

April 11, 2010

Honorable Elena Kagan  
Solicitor General of the United States  
Room 5614  
Department of Justice  
950 Pennsylvania Ave, NW  
Washington, DC 20530-0001

Via: fax, email, and overnight delivery (on April 12, 2010)

Re: Carson v. Merit Systems Protection Board, No. 09-1207, docketed at Supreme Court on April 6, 2010; request for an “acquiescence”

Dear Solicitor General Kagan,

For reasons stated in my petition of writ of certiorari as well as in the accompanying letters and documents, I respectfully request your office file an “acquiescence” agreeing that the matter merits review by the U.S. Supreme Court.

President Obama, as both a candidate and as President, has supported increased protection for federal whistleblowers. This is a jurisdictional case - in its response to my individual right of action (IRA) whistleblower appeal to the Merit Systems Protection Board (MSPB), the Department of Energy (DOE) complied with MSPB regulation by agreeing that the involved agency actions occurred. (I have also enclosed the “corresponding brief on CD-ROM” which I created per Fed. Cir. R. 32(e), it includes the joint appendix, the relevant pages from the agency’s response to MSPB are cited in my brief to the Supreme Court).

It is a legal fact that I am a whistleblower who suffered various forms of unlawful reprisal. The question is whether the agency actions cited in this appeal are “personnel actions” for creating “any other significant change in duties, responsibilities, or working conditions.”

Determining whether an agency action becomes such a personnel action is **still** unreviewed at the Federal Circuit, 16 years after this “catch-all” category of personnel action was created. Additionally, there is no precedent at the MSPB whether the Supreme Court precedent in Burlington v. White, 126 S.Ct 2405 (2006) is relevant this determination.

I hope you will agree the Administration’s repeatedly stated objectives to improve federal whistleblower protection can be advanced by this case, if the Supreme Court remands it to the Federal Circuit with appropriate instructions. I also hope a significant number of stakeholders to a trustworthy federal civil service will contact your office and/or the White House in support of this request. I understand that your office only has until April 26, 2010 to file an acquiescence, per Supreme Court Rule 12.6.

Respectfully,

Joseph P. Carson, PE  
10953 Twin Harbour Drive  
Knoxville, TN 37934  
865-300-5831

**copy:**

Norm Eisen, President Obama's Special Counsel for Ethics and Government Reform

**Attachments:**

My April 3, 2010 letter to DOE Secretary Chu

My April 6, 2010 letter to MSPB Chairman Grundmann

OPEIU (a federal employee union) April 8, 2010 letter to DOE Secretary Chu

Then-Senator Obama's May 2007 response to survey on federal whistleblower protection

Corresponding brief on CD-ROM for the underlying case at Federal Circuit, Carson v. MSPB, docket no. 2007-3134