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Grassley: Whistleblowers Deserve Our Profound Gratitude

Jul 30, 2018

*Note: Sen. Grassley has been a lead advocate for whistleblowers' rights and protections during his time in the U.S. Senate. In 2014, Grassley announced his plan to create the bipartisan Senate Whistleblower Protection Caucus to raise awareness of the need for adequate protections against retaliation for private sector and government employees who call attention to wrongdoing. The caucus is now chaired by Grassley and Sen. Ron Wyden of Oregon. The following speech is a part of Grassley's summer-long initiative highlighting the importance of congressional oversight.

Chairman, Senate Judiciary Committee
National Whistleblower Appreciation Day

July 30, 2018

VIDEO

This year, I am proud that the Senate's National Whistleblower Appreciation Day resolution is cosponsored by the entire Senate Whistleblower Protection Caucus. The text of our resolution quotes a much earlier one, dated July 30, 1778, from the Continental Congress.

On that date, the representatives of the 13 colonies recognized the courageous contribution of whistleblowers aboard the Warship Warren. The whistleblowers had sent one of their own – the Captain of the Marines—to present their petition describing wrongdoing by the Commander of the Continental Navy. The Congress responded by suspending the Commodore from his post, and by passing the first whistleblower protection law.

They said:

It is the duty of all persons in the service of the United States . . . to give the earliest information to Congress or other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states...

So, celebrating and honoring whistleblowers in our country is not new. It is a time-honored American tradition, and literally as old as the Republic. Since that time, Congress has sought to protect, honor, and reward whistleblowers. It's not just the right thing to do, it's the sensible thing to do. Whistleblowers like the sailors on the ship Warren know where to find the waste, fraud, abuse, and corruption.

History has shown us over and over again how much our country needs whistleblowers. In 1863, nearly 90 years after this first resolution, Congress passed "Lincoln's Law" to help fight massive fraud on the Union Army during the Civil War. The Law—we call it the False Claims Act—empowered private citizens to sue corrupt contractors on the taxpayers' behalf. For their pains, these citizen whistleblowers would receive a portion of what the Government recovered from the wrongdoer. And it worked!

Empowering these whistleblowers to prosecute fraud proved to be smarter, faster, and more effective than just relying on the government. In 1986, those provisions inspired my modern amendments to the False Claims Act, to restore the power of whistleblowers to help the government fight fraud. The results speak for themselves.

From 1987 to 2017, the federal government has recovered more than \$56 billion through the False Claims Act. 72% of that came from actions initiated by whistleblowers. Tens of billions of dollars once lost to fraud has been returned to the federal treasury, all because of whistleblowers.

You'll hear from one of these whistleblowers today. He will tell you about how he saw his bosses knowingly put police officers in danger. Dr. Aaron Westrick will tell you his story of blowing the whistle on body armor manufacturers who sold defective vests to federal, state, and local law enforcement officers. As you'll hear, those vests were anything but bullet proof. Within two weeks of each other in 2003, two police officers were critically wounded when vests made by these companies failed. One officer passed away. The other was permanently injured.

This year, Dr. Westrick's case finally came to an end when all of the defendants settled. When that happened, Dr. Westrick said: "I lost my job and career. I have no regrets. I would blow the whistle again."

When you don't listen to whistleblowers like Dr. Westrick—that's when the regrets come. Because of Dr. Westrick's remarkable courage, the product was pulled from the market and no doubt countless lives were saved. But think about this: What if his company had listened to him the first time? Things would have turned out very differently for the two brave officers whose vests failed them.

Oh, and by the way, because of his case, the government recovered more than \$67 million in lost funds and damages. Because of whistleblowers like Dr. Westrick, the False Claims Act is the most effective tool we have to fight government fraud. Opponents of the False Claims Act are often skeptical about its reward provisions. They assume whistleblowers are motivated by self-interest or greed, and the rewards just encourage bad behavior. But the reward programs are not about what whistleblowers gain by blowing the whistle. They're about everything the whistleblowers stand to lose.

The truth is that whistleblowers are so ostracized and reviled, they suffer retaliation for speaking up. In a lot of cases it costs them their livelihood and their reputations. And if they get fired, they can't just go out and get another job, because they've been blacklisted. So they incur huge legal costs at the same time they lose their income, maybe for a long time.

The whistleblower reward provisions don't just provide an incentive for them to step forward. In many cases the rewards are there to make them whole for the retaliation they suffer. It just makes sense—the government would never know all the ways it was getting ripped off without these whistleblowers. So whatever the government recovers because of their information, whistleblowers ought to receive a share of that.

That's the model behind the whistleblower programs at the Securities and Exchange Commission and at the Internal Revenue Service. And it works! Since their creation, these programs have netted more than \$975 million and \$3.6 billion, respectively, in recovery of sanctions, disgorgement, and revenue lost to tax fraud. Clearly, when these agencies work with whistleblowers, they succeed.

Of course, there's always room for improvement, and that's what Congress is here for. Every step of the way, I have been doing oversight of these programs and pushing them to do better. They need to complete their investigations and make timely and complete award determinations. In that vein, I am pleased that earlier this year Congress passed my amendment to ensure IRS whistleblowers are not shortchanged.

My amendment clarified that the pot of recovered funds the IRS uses as a basis for whistleblower awards—known as "collected proceeds"—includes unpaid taxes under Title 26 and fines and penalties collected under criminal and civil cases. It's only fair—because none of those proceeds would have been collected without the whistleblower's help.

Congress also approved my amendment to end the double-taxation of SEC whistleblower awards. Now whistleblowers don't have worry about paying taxes on their legal fees. Even with these welcome changes, our oversight work is never done. So, I'm still pursuing much needed improvements to the IRS whistleblower program.

Earlier this month, provisions I authored were included in bipartisan tax administration legislation introduced by Chairman Hatch and Ranking Member Wyden. These reforms are aimed at increasing communications with whistleblowers. They authorize status updates and clarify that the IRS can share information with whistleblowers to advance investigations. Most importantly, the reforms would provide protections for IRS whistleblowers from employer retaliation for the first time.

I am also actively engaged in getting to the bottom of the SEC's proposed new rules for its whistleblower program. It is vitally important that whistleblowers who are making a difference in SEC investigations every day are awarded what Congress has determined they are entitled to. The SEC cannot arbitrarily decide what it thinks is "appropriate" for a whistleblower to receive.

I'll tell you what's appropriate. You've heard the old saying "let the punishment fit the crime." Well, let the award in these cases truly fit the whistleblower's contribution. Because there would be no recoveries in these cases if there were no whistleblowers. That's just how it works. And the opposite is true. Going after waste, fraud, and abuse without whistleblowers is about as useful as harvesting acres of corn with a pair of rusty old scissors.

That applies across the board, to bad behavior by corporations as well as wrongdoing in our own government. Many of you here have also blown the whistle on waste, fraud, and abuse in government agencies—some of the very same agencies that go after fraud in the private sector. Your courage has helped us in Congress fulfill our constitutional duty of oversight, and ensure our government is truly accountable to the People it serves.

No matter the source of the wrongdoing, the whistleblowers who "give the earliest information" about it "to Congress or other proper authority" deserve our profound gratitude. In its 1778 resolution, the Continental Congress recognized the true value of whistleblowers in our democracy. In our 2018 resolution, today's Senate proclaimed the same. But it's not enough.

I've been asking every President since Ronald Reagan to hold a Rose Garden Ceremony to honor these brave men and women. Not a single one of them has taken me up on it. Just think about it. Tens of billions of dollars in funds lost to fraud and corruption have been recovered. Untold amounts of government waste and misconduct have been exposed. It's all because of the whistleblowers.

I think it's about time that a President joined the rest of us here in saying thank you. If we work together, I believe we can make that happen. In any case, you have my sincere appreciation, and that of the entire United States Senate. Thank you.

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