

For Immediate Release

Friday, March 13, 2009

Grassley holds President accountable for promises to make government transparent

WASHINGTON – Senator Chuck Grassley has asked President Barack Obama to account for the way his signing statement on the omnibus spending bill this week contradicts promises he made on during the presidential campaign and his pledges to support federal whistleblowers.

“The President’s signing statement this week is alarming,” Grassley said. “It makes you think that the new era of transparency is over before it began. President Obama shouldn’t go back on his word from the campaign trail and do an end run around Congress.” Here is a statement made by candidate Obama about presidential signing statements:

<http://www.youtube.com/watch?v=seAR1S1Mjkc>.

Earlier this month, Grassley wrote to Obama to urge him to hold a Rose Garden ceremony honoring whistleblowers. It’s an idea that Grassley has long suggested to Presidents as a way to send a message from the top of the bureaucracy on down that whistleblowers deserve rewards, rather than reprisals, for exposing mismanagement and waste, fraud and abuse of tax dollars.

The text of Grassley’s letter of protest regarding this week’s signing statement is immediately below. Grassley’s earlier letter is also below.

The Honorable Barack Obama
White House
1400 Pennsylvania Ave.
Washington, D.C.

March 13, 2009

Dear Mr. President:

Two weeks ago I wrote you a letter encouraging you to follow through with your campaign promises to strengthen accountability and transparency in Government by hosting a Rose Garden ceremony in honor of whistleblowers. As a longtime champion of whistleblowers, I was encouraged by the many statements you made about the important role whistleblowers play in rooting out waste, fraud, and abuse in government programs. However, after reading your signing statement on Wednesday accompanying H.R. 1105, the Omnibus Appropriations Act of 2009, I now believe that your campaign promises to support federal government whistleblowers ring hollow.

I have reviewed your campaign position papers and statements, and believe your action directly contradicts a number of your campaign promises. For example, you made an emphatic statement that once you were elected you would work to protect whistleblowers and “strengthen

whistleblower laws to protect federal workers who expose waste, fraud, and abuse of authority in government.”^[1] You also pledged to “sign legislation in the light of day without attaching signing statements that undermine the legislative intent.”^[2] Further, in a campaign speech that is available online, you stated your Administration was “not going to use signing statements as a way of doing an end run around Congress.”^[3] Despite these assurances and promises, your signing statement singled out specific provisions of the legislation and indicated you would interpret them contrary to the intent of Congress.

Specifically, you singled out sections 714(1)-(2) of H.R. 1105 which contains an appropriations rider that Congress has passed in various forms since 1997. This rider has been an important part of appropriations bills for a decade and it is a significant part of Congress’ efforts to protect the rights of Federal Government employees to provide information to Congress. The rider states that no appropriation shall be available for the salary of any officer or employee of the Federal Government that “attempts or threatens to prohibit or prevent, any other officer or employee of the Federal Government from having any direct oral or written communication or contact with any Member, committee, or subcommittee of the Congress[.]”^[4] This rider sends a powerful message to all agencies and Departments that any effort to block an employee from providing information to Congress will not be tolerated.

I am deeply concerned that the signing statement you issued will undermine this important whistleblower protection included in the Omnibus Appropriations Bill. Not only is your signing statement contrary to your campaign statements, it also goes beyond the traditional broad signing statements authored by previous Presidents. In specifically singling out this provision, you have gutted the legislative intent of this provision by stating that it does not “detract from [your] authority to *direct* the heads of executive departments to *supervise, control, and correct* employees’ communications with Congress[.]” (emphasis added). This is a shocking statement that acknowledges that you would be willing to give an order preventing employee whistleblowers from making disclosures to Congress. I do not see how this statement can be reconciled with your campaign promise to protect whistleblowers. In fact, it is even more egregious than simply breaking a promise, because it actually restricts current and previously existing whistleblower protections.

Unfortunately, your statement did not stop there. You also added that you would only use this authority if the communications would be “unlawful or would reveal information that is properly privileged or otherwise confidential.” While this appears to be a limitation on the situations where you would restrict Federal Government employee whistleblower rights, it also signals a potential expansion of the types of “privileged” information that can be withheld from

^[1] Change.gov, *Ethics*, http://change.gov/agenda/ethics_agenda/ (last visited March 12, 2009).

^[2] Barackobama.com, *Restoring Trust in Government and Improving Transparency, Giving Government Back to the People* <http://www.barackobama.com/pdf/TakingBackOurGovernmentBackFinalFactSheet.pdf> (last visited March 12, 2009).

^[3] See Youtube.com, *Obama on Presidential Signing Statements*, <http://www.youtube.com/watch?v=seAR1S1Mjkc> (last visited March 12, 2009).

^[4] Statement by the President on the Signing of H.R. 1105, March 11, 2009, *available at* http://www.whitehouse.gov/the_press_office/Statement-from-the-President-on-the-signing-of-HR-1105/ (last visited March 12, 2009).

Congress. It appears you are attempting to circumvent the statutes and precedents by which Congress currently has a right to access classified information—including Top Secret information. Moreover, your assertion of the authority to “correct” whistleblowers who provide information that is “otherwise confidential” is undefined and overly broad. It will undoubtedly chill whistleblowers who might otherwise come forward to report waste, fraud, or abuse to Congress.

I have fought hard to protect good faith whistleblowers who do nothing but “commit truth”. I’ve continuously objected to signing statements that have sought to restrict whistleblower protections. For example, I objected to signing statements issued by President Bush that restricted the whistleblower protection provisions of the Sarbanes-Oxley law Congress passed in 2002. I also objected to a signing statement issued by President Bush on the reforms contained in the Inspectors General Reform Act of 2008. Whistleblowers deserve strong protections and any effort to limit those protections should be debated openly in Congress for all to see, not done in a signing statement behind closed doors at the 11th hour.

Simply stated, your signing statement on the Omnibus Appropriations Act managed to set back whistleblower protections and violate two promises with one stroke of the pen. Most of all, I’m disappointed that your campaign promises to bring accountability, transparency, and reform to the Federal Government appear to be falling by the way side. I urge you to revisit your signing statement and implement sections 714(1)-(2) of the Omnibus Appropriations Act of 2009 in a manner consistent with the spirit and intent of the legislation. I hope that in the future we can work together to provide the American people with the open and transparent government they deserve.

Sincerely,
Chuck Grassley of Iowa
United States Senator

For Immediate Release
Friday, February 27, 2009

Grassley urges the President to change culture of bureaucracy
by honoring whistleblowers with a Rose Garden ceremony

WASHINGTON --- Senator Chuck Grassley today urged President Barack Obama to plan a Rose Garden ceremony to honor whistleblowers in order to strengthen transparency, good government and accountability in the federal bureaucracy.

Grassley said he’s hopeful that Obama will act on the suggestion based on the new President’s welcome calls for more openness and accountability in government.

“In exchange for risking their livelihoods to do what’s right for the good of the country, most whistleblowers are treated like skunks at a Sunday afternoon picnic and often far worse,” Grassley said. “President Obama could help to change this culture of hostility and uproot

wrongdoing in government with a Rose Garden ceremony honoring whistleblowers. It would send a message from the top of the bureaucracy on down that whistleblowers should be heard and treated with rewards not reprisals.”

A long-time advocate for whistleblowers, Grassley sponsored changes made in 1986 to the Abe Lincoln-era federal False Claims Act to empower private sector whistleblowers. These amendments have recovered over \$21 billion to the U.S. Treasury that would otherwise have been lost to fraud, according to the Justice Department. Grassley also co-authored the Whistleblower Protection Act of 1989 to protect public sector employees and has co-sponsored legislation updating that same law. He recently introduced legislation that would extend whistleblower protections to employees of the Legislative Branch and introduced updates to the False Claims Act this year and last to shore up whistleblower provisions eroded by the federal courts. The Iowa senator has stood up against the heavy hand of the bureaucracy – regardless of whether Republicans or Democrats were in charge -- for individual whistleblowers from the Pentagon, the FBI, the IRS, the Interior Department, the Department of Health and Human Services, the FDA, and the SEC.

The text of Grassley’s letter to the President is below.

February 26, 2009

The Honorable Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Mr. President:

I’m writing to encourage your efforts to achieve a more accountable and transparent government. You and I share this goal, and based on my efforts over many years, I appreciated what you said about openness and accountability on the campaign trail so many times and during your first month in office. Elected officials hold a public trust and have an obligation to take every step possible to rid government bureaucracy of waste, fraud and abuse, and to have the public’s business be public.

One thing I’ve asked every president since Ronald Reagan to do is to hold a Rose Garden ceremony honoring whistleblowers. No one has done so yet, but I hope that you will based on your strong statements about accountability in government. I’m writing this letter to urge you to do so.

A Rose Garden ceremony honoring whistleblowers, with the President of the United States lauding the sacrifice of those who shoulder great personal risk for the greater public good, would exemplify the accountability and responsibility you’ve challenged the nation to embrace. It would send a loud and clear signal from the very top of government to the very lowest levels of government that waste, fraud and abuse won’t be tolerated. It would rally private citizens, including those employed by government contractors, and government employees alike that

blowing the whistle on waste, fraud and abuse is not only the right thing to do, it's also each individual's civic responsibility.

In the Senate I've worked to champion the noble efforts of the whistleblowers with legislation and advocacy in individual cases. The whistleblowers I've gotten to know stood up when it was risky, when it was hard and when it wasn't popular. In exchange for risking their livelihoods to do what's right for the good of the country, most of these whistleblowers were treated like skunks at a Sunday afternoon picnic and far worse. Ernie Fitzgerald, one of the first federal government whistleblowers I ever met, described it well when he said whistleblowers were guilty of nothing more than "committing truth."

Mr. President, you could help to change this culture with a Rose Garden ceremony and, in turn, uproot wrongdoing and strengthen transparency, good government and accountability through the federal bureaucracy, as you've said you want to do. Again, it's my hope that you will act at this moment to honor whistleblowers with a Rose Garden ceremony. I look forward to working with you to achieve greater transparency in government.

Sincerely,

Chuck Grassley of Iowa

United States Senator