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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

EPA Seeks To Sink Trump Admin. Whistleblower Lawsuit

By **Clark Mindock**

Law360 (April 19, 2021, 5:36 PM EDT) -- A former high-level U.S. Environmental Protection Agency official who sued over his firing last year, which he claimed happened after he reported possible overspending by the then-EPA head, hasn't made a valid claim the government violated his rights, the Biden administration contends.

On Friday, the Biden administration urged a D.C. federal court to throw out the suit brought by Kevin Chmielewski, the former EPA deputy chief of staff for operations who sued the Trump administration in October. Chmielewski claims in his suit the government violated his constitutional rights by unlawfully firing him after he reported concerns to the proper authorities about possible ethics problems related to then-EPA Administrator Scott Pruitt's spending and management choices.

But the Biden administration told the federal court that, as a political appointee, Chmielewski lacked any property interest in his continued employment and so couldn't have had his due process rights violated when he was fired. And the government said that Chmielewski's First Amendment rights also hadn't been violated because he had been fired for refusing to comply with orders from his superiors when he refused to book travel for Pruitt that he felt was inappropriate.

Even if his rights had been violated, the Biden administration said that some of the relief he is seeking — a new job in government — isn't the place of the courts to grant.

"There is no authority for a court to install plaintiff into a political appointment, let alone in a new administration of a different political affiliation than that of plaintiff," the government argued. "Under longstanding political association precedent, plaintiff cannot reasonably expect that he would be able to serve in a political position in a new administration of an opposing political party from his own."

Chmielewski **said in his suit** filed in October that not only was he fired after raising concerns about Pruitt's spending, he was also denied another job at the U.S. Department of Energy despite assurances that he was more than qualified for a similar position there. He said the Trump administration's actions violated his First and Fifth amendment rights.

According to the suit, Chmielewski became aware his job was in jeopardy when he was locked out of his office and escorted from his workplace in February 2018. He says he then received documents in the mail claiming he had resigned when he had not.

Since then, Chmielewski told the D.C. federal court he has been unable to find work. An opportunity at the DOE that came his way proved to be a dead-end when the White House Presidential Personnel Office told him there is no place for him in the Trump administration after he reported Pruitt's actions, according to the suit.

Chmielewski asked in October that the court force the EPA to reinstate him as deputy chief of staff of the EPA or hire him in a comparable capacity either at the EPA or the DOE. He also asked that any reference to claims he resigned be stricken from his employment record.

Pruitt resigned in July 2018 amid accusations from Chmielewski and others that he violated a long string of ethical standards, including claims of overspending, using staff for personal errands and

inappropriate relationships with lobbyists.

Before Pruitt stepped down, Chmielewski told congressional Democrats that he had emails, documents and other records to show Pruitt used security concerns to fly first class and purchase bulletproof vests, weapons, biometric locks and at least one new SUV, rather than getting one from the General Services Administration, as well as installing a \$43,000 soundproof phone booth. Pruitt also agreed to a \$30,000 contract with private Italian security personnel.

Chmielewski also spoke to national media outlets about his concerns and additionally claimed Pruitt had lied to Congress.

At a May 2018 hearing before the Senate Appropriations Committee's Subcommittee on Interior, Environment and Related Agencies, Pruitt addressed the ethics accusations. With the caveat that he thought some ethics claims were "unfounded" and "exaggerated," he acknowledged that he could have done some things differently, such as the phone booth purchase and installation, which the U.S. Government Accountability Office said violated two federal statutes requiring the EPA to notify Congress of the expenditures.

The EPA and counsel for the plaintiff didn't immediately respond to requests for comment.

Chmielewski is represented by John A. Kolar of the Government Accountability Project.

The EPA is represented by Sian Jones of the U.S. Department of Justice.

The case is Chmielewski v. U.S. Environmental Protection Agency et al., case number 1:20-cv-03025, in the U.S. District Court for the District of Columbia.

--Additional reporting by Morgan Conley. Editing by Jay Jackson Jr.

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