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FBI whistleblower shields likely to stay

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White House attorneys have backed away from an effort to weaken legal protections for FBI whistleblowers in a bill now before Congress, according to advocacy groups in negotiations with the Obama administration.

Officials from the American Civil Liberties Union (ACLU), Government Accountability Project (GAP) and Project on Government Oversight (POGO) said this week that they were given guarantees that protections for FBI whistleblowers - federal employees who uncover fraud and waste - would be restored in a Senate bill when Congress returns in September.

The shift follows a report in The Washington Times earlier this month about the uproar among civil liberties groups and past FBI whistleblowers about proposed changes in the bill, which critics said would strip existing rights for FBI whistleblowers who expose fraud or misdeeds.

"From the moment that Mike [German, national

security counsel for the ACLU] raised it as a problem, the reaction we were getting back from the White House was, 'That wasn't what we intended,' " said Danielle Brian, executive director for POGO. "It was clear to me the drafters at the White House didn't know this was going to happen."

Mr. German, a former FBI whistleblower who faced government retaliation, said he alerted White House attorneys about the problem in a meeting days before a Senate committee passed the measure July 29 by a unanimous vote.

"When it was brought up, it was recognized it was a problem and there were assurances it would be addressed," Mr. German said.

A White House spokesman denied that the offending provisions were submitted by the administration and reiterated a statement that the legislative language it had sent to senators and advocates was a "discussion draft" for an still-evolving bill.

"The administration has worked with the Senate to produce bipartisan legislation that would increase the rights and protections available to whistleblowers - legislation that had been stalled in Congress for many years," White House spokesman Ben LaBolt said.

"The legislation was never intended to weaken protections for FBI whistleblowers - it was intended to do just the opposite," Mr. LaBolt said in a statement Wednesday. "The administration will continue to work with the bipartisan group of senators to ensure that the final version of the legislation strengthens protections for FBI whistleblowers and for whistleblowers across the government."

The thrust of the Senate bill is to provide new protections from retaliation for federal whistleblowers, but under the amended bill FBI employees who charge retaliation would have lost the right to have their cases heard by the Justice Department's inspector general.

FBI whistleblowers go through a process distinct from other intelligence and national security workers and other federal employees. Agency whistleblowers credit the system with encouraging more FBI employees to come forward to report wrongdoing.

White House attorneys sought and won a provision in the Senate whistleblower bill negotiations which would have removed some of the current protections for FBI

whistleblowers, The Times reported.

FBI whistleblowers, including former star agent Frederic Whitehurst, whose lawsuit resulted in President Clinton's establishment of the current standard of protection, have said the provision would set back efforts to expose fraud and corruption in the government by decades.

Whistleblower advocacy groups have publicly split over who backed the effort to revoke the rights included in the original Senate bill, and over when White House attorneys realized the problem.

"There was no mistake in the FBI's attempt to undercut whistleblower protections and the White House's acquiescence to this underhanded move," said National Whistleblowers Center President Stephen M. Kohn. "I personally told the White House negotiators of this problem a month before the Senate incorporated these unethical provisions."

Spokesmen for the FBI and the Justice Department did not return requests for comment Wednesday.

But GAP Legislative Director Tom Devine, who also thinks it was the FBI that pushed the change in the law, said White House attorneys have guaranteed him existing rights for FBI whistleblowers will be fully restored in the final bill.

"Nobody's wasting their time on the [FBI whistleblower] issue, because except for the formalities we've won and it doesn't really matter," Mr. Devine said.

The whistleblower advocate groups all said they alerted the White House about the change to the FBI whistleblower protections before the Senate Homeland Security and Governmental Affairs Committee passed the bill in late July.

Ms. Brian attributed the repeal to a "slapdash" effort by negotiators to put together a bill quickly, and Mr. Devine said the senators and the White House were intent on producing a win.

But Mr. Kohn said White House negotiators were given plenty of notice about the problem.

"It was objected to in face-to-face meeting in the White House, and they still included it in the version that they submitted to the Senate," Mr. Kohn said. "It was not a mistake because they were explicitly told they undercutting current rights."

A Senate Homeland Security and Governmental Affairs Committee spokeswoman said earlier this month that the FBI whistleblower protections would be restored to the bill when Congress reconvenes next month.

But advocates, including Mr. Kohn and Mr. German, said they are skeptical of any promises until they saw amended legislation.

"I assume everybody's acting in good faith. Nobody wanted to pass a bill that hurts more than it helps," Mr. German said. "In the end, I have to look at what's on the piece of paper. The promises that it will be addressed are great, but legislation has a way of moving forward regardless of what promises are made."

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