

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

The bill was read the third time.

The bill (H.R. 339), as amended, was passed.

SERGEANT JOSEPH GEORGE KUSICK VA COMMUNITY LIVING CENTER

Mr. PORTMAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2210, which was received from the House.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2210) to designate the community living center of the Department of Veterans Affairs in Butler Township, Butler County, Pennsylvania, as the "Sergeant Joseph George Kusick VA Community Living Center."

There being no objection, the Senate proceeded to consider the bill.

Mr. PORTMAN. I ask unanimous consent that the bill be considered read a third time and passed and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2210) was ordered to a third reading, was read the third time, and passed.

VETERANS APPEALS IMPROVEMENT AND MODERNIZATION ACT OF 2017

Mr. PORTMAN. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be discharged from further consideration of H.R. 2288 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2288) to amend title 38, United States Code, to reform the rights and processes relating to appeals of decisions regarding claims for benefits under the laws administered by the Secretary of Veterans Affairs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. PORTMAN. Mr. President, I ask unanimous consent that the Isakson substitute amendment at the desk be considered and agreed to; the bill, as amended, be considered read a third time and passed; and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 745) in the nature of a substitute was agreed to.

(The amendment is printed in today's RECORD under "Text of Amendments.")

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

The bill was read the third time.

The bill (H.R. 2288), as amended, was passed.

#### OFFICE OF SPECIAL COUNSEL REAUTHORIZATION ACT OF 2017

Mr. PORTMAN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 93, S. 582.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 582) to reauthorize the Office of Special Counsel, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Homeland Security and Governmental Affairs, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italics.)

S. 582

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Office of Special Counsel Reauthorization Act of 2017".

#### SEC. 2. ADEQUATE ACCESS OF SPECIAL COUNSEL TO INFORMATION.

Section 1212(b) of title 5, United States Code, is amended by adding at the end the following:

"(5)(A) Except as provided in subparagraph (B), the Special Counsel, in carrying out this subchapter, is authorized to—

"(i) have timely access to all records, data, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable agency that relate to an investigation, review, or inquiry conducted under—

"(I) section 1213, 1214, 1215, or 1216 of this title; or

"(II) section 4324(a) of title 38;

"(ii) request from any agency the information or assistance that may be necessary for the Special Counsel to carry out the duties and responsibilities of the Special Counsel under this subchapter; and

"(iii) require, during an investigation, review, or inquiry of an agency, the agency to provide to the Special Counsel any record or other information that relates to an investigation, review, or inquiry conducted under—

"(I) section 1213, 1214, 1215, or 1216 of this title; or

"(II) section 4324(a) of title 38.

"(B)(i) The authorization of the Special Counsel under subparagraph (A) shall not apply with respect to any entity that is an element of the intelligence community, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003), unless the Special Counsel is investigating, or otherwise carrying out activities relating to the enforcement of, an action under subchapter III of chapter 73.

"(ii) The Attorney General or an Inspector General may withhold from the Special Counsel material described in subparagraph (A) if—

"(I) disclosing the material could reasonably be expected to interfere with a criminal investigation or prosecution that is ongoing as of the date on which the Special Counsel submits a request for the material; and

"(II) the Attorney General or the Inspector General, as applicable, submits to the Special Counsel a written report that describes—

"(aa) the material being withheld; and

"(bb) the reason that the material is being withheld.

"(C)(i) A claim of common law privilege by an agency, or an officer or employee of an agency, shall not prevent the Special Counsel from obtaining any material described in subparagraph (A)(i) with respect to the agency.

"(ii) The submission of material described in subparagraph (A)(i) by an agency to the Special Counsel may not be deemed to waive any assertion of privilege by the agency against a non-Federal entity or against an individual in any other proceeding.

"(iii) With respect to any record or other information made available to the Special Counsel by an agency under subparagraph (A), the Special Counsel may only disclose the record or information for a purpose that is in furtherance of any authority provided to the Special Counsel in this subchapter.

"(6) The Special Counsel shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and each committee of Congress with jurisdiction over the applicable agency a report regarding any case of contumacy or failure to comply with a request submitted by the Special Counsel under paragraph (5)(A)."

#### SEC. 3. INFORMATION ON WHISTLEBLOWER PROTECTIONS.

(a) AGENCY RESPONSIBILITIES.—Section 2302 of title 5, United States Code, is amended by striking subsection (c) and inserting the following:

"(c)(1) In this subsection—

"(A) the term 'new employee' means an individual—

"(i) appointed to a position as an employee on or after the date of enactment of the Office of Special Counsel Reauthorization Act of 2017; and

"(ii) who has not previously served as an employee; and

"(B) the term 'whistleblower protections' means the protections against and remedies for a prohibited personnel practice described in paragraph (8) or subparagraph (A)(i), (B), (C), or (D) of paragraph (9) of subsection (b).

"(2) The head of each agency shall be responsible for—

"(A) preventing prohibited personnel practices;

"(B) complying with and enforcing applicable civil service laws, rules, and regulations, and other aspects of personnel management; and

"(C) ensuring, in consultation with the Special Counsel and the Inspector General of the agency, that employees of the agency are informed of the rights and remedies available to the employees under this chapter and chapter 12, including—

"(i) information with respect to whistleblower protections available to new employees during a probationary period;

"(ii) the role of the Office of Special Counsel and the Merit Systems Protection Board with respect to whistleblower protections; and

"(iii) the means by which, with respect to information that is otherwise required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, an employee may make a lawful disclosure of the information to—

"(I) the Special Counsel;

"(II) the Inspector General of an agency;

"(III) Congress; or

"(IV) another employee of the agency who is designated to receive such a disclosure.

“(3) The head of each agency shall ensure that the information described in paragraph (2) is provided to each new employee of the agency not later than 180 days after the date on which the new employee is appointed.

“(4) The head of each agency shall make available information regarding whistleblower protections applicable to employees of the agency on the public website of the agency and on any online portal that is made available only to employees of the agency, if such portal exists.

“(5) Any employee to whom the head of an agency delegates authority for any aspect of personnel management shall, within the limits of the scope of the delegation, be responsible for the activities described in paragraph (2).”.

(b) TRAINING FOR SUPERVISORS.—

(1) DEFINITIONS.—In this subsection—

(A) the term “agency” means any entity the employees of which are covered by paragraphs (8) and (9) of section 2302(b) of title 5, United States Code, without regard to whether any other provision of that title is applicable to the entity; and

(B) the term “whistleblower protections” has the meaning given the term in section 2302(c)(1)(B) of title 5, United States Code, as amended by subsection (a).

(2) TRAINING REQUIRED.—The head of each agency, in consultation with the Special Counsel and the Inspector General of that agency (or, in the case of an agency that does not have an Inspector General, the senior ethics official of that agency), shall provide the training described in paragraph (3).

(3) TRAINING DESCRIBED.—The training described in this paragraph shall—

(A) cover the manner in which the agency shall respond to a complaint alleging a violation of whistleblower protections that are available to employees of the agency; and

(B) be provided—

(i) to each employee of the agency who—

(I) is appointed to a supervisory position in the agency; and

(II) before the appointment described in subclause (I), had not served in a supervisory position in the agency; and

(ii) on an annual basis to all employees of the agency who serve in supervisory positions in the agency.

(c) INFORMATION ON APPEAL RIGHTS.—

(1) IN GENERAL.—Any notice provided to an employee under section 7503(b)(1), section 7513(b)(1), or section 7543(b)(1) of title 5, United States Code, shall include detailed information with respect to—

(A) the right of the employee to appeal an action brought under the applicable section;

(B) the forums in which the employee may file an appeal described in subparagraph (A); and

(C) any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file an appeal.

(2) DEVELOPMENT OF INFORMATION.—The information described in paragraph (1) shall be developed by the Director of the Office of Personnel Management, in consultation with the Special Counsel, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission.

#### SEC. 4. ADDITIONAL WHISTLEBLOWER PROVISIONS.

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

(1) in subsection (b)—

(A) in paragraph (9)—

(i) in subparagraph (C), by inserting “(or any other component responsible for internal investigation or review)” after “Inspector General”; and

(ii) in subparagraph (D), by inserting “rule, or regulation” after “law”;

(B) in paragraph (12), by striking “or” at the end;

(C) in paragraph (13), by striking the period at the end and inserting “; or”; and

(D) by inserting after paragraph (13) the following:

“(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).”; and

(2) in subsection (f)—

(A) in paragraph (1)—

(i) in subparagraph (E), by striking “or” at the end;

(ii) by redesignating subparagraph (F) as subparagraph (G); and

(iii) by inserting after subparagraph (E) the following:

“(F) the disclosure was made before the date on which the individual was appointed or applied for appointment to a position; or”; and

(B) by striking paragraph (2) and inserting the following:

“(2) If a disclosure is made during the normal course of duties of an employee, the principal job function of whom is to regularly investigate and disclose wrongdoing (in this paragraph referred to as the ‘disclosing employee’), the disclosure shall not be excluded from subsection (b)(8) if the disclosing employee demonstrates that an employee who has the authority to take, direct other individuals to take, recommend, or approve any personnel action with respect to the disclosing employee took, failed to take, or threatened to take or fail to take a personnel action with respect to the disclosing employee in reprisal for the disclosure made by the disclosing employee.”.

(b) EXPLANATIONS FOR FAILURE TO TAKE ACTION.—Section 1213 of title 5, United States Code, is amended—

(1) in subsection (b), by striking “15 days” and inserting “45 days”; and

(2) in subsection (e)—

(A) in paragraph (1), by striking “Any such report” and inserting “Any report required under subsection (c) or paragraph (5) of this subsection”; and

(B) by striking paragraph (2) and inserting the following:

“(2) Upon receipt of any report that the head of an agency is required to submit under subsection (c), the Special Counsel shall review the report and determine whether—

“(A) the findings of the head of the agency appear reasonable; and

“(B) if the Special Counsel requires the head of the agency to submit a supplemental report under paragraph (5), the reports submitted by the head of the agency collectively contain the information required under subsection (d).”;

(C) in paragraph (3), by striking “agency report received pursuant to subsection (c) of this section” and inserting “report submitted to the Special Counsel by the head of an agency under subsection (c) or paragraph (5) of this subsection”; and

(D) by adding at the end the following:

“(5) If, after conducting a review of a report under paragraph (2), the Special Counsel concludes that the Special Counsel requires additional information or documentation to determine whether the report submitted by the head of an agency is reasonable and sufficient, the Special Counsel may request that the head of the agency submit a supplemental report—

“(A) containing the additional information or documentation identified by the Special Counsel; and

“(B) that the head of the agency shall submit to the Special Counsel within a period of time specified by the Special Counsel.”.

(c) TRANSFER REQUESTS DURING STAYS.—

(1) PRIORITY GRANTED.—Section 1214(b)(1) of title 5, United States Code, is amended by adding at the end the following:

“(E) If the Board grants a stay under subparagraph (A), the head of the agency employing the employee who is the subject of the action shall give priority to a request for a transfer submitted by the employee.”.

(2) PROBATIONARY EMPLOYEES.—Section 1221 of title 5, United States Code, is amended by adding at the end the following:

“(k) If the Board grants a stay under subsection (c) and the employee who is the subject of the action is in probationary status, the head of the agency employing the employee shall give priority to a request for a transfer submitted by the employee.”.

(d) RETALIATORY INVESTIGATIONS.—Section 1214 of title 5, United States Code, is amended by adding at the end the following:

“(i) The Special Counsel may petition the Board to order corrective action, including fees, costs, or damages reasonably incurred by an employee due to an investigation of the employee by an agency, if the investigation by an agency was commenced, expanded, or extended in retaliation for a disclosure or protected activity described in section 2302(b)(8) or subparagraph (A)(i), (B), (C), or (D) of section 2302(b)(9), [even if no] without regard to whether a personnel action, as defined in section 2302(a)(2)(A), is taken [or not taken.]”.

#### SEC. 5. SUICIDE BY EMPLOYEES.

(a) DEFINITIONS.—In this section—

(1) the term “agency” means any entity the employees of which are covered by paragraphs (8) and (9) of section 2302(b) of title 5, United States Code, without regard to whether any other provision of that title is applicable to the entity; and

(2) the term “personnel action” has the meaning given the term in section 2302(a)(2)(A) of title 5, United States Code.

(b) REFERRAL.—

(1) IN GENERAL.—The head of an agency shall refer to the Special Counsel, along with any information known to the agency regarding the circumstances described in paragraph (2), any instance in which the head of the agency has information indicating that an employee of the agency committed suicide.

(2) INFORMATION.—The circumstances described in this paragraph are as follows:

(A) Before the death of an employee described in paragraph (1), the employee made a disclosure of information that reasonably evidences—

(i) a violation of a law, rule, or regulation;

(ii) gross mismanagement;

(iii) a gross waste of funds;

(iv) an abuse of authority; or

(v) a substantial and specific danger to public health or safety.

(B) After a disclosure described in subparagraph (A), a personnel action was taken with respect to the employee who made the disclosure.

(c) OFFICE OF SPECIAL COUNSEL REVIEW.—Upon receiving a referral under subsection (b)(1), the Special Counsel shall—

(1) examine whether a personnel action was taken with respect to an employee because of a disclosure described in subsection (b)(2)(A); and

(2) take any action that the Special Counsel determines is appropriate under subchapter II of chapter 12 of title 5, United States Code.

#### SEC. 6. PROTECTION OF WHISTLEBLOWERS AS CRITERIA IN PERFORMANCE APPRAISALS.

(a) ESTABLISHMENT OF SYSTEMS.—Section 4302 of title 5, United States Code, is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

“(b)(1) The head of each agency, in consultation with the Director of the Office of Personnel Management and the Special Counsel, shall develop criteria that—

“(a) the head of the agency shall use as a critical element for establishing the job requirements of a supervisory employee; and

“(B) promote the protection of whistleblowers.

“(2) The criteria required under paragraph (1) shall include—

“(A) principles for the protection of whistleblowers, such as the degree to which supervisory employees—

“(i) respond constructively when employees of the agency make disclosures described in subparagraph (A) or (B) of section 2302(b)(8);

“(ii) take responsible actions to resolve the disclosures described in clause (i); and

“(iii) foster an environment in which employees of the agency feel comfortable making disclosures described in [subparagraph (A)] clause (i) to supervisory employees or other appropriate authorities; and

“(B) for each supervisory employee—

“(i) whether the agency entered into an agreement with an individual who alleged that the supervisory employee committed a prohibited personnel practice; and

“(ii) if the agency entered into an agreement described in clause (i), the number of instances in which the agency entered into such an agreement with respect to the supervisory employee.

“(3) In this subsection—

“(A) the term ‘agency’ means any entity the employees of which are covered by paragraphs (8) and (9) of section 2302(b), without regard to whether any other provision of this section is applicable to the entity;

“(B) the term ‘prohibited personnel practice’ has the meaning given the term in section 2302(a)(1);

“(C) the term ‘supervisory employee’ means an employee who would be a supervisor, as defined in section 7103(a), if the agency employing the employee was an agency for purposes of chapter 71; and

“(D) the term ‘whistleblower’ means an employee who makes a disclosure described in section 2302(b)(8).”

(b) **CRITERIA FOR PERFORMANCE APPRAISALS.**—Section 4313 of title 5, United States Code, is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) in paragraph (5), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(6) protecting whistleblowers, as described in section 4302(b)(2).”

(c) **ANNUAL REPORT TO CONGRESS ON UNACCEPTABLE PERFORMANCE IN WHISTLEBLOWER PROTECTION.**—

(1) **DEFINITIONS.**—In this subsection, the terms “agency” and “whistleblower” have the meanings given the terms in section 4302(b)(3) of title 5, United States Code, as amended by subsection (a).

(2) **REPORT.**—Each agency shall annually submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and each committee of Congress with jurisdiction over the agency a report that details—

(A) the number of performance appraisals, for the year covered by the report, that determined that an employee of the agency failed to meet the standards for protecting whistleblowers that were established under section 4302(b) of title 5, United States Code, as amended by subsection (a);

(B) the reasons for the determinations described in subparagraph (A); and

(C) each performance-based or corrective action taken by the agency in response to a determination under subparagraph (A).

(d) **TECHNICAL AND CONFORMING AMENDMENT.**—Section 4301 of title 5, United States Code, is amended, in the matter preceding paragraph (1), by striking “For the purpose of” and inserting “Except as otherwise expressly provided, for the purpose of”.

#### **SEC. 7. DISCIPLINE OF SUPERVISORS BASED ON RETALIATION AGAINST WHISTLEBLOWERS.**

(a) **IN GENERAL.**—Subchapter II of chapter 75 of title 5, United States Code, is amended by adding at the end the following:

“§ 7515. **Discipline of supervisors based on retaliation against whistleblowers**

“(a) **DEFINITIONS.**—In this section—

“(1) the term ‘agency’—

“(A) has the meaning given the term in section 2302(a)(2)(C), without regard to whether any other provision of this chapter is applicable to the entity; and

“(B) does not include any entity that is an element of the intelligence community, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003);

“(2) the term ‘prohibited personnel action’ means taking or failing to take an action in violation of paragraph (8) or (9) of section 2302(b) against an employee of an agency; and

“(3) the term ‘supervisor’ means an employee who would be a supervisor, as defined in section 7103(a), if the entity employing the employee was an agency.

“(b) **PROPOSED DISCIPLINARY ACTIONS.**—

“(1) **IN GENERAL.**—If the head of the agency in which a supervisor is employed, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the agency in which a supervisor is employed has determined that the supervisor committed a prohibited personnel action, the head of the agency in which the supervisor is employed, consistent with the procedures required under paragraph (2)—

“(A) for the first prohibited personnel action committed by the supervisor—

“(i) shall propose suspending the supervisor for a period that is not less than 3 days; and

“(ii) may propose an additional action determined appropriate by the head of the agency, including a reduction in grade or pay; and

“(B) for the second prohibited personnel action committed by the supervisor, shall propose removing the supervisor.

“(2) **PROCEDURES.**—

“(A) **NOTICE.**—A supervisor against whom an action is proposed to be taken under paragraph (1) is entitled to written notice that—

“(i) states the specific reasons for the proposed action; and

“(ii) informs the supervisor about the right of the supervisor to review the material that constitutes the factual support on which the proposed action is based.

“(B) **ANSWER AND EVIDENCE.**—

“(i) **IN GENERAL.**—A supervisor who receives notice under subparagraph (A) may, not later than 14 days after receiving the notice, submit an answer and furnish evidence in support of that answer.

“(ii) **NO EVIDENCE FURNISHED; INSUFFICIENT EVIDENCE FURNISHED.**—If, after the end of the 14-day period described in clause (i), a supervisor does not furnish any evidence as described in that clause, or if the head of the agency in which the supervisor is employed determines that the evidence furnished by the supervisor is insufficient, the head of the agency shall carry out the action proposed under subparagraph (A) or (B) of paragraph (1).

“(C) **SCOPE OF PROCEDURES.**—An action carried out under this section—

“(i) except as provided in clause (ii), shall be subject to the same requirements and procedures, including those with respect to an appeal, as an action under section 7503, 7513, or 7543; and

“(ii) shall not be subject to—

“(I) paragraphs (1) and (2) of section 7503(b);

“(II) paragraphs (1) and (2) of subsection (b) and subsection (c) of section 7513; and

“(III) paragraphs (1) and (2) of subsection (b) and subsection (c) of section 7543.

“(3) **NON-DELEGATION.**—If the head of an agency is responsible for determining whether a supervisor has committed a prohibited personnel action for purposes of paragraph (1), the head of the agency may not delegate that responsibility.”

(b) **TECHNICAL AND CONFORMING AMENDMENT.**—The table of sections for subchapter II of chapter 75 of title 5, United States Code, is amended by inserting after the item relating to section 7514 the following:

“7515. Discipline of supervisors based on retaliation against whistleblowers.”

#### **SEC. 8. TERMINATION OF CERTAIN INVESTIGATIONS BY THE OFFICE OF SPECIAL COUNSEL.**

Section 1214(a) of title 5, United States Code, is amended [—]

“(1) in paragraph (1)(D), in the first sentence, by inserting “, other than a termination of an investigation described in paragraph (6)(A),” after “investigation of a prohibited personnel practice”; and

(2) by adding at the end the following:

“(6)(A) [Not later] *Notwithstanding any other provision of this section, not later than 30 days after receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel may terminate an investigation of the allegation without further inquiry [or an opportunity for the individual who submitted the allegation to respond] if the Special Counsel determines that—*

“(i) the same allegation, based on the same set of facts and circumstances had previously been—

“(I)(aa) made by the individual; and

“(bb) investigated by the Special Counsel;

or

“(II) filed by the individual with the Merit Systems Protection Board;

“(ii) the Special Counsel does not have jurisdiction to investigate the allegation; or

“(iii) the individual knew or should have known of the alleged prohibited personnel practice on or before the date that is 3 years before the date on which the Special Counsel received the allegation.

“(B) Not later than 30 days after the date on which the Special Counsel terminates an investigation under subparagraph (A), the Special Counsel shall provide a written notification to the individual who submitted the allegation of a prohibited personnel practice that states the basis of the Special Counsel for terminating the investigation.”

#### **SEC. 9. ALLEGATIONS OF WRONGDOING WITHIN THE OFFICE OF SPECIAL COUNSEL.**

Section 1212 of title 5, United States Code, is amended by adding at the end the following:

“(i) The Special Counsel shall enter into at least one agreement with the Inspector General of an agency under which—

“(1) the Inspector General shall—

“(A) receive, review, and investigate allegations of prohibited personnel practices or wrongdoing filed by employees of the Office of Special Counsel; and

“(B) develop a method for an employee of the Office of Special Counsel to directly

communicate with the Inspector General; and

“(2) the Special Counsel—

“(A) may not require an employee of the Office of Special Counsel to seek authorization or approval before directly contacting the Inspector General in accordance with the agreement; and

“(B) may reimburse the Inspector General for services provided under the agreement.”.

#### SEC. 10. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT.—Section 1218 of title 5, United States Code, is amended to read as follows:

##### “§ 1218. Annual report

“The Special Counsel shall submit to Congress, on an annual basis, a report on the activities of the Special Counsel, which shall include, for the year preceding the submission of the report—

“(1) the number, types, and disposition of allegations of prohibited personnel practices filed with the Special Counsel and the costs of resolving such allegations;

“(2) the number of investigations conducted by the Special Counsel;

“(3) the number of stays and disciplinary actions negotiated with agencies by the Special Counsel;

“(4) the number of subpoenas issued by the Special Counsel;

“(5) the number of instances in which the Special Counsel reopened an investigation after the Special Counsel had made an initial determination with respect to the investigation;

“(6) the actions that resulted from reopening investigations, as described in paragraph (5);

“(7) the number of instances in which the Special Counsel did not make a determination before the end of the 240-day period described in section 1214(b)(2)(A)(i) regarding whether there were reasonable grounds to believe that a prohibited personnel practice had occurred, existed, or was to be taken;

“(8) a description of the recommendations and reports made by the Special Counsel to other agencies under this subchapter and the actions taken by the agencies as a result of the recommendations or reports;

“(9) the number of—

“(A) actions initiated before the Merit Systems Protection Board, including the number of corrective action petitions and disciplinary action complaints initiated; and

“(B) stays and extensions of stays obtained from the Merit Systems Protection Board;

“(10) the number of prohibited personnel practice complaints that resulted in a favorable action for the complainant, other than a stay or an extension of a stay, organized by actions in—

“(A) complaints dealing with reprisals against whistleblowers; and

“(B) all other complaints; and

“(11) the number of prohibited personnel practice complaints that were resolved by an agreement between an agency and an individual, organized by agency and agency components, in—

“(A) complaints dealing with reprisals against whistleblowers; and

“(B) all other complaints;

“(12) the number of corrective actions that the Special Counsel required an agency to take after a finding by the Special Counsel of a prohibited personnel practice, as defined in section 2302(a)(1); and

“(13) the results for the Office of Special Counsel of any employee viewpoint survey conducted by the Office of Personnel Management or any other agency.”.

(b) PUBLIC INFORMATION.—Section 1219(a)(1) of title 5, United States Code, is amended to read as follows:

“(1) a list of any noncriminal matters referred to the head of an agency under section 1213(c), together with—

“(A) a copy of the information transmitted to the head of the agency under section 1213(c)(1);

“(B) any report from the agency under section 1213(c)(1)(B) relating to the matter;

“(C) if appropriate, not otherwise prohibited by law, and consented to by the complainant, any comments from the complainant under section 1213(e)(1) relating to the matter; and

“(D) the comments or recommendations of the Special Counsel under paragraph (3) or (4) of section 1213(e).”.

(c) NOTICE OF COMPLAINT SETTLEMENTS.—Section 1217 of title 5, United States Code, is amended—

(1) by striking “The Special Counsel” and inserting:

“(a) IN GENERAL.—The Special Counsel”; and

(2) by adding at the end the following:

“(b) ADDITIONAL REPORT REQUIRED.—

“(1) IN GENERAL.—If an allegation submitted to the Special Counsel is resolved by an agreement between an agency and an individual, the Special Counsel shall submit to Congress and each congressional committee with jurisdiction over the agency a report regarding the agreement.

“(2) CONTENTS.—The report required under paragraph (1) shall identify, with respect to an agreement described in that paragraph—

“(A) the agency that entered into the agreement;

“(B) the position and employment location of the employee who submitted the allegation that formed the basis of the agreement;

“(C) the position and employment location of any employee alleged by an employee described in subparagraph (B) to have committed a prohibited personnel practice, as defined in section 2302(a)(1);

“(D) a description of the allegation described in subparagraph (B); and

“(E) whether the agency that entered into the agreement has agreed to pursue any disciplinary action as a result of the allegation described in subparagraph (B).”.

#### SEC. 11. ESTABLISHMENT OF SURVEY PILOT PROGRAM.

(a) IN GENERAL.—The Office of Special Counsel shall design and establish a pilot program under which the Office shall conduct, during the first full fiscal year after the date of enactment of this Act, a survey of individuals who have filed a complaint or disclosure with the Office.

(b) PURPOSE.—The survey under subsection (a) shall be designed for the purpose of collecting information and improving service at various stages of a review or investigation by the Office of Special Counsel.

(c) RESULTS.—The results of the survey under subsection (a) shall be published in the annual report of the Office of Special Counsel.

(d) SUSPENSION OF OTHER SURVEYS.—During the period beginning on October 1, 2017, and ending on September 30, 2018, section 13 of the Act entitled “An Act to reauthorize the Office of Special Counsel, and for other purposes”, approved October 29, 1994 (5 U.S.C. 1212 note), shall have no force or effect.

#### SEC. 12. REGULATIONS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Special Counsel shall prescribe such regulations as may be necessary to perform—

(1) the functions of the Special Counsel under subchapter II of chapter 12 of title 5, United States Code, including regulations that are necessary to carry out sections 1213, 1214, and 1215 of that title; and

(2) any functions of the Special Counsel that are required because of the amendments made by this Act.

(b) PUBLICATION.—Any regulations prescribed under subsection (a) shall be published in the Federal Register.

#### SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 8(a)(2) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note) is amended by striking “2003, 2004, 2005, 2006, and 2007” and inserting “2017 through 2022”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as though enacted on September 30, 2015.

Mr. PORTMAN. Mr. President, I ask unanimous consent that the committee-reported amendments be considered, the Johnson amendment at the desk be considered and agreed to, the committee-reported amendments, as amended, be agreed to, the bill, as amended, be considered read a third time and passed, and the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment (No. 746) was agreed to, as follows:

(Purpose: To permit an Inspector General to withhold certain material from the Office of Special Counsel if the material is derived from, or pertains to, intelligence activities)

On page 3, strike lines 10 through 23 and insert the following:

“(ii) An Inspector General may withhold from the Special Counsel material described in subparagraph (A) if the Inspector General determines that the material contains information derived from, or pertaining to, intelligence activities.

“(iii) The Attorney General or an Inspector General may withhold from the Special Counsel material described in subparagraph (A) if—

“(I)(aa) disclosing the material could reasonably be expected to interfere with a criminal investigation or prosecution that is ongoing as of the date on which the Special Counsel submits a request for the material; or

“(bb) the material—

“(AA) may not be disclosed pursuant to a court order; or

“(BB) has been filed under seal under section 3730 of title 31; and

“(II) the Attorney General or the Inspector General, as applicable, submits to the Special Counsel a written report that describes—

“(aa) the material being withheld; and

“(bb) the reason that the material is being withheld.

On page 33, after line 8, add the following:

#### SEC. 14. TECHNICAL AMENDMENT.

Section 1214(b)(1)(B)(ii) of title 5, United States Code, as amended by section 1 of the Act entitled “An Act to amend section 1214 of title 5, United States Code, to provide for stays during a period that the Merit Systems Protection Board lacks a quorum.” (S. 1083, 115th Congress, 1st Session), is amended by striking “who was appointed, by and with the advice and consent of the Senate,”.

The committee-reported amendments, as amended, were agreed to.

The bill (S. 582), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 582

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Office of Special Counsel Reauthorization Act of 2017”.

**SEC. 2. ADEQUATE ACCESS OF SPECIAL COUNSEL TO INFORMATION.**

Section 1212(b) of title 5, United States Code, is amended by adding at the end the following:

“(5)(A) Except as provided in subparagraph (B), the Special Counsel, in carrying out this subchapter, is authorized to—

“(i) have timely access to all records, data, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable agency that relate to an investigation, review, or inquiry conducted under—

“(I) section 1213, 1214, 1215, or 1216 of this title; or

“(II) section 4324(a) of title 38;

“(ii) request from any agency the information or assistance that may be necessary for the Special Counsel to carry out the duties and responsibilities of the Special Counsel under this subchapter; and

“(iii) require, during an investigation, review, or inquiry of an agency, the agency to provide to the Special Counsel any record or other information that relates to an investigation, review, or inquiry conducted under—

“(I) section 1213, 1214, 1215, or 1216 of this title; or

“(II) section 4324(a) of title 38.

“(B)(i) The authorization of the Special Counsel under subparagraph (A) shall not apply with respect to any entity that is an element of the intelligence community, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003), unless the Special Counsel is investigating, or otherwise carrying out activities relating to the enforcement of, an action under subchapter III of chapter 73.

“(ii) An Inspector General may withhold from the Special Counsel material described in subparagraph (A) if the Inspector General determines that the material contains information derived from, or pertaining to, intelligence activities.

“(iii) The Attorney General or an Inspector General may withhold from the Special Counsel material described in subparagraph (A) if—

“(I)(aa) disclosing the material could reasonably be expected to interfere with a criminal investigation or prosecution that is ongoing as of the date on which the Special Counsel submits a request for the material; or

“(bb) the material—

“(AA) may not be disclosed pursuant to a court order; or

“(BB) has been filed under seal under section 3730 of title 31; and

“(II) the Attorney General or the Inspector General, as applicable, submits to the Special Counsel a written report that describes—

“(aa) the material being withheld; and

“(bb) the reason that the material is being withheld.

“(C)(i) A claim of common law privilege by an agency, or an officer or employee of an agency, shall not prevent the Special Counsel from obtaining any material described in subparagraph (A)(i) with respect to the agency.

“(ii) The submission of material described in subparagraph (A)(i) by an agency to the Special Counsel may not be deemed to waive any assertion of privilege by the agency against a non-Federal entity or against an individual in any other proceeding.

“(iii) With respect to any record or other information made available to the Special Counsel by an agency under subparagraph

(A), the Special Counsel may only disclose the record or information for a purpose that is in furtherance of any authority provided to the Special Counsel in this subchapter.

“(6) The Special Counsel shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and each committee of Congress with jurisdiction over the applicable agency a report regarding any case of contumacy or failure to comply with a request submitted by the Special Counsel under paragraph (5)(A).”

**SEC. 3. INFORMATION ON WHISTLEBLOWER PROTECTIONS.**

(a) AGENCY RESPONSIBILITIES.—Section 2302 of title 5, United States Code, is amended by striking subsection (c) and inserting the following:

“(c)(1) In this subsection—

“(A) the term ‘new employee’ means an individual—

“(i) appointed to a position as an employee on or after the date of enactment of the Office of Special Counsel Reauthorization Act of 2017; and

“(ii) who has not previously served as an employee; and

“(B) the term ‘whistleblower protections’ means the protections against and remedies for a prohibited personnel practice described in paragraph (8) or subparagraph (A)(i), (B), (C), or (D) of paragraph (9) of subsection (b).

“(2) The head of each agency shall be responsible for—

“(A) preventing prohibited personnel practices;

“(B) complying with and enforcing applicable civil service laws, rules, and regulations, and other aspects of personnel management; and

“(C) ensuring, in consultation with the Special Counsel and the Inspector General of the agency, that employees of the agency are informed of the rights and remedies available to the employees under this chapter and chapter 12, including—

“(i) information with respect to whistleblower protections available to new employees during a probationary period;

“(ii) the role of the Office of Special Counsel and the Merit Systems Protection Board with respect to whistleblower protections; and

“(iii) the means by which, with respect to information that is otherwise required by law or Executive order to be kept classified in the interest of national defense or the conduct of foreign affairs, an employee may make a lawful disclosure of the information to—

“(I) the Special Counsel;

“(II) the Inspector General of an agency;

“(III) Congress; or

“(IV) another employee of the agency who is designated to receive such a disclosure.

“(3) The head of each agency shall ensure that the information described in paragraph (2) is provided to each new employee of the agency not later than 180 days after the date on which the new employee is appointed.

“(4) The head of each agency shall make available information regarding whistleblower protections applicable to employees of the agency on the public website of the agency and on any online portal that is made available only to employees of the agency, if such portal exists.

“(5) Any employee to whom the head of an agency delegates authority for any aspect of personnel management shall, within the limits of the scope of the delegation, be responsible for the activities described in paragraph (2).”

(b) TRAINING FOR SUPERVISORS.—

(1) DEFINITIONS.—In this subsection—

(A) the term “agency” means any entity the employees of which are covered by para-

graphs (8) and (9) of section 2302(b) of title 5, United States Code, without regard to whether any other provision of that title is applicable to the entity; and

(B) the term “whistleblower protections” has the meaning given the term in section 2302(c)(1)(B) of title 5, United States Code, as amended by subsection (a).

(2) TRAINING REQUIRED.—The head of each agency, in consultation with the Special Counsel and the Inspector General of that agency (or, in the case of an agency that does not have an Inspector General, the senior ethics official of that agency), shall provide the training described in paragraph (3).

(3) TRAINING DESCRIBED.—The training described in this paragraph shall—

(A) cover the manner in which the agency shall respond to a complaint alleging a violation of whistleblower protections that are available to employees of the agency; and

(B) be provided—

(i) to each employee of the agency who—

(I) is appointed to a supervisory position in the agency; and

(II) before the appointment described in subclause (I), had not served in a supervisory position in the agency; and

(ii) on an annual basis to all employees of the agency who serve in supervisory positions in the agency.

(c) INFORMATION ON APPEAL RIGHTS.—

(1) IN GENERAL.—Any notice provided to an employee under section 7503(b)(1), section 7513(b)(1), or section 7543(b)(1) of title 5, United States Code, shall include detailed information with respect to—

(A) the right of the employee to appeal an action brought under the applicable section;

(B) the forums in which the employee may file an appeal described in subparagraph (A); and

(C) any limitations on the rights of the employee that would apply because of the forum in which the employee decides to file an appeal.

(2) DEVELOPMENT OF INFORMATION.—The information described in paragraph (1) shall be developed by the Director of the Office of Personnel Management, in consultation with the Special Counsel, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission.

**SEC. 4. ADDITIONAL WHISTLEBLOWER PROVISIONS.**

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

(1) in subsection (b)—

(A) in paragraph (9)—

(i) in subparagraph (C), by inserting “(or any other component responsible for internal investigation or review)” after “Inspector General”; and

(ii) in subparagraph (D), by inserting “, rule, or regulation” after “law”;

(B) in paragraph (12), by striking “or” at the end;

(C) in paragraph (13), by striking the period at the end and inserting “; or”; and

(D) by inserting after paragraph (13) the following:

“(14) access the medical record of another employee or an applicant for employment as a part of, or otherwise in furtherance of, any conduct described in paragraphs (1) through (13).”; and

(2) in subsection (f)—

(A) in paragraph (1)—

(i) in subparagraph (E), by striking “or” at the end;

(ii) by redesignating subparagraph (F) as subparagraph (G); and

(iii) by inserting after subparagraph (E) the following:

“(F) the disclosure was made before the date on which the individual was appointed

or applied for appointment to a position; or"; and

(B) by striking paragraph (2) and inserting the following:

"(2) If a disclosure is made during the normal course of duties of an employee, the principal job function of whom is to regularly investigate and disclose wrongdoing (in this paragraph referred to as the 'disclosing employee'), the disclosure shall not be excluded from subsection (b)(8) if the disclosing employee demonstrates that an employee who has the authority to take, direct other individuals to take, recommend, or approve any personnel action with respect to the disclosing employee took, failed to take, or threatened to take or fail to take a personnel action with respect to the disclosing employee in reprisal for the disclosure made by the disclosing employee."

(b) EXPLANATIONS FOR FAILURE TO TAKE ACTION.—Section 1213 of title 5, United States Code, is amended—

(1) in subsection (b), by striking "15 days" and inserting "45 days"; and

(2) in subsection (e)—

(A) in paragraph (1), by striking "Any such report" and inserting "Any report required under subsection (c) or paragraph (5) of this subsection";

(B) by striking paragraph (2) and inserting the following:

"(2) Upon receipt of any report that the head of an agency is required to submit under subsection (c), the Special Counsel shall review the report and determine whether—

"(A) the findings of the head of the agency appear reasonable; and

"(B) if the Special Counsel requires the head of the agency to submit a supplemental report under paragraph (5), the reports submitted by the head of the agency collectively contain the information required under subsection (d).";

(C) in paragraph (3), by striking "agency report received pursuant to subsection (c) of this section" and inserting "report submitted to the Special Counsel by the head of an agency under subsection (c) or paragraph (5) of this subsection"; and

(D) by adding at the end the following:

"(5) If, after conducting a review of a report under paragraph (2), the Special Counsel concludes that the Special Counsel requires additional information or documentation to determine whether the report submitted by the head of an agency is reasonable and sufficient, the Special Counsel may request that the head of the agency submit a supplemental report—

"(A) containing the additional information or documentation identified by the Special Counsel; and

"(B) that the head of the agency shall submit to the Special Counsel within a period of time specified by the Special Counsel."

(c) TRANSFER REQUESTS DURING STAYS.—

(1) PRIORITY GRANTED.—Section 1214(b)(1) of title 5, United States Code, is amended by adding at the end the following:

"(E) If the Board grants a stay under subparagraph (A), the head of the agency employing the employee who is the subject of the action shall give priority to a request for a transfer submitted by the employee."

(2) PROBATIONARY EMPLOYEES.—Section 1221 of title 5, United States Code, is amended by adding at the end the following:

"(k) If the Board grants a stay under subsection (c) and the employee who is the subject of the action is in probationary status, the head of the agency employing the employee shall give priority to a request for a transfer submitted by the employee."

(d) RETALIATORY INVESTIGATIONS.—Section 1214 of title 5, United States Code, is amended by adding at the end the following:

"(i) The Special Counsel may petition the Board to order corrective action, including fees, costs, or damages reasonably incurred by an employee due to an investigation of the employee by an agency, if the investigation by an agency was commenced, expanded, or extended in retaliation for a disclosure or protected activity described in section 2302(b)(8) or subparagraph (A)(i), (B), (C), or (D) of section 2302(b)(9), without regard to whether a personnel action, as defined in section 2302(a)(2)(A), is taken."

#### SEC. 5. SUICIDE BY EMPLOYEES.

(a) DEFINITIONS.—In this section—

(1) the term "agency" means any entity the employees of which are covered by paragraphs (8) and (9) of section 2302(b) of title 5, United States Code, without regard to whether any other provision of that title is applicable to the entity; and

(2) the term "personnel action" has the meaning given the term in section 2302(a)(2)(A) of title 5, United States Code.

(b) REFERRAL.—

(1) IN GENERAL.—The head of an agency shall refer to the Special Counsel, along with any information known to the agency regarding the circumstances described in paragraph (2), any instance in which the head of the agency has information indicating that an employee of the agency committed suicide.

(2) INFORMATION.—The circumstances described in this paragraph are as follows:

(A) Before the death of an employee described in paragraph (1), the employee made a disclosure of information that reasonably evidences—

(i) a violation of a law, rule, or regulation;

(ii) gross mismanagement;

(iii) a gross waste of funds;

(iv) an abuse of authority; or

(v) a substantial and specific danger to public health or safety.

(B) After a disclosure described in subparagraph (A), a personnel action was taken with respect to the employee who made the disclosure.

(c) OFFICE OF SPECIAL COUNSEL REVIEW.—Upon receiving a referral under subsection (b)(1), the Special Counsel shall—

(1) examine whether a personnel action was taken with respect to an employee because of a disclosure described in subsection (b)(2)(A); and

(2) take any action that the Special Counsel determines is appropriate under subchapter II of chapter 12 of title 5, United States Code.

#### SEC. 6. PROTECTION OF WHISTLEBLOWERS AS CRITERIA IN PERFORMANCE APPRAISALS.

(a) ESTABLISHMENT OF SYSTEMS.—Section 4302 of title 5, United States Code, is amended—

(1) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(2) by inserting after subsection (a) the following:

"(b)(1) The head of each agency, in consultation with the Director of the Office of Personnel Management and the Special Counsel, shall develop criteria that—

"(A) the head of the agency shall use as a critical element for establishing the job requirements of a supervisory employee; and

"(B) promote the protection of whistleblowers.

"(2) The criteria required under paragraph (1) shall include—

"(A) principles for the protection of whistleblowers, such as the degree to which supervisory employees—

"(i) respond constructively when employees of the agency make disclosures described in subparagraph (A) or (B) of section 2302(b)(8);

"(ii) take responsible actions to resolve the disclosures described in clause (i); and

"(iii) foster an environment in which employees of the agency feel comfortable making disclosures described in clause (i) to supervisory employees or other appropriate authorities; and

"(B) for each supervisory employee—

"(i) whether the agency entered into an agreement with an individual who alleged that the supervisory employee committed a prohibited personnel practice; and

"(ii) if the agency entered into an agreement described in clause (i), the number of instances in which the agency entered into such an agreement with respect to the supervisory employee.

"(3) In this subsection—

"(A) the term 'agency' means any entity the employees of which are covered by paragraphs (8) and (9) of section 2302(b), without regard to whether any other provision of this section is applicable to the entity;

"(B) the term 'prohibited personnel practice' has the meaning given the term in section 2302(a)(1);

"(C) the term 'supervisory employee' means an employee who would be a supervisor, as defined in section 7103(a), if the agency employing the employee was an agency for purposes of chapter 71; and

"(D) the term 'whistleblower' means an employee who makes a disclosure described in section 2302(b)(8)."

(b) CRITERIA FOR PERFORMANCE APPRAISALS.—Section 4313 of title 5, United States Code, is amended—

(1) in paragraph (4), by striking "and" at the end;

(2) in paragraph (5), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(6) protecting whistleblowers, as described in section 4302(b)(2)."

(c) ANNUAL REPORT TO CONGRESS ON UNACCEPTABLE PERFORMANCE IN WHISTLEBLOWER PROTECTION.—

(1) DEFINITIONS.—In this subsection, the terms "agency" and "whistleblower" have the meanings given the terms in section 4302(b)(3) of title 5, United States Code, as amended by subsection (a).

(2) REPORT.—Each agency shall annually submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and each committee of Congress with jurisdiction over the agency a report that details—

(A) the number of performance appraisals, for the year covered by the report, that determined that an employee of the agency failed to meet the standards for protecting whistleblowers that were established under section 4302(b) of title 5, United States Code, as amended by subsection (a);

(B) the reasons for the determinations described in subparagraph (A); and

(C) each performance-based or corrective action taken by the agency in response to a determination under subparagraph (A).

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 4301 of title 5, United States Code, is amended, in the matter preceding paragraph (1), by striking "For the purpose of" and inserting "Except as otherwise expressly provided, for the purpose of".

#### SEC. 7. DISCIPLINE OF SUPERVISORS BASED ON RETALIATION AGAINST WHISTLEBLOWERS.

(a) IN GENERAL.—Subchapter II of chapter 75 of title 5, United States Code, is amended by adding at the end the following:

##### "§ 7515. Discipline of supervisors based on retaliation against whistleblowers

"(a) DEFINITIONS.—In this section—



“(1) the term ‘agency’—

“(A) has the meaning given the term in section 2302(a)(2)(C), without regard to whether any other provision of this chapter is applicable to the entity; and

“(B) does not include any entity that is an element of the intelligence community, as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 3003);

“(2) the term ‘prohibited personnel action’ means taking or failing to take an action in violation of paragraph (8) or (9) of section 2302(b) against an employee of an agency; and

“(3) the term ‘supervisor’ means an employee who would be a supervisor, as defined in section 7103(a), if the entity employing the employee was an agency.

“(b) PROPOSED DISCIPLINARY ACTIONS.—

“(1) IN GENERAL.—If the head of the agency in which a supervisor is employed, an administrative law judge, the Merit Systems Protection Board, the Special Counsel, a judge of the United States, or the Inspector General of the agency in which a supervisor is employed has determined that the supervisor committed a prohibited personnel action, the head of the agency in which the supervisor is employed, consistent with the procedures required under paragraph (2)—

“(A) for the first prohibited personnel action committed by the supervisor—

“(i) shall propose suspending the supervisor for a period that is not less than 3 days; and

“(ii) may propose an additional action determined appropriate by the head of the agency, including a reduction in grade or pay; and

“(B) for the second prohibited personnel action committed by the supervisor, shall propose removing the supervisor.

“(2) PROCEDURES.—

“(A) NOTICE.—A supervisor against whom an action is proposed to be taken under paragraph (1) is entitled to written notice that—

“(i) states the specific reasons for the proposed action; and

“(ii) informs the supervisor about the right of the supervisor to review the material that constitutes the factual support on which the proposed action is based.

“(B) ANSWER AND EVIDENCE.—

“(i) IN GENERAL.—A supervisor who receives notice under subparagraph (A) may, not later than 14 days after receiving the notice, submit an answer and furnish evidence in support of that answer.

“(ii) NO EVIDENCE FURNISHED; INSUFFICIENT EVIDENCE FURNISHED.—If, after the end of the 14-day period described in clause (i), a supervisor does not furnish any evidence as described in that clause, or if the head of the agency in which the supervisor is employed determines that the evidence furnished by the supervisor is insufficient, the head of the agency shall carry out the action proposed under subparagraph (A) or (B) of paragraph (1).

“(C) SCOPE OF PROCEDURES.—An action carried out under this section—

“(i) except as provided in clause (ii), shall be subject to the same requirements and procedures, including those with respect to an appeal, as an action under section 7503, 7513, or 7543; and

“(ii) shall not be subject to—

“(I) paragraphs (1) and (2) of section 7503(b);

“(II) paragraphs (1) and (2) of subsection (b) and subsection (c) of section 7513; and

“(III) paragraphs (1) and (2) of subsection (b) and subsection (c) of section 7543.

“(3) NON-DELEGATION.—If the head of an agency is responsible for determining whether a supervisor has committed a prohibited personnel action for purposes of paragraph

(1), the head of the agency may not delegate that responsibility.”

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 75 of title 5, United States Code, is amended by inserting after the item relating to section 7514 the following:

“7515. Discipline of supervisors based on retaliation against whistleblowers.”

#### SEC. 8. TERMINATION OF CERTAIN INVESTIGATIONS BY THE OFFICE OF SPECIAL COUNSEL.

Section 1214(a) of title 5, United States Code, is amended by adding at the end the following:

“(6)(A) Notwithstanding any other provision of this section, not later than 30 days after receiving an allegation of a prohibited personnel practice under paragraph (1), the Special Counsel may terminate an investigation of the allegation without further inquiry if the Special Counsel determines that—

“(i) the same allegation, based on the same set of facts and circumstances had previously been—

“(I)(aa) made by the individual; and

“(bb) investigated by the Special Counsel; or

“(II) filed by the individual with the Merit Systems Protection Board;

“(ii) the Special Counsel does not have jurisdiction to investigate the allegation; or

“(iii) the individual knew or should have known of the alleged prohibited personnel practice on or before the date that is 3 years before the date on which the Special Counsel received the allegation.

“(B) Not later than 30 days after the date on which the Special Counsel terminates an investigation under subparagraph (A), the Special Counsel shall provide a written notification to the individual who submitted the allegation of a prohibited personnel practice that states the basis of the Special Counsel for terminating the investigation.”

#### SEC. 9. ALLEGATIONS OF WRONGDOING WITHIN THE OFFICE OF SPECIAL COUNSEL.

Section 1212 of title 5, United States Code, is amended by adding at the end the following:

“(i) The Special Counsel shall enter into at least one agreement with the Inspector General of an agency under which—

“(1) the Inspector General shall—

“(A) receive, review, and investigate allegations of prohibited personnel practices or wrongdoing filed by employees of the Office of Special Counsel; and

“(B) develop a method for an employee of the Office of Special Counsel to directly communicate with the Inspector General; and

“(2) the Special Counsel—

“(A) may not require an employee of the Office of Special Counsel to seek authorization or approval before directly contacting the Inspector General in accordance with the agreement; and

“(B) may reimburse the Inspector General for services provided under the agreement.”

#### SEC. 10. REPORTING REQUIREMENTS.

(a) ANNUAL REPORT.—Section 1218 of title 5, United States Code, is amended to read as follows:

##### “§ 1218. Annual report

“The Special Counsel shall submit to Congress, on an annual basis, a report on the activities of the Special Counsel, which shall include, for the year preceding the submission of the report—

“(1) the number, types, and disposition of allegations of prohibited personnel practices filed with the Special Counsel and the costs of resolving such allegations;

“(2) the number of investigations conducted by the Special Counsel;

“(3) the number of stays and disciplinary actions negotiated with agencies by the Special Counsel;

“(4) the number of subpoenas issued by the Special Counsel;

“(5) the number of instances in which the Special Counsel reopened an investigation after the Special Counsel had made an initial determination with respect to the investigation;

“(6) the actions that resulted from reopening investigations, as described in paragraph (5);

“(7) the number of instances in which the Special Counsel did not make a determination before the end of the 240-day period described in section 1214(b)(2)(A)(i) regarding whether there were reasonable grounds to believe that a prohibited personnel practice had occurred, existed, or was to be taken;

“(8) a description of the recommendations and reports made by the Special Counsel to other agencies under this subchapter and the actions taken by the agencies as a result of the recommendations or reports;

“(9) the number of—

“(A) actions initiated before the Merit Systems Protection Board, including the number of corrective action petitions and disciplinary action complaints initiated; and

“(B) stays and extensions of stays obtained from the Merit Systems Protection Board;

“(10) the number of prohibited personnel practice complaints that resulted in a favorable action for the complainant, other than a stay or an extension of a stay, organized by actions in—

“(A) complaints dealing with reprisals against whistleblowers; and

“(B) all other complaints; and

“(11) the number of prohibited personnel practice complaints that were resolved by an agreement between an agency and an individual, organized by agency and agency components, in—

“(A) complaints dealing with reprisals against whistleblowers; and

“(B) all other complaints;

“(12) the number of corrective actions that the Special Counsel required an agency to take after a finding by the Special Counsel of a prohibited personnel practice, as defined in section 2302(a)(1); and

“(13) the results for the Office of Special Counsel of any employee viewpoint survey conducted by the Office of Personnel Management or any other agency.”

(b) PUBLIC INFORMATION.—Section 1219(a)(1) of title 5, United States Code, is amended to read as follows:

“(1) a list of any noncriminal matters referred to the head of an agency under section 1213(c), together with—

“(A) a copy of the information transmitted to the head of the agency under section 1213(c)(1);

“(B) any report from the agency under section 1213(c)(1)(B) relating to the matter;

“(C) if appropriate, not otherwise prohibited by law, and consented to by the complainant, any comments from the complainant under section 1213(e)(1) relating to the matter; and

“(D) the comments or recommendations of the Special Counsel under paragraph (3) or (4) of section 1213(e);”

(c) NOTICE OF COMPLAINT SETTLEMENTS.—Section 1217 of title 5, United States Code, is amended—

(1) by striking “The Special Counsel” and inserting:

“(a) IN GENERAL.—The Special Counsel”; and

(2) by adding at the end the following:

“(b) ADDITIONAL REPORT REQUIRED.—

“(1) IN GENERAL.—If an allegation submitted to the Special Counsel is resolved by

an agreement between an agency and an individual, the Special Counsel shall submit to Congress and each congressional committee with jurisdiction over the agency a report regarding the agreement.

“(2) CONTENTS.—The report required under paragraph (1) shall identify, with respect to an agreement described in that paragraph—

“(A) the agency that entered into the agreement;

“(B) the position and employment location of the employee who submitted the allegation that formed the basis of the agreement;

“(C) the position and employment location of any employee alleged by an employee described in subparagraph (B) to have committed a prohibited personnel practice, as defined in section 2302(a)(1);

“(D) a description of the allegation described in subparagraph (B); and

“(E) whether the agency that entered into the agreement has agreed to pursue any disciplinary action as a result of the allegation described in subparagraph (B).”.

#### SEC. 11. ESTABLISHMENT OF SURVEY PILOT PROGRAM.

(a) IN GENERAL.—The Office of Special Counsel shall design and establish a pilot program under which the Office shall conduct, during the first full fiscal year after the date of enactment of this Act, a survey of individuals who have filed a complaint or disclosure with the Office.

(b) PURPOSE.—The survey under subsection (a) shall be designed for the purpose of collecting information and improving service at various stages of a review or investigation by the Office of Special Counsel.

(c) RESULTS.—The results of the survey under subsection (a) shall be published in the annual report of the Office of Special Counsel.

(d) SUSPENSION OF OTHER SURVEYS.—During the period beginning on October 1, 2017, and ending on September 30, 2018, section 13 of the Act entitled “An Act to reauthorize the Office of Special Counsel, and for other purposes”, approved October 29, 1994 (5 U.S.C. 1212 note), shall have no force or effect.

#### SEC. 12. REGULATIONS.

(a) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Special Counsel shall prescribe such regulations as may be necessary to perform—

(1) the functions of the Special Counsel under subchapter II of chapter 12 of title 5, United States Code, including regulations that are necessary to carry out sections 1213, 1214, and 1215 of that title; and

(2) any functions of the Special Counsel that are required because of the amendments made by this Act.

(b) PUBLICATION.—Any regulations prescribed under subsection (a) shall be published in the Federal Register.

#### SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 8(a)(2) of the Whistleblower Protection Act of 1989 (5 U.S.C. 5509 note) is amended by striking “2003, 2004, 2005, 2006, and 2007” and inserting “2017 through 2022”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as though enacted on September 30, 2015.

#### SEC. 14. TECHNICAL AMENDMENT.

Section 1214(b)(1)(B)(ii) of title 5, United States Code, as amended by section 1 of the Act entitled “An Act to amend section 1214 of title 5, United States Code, to provide for stays during a period that the Merit Systems Protection Board lacks a quorum.” (S. 1083, 115th Congress, 1st Session), is amended by striking “who was appointed, by and with the advice and consent of the Senate,”.

#### PRO BONO WORK TO EMPOWER AND REPRESENT ACT OF 2017

Mr. PORTMAN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be discharged from further consideration of S. 717 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 717) to promote pro bono legal services as a critical way in which to empower survivors of domestic violence.

There being no objection, the Senate proceeded to consider the bill.

Mr. PORTMAN. Mr. President, I ask unanimous consent that the bill be considered read a third time and passed and the motion to reconsider be considered made and laid upon the table.

The bill (S. 717) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 717

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Pro bono Work to Empower and Represent Act of 2017” or the “POWER Act”.

#### SEC. 2. FINDINGS.

Congress finds the following:

(1) Extremely high rates of domestic violence, dating violence, sexual assault, and stalking exist at the local, State, and national levels and such violence or behavior harms the most vulnerable members of our society.

(2) According to a study commissioned by the Department of Justice, nearly 25 percent of women suffer from domestic violence during their lifetime.

(3) Proactive efforts should be made available in all forums to provide pro bono legal services and eliminate the violence that destroys lives and shatters families.

(4) A variety of factors cause domestic violence, dating violence, sexual assault, and stalking, and a variety of solutions at the local, State, and national levels are necessary to combat such violence or behavior.

(5) According to the National Network to End Domestic Violence, which conducted a census including almost 1,700 assistance programs, over the course of 1 day in September 2014, more than 10,000 requests for services, including legal representation, were not met.

(6) Pro bono assistance can help fill this need by providing not only legal representation, but also access to emergency shelter, transportation, and childcare.

(7) Research and studies have demonstrated that the provision of legal assistance to victims of domestic violence, dating violence, sexual assault, and stalking reduces the probability of such violence or behavior reoccurring in the future and can help survivors move forward.

(8) Legal representation increases the possibility of successfully obtaining a protective order against an attacker, which prevents further mental and physical injury to a victim and his or her family, as demonstrated by a study that found that 83 percent of victims represented by an attorney were able to obtain a protective order, whereas only 32 percent of victims without an attorney were able to do so.

(9) The American Bar Association Model Rules include commentary stating that

“every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer”.

(10) As representatives of the Department of Justice, the duty of United States Attorneys is to present “equal and impartial justice to all its citizens”, which should include, especially, survivors of domestic violence, dating violence, sexual assault, and stalking who might not otherwise know how to seek advice and protection.

(11) As Federal leaders who have knowledge of domestic violence, dating violence, sexual assault, and stalking in their localities, United States Attorneys should encourage lawyers to provide pro bono resources in an effort to help victims of such violence or behavior escape the cycle of abuse.

(12) A dedicated army of pro bono attorneys focused on this mission will inspire others to devote efforts to this cause and will raise awareness of the scourge of domestic violence, dating violence, sexual assault, and stalking throughout the country.

(13) Communities, by providing awareness of pro bono legal services and assistance to survivors of domestic violence, dating violence, sexual assault, and stalking, will empower those survivors to move forward with their lives.

#### SEC. 3. U.S. ATTORNEYS TO PROMOTE EMPOWERMENT EVENTS.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, and not less often than once each year thereafter, each United States Attorney, or his or her designee, for each judicial district shall lead not less than 1 public event, in partnership with a State, local, tribal, or territorial domestic violence service provider or coalition and a State or local volunteer lawyer project, promoting pro bono legal services as a critical way in which to empower survivors of domestic violence, dating violence, sexual assault, and stalking and engage citizens in assisting those survivors.

(b) DISTRICTS CONTAINING INDIAN TRIBES AND TRIBAL ORGANIZATIONS.—During each 3-year period, a United States Attorney, or his or her designee, for a judicial district that contains an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304)) shall lead not less than 1 public event promoting pro bono legal services under subsection (a) of this section in partnership with an Indian tribe or tribal organization with the intent of increasing the provision of pro bono legal services for Indian or Alaska Native victims of domestic violence, dating violence, sexual assault, and stalking.

(c) REQUIREMENTS.—Each United States Attorney shall—

(1) have discretion as to the design, organization, and implementation of the public events required under subsection (a); and

(2) in conducting a public event under subsection (a), seek to maximize the local impact of the event and the provision of access to high-quality pro bono legal services by survivors of domestic violence, dating violence, sexual assault, and stalking.

#### SEC. 4. REPORTING REQUIREMENTS.

(a) REPORT TO THE ATTORNEY GENERAL.—Not later than October 30 of each year, each United States Attorney shall submit to the Attorney General a report detailing each public event conducted under section 3 during the previous fiscal year.

(b) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than January 1 of each year, the Attorney General shall submit to Congress a compilation and summary