

## **FBI Whistleblower Protection Enhancement Act of 2022**

### **Background**

Employees of nearly all federal law enforcement agencies, including the U.S. Secret Service, Drug Enforcement Administration (DEA), U.S. Marshals, and Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), enjoy a strong arsenal of federal whistleblower protections, including the right to have retaliation cases heard before the U.S. Merit Systems Protection Board (MSPB). Whistleblower protections are critical for ensuring accountability at these agencies. Whistleblowers feel safe blowing the whistle because they know that if their superiors try to bully or retaliate against them, they can receive a fair hearing, adjudicated by a neutral third party. Unfortunately, employees of the Federal Bureau of Investigation (FBI) are denied the basic right to have their retaliation case heard by a neutral third party and must instead adjudicate their claims internally. Not only is this unfair to employees of the FBI but it also has a chilling effect on whistleblowing activity.

### **The Issue**

The FBI adjudicates all whistleblower retaliation claims internally through a process prescribed in regulation. If an employee of the FBI would like to appeal an adverse action or agency determination, they only have the option of appealing to the Deputy Attorney General. This existing system places employees of the FBI at a huge disadvantage since at every level, the FBI or its parent agency, the Department of Justice, is responsible for adjudicating the claims.

The results are well-known. The FBI has a history of retaliating against whistleblowers and working to suppress evidence of wrongdoing, not in the interest of justice, but in order to protect itself from reputational harm. Enhanced whistleblower protections are necessary, and will encourage greater transparency and accountability. Furthermore, the MSPB currently adjudicates retaliation claims from nearly every other federal law enforcement agency in the country, and is fully equipped to handle sensitive operational matters.

### **What the Bill Does**

- Maintains the FBI's internal adjudication process for all initial claims but grants employees the ability to appeal determinations or adverse actions to the Merit Systems Protection Board.
- Prevents the FBI from using delay tactics to punish whistleblowers by introducing a kick-out provision. After 180 days, if the FBI has not made a final determination or corrective action order, employees can take their case directly to the MSPB.
- Increases accountability at the FBI, and guarantees that FBI whistleblowers are afforded the same protections that nearly every other federal law enforcement agency in the country enjoys.