

Monday, February 25, 2008

GAE Committee Public Hearing

Raised Bill No. 335

AAC The Protection Of Whistleblowers

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Madam Chair and members of the committee,

My name is Chris Gorski from New Hartford. I am here before you today to express my qualified support for Raised Bill No. 335, An Act Concerning the Protection of Whistleblowers. In the initial press conference by Attorney General Blumenthal of January 25th, he proposes authorization for his office to intervene on behalf of whistleblowers in an administrative hearing on retaliation,

"Whistleblowers at risk of retaliation should have the attorney general as a proactive advocate - fighting for immediate protective orders that stop vindictive corrupt officials from silencing or intimidating them," Blumenthal said.^{1d}

However the proposed bill does not include full advocacy for whistleblowers, with the exception of protective orders for current employees that are exposed to additional retaliation during the hearing process, which can last 10 months or more.² In fact, such advocacy is a conflict of interest for the Attorney General's Office, as the ironically named "Employment Right Department" of the Attorney General's office is "currently defending the state in approximately 160 employment cases in the state and federal courts, as well as a similar number of complaints before the Connecticut Commission on Human Rights and Opportunities and the Equal Employment Opportunities Commission."³

I have heard the admirable goals stated by the Honorable Senators Slossberg and Prague and Attorney General Blumenthal in their remarks of January 25. I agree with those goals and I am additionally advocating today for full legal representation by the state to protect courageous employees who stand up for laws, morals, principles and genuine concern for the best use of taxpayer dollars. In its current form, this bill does not provide for full legal representation for Whistleblowing employees. Such representation, above and beyond protection against "further retaliatory acts," is essential to have true justice for Whistleblowers and positive changes in many agencies. The Act as currently proposed, in Section 1(b)(2) states,

"If the Attorney General determines that such personnel action was in retaliation for such employee's or contractor's disclosure of information pursuant to this section, the

¹ <http://www.ct.gov/ag/cwp/view.asp?A=2795&Q=404686>

² <http://www.ct.gov/chro/cwp/view.asp?a=2528&Q=331990&chroPNavCtr=|#46037>

³ <http://www.ct.gov/ag/cwp/view.asp?a=2095&q=293188>

Attorney General **may** intervene in any proceeding pursuant to subdivision (3) of this subsection.”⁴

The key work here is "*may*." Just as Section 1(a) of this Bill gives the jurisdiction for investigating complaints to the Auditors of Public Accounts which then report and recommend action to the Attorney General's Office, the decision to pursue action is left to the Attorney General "as deemed appropriate." My concern with this approach is that there is too much conflict of interest within the Attorney General's Office in both defending the state and investigating the state. If we accept that a culture of suppressing whistleblowers is pervasive in state agencies (which of course this bill is designed to address) then how can we be assured that such a culture does not extend to within the Attorney General's Office without independent oversight? With both an "Employee Rights Department" currently defending 300+ cases against state agencies and officials before the very outlets designed to address the rights of Whistleblowers, and presumably a new department to investigate whistleblower complaints and step in to assert the rights of the whistleblower against these same agencies that another department of the AG's Office is defending, how could there be full and impartial effort put into both duties? My concern is that whistleblower allegations "may not" get the full attention they deserve, and the language of this bill does not **require** full investigation and follow-thru.

I have worked for the state and was retaliated against for reporting non-compliance with state regulations and gross mismanagement. I am currently pursuing a complaint and have been vigorously opposed by the Attorney General's own "Employment Rights Department," mostly on technicalities and not on the merits of my complaint. When reviewing the outcome of Whistleblower cases on the CHRO website (provided from 2003 to present),⁵ there is a noticeable lack of winning outcomes for whistleblowers. Reading these case outcomes is eye opening; I highly recommend visiting the CHRO website and reviewing them. Currently, there is a 100% winning streak for all cases fully processed through the CHRO in favor of the defendant (known as "Respondent") and against the employee (known as "Complainant").

Here are the statistical breakdowns of the seventeen dismissed complaints (out of twenty-three total complaints) brought to the CHRO since 2003:

- 41% have been dismissed due to "lack of jurisdiction"
- 18% have been dismissed due to "untimeliness," which means the failure to meet statutory deadlines for filing.
- 12% have been dismissed due to "failure to appear."
- 12% have been dismissed due to the "failure to meet the burden of proof."
- 12% have been dismissed due to a change to state or federal courts.
- 6% have been dismissed because the Whistleblower filed a grievance in another venue prior to appearing before the CHRO.

Six cases are still being adjudicated and do not have an outcome as of yet.

⁴ General Assembly, February Session, 2008 Raised Bill No. 335, LCO No. 1915, *01915_____GAE*

⁵ <http://www.ct.gov/chro/lib/chro/pdf/indexrefereewbrdecisions.pdf>

One may reasonably ask not only why all of the cases brought to conclusion since 2003 have failed to find in favor of the whistleblowers, but also why are there so few cases brought forth in the first place? I conclude that not only is there tremendous pressure brought forth upon state employees not to speak up against wrongdoings, but that the data showing a favorable outcome is non-existent.

I am not a lawyer. I have asked many lawyers for representation. I was denied by all. There is a poor chance of success shown to any lawyer who views the 2003 to current decisions of the CHRO, and the most such a lawyer stands to gain are "reasonable legal fees," as no punitive damages can be awarded in such cases. Without incentive for representation, many people represent themselves Pro Se, as have I. It has been educational, far too much so for someone who is not a legal scholar. I have learned to file motions, to cite legal precedence in objections and responses, and to organize a large portion of my time and energy around my case, including taking time off from my new job. It has taken a toll on my family and has been very stressful for me personally, equivalent to taking on several graduate courses or a second job with late nights of writing and research in support of my case. I have been fortunate in that I am college educated, have easy access to great sources of information, and the motivation to perform research and organize information professionally enough to have kept my case alive. Had I not had all of these points in my favor, I would undoubtedly have had my case dismissed as one of the statistics cited above.

It is imperative that full advocacy and legal representation needs to be provided by an independent state entity for those who report wrongdoings at every step of the process. It is also my opinion that it is not in the State's interest or the Attorney General's Office, as now organized, to provide this advocacy. It is however, in the interest of the people of Connecticut to protect those employees of our great State who act their consciences in their jobs despite overwhelming pressures not to do so. I urge the committee to address this need for advocacy as well as independent oversight and accountability into this bill.

Thank you Madam Chair and members of the committee for your commitment to advocating for whistleblower protection that will make Connecticut government a better place to work with integrity.

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