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President Kelley Sharply Critical of MSPB Chambers Decision, Calling It ‘Dangerous to the Public Health and Safety’

Washington, D.C.—The leader of the nation’s largest independent union of federal workers today sharply criticized a 2-1 decision by the Merit Systems Protection Board (MSPB) that she described as “dangerous to the public safety” because it “dramatically narrows protections” for federal employee whistleblowers who disclose serious health and safety risks.

President Colleen M. Kelley of the National Treasury Employees Union (NTEU) said the MSPB decision in a case involving the former chief of the U.S. Park Police “serves the public poorly and undermines the congressional intent evident in the Whistleblower Protection Act (WPA), particularly with respect to matters impacting public health and safety.”

NTEU had filed a brief with the MSPB in support of former Park Police Chief Theresa Chambers, who had requested that the MSPB overturn the decision of one of its administrative law judges upholding her firing and ruling that the comments she made to the media are not covered by the WPA.

Chambers, who was a veteran of 27 years in law enforcement, including six years as Park Police Chief, was fired by the Department of the Interior after the Washington Post published her comments about dangers to people and public monuments in the Washington area because of inadequate staffing, misallocation of resources and insufficient funding for the Park Police.

Ironically, just this summer, there was a rash of crime on and around the National Mall in Washington that drew nationwide attention. Some of the victims of this summer’s crime spree were tourists visiting the nation’s capital.

In its 2-1 decision, the MSPB majority said that an employee’s disclosure that an agency policy raises risks to the public health and safety is protected by the WPA “only if the desirability of the trade-off the policy choice represents is not debatable among reasonable people.” The majority further

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said the person making the statement must show that the policy choices are “illegitimate” in order to be protected against retaliation.

President Kelley attacked that rationale. “Employees should not be required to prove that a policy will endanger the public safety before protecting their rights to speak out on those dangers,” she said. “Dangers to public health and safety must be brought to light, whether or not an employee can prove bad faith on the part of agency decision makers.”

She pointed to the dissenting opinion of MSPB member Barbara Sapin, who stressed that “policy decisions underlie virtually all matters at issue in disclosures related to public safety dangers, and even the most extensive and thorough consideration cannot preclude any possibility of substantial and specific dangers to the public health and safety.”

In a lengthy and detailed dissent which echoed many of the arguments NTEU made in its amicus brief, Sapin added that “the additional requirement (imposed by the majority decision) can only discourage employees from making the disclosures Congress sought to encourage them to make.”

Chambers said now that she has exhausted her administrative remedies in her effort to reclaim her job, she intends to file an appeal with the U.S. Court of Appeals for the Federal Circuit. NTEU plans to again support Chambers in her fight and file a brief with the court.

NTEU has a long and successful history of fighting within agencies and using the courts to secure and protect First Amendment and whistleblower rights for federal workers.

As the largest independent federal union, NTEU represents some 150,000 employees in 30 agencies and departments.