

Department of Homeland Security Violates Whistleblower Protection Laws

ARCHIVAL CONTENT

WASHINGTON, D.C., Oct. 30 (SEND2PRESS NEWSWIRE) – The Government Accountability Project (GAP) and the Project On Government Oversight (POGO) are challenging a decision by the Department of Homeland Security's (DHS) Transportation Security Administration (TSA) to fire a Federal Air Marshal for revealing an unclassified plan that would have removed air marshals from nonstop long-distance flights, similar to those hijacked for the 9/11 terrorist attacks.

The whistleblower, Robert MacLean, is the first federal employee to be terminated for the "Unauthorized Release of Sensitive Security Information (SSI)." Today, MacLean filed documents in the U.S. Court of Appeals for the Ninth Circuit, challenging TSA's claim that the information constitutes SSI.

In July 2003, only days after DHS issued warnings that stemmed from a foiled hijacking plot, MacLean exposed that the Federal Air Marshal Service (FAMS) was planning to drastically reduce air marshal protection of long haul flights. Although the nationally broadcasted cellular phone text message that MacLean disclosed only mentioned reductions planned until August 9, 2003, "FAMS officials said that these program reductions would have continued for the remainder of the fiscal year," according to a Government Accountability Office (GAO) report issued in March 2004. High-risk flights would have been affected for three months.

TSA's plan was at odds with the Aviation and Transportation Security Act, whose Section 105 states that "Deployment of Federal Air Marshals... [on] nonstop, long distance flights, such as those targeted on September 11, 2001, should be a priority."

MacLean's disclosure, and the Congressional outrage it generated, forced the TSA to reverse course and immediately restore funding – narrowly preventing high-risk flights from being severely exposed to increased risk.

TSA ordered MacLean's termination on April 10, 2006, citing this single allegation for his subsequent removal from federal service. On its face, this justification violates both the Whistleblower Protection Act (WPA) and a spending ban in appropriations law, commonly known as the "anti-gag statute."

"The TSA didn't even attempt to camouflage its rationale for terminating Robert MacLean – they did it because he blew the whistle," stated GAP legislative representative Adam Miles. "Either they're not familiar with the whistleblower protection laws, or they're not concerned about following them. Either way, this termination decision needs to be overturned."

On October 20, 2006, Congresswoman Carolyn Maloney of New York called on DHS to conduct a "full review" of MacLean's case.

The WPA protects federal employees from retaliation for disclosing unclassified information if there is no congressional statute barring the release of the information and if the employee "reasonably believes" the information is evidence of a substantial and specific danger to public safety. "Congress did not enact SSI so that executive agencies could use it as rationale for covering-up its dangerous mistakes or revoking employee protections that are guaranteed under the WPA," noted POGO investigator Nick Schwellenbach.

The "anti-gag statute" reinforces the WPA by requiring agency non-disclosure agreements, or gag orders, on unclassified information to incorporate the rights guaranteed under good government laws like the WPA into the terms of the agreement. Under this law, officials who implement or enforce illegal gag orders are personally liable to repay the U.S. treasury for the unlawful spending. The funds used to carry out an agency-wide investigation to determine Mr. MacLean's involvement in a lawful whistleblower disclosure, may be subject to repayment under the Anti-deficit act.

"MacLean's termination is a case study in the abuse of government secrecy," said POGO's Schwellenbach. "MacLean disclosed this information in the interest of homeland security, but TSA's ham-fisted management retaliated against him anyway. Whistleblowers like MacLean serve the American public, and by protecting whistleblowers, we protect ourselves."

"If TSA's actions against me go unchecked, in the future anyone in a national security position will ignore their oath, turn a blind-eye, and remain silent out of fear of retaliation," MacLean added.

Founded in 1981, the Project On Government Oversight (POGO) is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more accountable federal government. www.pogo.org.

Founded in 1977, the Government Accountability Project (GAP) is nonprofit public interest group that promotes government and corporate accountability by advancing occupational free speech, defending whistleblowers, and empowering citizen activists.

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