

Sen. Grassley and Rep. Speier advocate for Whistleblower Rights on National Whistleblower Day

Article By:

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On July 30, the National Whistleblower Center hosted its annual National Whistleblower Day Celebration. The event, which is usually on Capitol Hill, occurred virtually. Like years past, the event was well attended and garnered participation by high profile panelists and speakers. Two of this year's keynote speakers, Senator Grassley (R-Iowa) and Representative Speier (D-California), issued strong comments about the importance of protecting whistleblowers. Whistleblower protection has historically been and continues to be, a bi-partisan issue. And, the legislators concurred in their remarks that Covid-19 whistleblowers are essential and must be protected in these unprecedented times.

In her powerful remarks, Rep. Speier summarized the history of whistleblower protections and emphasized that "Whistleblowers are moral compasses" and that "in these very difficult times, too often, we see retaliation and retribution for whistleblowers. So, any whistleblower who has that moral compass has to think twice, 'Do I really want to do this? And, face what may come to me?'" Further stating that "The biggest beneficiaries of whistleblower disclosures are the American people, are the taxpayers."

Rep. Speier then directed her remarks to a current legislative effort to protect corporate whistleblowers, stating that "We've already seen whistleblowers shine the spotlight on truth in Covid-19." She described the need to protect whistleblowers, "there are going to be bad actors, there are going to be people trying to take advantage of this horrific pandemic, they are going to try and fleece taxpayers of whatever money, and we have already seen it." Sen. Grassley also explained that "whistleblowers have been calling attention to sham artists peddling counterfeit and substandard medical goods and phony cures to consumers" in a recent influx of reports to the Securities and Exchange Commission.

Sen. Grassley further built on Rep. Speier's comments in his keynote speech. Describing crucial legislative revisions that would fortify the False Claims Act, the Senator explained that "the massive increase in government spending to address the Covid-19 crisis created new opportunities for fraudsters trying to cheat the government and steal hard earned taxpayer dollars." And that, "ironically, at a time when it's important to encourage whistleblowers to come forward so that we can recover stolen funds, the Justice Department has been continuing its recent practice of dismissing charges in many of the False Claims Act cases brought by whistleblowers before stating its reasons."

A practice the Senator disagrees with, as it “undermines the purpose of [his] 1986 amendments to the False Claims Act.”

Rather than the DOJ issuing dismissal decisions without explanation, the Senator emphasized that “if there are serious allegations of fraud, no less than the Attorney General should state the legitimate reasons for deciding not to pursue them in court.” And, “there needs to be transparency in government. So, these decisions ought to be transparent because with transparency brings accountability.”

In the FCA process, any person can bring a suit on behalf of the government when they believe that the government and taxpayers, are being defrauded. The goal of these actions is to interrupt and disincentivize wrongdoing and enable the government to recover ill-gotten funds.

When initiating an FCA suit, a whistleblower, or relator, must consult the government and provide an opportunity for the government to participate in the litigation. However, relators may pursue action on behalf of the government even when the government declines to join. Sen. Grassley explained that the government’s failure to timely respond to FCA disclosures disincentivizes whistleblowers, and “if the Justice Department dismisses it, that hurts the case for the relator going out on his own.” Explaining that although “[he doesn’t] say that what the Justice Department is doing is wrong,” the Senator has an issue with “how they are doing it, and [that] they are doing it now more than ever before.” And, “at the very least – transparency brings accountability [. . .] So, they ought to at least say why they’re dismissing it. And, if they’re going to dismiss it, to notify the citizen that has come in and let the citizen argue the other point of view. But, right now, it’s a one-sided deal – unfair to the taxpayers, unfair to the relator.”

In addition, when asked about opinions that allowed companies to escape accountability for fraud if a government contractor knew, under the U.S. Supreme Court ruling in the *Escobar* case, Sen. Grassley pointed out, “Lower courts have completely misconstrued dicta opinion by the Supreme Court and read into the law a materiality standard that is not consistent with the actual language of our law. This improper reading has hamstrung the law at a time when the government is spending unprecedented amounts combatting the pandemic that we’re in. It is critical that Congress shore up the False Claims Act to ensure that it is properly equipped to handle any potential COVID related fraud.”

On top of the Justice Department’s ability to dismiss FCA claims without explanation, the lower court’s limiting interpretation that allows companies to get away with fraud restricts whistleblowers’ abilities to hold wrongdoers accountable and harms taxpayers and the U.S. economy.

Last year, Sen. Grassley introduced The Whistleblower Program Improvement Act, which “requires the SEC and CFTC to make to make timely decisions regarding whistleblower rewards.” This requirement is particularly important during the Covid-19 crisis as the dramatic increase in reports will also increase claims determinations to be made by the SEC. A requirement to timely decide whistleblower rewards would prevent a backlog and encourage future whistleblowers to report wrongdoing, as the Senator explains: “if you want to encourage whistleblowers you’ve gotta let them know that the government is acting on it.”

Further, the Senator has introduced legislation to protect law enforcement whistleblowers, urging Congress to take action to protect whistleblowers before the end of this session.

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