

Summary of the breakdowns in statutory framework to protect federal employee from prohibited personnel practices (PPP's)

1) The US Office of Special Counsel (OSC), at its creation in 1979, interpreted away its duties as the federal law enforcement agency responsible to protect federal employees from agency violations of the “merit system principles,” codified at 5 U.S.C. §2301, which are termed “prohibited personnel practices (PPP's),” and which are codified at 5 U.S.C. §2302(b). It did this by stating, contrary to the plain language of the law and its legislative history, that the reporting requirements of (what is now) 5 U.S.C. §1214(e) do not apply to its determinations of PPP's and other violations of the civil service laws, rules, or regulations within its jurisdiction. Instead of having to formally report such determinations to the head of the involved agency, OSC claims to have no discernible nondiscretionary duty to enforce the laws under its jurisdiction.

OSC has yet to make a §1214(e) report, not in 31 years in which it has investigated about 50,000 complaints.

2) The Merit Systems Protection Board (MSPB), at its creation in 1979, interpreted away its duties to conduct “special studies” of OSC's interpretation of and compliance with its duties, as a federal law enforcement agency, to protect federal employees from PPP's, per 5 U.S.C. §1204(a)(3). It similarly interpreted away its duties to conduct “special studies” of agency head's compliance with their duty to “prevent PPP's,” by 5 U.S.C. §2302(c). It did this by claiming that despite the plain language of the law and its legislative history, (what is now) §1204(a)(3) does not require it to determine and report to Congress and the President “whether the public interest in a civil service free of PPP's is adequately protected” (i.e. whether federal employees are adequately protected from PPP's).

MSPB has not made such a report to Congress and the President, not in 31 years, during which it has conducted scores of “special studies” of diverse aspects of federal employment. It is not capable of making such a report today - because it has not conducted the requisite “special studies” of OSC and agency actions in “preventing PPP's.”

3) Agency heads are therefore incapable of demonstrating compliance with their duty to “prevent PPP's,” per 5 U.S.C. §2302(c). Joe Carson has made about 25 Freedom of Information Act (FOIA) requests to diverse agencies for records demonstrating their objective compliance (i.e. not simply agency policies statements banning PPP's, but records indicating whether those policies are being implemented). Of the approximately 15 that have responded, none have provided responsive records, see <www.NolanforOSC.com> for these documents.

4) U.S. Government Accountability Office (GAO) has duties, per 5 U.S.C. §2304, to conduct audits of the implementation of civil service laws. It has not conducted any that assess the interpretation of and compliance with §§1204(a)(3), 1214(e) and 2302(c).

5) U.S. Office of Personnel Management (OPM), per 5 U.S.C. §1104(b)(2), has an oversight responsibility for agency's implementation of “merit systems principles,” but is prohibited by §1103(a)(5) from evaluating whether agency employees are adequately protected from PPP's.