



U.S. Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505

OSC URGES NINTH CIRCUIT: APPLY FULL WHISTLEBLOWER PROTECTIONS IN PENDING CASES

FOR IMMEDIATE RELEASE

CONTACT: Ann O'Hanlon, (202) 254-3631; aohanlon@osc.gov

WASHINGTON, D.C./May 13, 2013 –

Today the U.S. Office of Special Counsel (OSC) filed an amicus brief with the U.S. Court of Appeals for the Ninth Circuit in the matter of *Kerr v. Salazar*. In the brief, OSC advises that provisions in the Whistleblower Protection Enhancement Act (the WPEA) clarifying the scope of protected whistleblowing should apply to cases pending at the time of the law's passage. This follows OSC's amicus brief in the matter of *Day v. Department of Homeland Security*, which raised similar issues.

OSC argues that Congress clearly stated its intent that the WPEA apply to pending Board cases. The Senate Report explicitly states: "(T)he Act's provisions shall be applied in OSC, MSPB, and judicial proceedings initiated by or on behalf of a whistleblower and pending on or after that effective date (of enactment)." S. Rep. No. 112-155. OSC further asserts that denying whistleblowers the benefit of Congress's restorative law would undermine, rather than promote, the governmental interests that Congress advances in the WPEA.

The appellant is Leslie A. Kerr, former manager of the Kodiak National Wildlife Refuge in Alaska. Kerr alleged that whistleblower reprisal motivated her removal from federal service. The District Court ruled that Kerr's disclosures to her supervisor did not qualify as protected disclosures under the Whistleblower Protection Act because they were made in the normal course of her employment. Her appeal was pending at the Ninth Circuit when the WPEA became law in 2012.

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. For more information, please visit our website at www.osc.gov.