UNITED STATES OF AMERICA MERIT SYSTEMS PROTECTION BOARD

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BARBARA R. KING,
Appellant
v.
DEPARTMENT OF THE AIR FORCE
Agency

Docket No. DA-0752-09-0604-P-1

AMICUS BRIEF OF MSPB WATCH

STATEMENT OF INTEREST

MSPB Watch¹ is an accountability organization that works to ensure that the U.S. Merit Systems Protection Board ("MSPB" or "Board") adheres to its mission of "protect[ing] Federal merit systems and the rights of individuals within those systems." MSPB Watch engages in research, outreach, education, and advocacy, relating in particular to whistleblowers' rights and the protection of those rights. While Congress debated the Whistleblower Protection Enhancement Act ("WPEA") in 2012, MSPB Watch advocated for its retroactive application and raised the very types of questions articulated by the administrative judge's ("AJ") December 14, 2012 Order. Since the WPEA's enactment, MSPB Watch has identified at least 90 cases pending before the Board that may be affected by the Board's decision.² MSPB Watch is thus well positioned to address the legal issues raised in the case at bar.

¹ MSPB Watch is run by David Pardo, an attorney and federal whistleblower. Its online presence is available at <u>www.mspbwatch.net</u>.

² See <u>http://mspbwatch.net/2013/01/24/gap-reaches-out-to-whistleblower-community-to-protect-rights-six-months-too-late/</u>.

ARGUMENT

Because Administrative Judge Malouf's order below makes similar, if not the same, arguments concerning retroactivity³ as those of Administrative Judge Weiss in *Day v. Dep't of Homeland Security*, Docket No. DC-1221-12-0528-W-1, in the interests of judicial economy, this amici respectfully endorses and adopts the argument of the Office of Special Counsel⁴ in *Day* as effectively stating its own legal argument to the Board. Amici also incorporates by reference its own amicus brief⁵ filed in *Day*.

Respectfully submitted this 10th day of April, 2013,



³ These duplicative arguments include the lack of "express prescription of retroactivity" in the Whistleblower Protection Enhancement Act ("WPEA"), and the consequences thereof; the purported "ambiguous," "inconclusive," or "contradict[ory]" legislative history of the WPEA; and the significance, if any, of the immediate effectiveness of the WPEA for employees of the Transportation Security Administration. ⁴ Available at

 $[\]frac{\text{http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=799164} \\ \text{5 Available at}$

http://www.mspb.gov/netsearch/viewdocs.aspx?docnumber=799192&version=802275&application=ACROBAT.