



June 11, 2009

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C.

Attention: Offices of Science and Technology Policy and
Congressional Relations

Dear Mr. President:

The Society for Conservation Biology, a global community of conservation professionals with senior scientists and managers in virtually every federal natural resource and environmental agency, once again urges you to take a leadership role in supporting legislative action to implement your campaign and transition policy for the protection of whistleblowers.

This afternoon the subcommittee on Oversight of the Federal Government of the Senate Committee on Homeland Security and Governmental Affairs will hold a hearing on legislation to protect whistleblowers, S. 372 - The Whistleblower Protection Enhancement Act of 2009. In that hearing they will examine the differences between their bill and the companion measure in the House, H.R. 1507. I have been assured by subcommittee staff that this letter will be entered into the record of the hearing.

We know from our members' personal experiences that challenging conventional wisdom in science in recent years has been nearly as financially and professionally dangerous as it was during the time of Galileo and Copernicus, both of whom suffered severe retaliation for defending the scientific method over the politicized science of their time. With the global threat from climate change and accelerating extinctions scientific freedom today has become even more important. Yet until further steps are taken it will still be seen quite logically as treacherous for those who practice it.

In December we briefed your transition team in detail on our "Recommendations for actions by the Obama Administration and the Congress to advance the scientific foundation for conserving biological



diversity.” Section 5 of those “Recommendations” is entitled “Restoring Scientific Integrity”. In the final subsection entitled “Strengthening the Law that Supports Science Across the Agencies” we asked you to “work with Congress to allow Federal whistleblowers who seek redress for retaliation to sue in U.S. District Court if they have not received a response to their claim through an administrative process within 180 days of filing that claim, or if they wish to appeal a Merit Systems Protection Board decision.”

We are grateful that both Houses of Congress are moving forward with very similar legislation to empower federal scientists and others who see serious wrongdoing such as the suppression or intentional and significant misrepresentation of science in federal proceedings or reports. We are specifically gratified that there is now a consensus among the majority of members of the House and Senate Committees of jurisdiction for a stronger scientific freedom provision, which is now in the bills of both Committees with identical language.

We were pleased and gratified by the policy of your campaign and transition team on whistleblowers:

Protect Whistleblowers: Often the best source of information about waste, fraud, and abuse in government is an existing government employee committed to public integrity and willing to speak out. Such acts of courage and patriotism, which can sometimes save lives and often save taxpayer dollars, should be encouraged rather than stifled. We need to empower federal employees as watchdogs of wrongdoing and partners in performance. Barack Obama will strengthen whistleblower laws to protect federal workers who expose waste, fraud, and abuse of authority in government. Obama will ensure that federal agencies expedite the process for reviewing whistleblower claims and whistleblowers have full access to courts and due process. http://change.gov/agenda/ethics_agenda/

Unfortunately, this policy commitment was removed from the White House website after the first day, and has not reappeared.

We also appreciated your March 9 policy initiative on scientific integrity, and are participating in that effort. As we have explained in our comments filed with the White House Office of Science and Technology Policy in



support of your initiative on scientific integrity, there is much that agencies can do to replace the current culture and corresponding internal environment of scientific repression with scientific freedom.

What is missing so far, however, is the commitment of your Administration and the Senate Committee to that timely access to the Federal District Courts where juries as a general rule are the finders of fact and where the rights of litigants are much more thoroughly enforced.

For example, my own disclosure of what I perceived to be violations of the Pelosi Amendment and related laws and regulations concerning environmental reviews of potentially harmful World Bank projects led to a lost job in 2002, an administrative appeal lasting nearly two years and a delay in correcting dangerous failures to obey the law (e.g., provisions of 22 U.S.C. 262m). I also disclosed the suppressing and redacting of my reports due to pressure from by officials of the Treasury Department when I was seconded to USAID from the Department of Agriculture. This led to an administrative appeal that lasted almost two years until the Merit Systems Protection Board ruled in my favor and reversed the ruling of the administrative judge (John M. Fitzgerald v. Department of Agriculture, 97 M.S.P.R. 181, September 1, 2004). I was one of relatively few to overcome an erroneous decision by the initial administrative judge, as in recent years very few whistleblowers have succeeded in this administrative process whose judges and board members do not have the full independence enjoyed by judges and juries. With the support of its author and namesake, and Senators Leahy, Lugar, and Biden, among others, the Congress eventually amended the Pelosi amendment in order to prevent some of the abuses of the law that I had pointed out. Faster access to the District Courts might well have more rapidly resolved my case and ended the Treasury Department's failure to obey the law and to honor established norms of environmental assessment practice, which failure had the effect of sweeping under the rug serious environmental and public health risks around the world.

The cornerstone for your campaign and transition commitments to whistleblower protection was that "full court access." The Administration's pledges will ring hollow unless whistleblowers have access to juries to enforce scientific integrity rights, the same as available for Americans generally when government abuses its power and violates their rights. For many years, censorship and repression of federal science has violated



countless policy statements yet the corresponding legal rights have had no effective remedy. The problem is that none of those rights have had credible enforcement structures for those who want to live the rhetoric on the job, and who must defend themselves against harassment and violations of their rights by those who are intolerant.

Thank you for considering the views of an organization whose members deeply believe in, and regularly risk their careers for, the principles restated in your policies. We hope that you will exercise active leadership in developing your Administration's policies and in your work with Congress. We ask now that that leadership include visible support for due process through full court access, so that the rights and responsibilities of federal scientists and others who seek to speak out to protect the public will no longer be dangerous for those who take those rights and responsibilities seriously enough to act upon them when confronted with wrong-doing.

Sincerely,

John M. Fitzgerald, J.D.
Policy Director
Society for Conservation Biology

Cc: Oversight Subcommittee Chairman Akaka
Tom Devine, J.D., Government Accountability Project
Francesca Grifo, Ph.D., Union of Concerned Scientists
Jeff Ruch, J.D., Public Employees for Environmental Responsibility