman about his treatment.

Because of this retaliation, we lost 4 years of expertise for the war on terror from a highly qualified Arab American agent. Once the FBI's top Arabic translator, Youssef is now simply processing documents.

Under current law, Youssef cannot pursue legal action for the retaliation. The Whistleblower Protection Enhancement Act of 2007 would rectify this situation.

Congress has a mandate to oversee the functions of the executive branch to ensure that government runs as effectively and efficiently as possible, but we cannot fulfill this mandate if we cannot get reliable information, and we cannot get that information if people must put their lives and careers on the line.

Mr. PLATTS. Mr. Chairman, I yield myself as much time as I may consume.

Mr. Chairman, H.R. 985, the Whistleblower Protection Enhancement Act, is a bipartisan bill which seeks to restore protections for civil servants who report illegalities, gross mismanagement and waste, and substantial and specific dangers to the public health and safety.

H.R. 985 contains many of the provisions of legislation which I introduced during the 109th Congress, H.R. 1317. It represents consensus language crafted through bipartisan negotiations among myself, Chairman WAXMAN, Ranking Member DAVIS, Representative VAN

HOLLEN, as well as the majority and minority staffs of the Oversight and Government Reform Committee, and interested stakeholders groups such as the Government Accountability Project. I certainly would like to thank all who have been involved in this process.

To provide context for the legislation we are considering today, it is important to review the legislative history in the area of whistleblower protections for Federal employees.

As a result of finding that the civil service protections of the time were inadequate, Congress, in the first Bush administration, enacted into law the Whistleblower Protection Act, WPA, of 1989, which expressly stated that ''any protected disclosure of waste, fraud and abuse by a Federal employee is covered by the law.''

Unfortunately, as interpreted by the Merit Systems Protection Board and the Federal circuit court, loopholes began to develop in the WPA. Accordingly, Congress strengthened the law in 1994.

It is noteworthy that the report accompanying the WPA Amendments of 1994 expressed great frustration with the way the WPA was being interpreted. According to the report, it states, ''Perhaps the most troubling precedents involved the Board's inability to understand that 'any' means 'any.' The WPA protects any disclosure evidencing a reasonable belief of specified misconduct, a cornerstone to which the MSPD remains blind.

□ 1500

''The only restrictions are for classified information or material, the release of which is specifically prohibited by statute. Employees must disclose that type of information through confidential channels to maintain protection. Otherwise, there are no exceptions.''

Unfortunately, we are once again largely back to where we started. Since the 1994 amendments, 177 whistleblower cases have come before the Federal Circuit Court; however, only two whistleblowers have prevailed. Among the reasons are a number of decisions which have continued to create exceptions to the law, including decisions stating that an employee is not protected by the WPA if the employee directs criticism to other witnesses or a supervisor in an attempt to start the process of challenging misconduct, or the information disclosed was done in the course of the employee's ordinary job duties, or the information disclosed has already been raised by someone else.

In addition, the Federal Circuit Court has stated in one case that: For a Federal employee to reasonably believe there is evidence of waste, fraud, and abuse, as required by the law, he or she must overcome with irrefragable proof the presumption that the agency was acting in good faith.

This is an unheard of legal standard, defined in the dictionary as ''impossible to refute.'' In other words, the agency pretty much has to admit to the waste, fraud, or abuse.

H.R. 985 would clarify congressional intent that any whistleblower disclosure includes disclosures ''without restriction to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of the employee's duties.'' In addition, H.R. 985 would end any uncertainty about the irrefragable proof standard, making it clear that the ''substantial evidence standard'' applies to all five categories for legally protected whistleblowing disclosures. Appellate courts could not impose additional burdens for a particular category, as I understand occurred in the case of White v. Department of Air Force with respect to ''gross mismanagement.''

Other provisions within H.R. 985 which are either identical or similar to provisions within previous versions of this legislation include:

Allowing employees the option to have their claims decided in Federal District Court if the Merit Systems Protection Board does not act on a claim within 180 days;

Ending the monopoly jurisdiction of the United States Court of Appeals for the Federal Circuit over appeals under the Whistleblower Protection Act;

Conducting a GAO study on the revocation of security clearances in retaliation for whistleblowing;

Extending whistleblower protections to the Transportation Security Administration baggage screeners;

Enhancing whistleblower protections for employees of government contractors;

Codifying an anti-gag rule that was first included in the Treasury Appropriations bill for 1988 and every year thereafter; and,

Continuing protections for whistleblowers who were subjected to prohibited personnel actions prior to their agency or unit being exempted from the WPA.

In conclusion, I would like to once again thank each of the parties who have been involved in the ongoing development of this critically important legislation. I would also like to thank those courageous citizens who have blown the whistle on waste, fraud, and abuse in the Federal Government. If we truly want to eliminate waste, fraud, and gross mismanagement throughout the Federal Government, then we need to empower and protect our Federal employees who are on the front lines of government operations and best positioned to witness this waste, fraud, and gross mismanagement. This legislation provides such empowerment and protection. I urge a ''yes'' vote.

Mr. Chairman, I reserve the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I thank the gentleman for his insightful comments, and I reserve the balance of my time.

Mr. PLATTS. Mr. Chairman, does the gentleman from Iowa have any additional speakers?

Mr. BRALEY of Iowa. Yes.

Mr. PLATTS. Mr. Chairman, I will then continue to reserve the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I yield 3½ minutes to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman for his leadership, and I thank all of the cosponsors that have brought this legislation, H.R. 985, to the floor, Representatives HENRY WAXMAN, TODD PLATTS, CHRIS VAN HOLLEN, and THOMAS DAVIS, and certainly a number of the total of 29 cosponsors, and the fact that this committee voted the whistleblower protection out unanimously.

We who are members of the Homeland Security Committee, along with Chairman THOMPSON, and I know we have been working on this with the ranking member as well, stand in support of this legislation. I know that we will be yielded time shortly, but I am delighted to be able to share my thoughts on the importance of H.R. 985, which would extend whistleblower protection to Federal workers who specialize in national security issues. It would also ensure that employees who work for companies with government contracts are protected when they report waste, fraud, and abuse of U.S. taxpayer dollars.

Protecting scientific whistleblowers, this legislation would extend whistleblower protection to Federal employees who disclose actions related to the validity of federally funded scientific research and analysts. Many of us recognize and remember the Los Alamos incident of a couple years ago still was never, if you will, explored and never settled.

This also would override several court and administrative decisions that undermine existing whistleblower protection, provide whistleblower access to Federal District Courts if the Merit Systems Protection Board or the Inspector General does not take action on their claims within 180 days.

This is good news to the Homeland Security Department and particularly the transportation security officers. Contrary to assertions by the opponents of the bill, TSOs do not have any meaningful whistleblower rights. The truth is, TSOs do not enjoy full whistleblower protection; specifically, transportation security officers enjoy little more than minimal whistleblower protections deriving from a memorandum of understanding entered into when the TSA was still part of the Department of Transportation. Under the MOU, screeners can only bring a claim to the office of a special counsel; they do not have the right of appeal or to seek independent review by another agency or court.

It is important to note that in 2004 the Merit Systems Protection Board

ruled in a case, Schott v. Department of Homeland Security, that the Homeland Security Act does not provide TSA screeners the right to bring a claim before the MSPB, even though such rights were enjoyed by all other department employees.

This is crucial. I have been working on this issue for quite a while. The No Fear Act, which indicated or had to do with discrimination against workers at the Environmental Protection Agency, generated, even though it is a bill on discrimination of Federal employees that generated from whistleblower employees at the Environmental Protection Agency that didn't have the necessary protection to talk about issues that dealt with regular issues of research, but also on the issue of security. Let me quickly say that the EPA had a similar problem where it also faced no protection of those employees, and the No Fear Act came out of that which had to do with racial discrimination against Federal employees.

But NASA, for example, legislation that I wrote dealing with the International Space Station to give protection to NASA employees to save lives and also to protect them in case of issues that they were dealing with relating to national security.

All employees should feel free to tell the truth. All employees should be protected, particularly Federal employees, particularly in this time in the backdrop of 9/11. Tell the truth, be protected, and the whistleblower protection will allow us to run this country in the right way, save lives, and have employees that are Federal Government employees gives us the fact so we can do the right thing. Support H.R. 985.

Mr. Chairman, I rise today in strong support of H.R. 985, the ''Whistleblower Protection Enhancement Act of 2007,'' which extends whistleblower protections to federal employees and contractors working in the area of national security and intelligence, including screeners at the Transportation Security Administration (TSA).

Mr. Chairman, there is a tremendous need to protect our best sources for identifying waste fraud and abuse—federal workers and contractors. H.R. 985 treats Transportation Security Officers (TSOs), sometimes called ''screeners,'' the same as all other Department employees by giving them full whistleblower protections, which TSOs currently do not have.

Mr. Chairman, contrary to assertions by opponents of the bill, TSOs do not have any meaningful whistleblower rights. The truth is TSOs do not enjoy full whistleblower protections. Specifically, TSOs enjoy little more than minimal whistleblower protections deriving from a Memorandum of Understanding (MOU) entered into when TSA was still part of the Department of Transportation.

Under this MOU, screeners can only bring a claim to the Office of Special Counsel; they do not have a right of appeal or to seek independent review by another agency or court.

Mr. Chairman, in 2004, the Merit Systems Protection Board (MSPB) ruled in Schott v. Department of Homeland Security, that the Homeland Security Act does not provide TSA screeners the right to bring a claim before the MSPB, even though such rights were enjoyed by all other Department employees.

Thus, as you can see Mr. Chairman, TSOs are treated differently than other Department of Homeland Security personnel—including fellow employees within TSA.

This bill allows a whistleblower to seek relief in federal circuit court, if his or her claim has not been acted upon within 6 months. In addition, H.R. 985 permits the whistleblower to bring an appeal on their case to any federal circuit court of appeals having in personam jurisdiction, not just the Court of Appeals for the Federal Circuit as is the case under current law.

I am also pleased that this bill provides the same rights to the Department's Office of Intelligence and Analysis employees as it does to intelligence employees in other agencies. I do not have to tell you, Mr. Chairman, that whistleblowers in the intelligence community must be careful when they disclose certain information.

H.R. 985 set forth procedures which enable whistleblowers to assert their claims, while at the same time adequately protecting any sensitive or classified information involved with such claims.

Mr. Chairman, I note that H.R. 1, which passed the House in January, seeks to improve the poor morale problem at TSA by giving TSO employees whistleblower and collective bargaining rights. These collective bargaining rights are comparable to other law enforcement officers and others within the Department, such as the Border Patrol, Customs and Border Protection Officers.

Mr. Chairman, as a senior member of the Homeland Security Committee and chair of the Subcommittee on Transportation Security and Infrastructure Protection, I am proud to support H.R. 985. This bill will help the federal government keep make America safer and more secure by encouraging and protecting employees who come forward to report waste, fraud, wrongdoing, or abuse of vital and limited government resources. I urge all members to join me in voting for this important legislation.

Mr. PLATTS. Mr. Chairman, I yield myself such time as I may consume.

In the report language from the Committee on Oversight and Government Reform, there is a well-stated argument about the importance of this legislation, why we need it, and why we need it for national security employees as well. The report reads as follows:

''A key component of government accountability is whistleblower protection. Federal employees are on the inside. They can see when taxpayer dollars are wasted and are often the first to see the signals of corrupt or incompetent management.

''Unfortunately, whistleblowers too often receive retaliation rather than recognition for their courage. They need adequate protections so they are not deterred from stepping forward to blow the whistle.

''There are many Federal Government workers who deserve whistleblower protection, but perhaps none more than national security officials. These are Federal Government employees who have undergone extensive background investigations, obtained security clearances, and handled classified information on a routine basis. Our government has concluded that they can be trusted to work on the most sensitive law enforcement and intelligence projects, yet these officials receive no protection when they come forward to identify abuses that are undermining our national security efforts.''

I think the report language well states the case for this bill and the importance of us adopting this legislation and moving the process forward.

Mr. Chairman, I reserve the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Illinois (Mr. DAVIS).

(Mr. DAVIS of Illinois asked and was given permission to revise and extend his remarks.)

Mr. DAVIS of Illinois. Mr. Chairman, I rise in strong support of H.R. 985, and I do so for a number of reasons. We all know that there are individuals who would love to simply be forthcoming with information. All of us have been places, all of us have worked places, all of us have known things, and we have all wanted to operate free and uninhibited. But unless individuals have the absolute protection, in many instances, of knowing that whatever it is that they would reveal that when they come forth that nobody can use that against them, because they also have concerns of their own relative to being able to maintain the job that they have got to take care of the security needs of their family.

Whistleblower protection could have been used more effectively even as we debated the issue of Iraq, as we made decisions based upon intelligence that supposedly we had but intelligence that obviously we did not have.

Whistleblower protection becomes very effective in helping to root out waste, fraud, and abuse. Some of the hearings that I have sat in on where we have discussed how we made use of our contracting resources in Iraq, for example, makes one wonder if we were just giving away the valuable resources of the American people.

So this legislation not only protects the taxpayers' money, but it also protects our troops, our soldiers, those who are in danger oftentimes because accurate information has not been deployed. Mr. Chairman, I urge passage of 985.

Mr. PLATTS. Mr. Chairman, I continue to reserve the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I see some of my distinguished colleagues here today, specifically Ranking Member DAVIS, Congressman SHAYS. And to prepare for this debate today, Mr. Chairman, I watched a movie, ''The Insider,'' last night, because it was a classic example

of why we need whistleblower protection in this country. The sight of those seven tobacco company CEOs standing before the committee on which I am proud to serve, raising their hands and swearing that tobacco and nicotine is not addictive, and the compelling personal story of Jeffrey Weigand and the struggle he and his family went through are why we need to support this bill today.

One of the reasons why we are here today is because of the compelling stories of dozens of national security whistleblowers from multiple Federal agencies who have provided sobering and exhaustive stories about retaliation and retribution for speaking the truth.

□ 1515

These accounts have been well documented before the committees of this House.

Michael German was a highly regarded FBI agent working on domestic terrorism cases for 16 years before quitting in frustration in 2004. His whistleblowing concerned a case that, according to NBC's Dateline, ''involved a potential nightmare scenario: meetings between a home-grown militia-type terrorism organization and an Islamic fundamentalist group during which they discussed possible cooperation.''

Mr. German alleges that the FBI fumbled the case and then, after he blew the whistle, falsified records in order to cover its mistakes. He reported his concerns to his superiors and reportedly faced retaliation for doing so, though a Department of Justice Inspector General report substantiated many of his claims.

Mr. Chairman, I reserve the balance of my time.

Mr. PLATTS. Mr. Chairman, I reserve the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Michigan (Mr. STUPAK).

Mr. STUPAK. Mr. Chairman, I thank the gentleman for yielding, allowing me an opportunity to speak about this issue here before us.

I want to thank Mr. WAXMAN and the committee for reporting an excellent bill. The Whistleblower Protection Enhancement Act is a long overdue piece of legislation that will go a long way towards correcting some of the abuses of the past and updating the whistleblower protection system to face the challenges of the present.

For too long protections passed by Congress for good-faith whistleblowers have been chipped away by executive agencies and the courts. Court decisions have limited the scope of whistleblower protections in a way that betrays the spirit of the original law. This bill will clarify the rights of whistleblowers, including the right to a prompt court proceeding if their employer challenges their right to the protection.

The bill also protects whistleblowers who work in the national security sector or who work for Federal contractors. This is a critical provision. Under current law, national security employees have next to no protection if they are retaliated against for reporting waste or corruption. This is an extremely dangerous situation. If corruption or abuse of power is happening in our intelligence and security agencies, it should be a concern for all Americans. Employees who report abuses in these sectors are doing a service to our national security. I am glad to see that this bill would finally protect them.

I am also pleased to see protections strengthened for Federal contractors. The growth of contracting under the current administration has been astronomical. Under President Bush the Federal Government is now spending nearly 40 cents of every discretionary dollar on contracts with private companies, a record level. Much of this money has been spent without any kind of oversight that would apply within a Federal agency.

Protection for whistleblowers in the contracting sector is key for improving congressional oversight and bringing potential waste and mismanagement under control.

Let me be clear. This bill doesn't just protect whistleblowers. It protects all Americans.

As chairman of the Oversight and Investigations Subcommittee of the Energy and Commerce Committee, I know that every congressional investigation relies on the willingness of individual witnesses to speak up about what they have seen. These individuals risk their careers and their reputations to expose instances of corruption, waste, and abuse within our government. We owe them a debt of gratitude for their courage. This bill is an important step towards making sure that those individuals have the protection they deserve.

Mr. PLATTS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would just like to again thank my colleagues who have worked on this and give special thanks to the staff of the majority and minority sides of the Oversight and Government Reform Committee both this session and for the last two sessions that I have been involved in this issue. We certainly wouldn't be here today without the tremendous work of the staff as well as the leadership of then-Chairman DAVIS, now-Ranking Member DAVIS, and current Chairman WAXMAN. So I appreciate everyone's participation in moving this very important issue forward.

This truly is about doing right by our courageous Federal employees who are willing to come forward when they see wrong and do right on behalf of their fellow citizens.

Mr. Chairman, I yield back the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I yield myself such time as I may consume.

I also want to thank my colleagues for the bipartisan spirit of support for this bill.

I want to just add a few more names to the record, in the remaining time that I have available, of courageous whistleblowers. These are not hypothetical situations we are talking about.

One of them, Richard Levernier, was employed at the Department of Energy for 22 years and was in charge of testing security at U.S. nuclear weapons facilities. Working through normal DOE channels, he tried for years to get his superiors to address security weaknesses that might allow terrorists to successfully assemble and detonate a nuclear device at one of the facilities. But his superiors declined to acknowledge that vulnerabilities existed.

When he faxed two unclassified Inspector General reports to the press, DOE suspended his security clearance. At the time he was 2 years away from retirement and eligible for a full pension. After he filed a lawsuit against DOE for unjust termination, the Office of Special Counsel conducted an investigation and concluded that the harassment against Levernier constituted a systematically illegal reprisal. The OSC also found a substantial likelihood that his underlying charges were correct.

Another brave individual, Russell Tice, a former intelligence agent at the National Security Agency, worked for 20 years in special access programs known as ''black world programs and operations.'' He had his security clearance revoked in May, 2005, after alerting his superiors of suspicious activity by a coworker. NSA later dismissed him after he raised questions about the legality of some NSA ''black world'' programs, including the eavesdropping by the Defense Department and the NSA on American citizens. Mr. Tice wanted to talk to Congress about what he feels are further abuses by the NSA, but has not been allowed to do so.

Specialist Samuel J. Provance's unit in Iraq was instructed to interrogate detainees in a way that he thought was immoral and inappropriate, and he told his superiors. Instead of investigating his claims, his superiors demoted him.

And, finally, Lieutenant Colonel Anthony Shaffer was demoted and his security clearance stripped after he made protected disclosures to the 9/11 Commission about Able Danger, a pre-9/11 operation for combating al Qaeda, and explained that there were DOD and DIA failures regarding 9/11.

This is not a hypothetical problem. Federal whistleblowers are being silenced, and instances of waste, fraud, and abuse are not being exposed. That is why I call on all my colleagues to support this bill.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN (Mr. ROSS). The gentleman from Pennsylvania (Mr. CARNEY) and the gentleman from Connecticut (Mr. SHAYS) each will control 10 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. CARNEY. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I would like to commend Chairman WAXMAN, Chairman THOMPSON, and others for their work on this long overdue and sorely needed bill.

As chairman of the Homeland Security Subcommittee on Management, Investigations, and Oversight, I have a vested interest in H.R. 985's passage. I would like to thank Chairman THOMPSON for allowing me to manage our committee's allotted time on the bill.

This bill extends whistleblower protections to Federal employees who work on national security mainly in the intelligence area and workers in the Transportation Security Administration, especially screeners, as well as to Federal contractors.

As Chairman WAXMAN and others have noted, there is a tremendous need to extend whistleblower protections for Federal workers or contractors, our best sources for shining light on waste, fraud, and abuse.

This bill treats transportation security officers, or TSOs, sometimes called ''screeners,'' the same as all other Department of Homeland Security employees by giving them full whistleblower protections, which TSOs currently do not have.

Mr. Chairman, others will tell you that TSOs have whistleblower rights. This is debatably true on paper, but it has not been true in practice.

The truth is, TSOs do not enjoy full whistleblower protections. TSOs have limited whistleblower protections that come from a memorandum of understanding, or MOU, that was entered into when the TSA was still part of the Department of Transportation. Under the MOU, TSOs, transportation screeners, can only bring a claim to the Office of Special Counsel. They do not have a right of appeal or independent review by another agency or court.

In 2004, while reviewing a TSO whistleblower claim in the case of Schott v. The Department of Homeland Security, the Merit Systems Protection Board, MSPB, ruled that the Homeland Security Act does not provide TSOs with the right to MSPB review. Other DHS employees enjoy the right to MSPB review.

Thus, as you can see, Mr. Chairman, the TSOs are currently treated differently than other DHS personnel, including their fellow employees within TSA.

This bill allows a whistleblower to go to court if their claim has not been acted upon within 6 months. This bill permits the whistleblower to bring an appeal on their case to any Federal Court of Appeals having proper jurisdiction over the case, not just the Court of Appeals for the Federal Circuit, as the law now stands.

I am also pleased that this bill provides the same rights to the Office of Intelligence and Analysis employees at DHS as it does to intelligence employees in other agencies. As we know, whistleblowers in the intelligence community must be careful when they disclose certain information. This bill helps govern how these intelligence-related employees bring their claims while also adequately protecting any sensitive or classified information that may be involved with their claims.

Mr. Chairman, I want to note that H.R. 1, which passed the House in January, tries to fix TSA's poor morale problem by giving TSOs whistleblower rights and collective bargaining rights. The collective bargaining rights are comparable to other law enforcement officers and others within the DHS, such as Border Patrol and CBP officers.

Mr. Chairman, I am happy to vote for this bill as it not only makes America safer and more secure, but it also allows for all employees to report waste, fraud, or abuse of our vital and limited government resources.

Mr. Chairman, I reserve the balance of my time.

Mr. SHAYS. Mr. Chairman, I yield myself such time as I may consume.

It is a pleasure to share this debate with Congressman CARNEY and to know that former Chairman DAVIS, now ranking member, and former Ranking Member WAXMAN, now chairman, have worked so closely together. And tremendous kudos to TODD PLATTS for the work that he has done on this legislation. This is a bipartisan effort for a very real reason, whistleblowers need this protection.

All Federal employees are ethically bound to expose violations of law, corruption, waste, and substantial danger to public health or safety. But meeting that obligation to ''blow the whistle'' on coworkers and superiors has never ever been easy.

□ 1530

Breaking bureaucratic ranks to speak unpleasant and unwelcome truths takes courage and risks involving the wrath of those with the power and motive to shoot the messenger. Yet seldom in our history has the need for the whistleblower's unfiltered voice been more urgent, particularly in the realms of national security and intelligence. Extraordinary powers needed to wage war on our enemies could, if unchecked, inflict collateral damage on the very rights and freedoms we fight to protect.

The use of expansive executive authority demands equally expansive scrutiny by Congress and the public. One absolute essential source of information to sustain that oversight is whistleblowers.

But those with whom we trust the Nation's secrets are too often treated like second-class citizens when it comes to asserting their rights and responsibilities to speak truth to power. Exempted from legal protections available to most other Federal employees under the Merit System Protection Board, referred to as the MSPB, national security whistleblowers must traverse a confusing maze of inconsistent regulations and procedures that too often afford them far less process than is due.

The legislation before us today takes the important step of creating a procedure for whistleblowers handling sensitive national security information, to have their claims investigated and adjudicated on a timely basis. These claims would be investigated by the agency Inspector General, as they are now, who will keep all classified information secure, while providing a fair and independent mechanism for investigation and adjudication. Should the Inspector General, and we have an Inspector General in each of these agencies, not reach a timely decision, or the employees wish to appeal, our legislation allows the appropriate Federal Circuit Court to hear the case.

This new approach will give these employees effective protection, while at the same time ensuring sensitive and classified information stays secure.

While I believe an amendment to bring the Department of Homeland Security intelligence-related employees under the same provisions as employees of intelligence agencies such as the CIA or FBI should have been made in order, I am grateful we are finally moving legislation that will allow employees who have faced whistleblower retaliation to get on with their lives.

I also believe suspension or revocation of a security clearance has the same chilling effect as demotion or firing, but clearance actions are virtually unreviewable. Those with whom we trust the Nation's secrets should not be second-class citizens when it comes to asserting their rights and obligations to speak truth to power. Employees should never face termination or harassment for acting courageously to identify improprieties in the workplace, especially when their observations could help improve safety or eliminate waste, abuse or fraud.

Another important step this legislation takes is to expand whistleblower protections to Transportation Security Administration, TSA, screeners for the first time, and that is why the Homeland Security Committee has been given time for this debate. TSA baggage screeners currently do not have whistleblower rights, and this bill will extend to screeners the same protections that all other Department of Homeland Security employees enjoy.

With the full whistleblower protections of this bill, TSA workers could report violations of law, mismanagement, waste, abuse of authority, or dangers to public health and safety, including those regarding or relating solely to homeland or national security.

The bottom line is with more power to the executive branch must come more oversight. That is why I strongly support this legislation. I think that is why this legislation is strongly supported on both sides of the aisle.

Mr. Chairman, I reserve the balance of my time.

Mr. CARNEY. Mr. Chairman, I yield 4 minutes to the distinguished gentlelady from the State of Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the distinguished gentleman for yielding.

Mr. Chairman, I thank Mr. CARNEY for his leadership and work, along with, as I mentioned earlier, the chairman of the full Committee on Homeland Security, Mr. THOMPSON, and the ranking member.

There is no doubt that whistleblower protection is intimately interwoven with the work and the issues and the mission and obligations of the Homeland Security Department and the Homeland Security Committee, both in the House and the other body. We have too often seen debacles occurring, tragically, and I believe with a clean whistleblower protection, where workers are aware of their rights, we are enhancing the security of America.

This bill in particular responds to the transportation security officers, sometimes called screeners. As the chairwoman of the Subcommittee on Transportation Security with oversight over our transportation security screeners, it is clear that giving them full whistleblower protection is crucial, and it is also clear that they do not have it now.

Others will tell you that TSOs have whistleblower protection rights. They do not. While this may be true on paper, it is not true in practice. The truth is that transportation security officers do not enjoy full whistleblower protections. Specifically TSOs have limited whistleblower protections that come under a memorandum of understanding, an MOU, that was entered into when TSA was still part of the Department of Transportation. Under the MOU, TSOs can only bring a claim to the Office of Special Counsel. They do not have a right of appeal or independent review by another agency or court.

What that means, Mr. Chairman, is they can be fired. So if a transportation security officer sees a breach at one of the thousands upon thousands of airports around America, they have no protection to protect the traveling public.

In 2004, while reviewing a TSO whistleblower claim in the case of Schott v. The Department of Homeland Security, the Merit System Protection Board ruled that the Homeland Security Act does not provide TSOs with the right to MSPB review, which review rights are enjoyed by other department employees.

Thus, as you can see, Mr. Chairman, this bill is crucial to the transportation security officers, who are treated more differently than any other Department of Homeland Security personnel, including their fellow employees within TSA. The bill allows a whistleblower to go to court if their claim has not been acted upon within 6 months.

There is much that the TSA screener says as he or she watches day after day at whether the procedures that we have in place really work. In fact, I know there are procedures that go on at the screening site where it is crucial that an astute, well-trained TSA employee, screener, can in fact be able to enhance the security of America by telling the truth.

I am glad Mr. CARNEY is chairing our Management Subcommittee, because he is going to be talking about training issues. They are crucial. This bill permits, Mr. Chairman, as I close, the whistleblower to bring an appeal on their case to any Federal Court of Appeals having proper jurisdiction over the case, not just a Court of Appeals for the Federal Circuit, as the law now stands. That means we have real protection against firing and termination just because a transportation security officer is doing his or her job.

I am also pleased this bill provides the same rights to the Department's Office of Intelligence and Analysis employees as it does to intelligence employees in other agencies. As we know, whistleblowers in the Intelligence Committee must be careful when they disclose certain information. This bill helps govern how these people bring their claims, while also adequately protecting any sensitive or classified information that may be involved with such claims.

Mr. Chairman, I want to note that H.R. 1, which passed the House in January, tries to fix TSA's poor morale problem by giving TSO whistleblower rights and collective bargaining rights. These collective bargaining rights are comparable to other law enforcement officers and others within the Department, such as Border Patrol and others.

I ask my colleagues to support this. This is a new day, a fresh day for homeland security in America, giving these officers the right to tell the truth and do their job and protect America.

Mr. Chairman, I rise today in strong support of H.R. 985, the ''Whistleblower Protection Enhancement Act of 2007,'' which extends whistleblower protections to federal employees and contractors working in the area of national security and intelligence, including screeners at the Transportation Security Administration (TSA).

Mr. Chairman, I have long been a strong proponent of whistleblower protection. As a Member of Congress from Houston, home of NASA's Johnson Space Center, I have long been involved in developing procedures and protections to ensure that concerns affecting the public health and safety are made known and addressed in an atmosphere free of intimidation, threats, harassment, and reprisal.

For example, during a hearing held a few years ago by the Science Committee of which I was a member, Admiral Gehman and representatives of the Columbia Accident Investigation Board explained how fear of retaliation by management led some engineers to withhold their concerns about the safety and well-being of NASA missions and crew. Reports received after the tragic Colombia space shuttle accident indicated the accident may have been avoided had there been in place a process that would foster an environment encouraging employees and contractors to come forward with information that could avert future threats to the safety of astronauts, mission specialists, and other workers.

My legislation created a NASA Safety Reporting Board that would rapidly screen such disclosures and either report them directly to the Administrator, or reject them as non-eligible—perhaps with a suggestion to seek redress through internal means, e.g., union and OSHA representatives, and agency ombudsmen. Afterward, the Board would be tasked with keeping a registry of reporting workers and with dispute resolution in the event that the worker alleges retaliation by management. Coupling the reporting and anti-retaliation functions in one board would limit the scope of the board to truly vital issues, and make workers feel confident that their concerns will not be lost or buried in the bureaucracy of standard whistleblower or OSHA claims. The Safety Reporting Board would be comprised of both NASA managers and non-managers, with diverse expertise, representing multiple Centers, and include an advocate for workers.

Because we saw the lack of whistle blower protection for NASA employers as a safety threat to the nation's commitment to space exploration and travel, we took action to remove this impediment. The effort has been successful and we are reaping the benefits to this day.

Mr. Chairman, we need to extend the benefits of whistleblower protection from NASA to other vital Government agencies and functions. There is a tremendous need to protect our best sources for identifying waste fraud and abuse—Federal workers and contractors. H.R. 985 treats Transportation Security Officers (TSOs), sometimes called ''screeners,'' the same as all other Department employees by giving them full whistleblower protections, which TSOs currently do not have.

Mr. Chairman, contrary to assertions by opponents of the bill, TSOs do not have any meaningful whistleblower rights. The truth is TSOs do not enjoy full whistleblower protections. Specifically, TSOs enjoy little more than minimal whistleblower protections deriving from a Memorandum of Understanding (MOU) entered into when TSA was still part of the Department of Transportation.

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H.R. 985 set forth procedures which enable whistleblowers to assert their claims, while at the same time adequately protecting any sensitive or classified information involved with such claims.

Mr. Chairman, I note that H.R. 1, which passed the House in January, seeks to improve the poor morale problem at TSA by giving TSO employees whistleblower and collective bargaining rights. These collective bargaining rights are comparable to other law enforcement officers and others within the Department, such as the Border Patrol, Customs and Border Protection Officers.

Mr. Chairman, as a senior member of the Homeland Security Committee and chair of the Subcommittee on Transportation Security and Infrastructure Protection, I am proud to support H.R. 985. This bill will help the Federal Government keep America safer and more secure by encouraging and protecting employees who come forward to report waste, fraud, wrongdoing, or abuse of vital and limited Government resources. I urge all members to join me in voting for this important legislation.

Mr. SHAYS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, when you give the administration of any party the kind of powers we need to give an administration today, you have to have a strong whistleblower statute, a strong civil liberties board, and aggressive congressional oversight. There are two inconvenient truths we need to deal with, in society today. One is what Al Gore talks about: the environment, and national security issues related to the environment.

Another inconvenient truth is what the 9/11 Commission points out to us, that we are confronting deadly radical Islamist terrorism. And that requires stronger statutes to deal with it.

We had an attempt in the late eighties by the first President Bush to have a workable whistleblower statute. That statute was eroded by the Federal Court in D.C. We saw the Clinton administration try to strengthen it in 1994, and again it was weakened by the courts. This is another attempt to strengthen this statute.

We have a weakness in our whistleblower statute that we must address. And it is being addressed on a bipartisan basis.

We have a Merit System Protection Board that deals with everyone outside of the intelligence community, but it doesn't render decisions soon enough. We are requiring that decisions be rendered within 180 days. If not, a whistleblower can go to court. And we now allow whistleblowers to appeal decisions they disagree with.

But we have had a more serious problem. This is the area of concern relating to the intelligence community. Whistleblowers have had to go to their own individual Inspector Generals. The Inspector Generals follow different practices. We are now making sure those practices conform to the Merit System Protection Board practices.

The biggest challenge was when you take away someone's security clearance, it is like telling a bus driver you don't have a license to drive a bus. You make that whistleblower meaningless to the agency, and it is a huge disincentive to speak out.

We are not saying that can't be taken away in this legislation. We are saying it needs to be studied by the GAO. But what we are also doing is giving the employee the right to go to court within 180 days if a decision isn't rendered, and to have that same ability to make sure their case is heard if they disagree with the decision.

I can't say how strongly enough I support this legislation. This legislation, which passed the committee last year has been improved this year. But, again, I want to say, Mr. PLATTS, you deserve a tremendous amount of credit for what you have done and I congratulate my colleagues on the other side of the aisle for bringing this legislation up so quickly.

Mr. Chairman, I reserve the balance of my time.

Mr. PLATTS. I yield myself such time as I may consume.

Mr. Chairman, I do urge my colleagues to vote for H.R. 985. It is important for any number of reasons. The bipartisan nature of this bill itself is I think in many ways reason enough. We have reached across the aisle in a bipartisan fashion to make sure that we do what is right for the American public, for the traveling public and for the safety of all of us.

Mr. Chairman, as an intelligence officer myself, I know full well from firsthand experience the importance of having lines of communication open so the right information is getting to decisionmakers, and that right information can often include telling us what is not going right, what has gone wrong and how we can fix it.

□ 1545

It is vital that people have the opportunity and avenues and conduits through which they can give good information, information when things are going well and information when things are not going well. All of this ultimately makes us a safer, stronger Nation. That is why I urge all of my colleagues to vote for H.R. 985.

Mrs. LOWEY. Mr. Chairman, I want to thank Chairman WAXMAN and Ranking Member DAVIS of the Oversight and Government Reform Committee for bringing this bill to the floor.

I rise in support of this bill and in particular, the provisions extending whistleblower protections to federal employees who work on national security matters, including those employed by the Transportation Security Administration.

The simple fact is that TSA screeners are treated differently than other Department of Homeland Security personnel. That is why I authored the provisions in the Implementing the 9/11 Commission Recommendations Act of 2007, which the House passed in January, that would give TSOs whistleblower and collective bargaining rights.

Astonishingly, the President has threatened to veto the 9/11 bill over this provision.

TSA screeners are frontline security workers who perform a crucial and often grueling job that requires training, experience, and patience. We need workers who have mastered the job and providing whistleblower protections to TSA employees is part of a broader strategy to ensure that these individuals will make a career of protecting our Nation.

I intend to vote for this bill not only to strengthen protections for whistleblowers and restore accountability to the federal government, but to advance this critical TSA provision through the legislative process and show the President that we are serious about giving our frontline security workers the same rights as other Department of Homeland Security personnel.

I urge my colleagues to do the same.

Mr. THOMPSON of Mississippi. Mr. Chairman, I applaud Chairman WAXMAN, Ranking Member DAVIS, and others for their work on this badly needed bill.

This bill extends whistleblower protections to Federal employees who work on national security, mainly in the intelligence area, workers in the Transportation Security Administration, especially screeners, and Federal contractors, amongst others.

As Chairman WAXMAN correctly identified, there is a tremendous need to protect Federal workers and contractors who are our best sources of identifying waste fraud, abuse or security problems.

This bill treats Transportation Security Officers (TSOs) the same as all other Department employees by giving them full whistleblower protections, which TSOs currently do not have.

Mr. Chairman, others will tell you that TSOs have adequate whistleblower rights. While this is debatably true on paper, it is not true in practice.

The truth is TSOs do not enjoy full whistleblower protections. They have extremely limited whistleblower protections granted by a Memorandum of Understanding (MOU) that was entered into when TSA was part of the Department of Transportation.

In fact, while reviewing a TSO whistleblower claim in 2004, the Merit Systems Protection Board (MSPB) ruled that the Homeland Security Act does not provide TSO whistleblowers with a right to MSPB review.

Compared to other Department employees who do enjoy the right to MSPB review, TSOs are treated differently.

Under the MOU, TSOs can only bring a claim to the Office of Special Counsel, but TSOs have no right of outside appeal to either the MSPB or any other independent agency or court, like all other the Department employees can.

This bill remedies this situation by giving the TSOs full whistleblower rights, including the right to independent outside review.

Besides independent outside review, this bill also allows a whistleblower to go to court if their claim has not been acted on within 6 months of filing.

This bill permits the whistleblower to bring an appeal on their case to any federal court of appeals having proper jurisdiction over the case.

I am also pleased that this bill provides the same rights to the Department's Office of Intelligence and Analysis employees as it does to intelligence employees in other agencies.

As we know, whistleblowers in the intelligence community must be careful when they disclose certain information.

This bill helps govern how these people can bring their claims, but it also adequately protects any sensitive or classified information that may be involved.

Mr. Chairman, I want to note that H.R. 1, which passed the House in January, has some similar effects as H.R. 985, mainly that it provides whistleblower protections to TSOs.

H.R. 1 also fixes the poor morale problems by allowing collective bargaining rights for TSOs, similar to other law enforcement officers and others within the Department, such as the Border Patrol and Customs and Border Protection Officers.

Nonetheless, I am happy to vote for H.R. 985 today as it not only makes America safer and more secure, but it also allows for all employees to report waste, fraud, or abuse of vital and limited government resources.

I urge my colleagues to support the bill.

Mrs. MALONEY of New York. Mr. Chairman, as a cosponsor of this legislation, I rise in strong support of H.R. 985, the Whistleblower Protection Act.

I think one thing we can all agree on is that the current system is broken and whistleblowers are simply not being protected.

Too often our system retaliates against whistleblowers rather than thanking them for standing up for what is right.

The Oversight and Government Reform Committee has heard from many of them, including Sibel Edmonds, the former FBI Translator who was fired for raising concerns about the way the FBI was translating important information about our security.

Her reward for blowing the whistle included having her security clearance stripped, being fired from her job and being forced to endure a years-long court battle that prevented her from any sort of normal life.

Things were so bad with her case that when she testified before the committee she literally could not tell us anything about her life—where she was born or which languages she speaks.

Sadly, she is not alone.

The Whistleblower Protection Act (WPA) has been weakened by court cases in recent years and even the weak protections offered under the WPA do not apply to national security whistleblowers or contractors at those agencies.

The Oversight Committee repeatedly has heard from people who have had their security clearances revoked after blowing the whistle.

We have been told that wrongdoers have been allowed to continue their actions while the whistleblower has been the one made to suffer.

In the 109th Congress I was joined by my colleague Representative DIANE WATSON in offering an amendment during the Committee's consideration of the Federal Employee Protection of Disclosures Act that would have extended whistleblower protections to employees in national security and the intelligence community.

I am thrilled that this legislation will extend these important protections to employees of intelligence agencies and to federal contractors.

Passage of this bill is long overdue.

I urge my colleagues to vote for this legislation.

Mr. DAVIS of Illinois. Mr. Chairman, I am pleased to have joined Chairman WAXMAN and Ranking Member DAVIS in sponsoring the Whistleblower Protection Enhancement Act of 2007.

The Whistleblower Protection Act of 2007 strengthens current law to protect whistleblowers in Federal agencies. Since 1994, the Whistleblower Protection Act has been gutted by judicial activism. The legislation would grant whistleblowers the right to challenge reprisals in Federal district court and clarifies that ''any'' protected disclosure applies to all lawful communication of misconduct. It would extend whistleblower protection rights to whistleblowers in the intelligence community and would extend these rights to federally funded contractors.

Extending whistleblower protection to the intelligence community is a critical aspect of this legislation. Most national security whistleblowers are not protected from retaliation by law. The National Security Whistleblower Coalition reports that the median number of years of government service for national security whistleblowers is 22 years. These employees are experienced and dedicated and their careers should not be put at risk when they report waste, fraud, and abuse. Protecting national security whistleblowers from retaliation is in the best interest of our national security.

I do have concerns about one group of workers that do not have whistleblower protection—postal workers. The Postal Service is not, by law, subject to the Whistleblower Protection Act—WPA. The Service's Employee and Labor Relations Manual—ELM—contains provisions adopted by the service that replicate the more significant protections found in the WPA for victims of unlawful reprisal. The ELM provisions, however, only concern ''corrective actions''; they do not mandate discipline for managers who retaliate against whistleblowers.

As chairman of the Subcommittee on Federal Workforce, Postal Service, and the District of Columbia, I will hold a hearing to examine the need to extend full whistleblower protections to postal employees.

Chairman WAXMAN, thank you for your advocacy in this area.

Mr. PLATTS. Mr. Chairman, I yield back the balance of my time.

Mr. SHAYS. Mr. Chairman, I thank my colleague for his presentation, and I yield back the balance of my time.

The Acting CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, an amendment in the nature of a substitute consisting of the text of the bill, modified by the amendments printed in the bill, is adopted. The bill, as amended, shall be considered as an original bill for the purpose of further amendment under the 5-minute rule and shall be considered read.

The text of the bill, as amended, is as follows:

H.R. 985

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Whistleblower Protection Enhancement Act of 2007''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. CLARIFICATION OF DISCLOSURES COVERED.

Section 2302(b)(8) of title 5, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction as to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, that the employee or applicant reasonably believes is evidence of''; and

(B) in clause (i), by striking ''a violation'' and inserting ''any violation''; and

(2) in subparagraph (B)—

(A) by striking ''which the employee or applicant reasonably believes evidences'' and inserting '', without restriction as to time, place, form, motive, context, or prior disclosure made to any person by an employee or applicant, including a disclosure made in the ordinary course of an employee's duties, of information that the employee or applicant reasonably believes is evidence of''; and

(B) in clause (i), by striking ''a violation'' and inserting ''any violation (other than a violation of this section)''.

SEC. 3. COVERED DISCLOSURES.

Section 2302(a)(2) of title 5, United States Code, is amended—

(1) in subparagraph (B)(ii), by striking ''and'' at the end;

(2) in subparagraph (C)(iii), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(D) 'disclosure' means a formal or informal communication, but does not include a communication concerning policy decisions that lawfully exercise discretionary authority unless the ⟦employee⟧ *employee or applicant* providing the disclosure reasonably believes that the disclosure evidences—

''(i) any violation of any law, rule, or regulation; or

''(ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.''.

SEC. 4. REBUTTABLE PRESUMPTION.

Section 2302(b) of title 5, United States Code, is amended by adding at the end the following: ''For purposes of paragraph (8), any presumption relating to the performance of a duty by an employee who has authority to take, direct others to take, recommend, or approve any personnel action may be rebutted by substantial evidence. For purposes of paragraph (8), a determination as to whether an employee or applicant reasonably believes that such employee or applicant has disclosed information that evidences any violation of law, rule, regulation,

gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety shall be made by determining whether a disinterested observer with knowledge of the essential facts known to or readily ascertainable by the employee or applicant could reasonably conclude that the actions of the Government evidence such violations, mismanagement, waste, abuse, or danger.''.

SEC. 5. NONDISCLOSURE POLICIES, FORMS, AND AGREEMENTS.

(a) PERSONNEL ACTION.—Section 2302(a)(2)(A) of title 5, United States Code, is amended—

(1) in clause (x), by striking ''and'' at the end;

(2) by redesignating clause (xi) as clause (xii); and

(3) by inserting after clause (x) the following:

''(xi) the implementation or enforcement of any nondisclosure policy, form, or agreement; and''.

(b) PROHIBITED PERSONNEL PRACTICE.—Section 2302(b) of title 5, United States Code, is amended—

(1) in paragraph (11), by striking ''or'' at the end;

(2) by redesignating paragraph (12) as paragraph (14); and

(3) by inserting after paragraph (11) the following:

''(12) implement or enforce any nondisclosure policy, form, or agreement, if such policy, form, or agreement does not contain the following statement: 'These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code (governing disclosures to Congress by members of the military); section 2302(b)(8) of title 5, United States Code (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 and following) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosures that could compromise national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Control Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by such Executive order and such statutory provisions are incorporated into this agreement and are controlling.';

''(13) conduct, or cause to be conducted, an investigation, other than any ministerial or nondiscretionary factfinding activities necessary for the agency to perform its mission, of an employee or applicant for employment because of any activity protected under this section; or''.

SEC. 6. EXCLUSION OF AGENCIES BY THE PRESIDENT.

Section 2302(a)(2)(C) of title 5, United States Code, is amended by striking clause (ii) and inserting the following:

''(ii)(I) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, or the National Security Agency; or

''(II) as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities, if the determination (as that determination relates to a personnel action) is made before that personnel action; or''.

SEC. 7. DISCIPLINARY ACTION.

Section 1215(a)(3) of title 5, United States Code, is amended to read as follows:

''(3)(A) A final order of the Board may impose—

''(i) disciplinary action consisting of removal, reduction in grade, debarment from Federal employment for a period not to exceed 5 years, suspension, or reprimand;

''(ii) an assessment of a civil penalty not to exceed $1,000; or

''(iii) any combination of disciplinary actions described under clause (i) and an assessment described under clause (ii).

''(B) In any case in which the Board finds that an employee has committed a prohibited personnel practice under paragraph (8) or (9) of section 2302(b), the Board shall impose disciplinary action if the Board finds that the activity protected under such paragraph (8) or (9) (as the case may be) was the primary motivating factor, unless that employee demonstrates, by a preponderance of the evidence, that the employee would have taken, failed to take, or threatened to take or fail to take the same personnel action, in the absence of such protected activity.''.

SEC. 8. GOVERNMENT ACCOUNTABILITY OFFICE STUDY ON REVOCATION OF SECURITY CLEARANCES.

(a) REQUIREMENT.—The Comptroller General shall conduct a study of security clearance revocations, taking effect after 1996, with respect to personnel that filed claims under chapter 12 of title 5, United States Code, in connection therewith. The study shall consist of an examination of the number of such clearances revoked, the number restored, and the relationship, if any, between the resolution of claims filed under such chapter and the restoration of such clearances.

(b) REPORT.—Not later than 270 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Oversight and Government Reform of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the results of the study required by subsection (a).

SEC. 9. ALTERNATIVE RECOURSE.

(a) IN GENERAL.—Section 1221 of title 5, United States Code, is amended by adding at the end the following:

''(k)(1) If, in the case of an employee, former employee, or applicant for employment who seeks corrective action (or on behalf of whom corrective action is sought) from the Merit Systems Protection Board based on an alleged prohibited personnel practice described in section 2302(b)(8), no final order or decision is issued by the Board within 180 days after the date on which a request for such corrective action has been duly submitted (or, in the event that a final order or decision is issued by the Board, whether within that 180-day period or thereafter, then, within 90 days after such final order or decision is issued, and so long as such employee, former employee, or applicant has not filed a petition for judicial review of such order or decision under subsection (h))—

''(A) such employee, former employee, or applicant may, after providing written notice to the Board, bring an action at law or equity for de novo review in the appropriate United States district court, which shall have jurisdiction over such action without regard to the amount in [controversy;] *controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury;* and

''(B) in any such action, the court—

''(i) shall apply the standards set forth in subsection (e); and

''(ii) may award any relief which the court considers appropriate, including any relief described in subsection (g).

An appeal from a final decision of a district court in an action under this paragraph may, at the election of the appellant, be taken to the Court of Appeals for the Federal Circuit (which shall have jurisdiction of such appeal), in lieu of the United States court of appeals for the circuit embracing the district in which the action was brought.

''(2) For purposes of this subsection, the term 'appropriate United States district court', as used with respect to an alleged prohibited personnel practice, means the United States district court for the district in which the prohibited personnel practice is alleged to have been committed, the judicial district in which the employment records relevant to such practice are maintained and administered, or the judicial district in which resides the employee, former employee, or applicant for employment allegedly affected by such practice.

''(3) This subsection applies with respect to any appeal, petition, or other request for corrective action duly submitted to the Board, whether pursuant to section 1214(b)(2), the preceding provisions of this section, section 7513(d), or any otherwise applicable provisions of law, rule, or regulation.''.

(b) REVIEW OF MSPB DECISIONS.—Section 7703(b) of such title 5 is amended—

(1) in the first sentence of paragraph (1), by striking ''the United States Court of Appeals for the Federal Circuit'' and inserting ''the appropriate United States court of appeals''; and

(2) by adding at the end the following:

''(3) For purposes of the first sentence of paragraph (1), the term 'appropriate United States court of appeals' means the United States Court of Appeals for the Federal [Circuit.] *Circuit, except that in the case of a prohibited personnel practice described in section 2302(b)(8) (other than a case that, disregarding this paragraph, would otherwise be subject to paragraph (2)), such term means the United States Court of Appeals for the Federal Circuit and any United States court of appeals having jurisdiction over appeals from any United States district court which, under section 1221(k)(2), would be an appropriate United States district court for purposes of such prohibited personnel practice.*''.

(c) COMPENSATORY DAMAGES.—Section 1221(g)(1)(A)(ii) of such title 5 is amended by striking all after ''travel expenses,'' and inserting ''any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney's fees, interest, reasonable expert witness fees, and costs).''.

[(c)] *(d)* CONFORMING AMENDMENTS.—

(1) Section 1221(h) of such title 5 is amended by adding at the end the following:

''(3) Judicial review under this subsection shall not be available with respect to any decision or order as to which the employee, former employee, or applicant has filed a petition for judicial review under subsection (k).''.

(2) Section 7703(c) of such title 5 is amended by striking ''court.'' and inserting ''court, and in the case of a prohibited personnel practice described in section 2302(b)(8) brought under any provision of law, rule, or regulation described in section 1221(k)(3), the employee or applicant shall have the right to de novo review in accordance with section 1221(k).''.

SEC. 10. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.

(a) IN GENERAL.—Chapter 23 of title 5, United States Code, is amended by inserting after section 2303 the following:

''§ 2303a. National security whistleblower rights

''(a) PROHIBITION OF REPRISALS.—

''(1) IN GENERAL.—In addition to any rights provided in section 2303 of this title, title VII of Public Law 105–272, or any other provision of law, an employee, former employee, or applicant for employment in a covered agency may not be discharged, demoted, or otherwise discriminated against (including by denying, suspending, or revoking a security clearance, or by otherwise restricting access to classified or sensitive information) as a reprisal for making a disclosure described in paragraph (2).

''(2) DISCLOSURES DESCRIBED.—A disclosure described in this paragraph is any disclosure of covered information which is made—

''(A) by an employee, former employee, or applicant for employment in a covered agency (without restriction as to time, place, form, motive, context, or prior disclosure made to any person by an employee, former employee, or applicant, including a disclosure made in the course of an employee's duties); and

''(B) to an authorized Member of Congress, an authorized official of an Executive agency, an authorized official of the Department of Justice, or the Inspector General of the covered agency in which such employee is employed, such former employee was employed, or such applicant seeks employment.

''(b) INVESTIGATION OF COMPLAINTS.—An employee, former employee, or applicant for employment in a covered agency who believes that such employee, former employee, or applicant has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General and the head of the covered agency. The Inspector General shall investigate the complaint and, unless the Inspector General determines that the complaint is frivolous, submit a report of the findings of the investigation within 120 days to the employee, former employee, or applicant and to the head of the covered agency.

''(c) REMEDY.—

''(1) Within 180 days of the filing of the complaint, the head of the covered agency shall, taking into consideration the report of the Inspector General under subsection (b) (if any), determine whether the employee, former employee, or applicant has been subjected to a reprisal prohibited by subsection (a), and shall either issue an order denying relief or shall implement corrective action to return the employee, former employee, or applicant, as nearly as possible, to the position he would have held had the reprisal not occurred, including voiding any directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, as well as providing back pay and related benefits, medical costs incurred, travel expenses, [and any other reasonable and foreseeable consequential damages including attorney's fees and costs.] *any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney's fees, interest, reasonable expert witness fees, and costs).* If the head of the covered agency issues an order denying relief, he shall issue a report to the employee, former employee, or applicant detailing the reasons for the denial.

''(2)(A) If the head of the covered agency, in the process of implementing corrective action under paragraph (1), voids a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, the head of the covered agency may re-initiate procedures to issue a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information only if those re-initiated procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal.

''(B) In any case in which the head of a covered agency re-initiates procedures under subparagraph (A), the head of the covered agency shall issue an unclassified report to its Inspector General and to authorized Members of Congress (with a classified annex, if necessary), detailing the circumstances of the agency's re-initiated procedures and describing the manner in which those procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal. The head of the covered agency shall also provide periodic updates to the Inspector General and authorized Members of Congress detailing any significant actions taken as a result of those procedures, and shall respond promptly to inquiries from authorized Members of Congress regarding the status of those procedures.

''(3) If the head of the covered agency has not made a determination under paragraph (1) within 180 days of the filing of the complaint (or he has issued an order denying relief, in whole or in part, whether within that 180-day period or thereafter, then, within 90 days after such order is issued), the employee, former employee, or applicant for employment may bring an action at law or equity for de novo review to seek any corrective action described in paragraph (1) in the appropriate United States district court (as defined by section 1221(k)(2)), which shall have jurisdiction over such action without regard to the amount in [controversy.] *controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury.* [A petition to review a final decision under this paragraph shall be filed in the United States Court of Appeals for the Federal Circuit.] *An appeal from a final decision of a district court in an action under this paragraph may, at the election of the appellant, be taken to the Court of Appeals for the Federal Circuit (which shall have jurisdiction of such appeal), in lieu of the United States court of appeals for the circuit embracing the district in which the action was brought.*

''(4) An employee, former employee, or applicant adversely affected or aggrieved by an order issued under paragraph (1), or who seeks review of any corrective action determined under paragraph (1), may obtain judicial review of such order or determination in the United States Court of Appeals for the Federal [Circuit.] *Circuit or any United States court of appeals having jurisdiction over appeals from any United States district court which, under section 1221(k)(2), would be an appropriate United States district court.* No petition seeking such review may be filed more than 60 days after issuance of the order or the determination to implement corrective action by the head of the agency. Review shall conform to chapter 7.

''(5)(A) If, in any action for damages or relief under paragraph (3) or (4), an Executive agency moves to withhold information from discovery based on a claim that disclosure would be inimical to national security by asserting the privilege commonly referred to as the 'state secrets privilege', and if the assertion of such privilege prevents the [plaintiff] *employee, former employee, or applicant* from establishing an element in support of the [plaintiff's] *employee's, former employee's, or applicant's* claim, the court shall resolve the disputed issue of fact or law in favor of the [plaintiff] *employee, former employee, or applicant*, provided that an Inspector General investigation under subsection (b) has resulted in substantial confirmation of that element, or those elements, of the [plaintiff's] *employee's, former employee's, or applicant's* claim.

''(B) In any case in which an Executive agency asserts the privilege commonly referred to as the 'state secrets privilege', whether or not an Inspector General has conducted an investigation under subsection (b), the head of that agency shall, at the same time it asserts the privilege, issue a report to authorized Members of Congress, accompanied by a classified annex if necessary, describing the reasons for the assertion, explaining why the court hearing the matter does not have the ability to maintain the protection of classified information related to the assertion, detailing the steps the agency has taken to arrive at a mutually agreeable settlement with the employee, former employee, or applicant for employment, setting forth the date on which the classified information at issue will be declassified, and providing all relevant information about the underlying substantive matter.

''(d) APPLICABILITY TO NON-COVERED AGENCIES.—An employee, former employee, or applicant for employment in an Executive agency (or element or unit thereof) that is not a covered agency shall, for purposes of any disclosure of covered information (as described in subsection (a)(2)) which consists in whole or in part of classified or sensitive information, be entitled to the same protections, rights, and remedies under this section as if that Executive agency (or element or unit thereof) were a covered agency.

''(e) CONSTRUCTION.—Nothing in this section may be construed—

''(1) to authorize the discharge of, demotion of, or discrimination against an [employee] *employee, former employee, or applicant for employment* for a disclosure other than a disclosure protected by subsection (a) or (d) of this section or to modify or derogate from a right or remedy otherwise available to an employee, former employee, or applicant for employment; or

''(2) to preempt, modify, limit, or derogate any rights or remedies available to an employee, former employee, or applicant for employment under any other provision of law, rule, or regulation (including the Lloyd-La Follette Act).

No court or administrative agency may require the exhaustion of any right or remedy under this section as a condition for pursuing any other right or remedy otherwise available to an employee, former employee, or applicant under any other provision of law, rule, or regulation (as referred to in paragraph (2)).

''(f) DEFINITIONS.—For purposes of this section—

''(1) the term 'covered information', as used with respect to an employee, former employee, or applicant for employment, means any information (including classified or sensitive information) which the employee, former employee, or applicant reasonably believes evidences—

''(A) any violation of any law, rule, or regulation; or

''(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

''(2) the term 'covered agency' means—

''(A) the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and the National Reconnaissance Office; and

''(B) any other Executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii)(II) to have as its principal function the conduct of foreign intelligence or counterintelligence activities;

''(3) the term 'authorized Member of Congress' means a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the committees of the House of Representatives or the Senate that have oversight over the program about which the covered information is disclosed;

''(4) the term 'authorized official of an Executive agency' shall have such meaning as the Office of Personnel Management shall by regulation prescribe, except that such term shall, with respect to any employee, former employee, or applicant for employment in an agency, include—

''(A) the immediate supervisor of the employee or former employee and each successive supervisor (immediately above such immediate supervisor) within the employee's or former employee's chain of authority (as determined under such regulations); and

''(B) the head, general counsel, and ombudsman of such agency; and

''(5) the term 'authorized official of the Department of Justice' means any employee of the Department of Justice, the duties of whose position include the investigation, enforcement, or prosecution of any law, rule, or regulation.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 23 of title 5, United States Code, is amended by inserting after the item relating to section 2303 the following:

''2303a. National security whistleblower rights.''.

SEC. 11. ENHANCEMENT OF CONTRACTOR EMPLOYEE WHISTLEBLOWER PROTECTIONS.

(a) CIVILIAN AGENCY CONTRACTS.—Section 315(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 265(c)) is amended—

(1) in paragraph (1), by striking ''If the head'' and all that follows through ''actions:'' and inserting the following: ''Not later than 180 days after submission of a complaint under subsection (b), the head of the executive agency concerned shall determine whether the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:''; and

(2) by redesignating paragraph (3) as paragraph (4) and adding after paragraph (2) the following new paragraph (3):

''(3) If the head of an executive agency has not issued an order within 180 days after the submission of a complaint under subsection (b) and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted his administrative remedies with respect to the complaint, and the complainant may bring an action at law or equity for de novo review to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in ⟦controversy.⟧ *controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury*.''.

(b) ARMED SERVICES CONTRACTS.—Section 2409(c) of title 10, United States Code, is amended—

(1) in paragraph (1), by striking ''If the head'' and all that follows through ''actions:'' and inserting the following: ''Not later than 180 days after submission of a complaint under subsection (b), the head of the agency concerned shall determine whether the contractor concerned has subjected the complainant to a reprisal prohibited by subsection (a) and shall either issue an order denying relief or shall take one or more of the following actions:''; and

(2) by redesignating paragraph (3) as paragraph (4) and adding after paragraph (2) the following new paragraph (3):

''(3) If the head of an agency has not issued an order within 180 days after the submission of a complaint under subsection (b) and there is no showing that such delay is due to the bad faith of the complainant, the complainant shall be deemed to have exhausted his administrative remedies with respect to the complaint, and the complainant may bring an action at law or equity for de novo review to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in ⟦controversy.⟧ *controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury*.''.

SEC. 12. PROHIBITED PERSONNEL PRACTICES AFFECTING THE TRANSPORTATION SECURITY ADMINISTRATION.

(a) IN GENERAL.—Chapter 23 of title 5, United States Code, is amended—

(1) by redesignating sections 2304 and 2305 as sections 2305 and 2306, respectively; and

(2) by inserting after section 2303a (as inserted by section 10) the following:

''§ 2304. Prohibited personnel practices affecting the Transportation Security Administration

''(a) IN GENERAL.—Notwithstanding any other provision of law, any individual holding or applying for a position within the Transportation Security Administration shall be covered by—

''(1) the provisions of section 2302(b)(1), (8), and (9);

''(2) any provision of law implementing section 2302(b)(1), (8), or (9) by providing any right or remedy available to an employee or applicant for employment in the civil service; and

''(3) any rule or regulation prescribed under any provision of law referred to in paragraph (1) or (2).

''(b) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to affect any rights, apart from those described in subsection (a), to which an individual described in subsection (a) might otherwise be entitled under law.

''(c) EFFECTIVE DATE.—This section shall take effect as of the date of the enactment of this section.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 23 of title 5, United States Code, is amended by striking the items relating to sections 2304 and 2305, respectively, and by inserting the following:

''2304. Prohibited personnel practices affecting the Transportation Security Administration.

''2305. Responsibility of the Government Accountability Office.

''2306. Coordination with certain other provisions of law.''.

SEC. 13. CLARIFICATION OF WHISTLEBLOWER RIGHTS RELATING TO SCIENTIFIC AND OTHER RESEARCH.

Section 2302 of title 5, United States Code, is amended by adding at the end the following:

''(f) As used in section 2302(b)(8), the term 'abuse of authority' includes—

''(1) any action that compromises the validity or accuracy of federally funded research or analysis; and

''(2) the dissemination of false or misleading scientific, medical, or technical information.''.

SEC. 14. EFFECTIVE DATE.

This Act shall take effect 30 days after the date of the enactment of this Act, except as provided in the amendment made by section 12(a)(2).

The Acting CHAIRMAN. No further amendment is in order except those printed in House Report 110–48. Each further amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. STUPAK

The Acting CHAIRMAN. It is now in order to consider amendment No. 1 printed in House Report 110–48.

Mr. STUPAK. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. STUPAK:

Page 28, line 19, strike ''and''.

Page 28, line 21, strike ''technical.'.'' and insert ''technical; and''.

Page 28, after line 21, add the following:

''(3) any action that restricts or prevents an employee or any person performing federally funded research or analysis from publishing in peer-reviewed journals or other scientific publications or making oral presentations at professional society meetings or other meetings of their peers.''.

The Acting CHAIRMAN. Pursuant to House Resolution 239, the gentleman from Michigan (Mr. STUPAK) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. STUPAK. Mr. Chairman, thank you for allowing me an opportunity to address my amendment, and I thank the Rules Committee for making my amendment in order. I want to recognize Mr. WAXMAN, Mr. BRALEY, Mr. DAVIS, and others of the Government Reform Committee for advancing a good bill, and I want to thank Mr. MARKEY for his help with this amendment and for his previous work in protecting the right of government scientists to publish their findings.

One of the most important sections of H.R. 985 deals with protecting the integrity of the scientific process by shielding whistleblowers who report tampering with government scientific investigations. My amendment would enhance whistleblower protection by including in the list of reportable actions any attempt to suppress the right of government scientists to publish or announce their findings in peer reviewed journals or public meetings with their fellow scientists.

In science, one of the strongest signs of credibility in a study is that the scientists are given a right to publish their rights freely, whatever those results may be. Completed studies are

submitted to peer-reviewed journals for consideration, allowing the scientific community at large to review, challenge and incorporate new findings.

The peer review process is a critical step in the development of scientific knowledge, and the transparency inherent in the process is one of our strongest safeguards against corrupted or misleading scientific claims.

Scientific studies funded by the taxpayers should be held to this same high standard. Political pressure on scientists to suppress or hide the results of their research is a direct attack on the public interest, and employees who report suppression of their scholarly publications should be given the same protection as those who report other kinds of corruption or abuse of authority.

My amendment would protect science in the public sector and has been endorsed by the Union of Concerned Scientists, a leading nonprofit organization dedicated to issues of scientific integrity.

Congress has already had some experience with this issue. In November 2004, the Senate Finance Committee heard testimony from Dr. David Graham, the whistleblower in the Vioxx case. Dr. Graham described how senior managers within the Office of Drug Safety of the FDA attempted to block publication of his study on the dangers of Vioxx, even going so far as to call the editors of The Lancet, a prestigious medical journal, to attack Dr. Graham's work.

Dr. Graham's case is not an isolated incident. In a recent survey by the Union of Concerned Scientists, 150 of 279 government scientists reported some sort of political interference with their work. When asked whether they believed they were free to publish results that might go against the political positions of their agency, a majority of those scientists who answered the question felt they were not free to publish.

We all know how important good science is in helping us make good public policy. As chairman of the Subcommittee on Oversight and Investigations, I am especially aware of the critical role whistleblowers have in rooting out abuses of power and aiding Congress in its oversight responsibilities.

My amendment helps to make the important scientific integrity section of the base bill more comprehensive and more clear. My amendment will protect the public's right to know the results of publicly funded research, and will help make a good bill even better.

Mr. Chairman, I reserve the balance of my time.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I rise to claim the time in opposition to the amendment.

The Acting CHAIRMAN. The gentleman from Virginia is recognized for 5 minutes.

Mr. TOM DAVIS of Virginia. Mr. Chairman, this amendment would amend the section of the bill dealing with the so-called ''politicization of science'' to say that Federal researchers and scientists are permitted to publicize the results of their federally funded research without any input from the agency paying their salaries and employing them.

First of all, I think it is inappropriate to shoehorn the debate about public policy influencing science into a bill about protecting whistleblowers. That is why I intend to support Mr. SALI's upcoming amendment to strike entirely the section which gives rise to this amendment.

Second, this amendment would make worse the provision in the underlying bill which would turn the natural tension between science and public policy into a personnel issue to be litigated in the courts.

The whistleblower laws protecting Federal employees are intended to protect individuals retaliated against for exposing waste, fraud, or abuse in government. This amendment has nothing to do with waste, fraud, or abuse, it actually has to do with one person's opinion.

Instead, this amendment would give an individual Federal researcher who conducts research using taxpayer dollars the full discretion as to how and where to publicize his or her research, prohibiting the agency who financed the research and for whom the researcher works from even getting involved in that process.

If a Federal researcher conducts a study using Federal money and decides he or she wants to present the research at a meeting in, say, Cuba, Iran, the Federal Government can wind up in court if it attempts to prevent the researcher from presenting the findings in that country.

Or if a Federal researcher conducts a study using Federal money on a classified national security matter involving, let's say, satellite technology, the Federal Government would be legally barred from having any say in how and to whom that information gets disseminated.

It is an overreach. This amendment protects one individual's right to determine how best to use taxpayer dollars instead of the collective judgment of elected and appointed policymakers. And to add insult to injury, the underlying bill would require taxpayers to pay the attorneys' fees of the individual should the researcher sue the government for trying to get involved.

To make matters worse, there is nothing in this amendment that would bar the Federal researcher from touting the fact that his or her work was ''Federal research,'' giving it the pretense of being research endorsed by the American public. It is a slippery slope to scientific chaos where the taxpayer foots the bill for conflicting, misleading, and possibly even poorly done work. There are no protections for the public or taxpayers for this amendment.

We have held a number of hearings in the Oversight and Government Reform Committee under the leadership of Chairman WAXMAN to investigate the possibility of ''politicization'' of science, and I understand the problem this amendment is attempting to address. I don't think, however, this is the way to do it. This is possibly a deal killer in terms of how this bill comes together in getting support from this side of the aisle.

This amendment is bad public policy, and it is bad for national security. I urge my colleagues to oppose this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. STUPAK. Mr. Chairman, I will be brief.

I sat for 12 years on the Energy and Commerce Committee, Oversight and Investigations, and I cannot tell you how many times we have dealt with scientists who have come forward under a whistleblower status, or will call us up in cases like the Vioxx that I mentioned.

I have an article I will include for the RECORD where a scientist said, ''FDA Called Journal to Block Vioxx Article.'' Thousands of people have died because a drug was put forth on the market because the scientist within the FDA was not allowed to publish the results of his study and was not allowed to speak at advisory panels.

We also see that in a drug called Ketek. It is a drug we continue to do investigation on, and we will have further hearings next week on it, how fraudulent studies were put forth before the FDA. The scientists knew it, and the FDA suppressed the evidence and allowed the drug to be approved, to the detriment and the death of many Americans.

And there is the drug Accutane which has many mysterious questions surrounding it, and people have not been allowed to testify at advisory panels which must approve a drug before it is put forth for public use.

This is a safety issue, and 150 of 279 government scientists reported political interference with their work.

My amendment protects the public right to know the results of taxpayer-funded research. What is wrong with that?

This amendment is a good amendment. It will make the bill better. I ask that my amendment be approved.

[From USA Today]

SCIENTIST SAYS FDA CALLED JOURNAL TO BLOCK VIOXX ARTICLE

(By Rita Rubin)

Just days before a medical journal was to publish a Food and Drug Administration-sponsored study that raised concerns about the safety of the arthritis drug Vioxx, an FDA official took the unusual step of calling the editor to raise questions about the findings' scientific integrity, suggests e-mail obtained by USA TODAY.

Lead author David Graham says the call was part of an effort to block publication of his research, an analysis of a database of 1.4 million Kaiser Permanente members showing that those who took Vioxx were more likely to suffer a heart attack or sudden cardiac death than those who took Celebrex,

Vioxx's rival. Graham had reported his study in August at an epidemiology meeting in France, but publication in a medical journal would have exposed it to a wider audience.

Graham, associate director for science and medicine at the FDA's Office of Drug Safety, says The Lancet, a medical journal published in London, had planned to post the study on its Web site Nov. 17, a day in advance of his appearance before the Senate Finance Committee to testify about the FDA's handling of Vioxx.

Merck had pulled the drug from the market Sept. 30 because of safety concerns. Publication of the study could have embarrassed the FDA, which was being criticized for not warning patients sooner of Vioxx's cardiovascular risks.

Steven Galson, acting director of the FDA's Center for Drug Evaluation and Research, said Sunday that Graham's charges are unfounded. ''We didn't make any efforts to block publication in The Lancet,'' he said. ''What we did is let The Lancet know that the paper was submitted in violation of the agency's clearance process.'' Graham had sought to publish his study before getting the FDA's OK, Galson said.

And in a written statement, FDA Acting Commissioner Lester Crawford said that Galson contacted Lancet editor Richard Horton ''out of respect for the scientific review process.''

Galson said he would like to see the paper published some day but didn't see the value of timing its release to the Senate hearing, ''not exactly a scientific imperative.''

Graham says he pulled his paper at the last minute because he feared for his job. Following is a chronology of the events surrounding the paper's withdrawal:

Nov. 12. Galson called Horton to tell him that the FDA had not cleared Graham's paper for publication. He then e-mailed Horton a link to a document describing the FDA's internal review process for journal articles. ''As you will see, there are some ambiguities here,'' Galson said in his e-mail.

In a later e-mail to Horton that day, Galson brought up points from a nine-page review of Graham's study by Ann Trontell, deputy director of the FDA's drug safety office. Galson and Trontell noted discrepancies between the article submitted to The Lancet and an abstract of the study that had been submitted in May for presentation at a second scientific meeting, an American College of Rheumatology conference. Trontell's review, which Graham had forwarded to Horton, refers to ''potential charges of data manipulation.''

Graham says he had already explained the discrepancies to his superiors at the FDA. After the abstract was submitted to the rheumatology group, Graham says, he discovered two problems: A computer program had misclassified the amount of Vioxx some patients had taken; and one of his co-authors noticed that an analysis Graham had done was incorrect.

Graham says the rheumatology group told him that it was too late to correct the printed abstract, but that he could present the corrected analysis at its annual meeting in October, as he had at the epidemiology meeting in August

Nov. 14. In an e-mail to Galson, Horton wrote, ''You will not be surprised if I say that I was a little taken aback to get your call on Friday (Nov. 12). It is very unusual indeed for a member of the employing institution of an author to contact us in the middle of the review and publication process of a manuscript.''

Horton wrote that Galson's call could be perceived as an improper attempt to interfere with The Lancet's review process. Raising the possibility that a scientist manipulated data ''is an extremely serious allegation,'' Horton wrote. ''One could read such an allegation as an attempt to introduce doubt into our minds about the honesty of the authors—doubt that might be sufficient to delay or stop publication of research that was clearly of serious public interest''

Nov. 18. Graham told a Senate panel that the FDA is ''virtually defenseless'' against another ''terrible tragedy and a profound regulatory failure'' like Vioxx.

Mr. Chairman, I reserve the balance of my time.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I don't think there is a Member of this House that doesn't sympathize with what the gentleman from Michigan is trying to do.

The difficulty is the way this amendment is drafted. It is a huge overreach. It allows anybody who is doing research under the auspices of the Federal Government to then publish it without any kind of overview from their superiors, who sometimes have competing reports and deliberations as they reach a public policy decision.

This is bad law. It allows attorneys' fees in the case where somebody is denied that opportunity.

This kind of overreach amendment is not about whistleblowing at all; it is a politicization of science from the other perspective. I urge Members to defeat this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. STUPAK. Mr. Chairman, I yield the balance of my time to the gentleman from Iowa (Mr. BRALEY).

Mr. BRALEY of Iowa. Mr. Chairman, I rise in support of this amendment, and I thank the gentleman from Michigan for introducing this amendment which would enhance a provision of underlying legislation that protects scientific whistleblowers.

The underlying provision clarifies that whistleblowers disclosing political or ideological interference with Federal science are protected from retaliation. This amendment furthers that goal by affirming that Federal scientists and grantees should also be able to report censorship of scientific debate without fearing reprisal.

I support passage of this amendment. I urge Members to vote ''yes.''

The Acting CHAIRMAN. All time for debate on the amendment has expired.

The question is on the amendment offered by the gentleman from Michigan (Mr. STUPAK).

The question was taken; and the Acting Chairman announced that the ayes appeared to have it.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. PLATTS

The Acting CHAIRMAN. It is now in order to consider amendment No. 2 printed in House Report 110–48.

Mr. PLATTS. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. PLATTS:

Strike the heading for section 3 and insert the following (and amend the table of contents accordingly):

SEC. 3. DEFINITIONAL AMENDMENTS.

In section 3, insert ''(a) DISCLOSURE.—'' before ''Section'' and add at the end the following:

(b) CLEAR AND CONVINCING EVIDENCE.—Sections 1214(b)(4)(B)(ii) and 1221(e)(2) of title 5, United States Code, are amended by adding at the end the following: ''For purposes of the preceding sentence, 'clear and convincing evidence' means evidence indicating that the matter to be proved is highly probable or reasonably certain.''.

The Acting CHAIRMAN. Pursuant to House Resolution 239, the gentleman from Pennsylvania (Mr. PLATTS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. PLATTS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this amendment would require the Merit Systems Protection Board to rely on a consistent standard for clear and convincing evidence, which is the burden of proof that must be met to sustain an agency's affirmative defense that it would have taken the same personnel action in question independent of an employee's protected contact.

Under the amendment, clear and convincing evidence will be defined as ''evidence indicating that the matter to be proved is highly probable or reasonably certain.'' This standard is consistent with United States Supreme Court precedent and administrative decisions for remedial employment statutes.

By way of background, when Congress passed the Whistleblower Protection Act of 1989, it intended to toughen the legal burden of proof for a Federal agency's affirmative defense once a whistleblower establishes a prima facie case of retaliation from ''preponderance of the evidence'' to ''clear and convincing evidence.'' However, just the opposite has occurred. The clear and convincing evidence standard is now the primary basis cited to rule against whistleblowers in decisions on merits.

The reason behind this is that the Merit Systems Protection Board has created a unique test for clear and convincing evidence which is inconsistent with long-established judicial and administrative norms. In assessing the standard, the board considers three factors:

First, the merits of an agency's stated independent justification for acting against a whistleblower; second, whether there was a motive to retaliate; and third, whether the action reflects discriminatory treatment compared to that afforded employees who have not engaged in protective conduct.

The three-part test leaves the board with broad discretion in any given case with respect to how many criteria an agency must demonstrate and what level of proof must be demonstrated for each factor.

Adoption of this amendment is necessary in order to restore congressional intent in passing the Whistleblower Protection Act.

□ 1600

Through the WPA and this legislation we are now considering, Congress has defined the terms for two of the three tests an employee must pass to obtain relief: ''reasonable belief'' and ''contributing factor.'' For the administrative process to function as intended, Congress must also define ''clear and convincing evidence.''

Accordingly, I urge a ''yes'' vote on the amendment. I appreciate this amendment being made in order by the Rules Committee.

Mr. Chairman, I reserve the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I rise in support of this amendment offered by the gentleman from Pennsylvania and commend him for his work.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I rise to claim the time in opposition.

The Acting CHAIRMAN. The gentleman from Virginia is recognized for 5 minutes.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I yield myself such time as I may consume.

I oppose this amendment. This amendment would raise the threshold by which agencies must prove they would have taken disciplinary action against an employee notwithstanding the employee's whistleblower claim.

Current law requires agencies to prove this by clear and convincing evidence. This amendment raises the threshold and requires agencies to prove that such action was highly probable or reasonably certain.

There may be a real issue here which must be addressed, but after working on this bill for years now yesterday was the first time that this issue was brought to our attention.

On its face, I am concerned this amendment would raise an already high threshold imposed upon agencies trying to prove they are placing an employee on administrative leave because, for example, the employee sexually harassed another employee and not because the employee is a whistleblower. The current clear and convincing evidence standard seems a sufficient burden of proof to impose upon agencies.

I am also concerned we may be establishing a dangerous precedent by further defining in one isolated statute what the term ''clear and convincing evidence'' means. Does the U.S. Code typically define standards of proof such as ''clear and convincing'' and ''beyond a reasonable doubt'' or are these terms of art defined in case law? And does this new definition of ''highly probable'' or ''reasonably certain'' actually solve the problem or does it make it even more confusing for courts and litigants?

Mr. Chairman, there may be a valid issue here worth investigating. It is entirely possible that the Office of Special Counsel, the Merit Systems Protection Board and the courts are getting this wrong, but we should review this proposed change and vet it through the committee process before amending the Whistleblower Protection Act.

The good news is we have an opportunity to address these questions. The authorizations for both the Office of Special Counsel and the Merit Systems Protection Board expire this year, and the committee can and should carefully review the issue as we consider these reauthorizations.

I think my concern on this, if there is a pending sexual harassment claim against an employee, and they all of the sudden turn out and become a whistleblower, that then in the sexual harassment claim we have a higher standard, and for the litigant, the person that has been harassed in that case, they have a higher burden of proof than they would notwithstanding the whistleblower claim. I do not think that is fair to the person who is being harassed in this case, and I do not see a need for it.

So I urge my colleagues to oppose this amendment today and allow the committee in regular order to consider carefully and foil this problem identified by my good friend and colleague Mr. PLATTS.

Mr. Chairman, I reserve the balance of my time.

Mr. PLATTS. Mr. Chairman, I appreciate the gentleman's concerns raised and certainly will keep them in mind as we move forward with this process today and in the weeks and months to come.

I yield 1½ minutes to the gentleman from Iowa (Mr. BRALEY).

Mr. BRALEY of Iowa. Mr. Chairman, I rise in support of this amendment offered by the gentleman from Pennsylvania and commend him for his work. This amendment will clarify the standard used to evaluate an employee's defense when a whistleblower claims that an employer acted in illegal retaliation.

When a whistleblower claims that an agency engaged in a retaliatory action, it is an affirmative defense for the agency if it can prove that it would have taken the same action even if the employee had not blown the whistle. This is, in fact, the same type of analysis that takes place in sex discrimination and sexual harassment claims, and yet nothing in this amendment would impose a different burden of proof in those cases because they are statutory-based claims and are not affected by the amendment.

Congress set the agency's burden of proof for this defense as ''clear and convincing evidence'' in the Whistleblower Protection Act. The Merit Systems Protection Board has ignored the intent of Congress and implemented its own test for evaluating whether or not an agency has shown clear and convincing evidence that it would have taken the same action anyway.

This has made it almost impossible for employees to successfully challenge retaliatory personnel actions.

This amendment defines clear and convincing evidence as evidence indicating that the matter to be proved is highly probable or reasonably certain.

This is a commonsense fix that clarifies Congress' intent.

I support this amendment which will further strengthen protection for whistleblowers and urge all Members to vote ''yes'' in support of the amendment.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I just urge my colleagues to oppose the amendment, and I yield back the balance of my time.

Mr. PLATTS. Mr. Chairman, again, I appreciate the gentleman from Iowa's support and words in support of this amendment and urge a ''yes'' vote. I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. PLATTS).

The question was taken; and the Acting Chairman announced that the noes appeared to have it.

Mr. PLATTS. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Pennsylvania will be postponed.

AMENDMENT NO. 3 OFFERED BY MR. PLATTS

The Acting CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 110–48.

Mr. PLATTS. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. PLATTS:

In section 2, in the matter to be inserted by paragraphs (1)(A) and (2)(A) thereof, insert ''forum,'' after ''context,''.

In section 2, insert ''(a) IN GENERAL.—'' before ''Section'' and add at the end the following:

(b) PROHIBITED PERSONNEL PRACTICES UNDER SECTION 2302(b)(9).—Title 5, United States Code, is amended in subsections (a)(3), (b)(4)(A), and (b)(4)(B)(i) of section 1214 and in subsections (a) and (e)(1) of section 1221 by inserting ''or 2302(b)(9)(B)-(D)'' after ''section 2302(b)(8)'' each place it appears.

In section 1221(k)(1) of title 5, United States Code (as added by section 9(a)), insert ''or 2302(b)(9)(B)-(D)'' after ''section 2302(b)(8)''.

In section 7703(b)(3) of title 5, United States Code (as added by section 9(b)(2)), insert ''or 2302(b)(9)(B)-(D)'' after ''section 2302(b)(8)''.

In the matter to be inserted by section 9(d)(2) in section 7703(c) of title 5, United States Code, insert ''or 2302(b)(9)(B)-(D)'' after ''section 2302(b)(8)''.

In section 2303a(a)(2)(A) of title 5, United States Code (as amended by section 10(a)), insert ''forum,'' after ''context,''.

The Acting CHAIRMAN. Pursuant to House Resolution 239, the gentleman from Pennsylvania (Mr. PLATTS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. PLATTS. Mr. Chairman, I yield myself as much time as I may consume.

This amendment is intended to address situations in which an employee faces retaliation for being associated with whistleblowers through his or her testimony in a legal proceeding, and to encourage cooperation with Inspector General and Office of Special Counsel investigations, as well as compliance with the law.

Oddly, under current law, whistleblowers who make their disclosures of waste, fraud or abuse in the context of another employee's legal appeal, a grievance hearing, an Inspector General or Office of Special Counsel investigation are not given the same protections as other whistleblowers, such as those who blow the whistle on national television. This simply does not make sense.

My amendment would rectify this situation in three ways. First, the amendment would clarify that a protected disclosure cannot be disqualified because of the forum in which it is made, such as through witness testimony in another employee's appeal.

Second, the amendment would establish more realistic burdens of proof, the same as exist in most whistleblower cases, for those who were retaliated against because they testified on behalf of an employee exercising their legal rights, because they cooperated with an Inspector General or Special Counsel investigation, or because they refused to obey an order that would have required a violation of the law.

And third, the amendment gives these whistleblowers access to the same due process rights as other whistleblowers.

Testifying under oath, cooperating with an Inspector General or Special Counsel investigation, and refusing orders to violate the law are all important ways by which public servants can expose waste, fraud and abuse in the government. Accordingly, I urge a ''yes'' vote on the amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I rise in support of the amendment.

The Acting CHAIRMAN. Without objection, the gentleman from Iowa is recognized for 5 minutes.

There was no objection.

Mr. BRALEY of Iowa. Mr. Chairman, I yield myself such time as I may consume.

This amendment clarifies that Federal whistleblowers are protected regardless of where they are or when they blow the whistle.

A whistleblower who makes a disclosure that is considered a whistleblower disclosure under 5 U.S.C. 2302(b)(8) gets the benefit of protections such as the right to challenge a retaliatory act by an employer. If the same whistleblower makes the same disclosure but does it while testifying as a plaintiff or as a witness in litigation, the whistleblower does not get the same protections.

We should protect Federal employees who expose government wrongdoing, no matter what the forum. This amendment appropriately extends Whistleblower Protection Act coverage to employees who make disclosures in litigation as described in 5 U.S.C. Section 2302(b)(9).

This amendment extends equal burdens of proof and individual rights of action to whistleblowers who serve as witnesses in Inspector General and Special Counsel investigations. This amendment also clarifies that these protections apply to Federal employees who face retaliation for refusing to violate the law.

I urge my colleagues to support this amendment, which closes these senseless loopholes.

Mr. Chairman, I yield back the balance of my time.

Mr. PLATTS. Mr. Chairman, how much time do I have?

The Acting CHAIRMAN. The gentleman from Pennsylvania (Mr. PLATTS) has 3½ minutes remaining. The gentleman from Iowa (Mr. BRALEY) has yielded back the balance of his time.

Mr. PLATTS. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. TOM DAVIS), the ranking member of the Committee on Oversight and Government Reform.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I thank the gentleman from Pennsylvania and, once again, thank him for his leadership on this issue. I support this amendment.

This amendment will extend additional whistleblower protections against reprisal to employees who cooperate with their agency Inspector General or in some other official grievance or investigative process.

Unfortunately, courts have misread the intent of the Whistleblower Protection Act and have arbitrarily reclassified certain whistleblowing activity as an exercise of appeal right. These rights are covered under a different section of title V of the U.S. Code.

By reclassifying these activities as exercises of appeal right, the courts have deprived employees of whistleblowing protection for their same disclosure showing significant misconduct if presented in a grievance or litigation instead of, for example, in a television interview.

It could occur when an employee faces reprisal as one associated with a whistleblower when testifying in an IG investigation or Office of Special Counsel investigation.

It strikes me these are precisely the forums Congress intended the whistleblower to take. These are, in essence, whistleblowers who are operating within the existing chain of command. They have used the chain of command, not gone outside the system, but they are not afforded the same protection as those who do.

These are the forums where we can actually make a difference to policymakers. This amendment ends the inequity by clarifying that an otherwise protected disclosure cannot be disqualified because of the forum where it is communicated.

I support this amendment. I congratulate my friend for offering it.

Mr. PLATTS. Mr. Chairman, I would just like to again recognize the ranking member, the past several terms as the chairman of the Government Reform Committee. He and his staff have been instrumental in moving this issue forward and working with my staff and members on the other side as well, and want to recognize him and his staff for their great work.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. PLATTS).

The amendment was agreed to.

AMENDMENT NO. 4 OFFERED BY MR. SALI

The Acting CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 110–48.

Mr. SALI. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. SALI:

Strike section 13 (and make all necessary technical and conforming changes).

The Acting CHAIRMAN. Pursuant to House Resolution 239, the gentleman from Idaho (Mr. SALI) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Idaho.

□ 1615

Mr. SALI. Mr. Chairman, my amendment would remove language from H.R. 985 that would prohibit dissent with respect to scientific research.

I filed my amendment because I believe it is inappropriate to attempt to shoehorn the debate about public policy influencing science into this legislation, thus turning it into a personnel issue to be litigated in the courts.

As set forth by section 13 of the bill, the dissemination of ''false or misleading technical information'' is deemed to be an ''abuse of authority'' upon which a Federal authority can make a protected disclosure.

The problem is that on scientific issues, the question of what is false or misleading is often a difficult question on which reasonable people can disagree, and on which sometimes scientific authorities have a hard time making up their minds. Are eggs good for you or bad for you? Is milk good for you or bad for you?

Section 13 of this bill has significant implications upon the development of scientific research conducted by the government, including research and development work at the Defense Department, as well as federally funded research on health and related issues. By including the science provisions in this bill, I am concerned that we are opening the door for debates in science to become the basis of litigation. Putting the threat of litigation on a healthy debate of science is not good public policy.

Furthermore, this clause potentially makes the tension between ethics and science the subject of litigation. For example, federally funded scientific research on human cloning should be debated amongst policymakers and agency officials without fear of retaliation by scientists and researchers. If an agency or the administration disagrees with the findings of a particular scientist, we should not be opening up our judicial system for those disagreements to be litigated as Federal employee personnel issues. That hardly seems like a responsible policy.

I urge my colleagues to oppose turning science into a personnel issue to be litigated in the courts.

Mr. Chairman, I reserve the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I rise in strong opposition to this amendment.

The Acting CHAIRMAN. The gentleman is recognized for 5 minutes.

Mr. BRALEY of Iowa. For the past 6 years, there has been overwhelming political interference with science by the Bush administration. We have seen examples of government scientists barred from conducting or presenting research because it conflicts with administration policies. We have seen scientific findings manipulated or outright rejected when they don't bolster favored policies. And we have seen government agencies put out information about health that is entirely false, but politically advantageous. In one EPA report on the environment, the White House made so many edits to downplay the discussion of global warming that scientists at the agency said the draft no longer accurately represents scientific consensus on climate change.

The FDA delayed approval of plan B for over-the-counter use based on political, not scientific, reasons, causing senior FDA officials and scientific experts to resign in protest.

Numerous scientific and medical organizations have taken positions against this abuse of science. It has been condemned in the editorial pages of the most prominent scientific journals. The Journal of Science, for instance, said that this interference invades areas once immune to this kind of manipulation.

Mr. Chairman, 52 Nobel Laureates, 62 National Medal of Science winners, 194 members of the National Academies of Science and thousands of other American scientists have signed a statement speaking out against political interference in science. To prevent and remedy these kinds of problems, we have to know about them. That is why this legislation makes clear that employees who want to disclose these kinds of abuses are entitled to whistleblower protections. Our Federal scientists should not be punished at work for coming forward to report these abuses of science.

This legislation will have no effect at all on legitimate political or policy decisions related to scientific issues. All it does is prevent retaliation against employees who report abuses of science. The amendment we are debating now would strike this critical provision.

I strongly oppose the amendment and urge all Members to vote ''nay.''

Mr. Chairman, I reserve the balance of my time.

Mr. SALI. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. ISSA).

Mr. ISSA. Mr. Chairman, I rise in support of this amendment and for the exact same reason that my colleague on the other side of the aisle opposes it.

We have a predicament that we are dealing with in this very committee, in the Committee on Oversight and Government Reform. We are dealing with global warming. The $2 billion-plus that we spend every year, and scientists like Jim Hansen and others who have been out there saying what they want to freely, the way they want to, and they have done this at a time in which there is an allegation of a problem. Quite frankly, it is amazing that when I Google, I get tens of thousands of hits on a scientist who is talking about why global warming is a threat, why we have to do things quickly, and yet there is some theory that we have stifled science.

By treating science separately in the whistleblower status, we are doing a disservice to every scientist and treating them adversely, separately and differently. This simply wants to return us to a procedure that we had before, one that has worked. In fact, Jim Hansen, who will be before our committee next week, and others have gone through a vetting process and then proceeded to make freely the speeches they wanted to make. There has not been a need for whistleblower. In fact, scientists are free to express their opinions now, and that is appropriate; they can do it under the existing guidelines.

This amendment seeks to return us to what was a functioning system, one in which we supported science, and scientists have been free to say what they want to. There may be edits going up the process that the gentleman on the other side of the aisle objects to, but there were edits under the previous administration.

I urge support of the Sali amendment, recognizing that, in fact, this would be a sword that could cut both ways and the future could be adverse to the very scientists it seeks to assist.

Mr. BRALEY of Iowa. Mr. Chairman, this amendment, which strikes section 13 of the underlying bill, is very simple; all it does is expand the term ''abuse of authority'' under existing law to include any action that compromises the validity or accuracy of federally funded research or analysis. And it is the federally funded component of that clause that makes this amendment bad for the American people.

American taxpayers should not have the risk of important scientific research being impacted by political influence from any political party. That is why it is important that this amendment be defeated.

There are those that say that politics and science will always intersect. That is absolutely true. Science doesn't give us all the answers. We have to make political and policy decisions about the right path to follow.

For example, an administration might decide not to support a certain type of research. We may not agree with that decision, but the administration has a right to make it as long as it is honest about the information and rationale behind it. What is not acceptable is when the government actually manipulates science to advance its decisions.

Hiding data, releasing misinformation, gagging scientists, all to justify a political course of action, is wrong. That is the type of action that we want Federal employees to feel safe in reporting. And that is why this bill makes crystal clear that disclosures related to manipulation and distortion of science are protected disclosures. That is why I again call upon my colleagues on both sides of the aisle to join me in voting against this amendment.

With that, Mr. Chairman, I yield back the balance of my time.

Mr. SALI. Mr. Chairman, how much time is remaining?

The Acting CHAIRMAN. The gentleman from Idaho has 1 minute remaining.

Mr. SALI. Mr. Chairman, I would expect that the good gentleman that is debating against this amendment has policies in his office that allow him to control the message that comes out of his office, not to hide anything, I'm sure, but so that he will have a uniform message. That is important at times within government agencies.

What we do not want to do, Mr. Chairman, is, we do not want to include a provision in this bill that will put scientific debate in the middle of personnel issues for the Federal Government. We do not want to put the results of scientific research, we don't want to take that out of the grasp of debate by policymakers for fear of retaliation by scientists and researchers who are doing work for the Federal Government.

Mr. Chairman, this is good public policy to have this amendment, to take this section out of the bill; and I would

urge my colleagues to support this amendment.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Idaho (Mr. SALI).

The question was taken, and the Acting Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SALI. Mr. Chairman, I demand a recorded vote.

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Idaho will be postponed.

AMENDMENT NO. 5 OFFERED BY MR. TIERNEY

The Acting CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 110–48.

Mr. TIERNEY. Mr. Chairman, I offer an amendment.

The Acting CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. TIERNEY:

Page 13, strike line 19, and all that follows through page 24, line 7, and insert the following:

SEC. 10. NATIONAL SECURITY WHISTLEBLOWER RIGHTS.

(a) IN GENERAL.—Chapter 23 of title 5, United States Code, is amended by inserting after section 2303 the following:

''§ 2303a. National security whistleblower rights

''(a) PROHIBITION OF REPRISALS.—

''(1) IN GENERAL.—In addition to any rights provided in section 2303 of this title, title VII of Public Law 105–272, or any other provision of law, an employee or former employee in a covered agency may not be discharged, demoted, or otherwise discriminated against (including by denying, suspending, or revoking a security clearance, or by otherwise restricting access to classified or sensitive information) as a reprisal for making a disclosure described in paragraph (2).

''(2) DISCLOSURES DESCRIBED.—A disclosure described in this paragraph is any disclosure of covered information which is made—

''(A) by an employee or former employee in a covered agency (without restriction as to time, place, form, motive, context, or prior disclosure made to any person by an employee or former employee, including a disclosure made in the course of an employee's duties); and

''(B) to an authorized Member of Congress, an authorized official of an Executive agency, or the Inspector General of the covered agency in which such employee or former employee is or was employed.

''(b) INVESTIGATION OF COMPLAINTS.—An employee or former employee in a covered agency who believes that such employee or former employee has been subjected to a reprisal prohibited by subsection (a) may submit a complaint to the Inspector General and the head of the covered agency. The Inspector General shall investigate the complaint and, unless the Inspector General determines that the complaint is frivolous, submit a report of the findings of the investigation within 120 days to the employee or former employee (as the case may be) and to the head of the covered agency.

''(c) REMEDY.—

''(1) Within 180 days of the filing of the complaint, the head of the covered agency shall, taking into consideration the report of the Inspector General under subsection (b) (if any), determine whether the employee or former employee has been subjected to a reprisal prohibited by subsection (a), and shall either issue an order denying relief or shall implement corrective action to return the employee or former employee, as nearly as possible, to the position he would have held had the reprisal not occurred, including voiding any directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, as well as providing back pay and related benefits, medical costs incurred, travel expenses, any other reasonable and foreseeable consequential damages, and compensatory damages (including attorney's fees, interest, reasonable expert witness fees, and costs). If the head of the covered agency issues an order denying relief, he shall issue a report to the employee or former employee detailing the reasons for the denial.

''(2)(A) If the head of the covered agency, in the process of implementing corrective action under paragraph (1), voids a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information that constituted a reprisal, the head of the covered agency may re-initiate procedures to issue a directive or order denying, suspending, or revoking a security clearance or otherwise restricting access to classified or sensitive information only if those re-initiated procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal.

''(B) In any case in which the head of a covered agency re-initiates procedures under subparagraph (A), the head of the covered agency shall issue an unclassified report to its Inspector General and to authorized Members of Congress (with a classified annex, if necessary), detailing the circumstances of the agency's re-initiated procedures and describing the manner in which those procedures are based exclusively on national security concerns and are unrelated to the actions constituting the original reprisal. The head of the covered agency shall also provide periodic updates to the Inspector General and authorized Members of Congress detailing any significant actions taken as a result of those procedures, and shall respond promptly to inquiries from authorized Members of Congress regarding the status of those procedures.

''(3) If the head of the covered agency has not made a determination under paragraph (1) within 180 days of the filing of the complaint (or he has issued an order denying relief, in whole or in part, whether within that 180-day period or thereafter, then, within 90 days after such order is issued), the employee or former employee may bring an action at law or equity for de novo review to seek any corrective action described in paragraph (1) in the appropriate United States district court (as defined by section 1221(k)(2)), which shall have jurisdiction over such action without regard to the amount in controversy. An appeal from a final decision of a district court in an action under this paragraph may, at the election of the appellant, be taken to the Court of Appeals for the Federal Circuit (which shall have jurisdiction of such appeal), in lieu of the United States court of appeals for the circuit embracing the district in which the action was brought.

''(4) An employee or former employee adversely affected or aggrieved by an order issued under paragraph (1), or who seeks review of any corrective action determined under paragraph (1), may obtain judicial review of such order or determination in the United States Court of Appeals for the Federal Circuit or any United States court of appeals having jurisdiction over appeals from any United States district court which, under section 1221(k)(2), would be an appropriate United States district court. No petition seeking such review may be filed more than 60 days after issuance of the order or the determination to implement corrective action by the head of the agency. Review shall conform to chapter 7.

''(5)(A) If, in any action for damages or relief under paragraph (3) or (4), an Executive agency moves to withhold information from discovery based on a claim that disclosure would be inimical to national security by asserting the privilege commonly referred to as the 'state secrets privilege', and if the assertion of such privilege prevents the employee or former employee from establishing an element in support of the employee's or former employee's claim, the court shall resolve the disputed issue of fact or law in favor of the employee or former employee, provided that an Inspector General investigation under subsection (b) has resulted in substantial confirmation of that element, or those elements, of the employee's or former employee's claim.

''(B) In any case in which an Executive agency asserts the privilege commonly referred to as the 'state secrets privilege', whether or not an Inspector General has conducted an investigation under subsection (b), the head of that agency shall, at the same time it asserts the privilege, issue a report to authorized Members of Congress, accompanied by a classified annex if necessary, describing the reasons for the assertion, explaining why the court hearing the matter does not have the ability to maintain the protection of classified information related to the assertion, detailing the steps the agency has taken to arrive at a mutually agreeable settlement with the employee or former employee, setting forth the date on which the classified information at issue will be declassified, and providing all relevant information about the underlying substantive matter.

''(d) APPLICABILITY TO NON-COVERED AGENCIES.—An employee or former employee in an Executive agency (or element or unit thereof) that is not a covered agency shall, for purposes of any disclosure of covered information (as described in subsection (a)(2)) which consists in whole or in part of classified or sensitive information, be entitled to the same protections, rights, and remedies under this section as if that Executive agency (or element or unit thereof) were a covered agency.

''(e) CONSTRUCTION.—Nothing in this section may be construed—

''(1) to authorize the discharge of, demotion of, or discrimination against an employee or former employee for a disclosure other than a disclosure protected by subsection (a) or (d) of this section or to modify or derogate from a right or remedy otherwise available to an employee or former employee; or

''(2) to preempt, modify, limit, or derogate any rights or remedies available to an employee or former employee under any other provision of law, rule, or regulation (including the Lloyd-La Follette Act).

No court or administrative agency may require the exhaustion of any right or remedy under this section as a condition for pursuing any other right or remedy otherwise available to an employee or former employee under any other provision of law, rule, or regulation (as referred to in paragraph (2)).

''(f) DEFINITIONS.—For purposes of this section—

''(1) the term 'covered information', as used with respect to an employee or former employee, means any information (including classified or sensitive information) which the employee or former employee reasonably believes evidences—

''(A) any violation of any law, rule, or regulation; or

''(B) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

''(2) the term 'covered agency' means—

''(A) the Federal Bureau of Investigation, the Office of the Director of National Intelligence, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and the National Reconnaissance Office; and

''(B) any other Executive agency, or element or unit thereof, determined by the President under section 2302(a)(2)(C)(ii)(II) to have as its principal function the conduct of foreign intelligence or counterintelligence activities;

''(3) the term 'authorized Member of Congress' means—

''(A) with respect to covered information about sources and methods of the Central Intelligence Agency, the Director of National Intelligence, and the National Intelligence Program (as defined in section 3(6) of the National Security Act of 1947), a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, or any other committees of the House of Representatives or Senate to which this type of information is customarily provided;

''(B) with respect to special access programs specified in section 119 of title 10, an appropriate member of the Congressional defense committees (as defined in such section); and

''(C) with respect to other covered information, a member of the House Permanent Select Committee on Intelligence, the Senate Select Committee on Intelligence, the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, or any other committees of the House of Representatives or the Senate that have oversight over the program which the covered information concerns; and

''(4) the term 'authorized official of an Executive agency' shall have such meaning as the Office of Personnel Management shall by regulation prescribe, except that such term shall, with respect to any employee or former employee in an agency, include the head, the general counsel, and the ombudsman of such agency.''.

The Acting CHAIRMAN. Pursuant to House Resolution 239, the gentleman from Massachusetts (Mr. TIERNEY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Massachusetts.

Mr. TIERNEY. Mr. Chairman, as we discussed already here, whistleblowers play a key role in holding government accountable, and this legislation takes the important and long-overdue step of providing whistleblower protections for Federal workers who specialize in national security issues.

This amendment was carefully crafted to clarify the process by which national security whistleblower information, that is, information which may evidence a violation of law, rule or regulation of gross mismanagement, fraud, waste, or abuse is shared with executive branch officials and Members of Congress. It specifically addresses information possessed by whistleblowers involving intelligence sources and methods. And in those instances that is information that is customarily provided to the House and Senate Intelligence Committees. It also makes clear that information of concern relating to the Department of Defense Special Access Programs, or SAPS as they are currently called, should be reported to the Armed Services Committee and the Defense Appropriations Subcommittee.

Overall, this clarifying amendment strengthens the bill by ensuring that current and former employees of the intelligence community, the FBI, the military and other national security elements that possess sensitive classified national security information receive adequate protections against reprisals under the law. Further, it will better ensure the protection of classified sensitive information at issue in many of these cases. So I urge my colleagues to support what I believe is a sensible amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. BRALEY of Iowa. Mr. Chairman, I am not opposed, but I ask unanimous consent to claim the time in opposition.

The Acting CHAIRMAN. Without objection, the gentleman from Iowa is recognized for 5 minutes.

There was no objection.

Mr. BRALEY of Iowa. Mr. Chairman, I rise in support of the amendment offered by the gentleman from Massachusetts (Mr. TIERNEY).

I commend Mr. TIERNEY for his work on this compromise. As a member of both the Permanent Select Committee on Intelligence and the Committee on Oversight and Government Reform, he has done a great job on expressing the concerns of both committees in a way that will allow us to move forward with this important legislation.

One particular change made by this amendment is the removal of language in the underlying bill that allows a national security whistleblower to always disclose information to a supervisor. This amendment acknowledges that there are certain circumstances where it may not be appropriate for a supervisor to receive a disclosure, such as when an employee is disclosing classified information to which the supervisor does not have access. This amendment also changes a provision in H.R. 985 regarding national security whistleblowers, to limit which Members of Congress can receive information from a national security whistleblower about an especially sensitive subject.

It is important that Federal workers who specialize in national security issues have the ability to disclose the information about government wrongdoing to Congress. These workers need to know that they have access to a safe harbor where information will be fully investigated and appropriately safeguarded. However, because of the sensitive nature of the information these whistleblowers may disclose, it is also important to ensure that appropriate Members of Congress receive these communications.

□ 1630

This amendment addresses concerns that have been raised about allowing national security whistleblowers to disclose sensitive classified information to Congress by ensuring that information will go to members of committees with expertise and procedures for handling such information.

I support this compromise amendment, and I urge all Members to vote ''yes.''

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIRMAN. All time for debate on the amendment has expired.

The question is on the amendment offered by the gentleman from Massachusetts (Mr. TIERNEY).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. PLATTS

Mr. PLATTS. Mr. Chairman, I ask unanimous consent that the request for a recorded vote on amendment No. 2 and the previous vote by voice on that amendment be vacated, to the end that the Chair put the question on adopting the amendment de novo.

The Acting CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Acting CHAIRMAN. The question is on the amendment offered by the gentleman from Pennsylvania (Mr. PLATTS).

The amendment was agreed to.

ANNOUNCEMENT BY THE ACTING CHAIRMAN

The Acting CHAIRMAN. Pursuant to clause 6 of rule XVIII, proceedings will now resume on those amendments on which further proceedings were postponed, in the following order:

Amendment No. 1 by Mr. STUPAK of Michigan.

Amendment No. 4 by Mr. SALI of Idaho.

The Chair will reduce to 5 minutes the time for any electronic vote after the first vote in this series.

AMENDMENT NO. 1 OFFERED BY MR. STUPAK

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. STUPAK) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 250, noes 178, not voting 10, as follows:

[Roll No. 149]

AYES—250

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bartlett (MD)
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Bordallo
Boren
Boswell
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson
Castor
Chandler
Christensen
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Courtney
Cramer
Crowley
Cubin
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
DeFazio
DeGette
Delahunt
DeLauro
Dent
Dicks
Dingell
Doggett
Donnelly
Doyle
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Ferguson
Filner
Fortenberry
Frank (MA)
Giffords
Gilchrest
Gillibrand
Gillmor
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson, E. B.
Jones (NC)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
Klein (FL)
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McDermott
McGovern
McIntyre
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Michaud
Millender-McDonald
Miller (NC)
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler
Napolitano
Neal (MA)
Norton
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Perlmutter
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reichert
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shays
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Tiahrt
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wilson (OH)
Woolsey
Wu
Wynn
Yarmuth

NOES—178

Aderholt
Akin
Alexander
Bachmann
Bachus
Baker
Barrett (SC)
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono
Boozman
Brady (TX)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Coble
Cole (OK)
Conaway
Crenshaw
Culberson
Davis (KY)
Davis, David
Davis, Tom
Deal (GA)
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Emerson
English (PA)
Everett
Fallin
Feeney
Flake
Forbes
Fortuño
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey
Gohmert
Goode
Goodlatte
Graves
Hall (TX)
Hastert
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Hobson
Hoekstra
Hulshof
Hunter
Inglis (SC)
Issa
Jindal
Johnson (IL)
Johnson, Sam
Jordan
Keller
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Knollenberg
Kuhl (NY)
Lamborn
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Musgrave
Myrick
Neugebauer
Nunes
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Sali
Schmidt
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (TX)
Souder
Stearns
Sullivan
Tancredo
Thornberry
Tiberi
Turner
Upton
Walberg
Walsh (NY)
Wamp
Weldon (FL)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—10

Brown (SC)
Costa
Costello
Davis, Jo Ann
Granger
Jones (OH)
Meehan
Miller, George
Saxton
Tanner

□ 1658

Messrs. PEARCE, CAMPBELL of California and DEAL of Georgia changed their vote from ''aye'' to ''no.''

Mrs. LOWEY and Messrs. BARTLETT of Maryland, WALDEN of Oregon and ISRAEL changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 4 OFFERED BY MR. SALI

The Acting CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Idaho (Mr. SALI) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The Acting CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 159, noes 271, not voting 8, as follows:

[Roll No. 150]

AYES—159

Aderholt
Akin
Alexander
Bachmann
Bachus
Baker
Barrett (SC)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono
Boozman
Brady (TX)
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chabot
Coble
Cole (OK)
Conaway
Crenshaw
Culberson
Davis (KY)
Davis, David
Davis, Tom
Deal (GA)
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Emerson
English (PA)
Everett
Fallin
Feeney
Flake
Forbes
Fortuño
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey
Gohmert
Goode
Goodlatte
Graves
Hall (TX)
Hastert
Hastings (WA)
Hayes
Heller
Hensarling
Hobson
Hunter
Inglis (SC)
Issa
Johnson, Sam
Jones (NC)
Jordan
Keller
King (IA)
King (NY)
Kingston
Kline (MN)
Knollenberg
Kuhl (NY)
Lamborn
Latham
Lewis (KY)
Linder
Lucas
Lungren, Daniel E.
Manzullo
Marchant
McCarthy (CA)
McCaul (TX)
McCotter
McCrery
McHenry
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Musgrave
Myrick
Neugebauer
Nunes
Paul
Pearce
Pence
Peterson (PA)
Pickering
Pitts
Poe
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Sali
Schmidt
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (TX)
Souder
Stearns
Sullivan
Terry
Thornberry
Tiberi
Turner
Upton
Walberg
Wamp
Weldon (FL)
Weller
Westmoreland
Whitfield
Wilson (NM)
Wilson (SC)
Young (AK)

NOES—271

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bartlett (MD)
Barton (TX)
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Bordallo
Boren
Boswell
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Brown-Waite, Ginny
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson
Castle
Castor
Chandler
Christensen
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crowley
Cubin
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
DeFazio
DeGette
Delahunt
DeLauro
Dent
Dicks
Dingell
Doggett
Donnelly
Doyle
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Engel
Eshoo
Etheridge
Faleomavaega
Farr
Fattah
Ferguson
Filner
Fortenberry
Frank (MA)
Giffords
Gilchrest
Gillibrand
Gillmor
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Hall (NY)
Hare
Harman
Hastings (FL)
Herger
Herseth
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hodes
Hoekstra
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)

Jefferson
Jindal
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
Kirk
Klein (FL)
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Lee
Levin
Lewis (CA)
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mack
Mahoney (FL)
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McDermott
McGovern
McHugh
McIntyre
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Michaud
Millender-McDonald
Miller (NC)
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler
Napolitano
Neal (MA)
Norton
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Perlmutter
Peterson (MN)
Petri
Platts
Pomeroy
Price (NC)
Rahall
Rangel
Regula
Reichert
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shays
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tancredo
Tauscher
Taylor
Thompson (CA)
Thompson (MS)
Tiahrt
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh (NY)
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wicker
Wilson (OH)
Wolf
Woolsey
Wu
Wynn
Yarmuth
Young (FL)

NOT VOTING—8

Brown (SC)
Davis, Jo Ann
Granger
Gutierrez
Meehan
Miller, George
Saxton
Tanner

□ 1708

So the amendment was rejected.

The result of the vote was announced as above recorded.

The Acting CHAIRMAN. There being no further amendments, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SCOTT of Georgia) having assumed the chair, Mr. ROSS, Acting Chairman of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 985) to amend title 5, United States Code, to clarify which disclosures of information are protected from prohibited personnel practices; to require a statement in nondisclosure policies, forms, and agreements to the effect that such policies, forms, and agreements are consistent with certain disclosure protections, and for other purposes, pursuant to House Resolution 239, he reported the bill, as amended by that resolution, back to the House with sundry further amendments adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any further amendment reported from the Committee of the Whole?

Mr. PRICE of Georgia. Mr. Speaker, I demand a re-vote on the Stupak amendment.

The SPEAKER pro tempore. Is a separate vote demanded on any other amendment? If not, the Chair will put them en gros.

The amendments were agreed to.

The SPEAKER pro tempore. The Clerk will redesignate the amendment on which a separate vote has been demanded.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. STUPAK:

Page 28, line 19, strike ''and''.

Page 28, line 21, strike ''technical.'.'' and insert ''technical; and''.

Page 28, after line 21, add the following:

''(3) any action that restricts or prevents an employee or any person performing federally funded research or analysis from publishing in peer-reviewed journals or other scientific publications or making oral presentations at professional society meetings or other meetings of their peers.''.

The SPEAKER pro tempore. The question is on the amendment.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. PRICE of Georgia. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 252, nays 173, not voting 8, as follows:

[Roll No. 151]

YEAS—252

Abercrombie
Ackerman
Allen
Altmire
Andrews
Arcuri
Baca
Baird
Baldwin
Barrow
Bartlett (MD)
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Braley (IA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carney
Carson
Castor
Chandler
Clarke
Clay
Cleaver
Clyburn
Cohen
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crowley
Cubin
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis, Lincoln
DeFazio
DeGette
Delahunt
DeLauro
Dent
Dicks
Dingell
Doggett
Donnelly
Doyle
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Engel
Eshoo
Etheridge
Farr
Fattah
Ferguson
Filner
Fortenberry
Frank (MA)
Giffords
Gilchrest
Gillibrand
Gillmor
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hare
Harman
Hastings (FL)
Herseth
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hodes
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Jones (NC)
Jones (OH)
Kagen
Kanjorski
Kaptur
Kennedy
Kildee
Kilpatrick
Kind
Klein (FL)
Kucinich
LaHood
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lynch
Mahoney (FL)
Maloney (NY)
Markey
Marshall
Matheson
Matsui
McCarthy (NY)
McCollum (MN)
McDermott
McGovern
McIntyre
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Michaud
Millender-McDonald
Miller (NC)
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Payne
Perlmutter
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reichert
Renzi
Reyes
Rodriguez
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shays
Shea-Porter
Sherman
Shuler
Sires
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sutton
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Tiahrt
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Wexler
Wilson (OH)
Woolsey
Wu
Wynn
Yarmuth
Young (AK)

NAYS—173

Aderholt
Akin
Alexander
Bachmann
Bachus
Baker
Barrett (SC)
Barton (TX)
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Bono
Boozman
Brady (TX)
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Castle
Chabot
Coble
Cole (OK)
Conaway
Crenshaw
Culberson
Davis (KY)
Davis, David
Davis, Tom
Deal (GA)
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Emerson
English (PA)
Everett
Fallin
Feeney
Flake
Forbes
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gingrey
Gohmert
Goode
Goodlatte
Graves
Hall (TX)
Hastert
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Hobson
Hoekstra
Hulshof
Hunter
Inglis (SC)
Issa
Jindal
Johnson, Sam
Jordan
Keller
King (IA)
King (NY)
Kingston
Kirk
Kline (MN)
Knollenberg
Kuhl (NY)
Lamborn
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCarthy (CA)
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (MI)
Miller, Gary
Musgrave
Myrick
Neugebauer
Nunes
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Royce
Ryan (WI)
Sali
Schmidt
Sensenbrenner
Sessions
Shadegg
Shimkus
Shuster
Simpson
Smith (NE)
Smith (TX)
Souder
Stearns
Sullivan
Tancredo
Thornberry
Tiberi
Turner
Upton
Walberg
Walsh (NY)
Wamp
Weldon (FL)
Weller
Westmoreland

Whitfield	Wilson (NM)	Wolf
Wicker	Wilson (SC)	Young (FL)

NOT VOTING—8

Brown (SC)	Meehan	Saxton
Davis, Jo Ann	Miller (FL)	Tanner
Granger	Miller, George	

□ 1727

So the amendment was agreed to.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

□ 1730

MOTION TO RECOMMIT OFFERED BY MR. WESTMORELAND

Mr. WESTMORELAND. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. WESTMORELAND. I am in its present form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Westmoreland moves to recommit the bill H.R. 985 to the Committee on Oversight and Government Reform with instructions that the Committee report the same back to the House forthwith with the following amendments:

Page 28, line 13, before ''Section'' insert ''(a) IN GENERAL.—____''.

Page 28, line 19, strike ''and''.

Page 28, line 21, strike ''.'' and insert ''; and''.

Page 28, after line 21, insert the following:

''(4) any action that discriminates for or against any employee or applicant for employment on the basis of religion, as defined by section 13(b) of the Whistleblower Protection Enhancement Act of 2007.''.

Page 28, after line 21 (following the matter inserted by the previous amendment), add the following:

(b) DEFINITION.—As used in section 2302(f)(3) of title 5, United States Code (as amended by subsection (a)), the term ''on the basis of religion'' means—

(1) prohibiting personal religious expression by Federal employees to the greatest extent possible, consistent with requirements of law and interests in workplace efficiency;

(2) requiring religious participation or nonparticipation as a condition of employment, or permitting religious harassment;

(3) failing to accommodate employees' exercise of their religion;

(4) failing to treat all employees with the same respect and consideration, regardless of their religion (or lack thereof);

(5) restricting personal religious expression by employees in the Federal workplace except where the employee's interest in the expression is outweighed by the government's interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion;

(6) regulating employees' personal religious expression on the basis of its content or viewpoint, or suppressing employees' private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect on the efficiency of the workplace, including ideological speech on politics and other topics;

(7) failing to exercise their authority in an evenhanded and restrained manner, and with regard for the fact that Americans are used to expressions of disagreement on controversial subjects, including religious ones;

(8) failing to permit an employee to engage in private religious expression in personal work areas not regularly open to the public to the same extent that they may engage in nonreligious private expression, subject to reasonable content- and viewpoint-neutral standards and restrictions;

(9) failing to permit an employee to engage in religious expression with fellow employees, to the same extent that they may engage in comparable nonreligious private expression, subject to reasonable and content-neutral standards and restrictions;

(10) failing to permit an employee to engage in religious expression directed at fellow employees, and may even attempt to persuade fellow employees of the correctness of their religious views, to the same extent as those employees may engage in comparable speech not involving religion;

(11) inhibiting an employee from urging a colleague to participate or not to participate in religious activities to the same extent that, consistent with concerns of workplace efficiency, they may urge their colleagues to engage in or refrain from other personal endeavors, except that the employee must refrain from such expression when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome;

(12) failing to prohibit expression that is part of a larger pattern of verbal attacks on fellow employees (or a specific employee) not sharing the faith of the speaker;

(13) preventing an employee from—

(A) wearing personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry; or

(B) displaying religious art and literature in their personal work areas to the same extent that they may display other art and literature, so long as the viewing public would reasonably understand the religious expression to be that of the employee acting in her personal capacity, and not that of the government itself;

(14) prohibiting an employee from using their private time to discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities;

(15) discriminating against an employee on the basis of their religion, religious beliefs, or views concerning their religion by promoting, refusing to promote, hiring, refusing to hire, or otherwise favoring or disfavoring, an employee or potential employee because of his or her religion, religious beliefs, or views concerning religion, or by explicitly or implicitly, insisting that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment or insisting that an employee refrain from participating in religious activities outside the workplace except pursuant to otherwise legal, neutral restrictions that apply to employees' off-duty conduct and expression in general (such as restrictions on political activities prohibited by the Hatch Act);

(16) prohibiting a supervisor's religious expression where it is not coercive and is understood to be his or her personal view, in the same way and to the same extent as other constitutionally valued speech;

(17) permitting a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers, as determined by its frequency or repetitiveness, and severity;

(18) failing to accommodate an employee's exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations, based on real rather than speculative or hypothetical cost and without disfavoring other, nonreligious accommodations; and

(19) in those cases where an agency's work rule imposes a substantial burden on a particular employee's exercise of religion, failing to grant the employee an exemption from that rule, absent a compelling interest in denying the exemption and where there is no less restrictive means of furthering that interest.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

Mr. WESTMORELAND (during the reading). Mr. Speaker, I ask unanimous consent that the motion be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Georgia?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Georgia is recognized for 5 minutes in support of his motion.

Mr. WESTMORELAND. Mr. Speaker, I offer this motion to recommit with instructions.

One of the most confusing areas of public life for most Americans involves to what extent a person may express their personal religious views. Everyone believes they have complete religious freedom and yet the media often reports instances where courts or administrators say people may not express their religious faith. The unfortunate result of this confusion is that people tend to self-censor their behavior.

In 1997, the Clinton administration sent out guidelines to all Federal agencies that specifically detailed an employee's right to religious expression in the workplace. As then-President Clinton said in his remarks on the executive memorandum, ''Religious freedom is at the heart of what it means to be an American and at the heart of our journey to become truly one America.''

America continues to see ever-growing and diverse forms of religious expression, and unfortunately we have also seen an increase in the attempts to undermine religious freedom and expression.

So, as we consider this bill, we should be clear that the Federal employees do not have to check their faith at the door of their workplace and are protected under this bill if they do report violations of the current Clinton-era guidelines. In fact, it is often their faith that makes them the compassionate social worker in the employment office, the loving teacher in the Head Start program and the caring medical professionals treating our wounded soldiers.

There is nothing more personal than a person's faith, and our Federal employees deserve to know that they cannot be forced to check their quality of life at the door. As such, this motion provides that it is an abuse of authority for Federal agencies to prevent a Federal employee from blowing the whistle on instances of retaliation against permissible religious exercise and expression in the workplace.

The definition of permissible religious exercise and expression is drawn from President Clinton's 1997 memorandum to Federal agencies regarding religious expression in the Federal workplace. It includes, for example, the ability of Federal employees to have a Bible on their desk, wear a religious emblem on their clothing, or to express their views to other employees. It also includes provisions protecting against discrimination, harassment and coercion.

I believe this is an important addition to this bill, Mr. Speaker, and I urge my colleagues to support the addition of this language.

Mr. Speaker, I yield back the balance of my time.

Mr. TIERNEY. Mr. Speaker, I am not opposing the motion, but I ask unanimous consent to claim the time in opposition.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

Mr. TIERNEY. Mr. Speaker, we are prepared to accept this motion, and assume that means we will have unanimity on final passage.

This appears to track President Clinton's executive order, and it is, in fact, current law. To that extent, we have no difficulty in accepting it.

The motion to recommit seems to extend the coverage of the Whistleblower Protection Act to whistleblowers who report violations of President Clinton's guidelines of religious exercise and religious expression in the Federal workplace.

The guidelines apply to all civilian executive branch agencies, officials, and employees of the Federal workforce, they specify which religious expressions by covered employees, and under what circumstances, are permitted or may be regulated or prohibited.

The guidelines were issued by President Clinton to clarify how to address the sometimes difficult situations in the workplace where an agency must balance the free expression rights of Federal workers with the rights of other workers and the obligation of Federal authorities not to engage in the official promotion of religion.

By providing greater clarity, the guidelines have helped to avoid conflicts in the Federal workplace over the balance between religious expression and the obligations of the Federal Government to the Constitution, other employees and the general public.

With that, as I said, it seems to track that executive order; and if it does, we are happy to accept it.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. WESTMORELAND. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 426, noes 0, not voting 7, as follows:

[Roll No. 152]

AYES—426

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Altmire
Andrews
Arcuri
Baca
Bachmann
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bean
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd (FL)
Boyda (KS)
Brady (PA)
Brady (TX)
Braley (IA)
Brown, Corrine
Brown-Waite, Ginny
Buchanan
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardoza
Carnahan
Carney
Carson
Carter
Castle
Castor
Chabot
Chandler
Clarke
Clay
Cleaver
Clyburn
Coble
Cohen
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Courtney
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis, David
Davis, Lincoln
Davis, Tom
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Donnelly
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Ellison
Ellsworth
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Fallin
Farr
Fattah
Feeney
Ferguson
Filner
Flake
Forbes
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Giffords
Gilchrest
Gillibrand
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Graves
Green, Al
Green, Gene
Grijalva
Gutierrez
Hall (NY)
Hall (TX)
Hare
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayes
Heller
Hensarling
Herger
Herseth
Higgins
Hill
Hinchey
Hinojosa
Hirono
Hobson
Hodes
Hoekstra
Holden
Holt
Honda
Hooley
Hoyer
Hulshof
Hunter
Inglis (SC)
Inslee
Israel
Issa
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jindal
Johnson (GA)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Jordan
Kagen
Kanjorski
Kaptur
Keller
Kennedy
Kildee
Kilpatrick
Kind
King (IA)
King (NY)
Kingston
Kirk
Klein (FL)
Kline (MN)
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Lamborn
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Loebsack
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Mahoney (FL)
Maloney (NY)
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy (CA)
McCarthy (NY)
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNerney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Nunes
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pence
Perlmutter
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rodriguez
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Roskam
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sali
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schmidt
Schwartz
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Sestak
Shadegg
Shays
Shea-Porter
Sherman
Shimkus
Shuler
Shuster
Simpson
Sires
Skelton
Slaughter
Smith (NE)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Solis
Souder
Space
Spratt
Stark
Stearns
Stupak
Sullivan
Sutton
Tancredo
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walberg
Walden (OR)
Walsh (NY)
Walz (MN)
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Weldon (FL)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (OH)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Yarmuth
Young (AK)
Young (FL)

NOT VOTING—7

Brown (SC)
Davis, Jo Ann
Granger
Meehan
Miller, George
Saxton
Tanner

□ 1758

Mr. SHERMAN changed his vote from ''no'' to ''aye.''

So the motion to recommit was agreed to.

The result of the vote was announced as above recorded.

Mr. BRALEY of Iowa. Mr. Speaker, pursuant to the instructions of the House on the motion to recommit, I report the bill, H.R. 985, back to the House with an amendment.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment:

Page 28, line 13, before ''Section'' insert ''(a) IN GENERAL.—____''.

Page 28, line 19, strike ''and''.

Page 28, line 21, strike ''.'' and insert ''; and''.

Page 28, after line 21, insert the following:

''(4) any action that discriminates for or against any employee or applicant for employment on the basis of religion, as defined by section 13(b) of the Whistleblower Protection Enhancement Act of 2007.''.

Page 28, after line 21 (following the matter inserted by the previous amendment), add the following:

(b) DEFINITION.—As used in section 2302(f)(3) of title 5, United States Code (as amended by subsection (a)), the term ''on the basis of religion'' means—

(1) prohibiting personal religious expression by Federal employees to the greatest extent possible, consistent with requirements of law and interests in workplace efficiency;

(2) requiring religious participation or nonparticipation as a condition of employment, or permitting religious harassment;

(3) failing to accommodate employees' exercise of their religion;

(4) failing to treat all employees with the same respect and consideration, regardless of their religion (or lack thereof);

(5) restricting personal religious expression by employees in the Federal workplace except where the employee's interest in the expression is outweighed by the government's interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion;

(6) regulating employees' personal religious expression on the basis of its content or viewpoint, or suppressing employees' private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect on the efficiency of the workplace, including ideological speech on politics and other topics;

(7) failing to exercise their authority in an evenhanded and restrained manner, and with regard for the fact that Americans are used to expressions of disagreement on controversial subjects, including religious ones;

(8) failing to permit an employee to engage in private religious expression in personal work areas not regularly open to the public to the same extent that they may engage in nonreligious private expression, subject to reasonable content- and viewpoint-neutral standards and restrictions;

(9) failing to permit an employee to engage in religious expression with fellow employees, to the same extent that they may engage in comparable nonreligious private expression, subject to reasonable and content-neutral standards and restrictions;

(10) failing to permit an employee to engage in religious expression directed at fellow employees, and may even attempt to persuade fellow employees of the correctness of their religious views, to the same extent as those employees may engage in comparable speech not involving religion;

(11) inhibiting an employee from urging a colleague to participate or not to participate in religious activities to the same extent that, consistent with concerns of workplace efficiency, they may urge their colleagues to engage in or refrain from other personal endeavors, except that the employee must refrain from such expression when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome;

(12) failing to prohibit expression that is part of a larger pattern of verbal attacks on fellow employees (or a specific employee) not sharing the faith of the speaker;

(13) preventing an employee from—

(A) wearing personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry; or

(B) displaying religious art and literature in their personal work areas to the same extent that they may display other art and literature, so long as the viewing public would reasonably understand the religious expression to be that of the employee acting in her personal capacity, and not that of the government itself;

(14) prohibiting an employee from using their private time to discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities;

(15) discriminating against an employee on the basis of their religion, religious beliefs, or views concerning their religion by promoting, refusing to promote, hiring, refusing to hire, or otherwise favoring or disfavoring, an employee or potential employee because of his or her religion, religious beliefs, or views concerning religion, or by explicitly or implicitly, insisting that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment or insisting that an employee refrain from participating in religious activities outside the workplace except pursuant to otherwise legal, neutral restrictions that apply to employees' off-duty conduct and expression in general (such as restrictions on political activities prohibited by the Hatch Act);

(16) prohibiting a supervisor's religious expression where it is not coercive and is understood to be his or her personal view, in the same way and to the same extent as other constitutionally valued speech;

(17) permitting a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers, as determined by its frequency or repetitiveness, and severity;

(18) failing to accommodate an employee's exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations, based on real rather than speculative or hypothetical cost and without disfavoring other, nonreligious accommodations; and

(19) in those cases where an agency's work rule imposes a substantial burden on a particular employee's exercise of religion, failing to grant the employee an exemption from that rule, absent a compelling interest in denying the exemption and where there is no less restrictive means of furthering that interest.

(c) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person.

Mr. BRALEY of Iowa (during the reading). Mr. Speaker, I ask unanimous consent that the amendment be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

The SPEAKER pro tempore. The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

Mr. BRALEY of Iowa. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 331, nays 94, not voting 8, as follows:

[Roll No. 153]

YEAS—331

Abercrombie	Davis (AL)	Honda
Ackerman	Davis (CA)	Hooley
Alexander	Davis (IL)	Hoyer
Allen	Davis, Lincoln	Hulshof
Altmire	Davis, Tom	Inslee
Andrews	DeFazio	Israel
Arcuri	DeGette	Issa
Baca	Delahunt	Jackson (IL)
Bachus	DeLauro	Jackson-Lee (TX)
Baird	Dent	Jefferson
Baldwin	Diaz-Balart, L.	Jindal
Barrow	Diaz-Balart, M.	Johnson (GA)
Bartlett (MD)	Dicks	Johnson (IL)
Barton (TX)	Dingell	Johnson, E. B.
Bean	Doggett	Jones (NC)
Becerra	Donnelly	Jones (OH)
Berkley	Doolittle	Kagen
Berman	Doyle	Kanjorski
Berry	Drake	Kaptur
Bilbray	Edwards	Keller
Bilirakis	Ehlers	Kennedy
Bishop (GA)	Ellison	Kildee
Bishop (NY)	Ellsworth	Kilpatrick
Blumenauer	Emanuel	Kind
Bono	Emerson	King (NY)
Boozman	Engel	Kirk
Boren	English (PA)	Klein (FL)
Boswell	Eshoo	Kucinich
Boucher	Etheridge	Kuhl (NY)
Boustany	Farr	LaHood
Boyd (FL)	Fattah	Lampson
Boyda (KS)	Ferguson	Langevin
Brady (PA)	Filner	Lantos
Braley (IA)	Fortenberry	Larsen (WA)
Brown, Corrine	Fossella	Larson (CT)
Brown-Waite, Ginny	Frank (MA)	LaTourette
Buchanan	Frelinghuysen	Lee
Burton (IN)	Gerlach	Levin
Butterfield	Giffords	Lewis (CA)
Calvert	Gilchrest	Lewis (GA)
Camp (MI)	Gillibrand	Lipinski
Capito	Gillmor	LoBiondo
Capps	Gohmert	Loebsack
Capuano	Gonzalez	Lofgren, Zoe
Cardoza	Goode	Lowey
Carnahan	Goodlatte	Lucas
Carney	Gordon	Lynch
Carson	Graves	Mahoney (FL)
Castle	Green, Al	Maloney (NY)
Castor	Green, Gene	Manzullo
Chabot	Grijalva	Markey
Chandler	Gutierrez	Marshall
Clarke	Hall (NY)	Matheson
Clay	Hall (TX)	Matsui
Cleaver	Hare	McCarthy (NY)
Clyburn	Harman	McCaul (TX)
Coble	Hastings (FL)	McCollum (MN)
Cohen	Hayes	McCrery
Cole (OK)	Heller	McDermott
Conyers	Herger	McGovern
Cooper	Herseth	McHugh
Costa	Higgins	McIntyre
Costello	Hill	McMorris Rodgers
Courtney	Hinchey	McNerney
Cramer	Hinojosa	McNulty
Crenshaw	Hirono	Meek (FL)
Crowley	Hobson	Meeks (NY)
Cuellar	Hodes	Melancon
Cummings	Holden	
	Holt	

Michaud
Millender-McDonald
Miller (MI)
Miller (NC)
Mitchell
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy (CT)
Murphy, Patrick
Murphy, Tim
Murtha
Nadler
Napolitano
Neal (MA)
Nunes
Oberstar
Obey
Olver
Ortiz
Pallone
Pascrell
Pastor
Paul
Payne
Perlmutter
Peterson (MN)
Peterson (PA)
Petri
Pickering
Platts
Poe
Pomeroy
Porter
Price (NC)
Pryce (OH)
Rahall
Ramstad
Rangel
Regula
Reichert
Renzi
Reyes
Rodriguez
Rohrabacher
Ros-Lehtinen
Roskam
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sarbanes
Schakowsky
Schiff
Schwartz
Scott (GA)
Scott (VA)
Serrano
Sestak
Shays
Shea-Porter
Sherman
Shimkus
Shuler
Sires
Skelton
Slaughter
Smith (NJ)
Smith (WA)
Snyder
Solis
Space
Spratt
Stark
Stupak
Sullivan
Sutton
Tauscher
Taylor
Terry
Thompson (CA)
Thompson (MS)
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh (NY)
Walz (MN)
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Welch (VT)
Weller
Wexler
Whitfield
Wicker
Wilson (OH)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Yarmuth
Young (AK)

NAYS—94

Aderholt
Akin
Bachmann
Baker
Barrett (SC)
Biggert
Bishop (UT)
Blackburn
Blunt
Boehner
Bonner
Brady (TX)
Burgess
Buyer
Campbell (CA)
Cannon
Cantor
Carter
Conaway
Cubin
Culberson
Davis (KY)
Davis, David
Deal (GA)
Dreier
Duncan
Everett
Fallin
Feeney
Flake
Forbes
Foxx
Franks (AZ)
Gallegly
Garrett (NJ)
Gingrey
Hastert
Hastings (WA)
Hensarling
Hoekstra
Hunter
Inglis (SC)
Johnson, Sam
Jordan
King (IA)
Kingston
Kline (MN)
Knollenberg
Lamborn
Latham
Lewis (KY)
Linder
Lungren, Daniel E.
Mack
Marchant
McCarthy (CA)
McHenry
McKeon
Mica
Miller (FL)
Miller, Gary
Musgrave
Myrick
Neugebauer
Pearce
Pence
Pitts
Price (GA)
Putnam
Radanovich
Rehberg
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Sali
Schmidt
Sensenbrenner
Sessions
Shadegg
Shuster
Simpson
Smith (NE)
Smith (TX)
Souder
Stearns
Tancredo
Thornberry
Walberg
Wamp
Weldon (FL)
Westmoreland
Wilson (NM)
Young (FL)

NOT VOTING—8

Brown (SC)
Davis, Jo Ann
Granger
McCotter
Meehan
Miller, George
Saxton
Tanner

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1808

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. BRALEY of Iowa. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 985, the Whistleblower Protection Enhancement Act of 2007.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Iowa?

There was no objection.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1362, ACCOUNTABILITY IN CONTRACTING ACT

Ms. CASTOR, from the Committee on Rules, submitted a privileged report (Rept. No. 110–49) on the resolution (H. Res. 242) providing for consideration of the bill (H.R. 1362) to reform acquisition practices of the Federal Government, which was referred to the House Calendar and ordered to be printed.

ELECTION OF MEMBERS TO JOINT COMMITTEE ON PRINTING AND JOINT COMMITTEE OF CONGRESS ON THE LIBRARY

Ms. MILLENDER-McDONALD. Mr. Speaker, I offer a resolution (H. Res. 244) and I ask unanimous consent for its immediate consideration in the House.

The Clerk read the resolution, as follows:

H. RES. 244

Resolved,

SECTION 1. ELECTION OF MEMBERS TO JOINT COMMITTEE ON PRINTING AND JOINT COMMITTEE OF CONGRESS ON THE LIBRARY.

(a) JOINT COMMITTEE ON PRINTING.—The following Members are hereby elected to the Joint Committee on Printing, to serve with the chair of the Committee on House Administration:

(1) Mr. Brady of Pennsylvania.
(2) Mr. Capuano.
(3) Mr. Ehlers.
(4) Mr. McCarthy of California.

(b) JOINT COMMITTEE OF CONGRESS ON THE LIBRARY.—The following Members are hereby elected to the Joint Committee of Congress on the Library, to serve with the chair of the Committee on House Administration:

(1) Ms. Zoe Lofgren of California.
(2) Mr. Ehlers.
(3) Mr. Daniel E. Lungren of California.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from California?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

DIRECTOR MUELLER SHOULD STEP DOWN

(Mr. GOHMERT asked and was given permission to address the House for 1 minute.)

Mr. GOHMERT. Mr. Speaker, regarding the recently revealed abuses of power and process by the FBI, Director Mueller has now indicated that he should have provided adequate training, experience and oversight. He is right.

But it also ignores what may have been one of the underlying contributors to the ultimate problem now revealed. Director Mueller has for some time now changed personnel policies at the FBI that he knew would drive out some of his best agents with the most and best experience to handle such very sensitive PATRIOT Act powers. When a director decides that his policies are far wiser than others, even as he sees that he is driving many of his best, most experienced agents and employees out of their supervisory roles, he has an even greater burden to see that his agents are trained.

Some tried to advise him of the damage to the ranks of experience that he was causing by what he thought to be innovative personnel management. He did not listen, and he did not ensure that the turnover he was creating left adequately trained personnel.

It is a wonderful thing when a leader goes against all the critics to do what he knows to be right, and he is, in fact, right. However, when a leader goes against critics who tried to tell him he was wrong, and he is later proved to be quite wrong, he should do the noble thing and step down without further ado.

Director Mueller has stated himself he must take the responsibility, and he is right. He must and he should. He should step down.

OUR NATION MUST SHOW RESOLVE AGAINST THE IRANIAN NUCLEAR THREAT

(Mr. CANTOR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CANTOR. Mr. Speaker, recently some Members of the House have proposed using the supplemental appropriations bill to restrict the President's ability to defend our country and its allies from a hostile Iran. Attempts to curtail the bargaining ability and leverage of the United States comes at the precise moment when our Nation must show strength.

However, attempts to dampen our resolve and security send the anti-U.S. forces in Tehran a signal that America is weak. If Iran continues to see that America stands determined to prevent it from going nuclear, it will be encouraged to become a responsible member of the international community.

If we falter, the Iranian nuclear threat may well become a reality. Mr. Speaker, we must not let that happen.

□ 1815

SPECIAL ORDERS

The SPEAKER pro tempore (Mr. PERLMUTTER). Under the Speaker's announced policy of January 18, 2007, and under a previous order of the House,