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OSC URGES MSPB: APPLY FULL WHISTLEBLOWER PROTECTIONS IN PENDING CASES

FOR IMMEDIATE RELEASE

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Today the U.S. Office of Special Counsel (OSC) filed an amicus brief with the Merit Systems Protection Board in the matter of *Day v. Department of Homeland Security*. In the brief, OSC advises that provisions in the Whistleblower Protection Enhancement Act (the Act) clarifying the scope of protected whistleblowing should apply to cases pending at the time of the law's passage.

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 in the case at hand is former Coast Guard employee Thomas Day, whose Individual Right of Action appeal against the Department of Homeland Security was pending at the MSPB when the Act was passed. The administrative judge on the case asked the MSPB to rule on whether a disclosure made as part of an employee's normal duties and through normal channels is protected under the Whistleblower Protection Act (WPA).

"For too long, OSC has been handcuffed by court decisions that limited protections under the WPA," said Special Counsel Carolyn Lerner. "Congress made clear that these loopholes were contrary to the plain meaning and intent of the WPA."

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.