United States Senate
WASHINGTON, DC 20510

March 4, 2016

The Honorable Robert A. McDonald
Secretary
U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

Dear Secretary McDonald:

We write concerning the U.S. Office of Special Counsel's (OSC) recent letter to the President detailing two whistleblower disclosures of violations of scheduling protocols at Department of Veterans Affairs (VA) facilities.[1] Specifically, Germaine Clarno and Christopher Shea Wilkes, VA social workers employed respectively at the Edward Hines, Jr. hospital in Chicago, Illinois, and the Overton Brooks VA Medical Center in Shreveport, Louisiana, alleged that VA management failed to follow proper scheduling protocols, leading to a "false appearance of acceptable wait times." We are concerned by how both the VA and the Office of Inspector General (OIG) handled these cases and we seek your commitment to fully cooperate in all ongoing OSC investigations.

Following the whistleblowers' disclosures, OSC referred both cases to the VA for investigation. The VA is required to investigate the whistleblower allegations and report back to OSC its findings.[2] In both cases, the VA referred the investigation to the OIG and provided OSC with the OIG's summaries of the investigations.[3] OSC found the OIG summaries to be "incomplete," writing that "[t]hey do not respond to the issues that the whistleblower raised."[4] According to OSC, the OIG instead investigated straw man allegations: "The OIG investigations found evidence to support the whistleblowers' allegations that employees using separate spreadsheets outside of the VA's electronic scheduling and patient records systems. However, the OIG largely limited its review to determining whether these spreadsheets were 'secret.'"[5] While the OIG uncovered indications of access to care challenges at both facilities, according to OSC, the OIG did not analyze the wait-time information or provide recommendations for improvement.[6]

OSC found that the "focus and tone of the OIG investigations appear to be intended to discredit the whistleblowers by focusing on the word 'secret' rather than reviewing the access to care issues identified by the whistleblowers and in the OSC referrals."[7] Incredibly, the VA's

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[1] Letter from Carolyn Lerner, Off. of Special Counsel, to the President (Feb. 25, 2016) [hereinafter "OSC letter"].
[2] *See* 5 C.F.R. § 1800.2.
[3] OSC letter, *supra* note 1.
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*

Office of Accountability Review determined that the OIG's reports "thoroughly" and "fully" addressed the whistleblowers' allegations.[8] However, OSC determined that the "VA's reports do not meet the statutory requirements and the findings do not appear reasonable."[9]

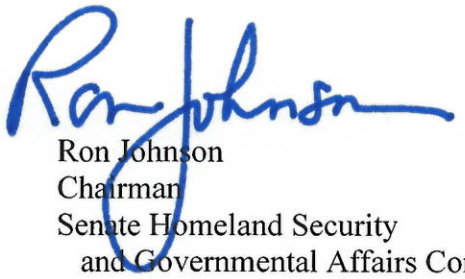
Finally, OSC's letter to the President states that the OIG denied OSC access to a copy of the OIG's investigation reports into both sets of allegations. OSC informed the President that denial of access undermined its "ability to assess the VA's resolution of these issues."[10] The OIG's refusal to provide this material—similar to the OIG's refusal to produce the case file of its inspection of the VA Medical Center in Tomah, Wisconsin (Tomah VAMC)—is inappropriate and unacceptable.

We request from the VA all documents and communications referring or relating to allegations of wait-time abuse that were raised by Mr. Clarno or Mr. Wilkes. Please provide this information as soon as possible but no later than 5:00 p.m. on March 17, 2016.

We are strong proponents of whistleblowers, as it took courageous VA employees to blow the whistle on serious problems at the Phoenix VA, Hines VA, Overton Brooks VA, and the Tomah VA. We have worked with our colleagues to advocate for important legislation that protects whistleblowers from retaliation. Both the VA and the OIG must fully cooperate with OSC in examining whistleblower allegations. In these two cases, allegations of scheduling manipulation must be fixed. A transparent and accountable VA is what our nation's veterans deserve.

Thank you for your attention to this important matter.

Sincerely,



Ron Johnson
Chairman
Senate Homeland Security
and Governmental Affairs Committee

Mark Kirk
Chairman
Military Construction, Veterans Affairs,
and Related Agencies Subcommittee
U.S. Senate Committee on Appropriations

cc: The Honorable Tom Carper
Ranking Member

The Honorable Carolyn N. Lerner
Special Counsel
U.S. Office of Special Counsel

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[8] *Id.*
[9] *Id.*
[10] *Id.*