INTRODUCED BY MEMBERS OF THE NO FEAR COALITION

May 15, 2007

NOTIFICATION AND FEDERAL EMPLOYEE ANTIDISCRIMINATION AND RETALATION ACT OF 2007

AN ACT

To strengthen accountability features introduced by Notification And Federal Employee Antidiscrimination and Retaliation Act of 2002, to prescribe incentives to ensure that Federal agencies timely address violations of anti-discrimination and whistleblower protection laws which includes a requirement that the agency address the Act's implementation and progress in its Annual Strategic Plan; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2007 ''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—GENERAL PROVISIONS
Sec. 101. Findings.
Sec. 102. Intent of Congress.
Sec. 103. Definitions.
Sec. 104. Effective date.

TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION
Sec. 201. In General.
Sec. 202. Disciplinary action requirement.
Sec. 203. Parties named in EEO complaint

TITLE III—NOTIFICATION, TRAINING AND REPORTING
Sec. 301. Notification, reporting and training requirement.

TITLE IV—FEDERAL JUDGMENT FUND REIMBURSEMENT
Sec. 401. Judgment fund reimbursement requirement.

TITLE V—JUDICIAL REFORM PROTECTIONS
Sec. 501. Judicial reform protections -- pro se litigants.
Sec. 502. Special system process (SSP) monitoring
Sec. 503. Judicial reform protections -- attorney / counselor.
Sec. 504. Role of Department of Justice.

TITLE I—GENERAL PROVISIONS

SEC. 101. FINDINGS.

Congress finds that—

(1) Agencies that engage in discrimination, retaliation, harassment or violations of federal discrimination and / or whistleblower laws undermine the confidence of the American people in the Government, puts the publics safety and services at risk, and reduces the Federal Government's ability to timely and adequately address vital public needs;

(2) Federal agencies essentially abandon the task of governing and divert public resources towards clearly proscribed ends, upon engaging in unlawful, work-related discrimination, retaliation, and/or harassment;

(3) Rather than being ends, in and of themselves, such discrimination, retaliation, and/or harassment may be subterfuge, facilitating and masking other waste, abuse, and/or unlawfulness;

(4) Whatever the lurid objective(s) of unlawful discrimination, retaliation, and/or harassment, federal employees and contract workers sacrifice too much in eradicating it from federal agencies;

(5) Vindicating those agencies unduly focuses on defeating the corresponding claims of federal employees and contract workers when protracted legal proceedings result;

(6) Americans are best served by truth seeking processes that expeditiously substantiate or refute allegations of unlawful, work-related discrimination, retaliation, and/or harassment of federal employees and contract workers;

(7) Slow mechanisms unduly sanction adversarial relationships between America and its citizens;

(8) The inextricable toll equals direct and indirect costs spread between federal executive and judicial offices to defend against and otherwise resolve claims, obviously precipitated by at least a colorable prospect of unlawful, work-related discrimination, retaliation, and/or harassment;

(9) Those taxpayer dollars are better expended reconciling understandable if arguably flawed assessments by federal employees and contract workers that escalate to allegations of unlawful, work-related discrimination, retaliation, and/or harassment;

(10) While it may or may not be possible to vindicate those allegations, the reasonable efforts of federal employees and contract workers to vindicate them should not occasion any appreciable loss;

(11) Unlawful, work-related discrimination, retaliation, and/or harassment prompt lost opportunities, general unhealthiness, distinct physical illnesses, mental as well as emotional disturbances, and death among federal employees and contract workers;

(12) The process of proving those losses should not become an ordeal, attendant more to the recalcitrance of government attorneys than the perplexity of underlying disputes;

(13) Congress has heard testimony from individuals that point to chronic problems of discrimination and retaliation against Federal employees;

(a) In the case of Dr. Marsha Coleman-Adebayo, an Environmental Protection Agency (EPA), Environmental Specialist, a jury in August 2000 found that the Agency had discriminated against her based on race, color and a hostile work environment. EPA managers retaliated against the scientist after she reported that an American Company exposed its African miners and their families to vanadium – a deadly substance. EPA relieved Dr. Coleman-Adebayo of her duties after she reported the abuse. The agency has consistently retaliated against the employee since she prevailed in her jury verdict and delivered two Congressional testimonies. A federal jury awarded her $600,000.

(b) In the case of *Matthew Fogg vs. Janet Reno, John Aschroft, Alberto Gonzales*, United States Attorney General, Department of Justice (DOJ). On April 28, 1998, a Federal jury awarded Supervisory deputy U.S. Marshal Matthew Fogg four million dollars ($4,000,000) in compensatory damages and *found* the U.S. Marshal Service (USMS), a bureau under DOJ supervision, to be a *"Racial Hostile Environment"* for all African American U.S. Marshals nationwide. Nine years later Fogg has not received a final decision nor any Equitable Relief from a subsequent favorable Appellant (2001) and lower court decision (2005) against the USMS. The DOJ has paid Fogg's attorney fees for $300,000 but continues to-date exercising its' right to appeal this matter.

(14) Federal agencies are to foster a workplace free of discrimination and timely resolve prima facie cases of discrimination and retaliation;

(a) In the case of *Janet Howard, Tanya Ward Jordan, and Joyce E. Megginson vs. Carlos M. Gutierrez, Secretary-Department of Commerce* - Ms. Howard, Export Specialist, initially filed a race-based discrimination class action lawsuit in 1995. In 2001, the Department used appropriated funds to establish a "Class Action Project Fund", since renamed the Complex Litigation Unit. As of 2007, twelve(12) years later, the Department continues to exhaust millions of taxpayer dollars by further litigating rather than resolving class claims of civil rights violations;

(b) In the case of *Michael McCray vs. Daniel Glickman* – Secretary U.S. Department of Agriculture, Michael R. McCray, Esq. Community Development Specialist, was demoted, discharged and "blacklisted" from subsequent federal/non-profit employment after he reported over forty million dollars ($40,000,000) in government fraud, waste and abuse by USDA and the Mid-Delta Empowerment Zone Alliance. Representing himself, Michael McCray established a *prima facie* case of discrimination and retaliation with admissible evidence, eyewitness testimony and legal admissions. However, after 4,380 days – Attorney McCray has never received a hearing or any due process resulting from baseless and dilatory litigation tactics and reported judicial misconduct amounting to coordinated judicial wrongdoing.

(15) Justice delayed is not only justice denied, but an undue distraction for all involved when federal agencies strain in its wake to be cleared of unlawful, work-related discrimination, retaliation, and/or harassment;

(16) Federal employees and contract workers accordingly lose faith and confidence in the ability or willingness of quasi-judicial agencies and federal courts to protect their civil and constitutional rights;

(17) Those providing leadership to enforce, strengthen, and expand the 2002 provisions of this Act, attest to seeming predisposition of quasi-judicial agencies and federal courts, favoring federal agencies, policy makers, and/or managers accused of unlawful, work-related discrimination, retaliation, and/or harassment;

(18) Federal employees and contract workers should be able to secure legal counsel and representation for related proceedings without a prospect of financial ruin, given reasonably prudent spending habits;

(19) Lawyers should be able to reasonably and effectively contend with inappropriate bias in the course of related proceedings, regardless of its source, without fear of professional retribution;

(20) Unlawful, work-related discrimination, retaliation, and/or harassment deprive Americans of honest services and the highest, best use of tax dollars when perpetrated by federal agents;

(21) It is appropriate for those so defrauding the American public to be personally liable for their conduct under applicable civil and/or criminal law, and subject to discipline;

(22) As America's federal government affects interstate or foreign commerce, and Congress regulates the use of federal resources through appropriation and various oversight powers, Congress hereby proscribes the use of federal intra-office and/or inter-agency mail and/or electronic communication system(s) to perpetrate and/or conceal work-related and unlawful discrimination, retaliation, and/or harassment in accord with Title 18, sections 1341 (relating to mail fraud) and 1343 (relating to wire fraud) of the United States Code.

SEC. 102. INTENT OF CONGRESS.

It is the intent of Congress that—

(1) The enforcement and accountability features set forth within the Act will be effective in strengthening the original congressional intent of the No FEAR law of 2000. Additional Judicial Reform Provisions are necessary because no legislative gains enacted through No FEAR legislation will be effective under the current system of law enforcement or federal court administration. Namely, such provisions shall;

(a) improve the confidence of the American people in the capability of the Federal Government, by systematically holding Federal agencies like Federal Emergency Management Agency

(FEMA), Environmental Protection Agency (EPA), Health and Human Services (HHS) and other agencies accountable for implementing provisions of the Act;

(b) improve Federal program effectiveness and public accountability by promoting a workforce culture where the agency judiciously and expeditiously addresses violations in discrimination and whistleblower laws.

(c) increase employee awareness of rights/protections related to Federal discrimination / whistleblower protection laws and /or retaliation claims.

(d) provide more accountability and consequences for discrimination and retaliation against whistleblowers.

(e) provide more opportunities for civil society to provide citizens oversight of the implementation of the No FEAR provisions and to participate in No FEAR training.

(2) Federal agencies from various federal entities shall provide no less than ten Inter-Agency Personnel Actions to the Office of Special Counsel to create a No FEAR oversight office. This office shall be the official clearinghouse for the federal government and provide written information to Congress, the executive branch and the public on the enforcement of the No FEAR law. Acknowledging the retaliation that many federal employees who worked to ensure the passage of the first No FEAR law, the No FEAR oversight office will initially consist of Federal employees, with appropriate experience, who worked on this legislation. This office shall be established within 90 days of congressional passage of No FEAR II;

(3) The No FEAR Institute, a nonprofit, non-Federal Government entity, is hereby designated as the exclusive source of training, counseling and Special System Process Monitoring that is mandated by this Act with regard to their rights and remedies under antidiscrimination, retaliation, and harassment, as well as whistleblower protection laws; as set forth at Title 42, section 253(i)(1) of the United States Code, it is the policy of Congress that an executive agency should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures. The award hereby required to said No FEAR Institute is in contravention of the policy set forth in 42 U.S.C. section 253(i)(1);

(4) Federal agencies must provide timely and definitive disciplinary provisions should deter federal managers from colluding and conspiring to violate civil rights and civil liberties protections of minorities and whistleblowers and curtail such activity that seriously undermines public faith and confidence in the judicial system. Left unchecked, such tacit collusions have the undesired coercive effect of spreading to other federal officials, influencing the defense tactics utilized by U.S. Attorneys, and improperly influencing federal judges.

(5) Judicial Reform provisions are enacted to protect the constitutional rights of minorities and whistleblowers for due to tacit conspiracies, many are psychologically or financially destroyed as they navigate the administrative procedures or Federal court while the federal conspirators are represented by U.S. Attorneys; many unrepresented complainants are denied fair hearings or due process simply because many federal judges are biased against pro se litigants;

(6) Criminal penalties for violations of federal law shall make responsible parties accountable for intimidation and harassment in federal agencies towards whistleblowers and civil rights activists who have, in some cases, developed chronic illnesses, suffered posttraumatic stress disorder and loss of life;

(7) Federal agencies are hereby required to address No FEAR Act provisions in its Annual Strategic Plan should increase Federal agency compliance with the law and its accountability. For an unseverable connection exists between planning and budgeting, a connection through which an agency decides what to do and how to do it well. Failure to provide such accountability, continues to cost taxpayers. According to the General Accounting Office, the Judgment Fund paid $656,000,000.00 for the period FY 2001 thru 2003 due to discrimination claims.

(8) Judicial Reform provisions are enacted to protect the constitutional rights of minorities and whistleblowers for due to tacit conspiracies, many are psychologically or financially destroyed as they navigate the administrative procedures or Federal court while the federal conspirators are represented by

U.S. Attorneys; many unrepresented complainants are denied fair hearings or due process simply because many federal judges are biased against pro se litigants;

(9) An independent and impartial judiciary and a speedy and efficient system are the very essence of our system of government and the American way of life. Unfortunately, our judiciary has become ponderous, excruciatingly slow and inefficient, with archaic and dilatory procedures which have proved to be extremely damaging to our governance and society.

(10) As Justice Department attorneys, administrative hearing officers, and federal judges are necessarily complicit in creating the problem, Congress hereby unabashedly condemns their misfeasence and/or malfeasence and establishes strong Judicial Reform Provisions to effectuate the broad remedial purposes of the No FEAR Act and related civil rights and civil liberties legislation, including the following:

(a.) To inform and educate the public on the laws and constitutional provisions on which lawyers and judges regulate individual State Bar Associations; and to uncover the violation of separation of powers and conflicts of interest within the judicial branch.

(b.) To abolish the self-regulation of attorneys and place the admission of persons to practice law into a branch of government independent of the judiciary. To include the involvement of ordinary citizens in attorney disciplinary proceedings and to conduct these proceedings in the open.

(c.) To abolish the confidentiality of the complaints made against judges and to establish a system of judicial accountability which involves the ordinary citizens in judicial disciplinary proceedings which are to be conducted in the open. Complaints of misconduct against judges should be investigated even if it involves their decisions, procedural rules or the merits of the case, particularly where the judges fail to follow the law and rules and falsify, and/or disregard the facts and evidence.

(d.) To hold judges and lawyers responsible for their behavior to litigants, and make them accountable and subject them to penalties for the abuse and violation of the guidelines of the laws and rules.

(e.) The creation of a court watch program by the legislature to oversee the functioning of the courts by random inspection of the audio and video tapes and court files, by an agency created for that purpose, with members that includes the ordinary citizen.

(f.) To seek the installation of audio and video equipment in the civil court division of the state court, and video equipment in the federal court (they already have audio equipment). The audio and video tapes to be available for public inspection. The audio tapes subject to be transcribed officially at reasonable rates.

(11) To remedy the fact much of the illegal and discriminatory conduct occurs because federal managers rely on the inability of the current justice system to fairly adjudicate claims against them. And that many U.S. Attorneys and Federal Judges Act is if the federal law does not apply to the government and conduct themselves with little or no regard to the legal rules, regulations and laws they are sworn to uphold and enforce.

(12) The judiciary has become a government within a government setting its own rules and laws for judges and lawyers, accountable only to itself under a self regulation, generally with no penalty for acting in contravention of the rules and laws.

(13) Title VII liability limits shall be $300,000 for each claim of discrimination adjudicated in favor of the claimant in a particular case. This hereby reaffirms the original intent of Congress for federal workplace discrimination claims under Title VII. Title VII is only the exclusive remedy for workforce

discrimination claims. Title VII is not the exclusive remedy for mixed claims of discrimination and retaliation, harassment or other violations of federal law; and

(14) Federal Government hereby waives sovereign immunity as to any federal employee, federal judge and/or U.S. Attorney who violates any applicable provision under this Act. Accordingly, Sovereign immunity or qualified immunity shall not be a defense in any action in which a federal employee, federal judge and/or U.S. Attorney violates applicable laws under the Act.

SEC. 103. DEFINITIONS.

For the purposes of this Act —

(1) the term "Disciplinary Action Against a Manager" means any federal manager found liable for discrimination or retaliation against whistleblowers is defined as "formal reprimands with financial penalties inflicted on an offender through judicial procedures."

(2) The term "Employee" means any "federal worker covered by Title 5 CFR".

(3) The term "Person" means an individual, currently or formerly employed or otherwise retained in or by a federal agency, whose conduct in the course of that employment or retirement as determined without consideration of vicarious liability, by or before a court of law and/or an administrative government agency, violates or violated any provision of law cited in section 201, subsection (c) of this Act or any other provision of law which prohibits any form of discrimination, as identified under rules issues under section 204; and who has exhausted, waived, and/or forfeited all direct rights to appeal or otherwise challenges that determination to no avail; and is accordingly subject to civil liability and/or criminal prosecution should the proscribed conduct amount to prohibited activity or activities under 18 U.S.C. section 1962 (RICO provisions); constitute a criminal conspiracy against rights within the meaning of 18 U.S.C. section 241 or conspiracy to defraud within the meaning of 18 U.S.C. sections 371 and/or 373; and/or accomplish a violation of rights and/or immunities under color of law within the meaning of 18 U.S.C. section 242;

(4) The term "Immediately" means less than ten (10) calendar days.

(5) The term "Independent" means the independent investigators cannot have any personal or business relationship to the manager or agency.

(6) The term "Principle Agency Witness" means all federal officials who have been alleged to discriminate retaliate or harasses other federal workers.

SEC. 104. EFFECTIVE DATE

The provisions set forth in this Act shall take effect six (6) months from the date of the enactment of this Act.

TITLE II—FEDERAL EMPLOYEE DISCRIMINATION AND RETALIATION

SEC. 201. IN GENERAL.

(a) Under this Act, federal managers are hereby subject to severe civil and criminal penalties. Such penalties have been set forth due to protect federal whistleblowers who safeguards public interest and to combat the severe damage caused by conspiracies and tacit collusion by federal officials, lawyers and judges acting under color of law, to obstruct justice, intimidate and harass litigants, and/or tamper with witnesses to the detriment of the public good. Federal managers inflicting such distress that lead to illnesses that compromise the natural life span of employees and/ or lead to death shall face criminal penalties.

(b) An overriding National interest exists to ensure the fair treatment of Federal Workers regardless of race, class and gender or other protected classification. More importantly, discrimination against Federal Workers negatively impacts the ability of the federal workforce to deliver the goods and services to the American People. Due to the wide variety of goods and services provided to American citizens from the federal government; discrimination, retaliation and intimidation against Federal Workers affects every American.

(c) Likewise, retaliation against Federal Workers for whistle blowing disclosures is also a National concern. Retaliation against Federal Workers, who disclose vital information to secure public health, safety and the proper use of government funding and authority, negatively impacts the ability of the federal workforce to deliver the goods and services to the American People. Therefore, discrimination and retaliation against federal workers are not limited to the individual federal workers; but in fact constitute crimes and violations against the American People. Accordingly, under this Act, all federal officials named in discrimination, retaliation or whistleblower cases are subject to criminal penalties and must provide their own private legal representation.

SEC. 202. DISCIPLINARY ACTION REQUIREMENT

(1) Agency shall impose disciplinary action on employees / officials culpable in cases where a final finding of discrimination has been rendered. Disciplinary action taken shall be taken thirty (30) days from the date the decision becomes final.

(2) With regard to discipline, culpable employees shall immediately be removed from supervisory/team leader authority and demoted at least one grade when a final finding of discrimination has been rendered. Upon finding discrimination agency shall also annotate in the offending employees Official Personnel Folder that the individual had a finding of discrimination against him / her. Annotation will remain permanently in employee's file.

(3) Further disciplinary action shall be immediately referred to the Office of Special Counsel (OSC). OSC may impose –

(i) demotion of at least two grade levels;
(ii) suspension no less than one month;
(iii) forfeiture of rights to any federal retirement pension;
(iv) forfeiture of rights to any federal contracts;
(v) an assessment of a civil penalty not to exceed $10,000;
(vi) additional disciplinary action consisting of debarment from Federal employment for a period not to exceed 5 years; or
(vii) any combination of disciplinary actions described under clause (i) thru (vi).

(4) The Office of Special Counsel shall retain an independent investigator to determine the culpability of managers found liable in the discrimination case.

(5) An independent or congressional oversight body shall have the power to either confirm the OSC initial decision or over rule the decision. An independent volunteer organization shall be enlisted, with a history of involvement in this issue, to participate in this process and provide written arguments on the cases. The EEO complaint shall form the basis of the investigation.

SEC. 203. PARTIES NAMED IN EEO COMPLAINT

All Equal Employment Opportunity Complaints (EEO) and subsequent Title VII Federal Court filings will name the Complainant versus the Agency Head (*i.e., Secretary, Director, Attorney General, etc.*) and the names of any Principal Agency Witnesses (PAW) alleged in the Complaint. (PAW – see definition in Sec. 103.)

TITLE III—NOTIFICATION, TRAINING AND REPORTING

SEC. 301. NOTIFICATION, REPORTING AND TRAINING REQUIREMENT.

(1) The No FEAR Institute, a nonprofit, non-Federal Government entity, is hereby specified as the exclusive source of training and counseling for federal employees and Special System Process that is mandated by this act with regard to their rights and remedies under antidiscrimination, retaliation, and harassment, as well as whistleblower protection laws;

(2) As set forth at Title 42, section 253(i)(1) of the United States Code, it is the policy of Congress that an executive agency should not be required by legislation to award a new contract to a specific non-Federal Government entity. It is further the policy of Congress that any program, project, or technology identified in legislation be procured through merit-based selection procedures;

(3) The award hereby required to said No FEAR Institute is in contravention of the policy set forth in 42 U.S.C. section 253(i)(1);

(4) The No FEAR Institute, an independent non-government 501(c)(3) entity, uniquely qualified for this training, shall be recognized as the official federal government training institute and receive earmark funding in order to provide training to all federal government employees and contractors receiving over 55% of their annual budget from the federal government.

(5) Agency shall notify employees, including contractors connected to the Federal government or private sector companies receiving the majority of U.S. Government funds, of No FEAR provisions.

(6) Within three (3) days of the signing of the Act, the Agency shall broadcast (via e-mail or voice mail) the agency website where information regarding the Act may be obtained. Such broadcasts shall me made annually

(7) The Agency shall initiate counseling for all individuals involved once a *prima facie* case of discrimination has been established. The counseling will involve six (6) sessions conducted by the No FEAR Institute, an independent organization specializing in these matters.

(8) Federal Agencies shall post on its website:

(a.) data on all *class actions filed* including: size, status, filing date, number of suits filed against agency, and demographic make-up.
(b.) total reimbursement due to the judgment fund
(c.) Annual reports to Speaker of the House and Attorney General as identified in No FEAR 2002
(d.) Names of discriminating officials along with disciplinary action taken.
(e.) Request for counseling by race, sex, as well as individuals that fall within both categories (i.e., African-American females, White males, Asian females)
(f.) Total workforce and ethnic representation including race and national origin data.
(h.) number and nature of personnel grievances alleging prohibited personnel practices.
(i) Annual report to Speaker of the House, Appropriation Committees, and Attorney General containing among other data, the total dollar amount by fiscal years that the Agency owes the Judgment Fund.
(j) Total costs associated with processing and litigating cases include salaries of all personnel involved, travel costs, and all other hidden administrative costs.
(k) number of plaintiffs that prevail in jury trials or administrative process.
(l.) specific agency office where discrimination was found.
(m.) number of complaints (beginning with those in the informal process, formal stage through administrative process or jury trial).
(n.) policy on disciplinary actions for employees who violate any laws cited under the Act.
(o) All federal agencies shall prominently display a link to their No FEAR data on the front page of their websites.

(9) GAO shall provide an annual report on total costs associated with processing and litigating cases, including costs associated with Department of Justice litigation.

(10) Agency shall include targets & milestones reflective of its efforts to implement the Act under the Government Performance Results Acts: *Strategic Management of Human Capital Initiative*. No FEAR Act efforts shall be reflected in the agency's Strategic Plan and Annual Report.

(11) When complaint is not resolved to employee's satisfaction, manager with the decision-making authority shall certify under oath: a) every step the agency took to resolve the matter; and b) rationale for not reconciling issue. Within 10 days of the end of the reconciliation process, the agency shall provide the affidavit to employee. The employee may freely use or introduce the affidavit in any further proceedings.

(12) EEOC shall post the names of persons found guilty of violating whistle blowing laws and /or discrimination laws on its website.

TITLE IV—FEDERAL JUDGMENT FUND REIMBURSEMENT

SEC. 401. JUDGMENT FUND REIMBURSEMENT REQUIREMENT.

(1) No later than forty-five (45 days) from the receipt of a final decision finding discrimination and/or whistle blowing violation the agency shall notify Treasury (a) of its responsibility to repay the judgment fund; and (b) to arrange payment for the full amount or to make arrangements for a payment schedule in accordance with paragraph 2 of this section.

(2) Agency shall repay the judgment fund in full no later than *two fiscal years* after the judgment fund makes the payment.

(3) Treasury shall collect from the responsible agency monies paid out of the judgment fund on its behalf no later than the conclusion of the second fiscal year following the full fiscal year of the judgment.

(4) With regard to funds owed for past due amounts before the enactment of No FEAR II, agency shall make payment the next fiscal year from the date of the Act's enactment.

(5) Within 90 days of enactment of this legislation, agencies shall send a written notice to the Department of Treasury detailing by fiscal years the total of amount owed the Judgment Fund since the enactment of Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002. The Agencies and the Department of Treasury shall work out the reimbursement plan in accordance with other provisions of this Act.

TITLE V— JUDICIAL REFORM PROTECTIONS

SEC. 501. JUDICIAL REFORM PROTECTIONS (PRO SE LITIGANTS).

(1) As a result of the extreme psychological and financial strain caused by federal retaliation and harassment; many federal whistleblowers and complainants are forced to represent themselves (Pro Se) at some point during many whistle blowing or discrimination cases.

(2) Pro Se litigants against the federal government are some of the most heroic individuals who fight to exercise the franchise guaranteed by the Bill of Rights and the U.S. Constitution. These courageous litigants fight to protect the public and defend all American's rights to petition the government for redress of grievances, substantive due process of law, right to counsel and right to trial by jury.

(3) Many U.S. Attorneys and U.S. Federal Judges illegally deny these courageous individuals the respect or due process they deserve. Moreover, confidence in the judicial system is shaken, when U.S.

Attorneys and Federal Judges display bias against pro se litigants directly from the bench, and are loath to hear pro se cases.

(4) Consequently, in addition to the discrimination, retaliation and abuse pro se litigants receive at the hands of the federal agency; pro se litigants often face additional disenfranchisement and violations of their rights by the U.S. Attorneys and Federal Judges assigned to defend the federal officials or hear pro se cases.

(5) Judicial Whistleblowers, lawyers and firms face intimidation and retaliation for reporting Professional Disability and Misconduct against U.S. Attorney's and Federal Judges. Consequently, most Judicial complaints are filed by Pro Se litigants alleging judicial collusion (most are summarily rejected or ignored).

(6) Aggrieved complainant shall be provided the absolute right to demand and receive copies of the actual audio-tape transcripts from the court reporters at any meeting, conference or hearing which were transcribed. Failure to provide these audio-transcripts upon request constitutes reversible error.

(7) If a Pro Se litigant, contending to be financially unable to employ an attorney to represent him/her against a federal agency, desires to have an attorney appointed, the complainant shall make a request in writing to the court or its designee for an attorney to be appointed.

(i) The request shall be in the form of an application for appointment of counsel and certificate of financial resources, made under oath and signed by the accused which shall contain information as to the complainant's assets, liabilities, employment, earnings, other income, number and ages of dependents, the charges alleged against the agency and such other information as shall be required by the court.

(ii) The purpose of the application and certificate is to provide the court or its designee with sufficient information from which to determine the financial ability of the accused to employ counsel.

(iii) The original authorization of appointment shall be filed with the notice of appearance in the case; a copy of the authorization/appearance shall be forwarded to the clerk, court administrator, or such other person designated by the court to assign an attorney to the complainant. Such person shall notify the accused, the appointed attorney, the defendants and the defendant's attorney of the appointment.

(8) However, poverty is not the only factor justifying appointed counsel; the appointment of counsel under this Act relates more to the important public interest of adequately investigating whistleblowing claims, especially in (but not limited to) the areas of Public Health, Public Safety, National Security or Waste, Fraud or Abuse of government resources. It also derives in the important national interest of ensuring the prompt Public Administration and efficient delivery of federal programs and services by a federal workforce free from discrimination, retaliation and harassment.

SEC. 502 SPECIAL SYSTEM PROCESS (SSP) MONTORING.

1. Congress will create a Special System Process (SSP) similar to a Civilian Review Board and Independent Office of Inspector General to monitor Administrative inaction and actively investigate claims of Disability and Misconduct of U.S. Attorney's and Federal Court Judges, and administrative claims and/or court cases that extend beyond three years.

2. OSC will spend twenty-five (25%) of its budget to fund the SSP Investigation, Monitoring and Reporting.

3. The Special System Process (SSP) will have complete Federal authority to investigate, report, mediate and push/broker binding settlements if courts are unable to render complete decisions within 3 years of Federal Court litigation.

4. Federal Plaintiffs reserve the right to waive SSP. Agency's must comply if Plaintiff elects to utilize SSP since burden of proof is upon complainant's to prove Title VII injuries.

SEC. 503. JUDICIAL REFORM PROTECTIONS ATTORNEY / COUNSELORS.

(1) It is a lawyer's duty to, when necessary, challenge the rectitude of official action while upholding legal process; and

(2) As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession; and

(3) A lawyer should cultivate knowledge of the law beyond its use for clients and employ that knowledge in reform of the law; and

(4) A judge and some lesser judicial officials are uniquely poised to improve the law, the legal profession, the legal system and the administration of justice; and

(5) Lawyers, judges and some lesser judicial officials are usually regulated by some if not all of the same courts, judicial officers, and quasi-judicial officials they may be ethically bound to critique and/or criticize; and

(6) Through such regulation said lawyers, judges and lesser judicial officials may suffer a loss of liberty, including but not limited to the loss of their learned profession or position and a corresponding loss of reputation, stature and/or livelihood; and

(7) [ ] " . . . history shows that speech is suppressed when either the speaker or the message is critical of those who enforce the law." *Gentile v. State Bar of Nevada* , 501 U.S. 1030 at 1051 (1991). (internal citations omitted); and

(8) [ ] ". . . it is important . . . to ensure not only that . . . substantive First Amendment standards are sound, but also that they are applied through reliable procedures." *Waters v. Churchill* , 511 U.S. 661 at 666 (1994); and

(9) Federal whistleblower protection is afforded by statute to employees of federally regulated businesses and occupations and to various employees of the executive branch for the United States of America; and

(10) This legislative action is taken in the interest of preserving those rights accorded by the First and Fifth Amendment of the U.S. Constitution, also as they are applied to the various states of this country under the Fourteenth Amendment of the U.S. Constitution;

(11) The present legislation provides for evidentiary trial or hearing by jury as an appropriate check on the judicial branch of America and its states, reducing the risk that some of their most effective critics will be unduly silenced through disciplinary action or the threat thereof or forced to undertake a private crusade for vindication, intimidation and retaliation:

(a) No attorney or lawyer licensed to practice the profession of law and to represent clients before any court of the United States, a state, territory, commonwealth, trust territory, any extraterritorial jurisdiction under Article I of the Constitution, or the District of Columbia as well as any other judicial body, quasi-judicial body, or administrative agency having quasi-judicial authority; shall be disbarred or suspended thirty (30) days or more, with or without automatic reinstatement or less than thirty (30) days without automatic reinstatement or assessed a fine, costs or other monetary penalty exceeding one thousand dollars ($1,000); for reason of any grievance, charge, complaint, show cause order or other such charging or accusatory instrument having been filed, docketed or otherwise processed based on the accused attorney or lawyer having made or allegedly having made one (1) or more false or reckless statement(s) about the qualifications, integrity and/or competence of any court, tribunal, judge, magistrate, referee, judge pro-tem, associate judge, special judge, appointed master or any other judicial officer or candidate

for said office as well as any arm, branch, or extension of any such court or tribunal, or any member thereof acting in a judicial, quasi-judicial, or appointed or delegated investigative capacity unless:

(i) the date, time, place, content, and any alleged falsity of the targeted statement(s) as well as any corresponding malice, intent, knowledge, recklessness and other relevant conditions of mind be specifically averred by that charging or accusatory instrument and any amendment thereof;
(ii) that charging or accusatory instrument is appropriately served on the subject attorney or lawyer within sixty (60) days of its underlying statement(s);
(iii) at an appropriate time for pleading or otherwise responding to that charging or accusatory instrument or an amendment thereof, the subject attorney or lawyer may request an evidentiary trial or hearing of the matter before a regularly sitting, federal or state grand jury;
(iv) said evidentiary trial or hearing takes place within thirty (30) days of it being requested unless the same is continued for good cause shown;
(v) the responding attorney or lawyer may make a limited offer of proof in the hearing of the jury, if any, thereby showing the character of evidence excluded by the presiding judge or officer, the form in which it was offered by the attorney or lawyer, the objection made to it and the ruling thereon. Such offer of proof is to be made in succinct, narrative form and not in question and answer form;
(vi) in the case of evidentiary trial or hearing before a jury, the question of whether an attorney or lawyer is guilty of any or all violation(s) averred by that charging or accusatory instrument or any amendment thereof is resolved by unanimous verdict;
(vii) that charging or accusatory instrument and any amendment thereof specifically advises the subject attorney or lawyer of his or her rights and obligations under this Act. In no event may an attorney or lawyer, so determined not guilty by unanimous jury verdict, be fined, taxed costs or otherwise subjected to monetary penalty or suffer a suspension or other exclusion from the bar for more than thirty (30) days upon appeal of the underlying matter;

(b) In no event shall any portion of costs for a sitting grand jury be imposed upon an attorney or lawyer subject to discipline triggering application of this Act;

(c) To the extent, this Act relates to the discipline, taxation or fining of an attorney or lawyer, it correspondingly relates to the discipline, taxation or fining of a judge or lesser judicial official.

SEC. 504. ROLE OF DEPARTMENT OF JUSTICE (DOJ).

(a) DOJ shall prosecute each person determined to have violated federal criminal law under subsection 203 of this statute and provide Congress its justification for failing to do so within 180 days of each determination that does not trigger a prosecution as hereby mandated;

(b) DOJ shall prosecute managers for obstruction of justice and other violations of witness-tampering statutes.

(c) Cases shall be referred to DOJ for criminal penalties when Agencies are found liable for intimidating or harassing employees that testify before Congress (Sarbanes/Oxley). When an employee notifies Congress that intimidation/harassment has occurred as a result of congressional testimony, Congress shall within 30 days initiate an investigation of this complaint. If the complaint is found to have merit, Congress will refer this matter to DOJ for criminal investigation. DOJ will provide a written investigation to congress and if criminal proceedings are not initiated, DOJ shall explain in writing the basis for that decision.

(d) DOJ shall initiate criminal charges against a manager with a finding of discrimination. Criminal charges can be pursued after the results of the EEOC become binding, all due process exhausted or court decision.

(e) DOJ must provide to Congress justification for failing to initiate or pursue criminal charges against federal managers.

(f) On or before July 4th of each calendar year, each U.S. attorney shall issue a public report posted on the internet and filed with Congress setting forth: the number of requests for investigations/complaints filed concerning alleged violations of 18 USC 1513(e); number of investigations initiated re: 18 U.S.C. 1513(e); number of indictments and a complete accounting of complaint resolution.

(g) Any U.S. Attorneys office which did not file an indictment under 18 U.S.C. 1513(e) shall publish an explanation. If the required data was not published, or not accurate and complete, court shall order U.S. Attorneys Office in question to publish the data, pay complainant's attorney fees and costs and award complainant $10,000.00 for each material violation.

(h) The DOJ shall consider, as apart of its deliberation on criminal penalties, the health and family impacts and other socio-economic factors of the plaintiff.

(i) The DOJ shall consider, as apart of its deliberation on criminal penalties any federal manager that order a subordinate to report to work over the objections of their medical doctor and as a result of this order the employee develops a chronic illness, post traumatic stress disorder and/or death. Federal managers inflicting such distress that lead to illnesses that compromise the natural life span of employees and/ or to lead to death shall face criminal penalties.

(j) Any person convicted of a criminal law violation pursuant to this subsection shall forfeit his or her right to any and all federal retirement pension(s) as well as federal contract(s) for goods and/or services, including the corresponding right(s) to payment vesting and/or due and payable after he or she has exhausted, waived, and/or forfeited all direct rights to appeal that conviction to no avail.

(k) DOJ must fairly prosecute and/or defend. DOJ may not use vexatious, abusive or unethical conduct under the guise of "aggressive litigation" tactics in defending federal managers accused of discrimination, retaliation or harassment.

(l) Moreover, Justice Department Attorneys found employing such vexatious and abusive litigation tactics while defending federal managers will be reported as a formal complaint to the Office of Professional Responsibility (DOJ), Office of Inspector General (DOJ), Office of Civil Rights (DOJ) and the newly enacted Special System Process (SSP); a formal reprimand will be entered in to the offending Attorneys permanent personal files.

(m) Additionally, copies of these formal reprimands will be immediately forwarded to the State Bar Association(s) for disbarment proceedings against the individual attorney's engaged in such unprofessional and unethical conduct.