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Senate

The Senate met at 3 p.m. and was called to order by the President pro tempore (Mr. GRASSLEY).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Eternal Master, we find shelter in Your shadow, for You are our refuge and fortress.

Lord, we place our trust in You. Rescue our Senators from the forces that seek to threaten freedom. Remind our lawmakers that nothing is impossible for You. Be with them this day as they strive to serve You and country.

We call on You because You have promised to answer us, so satisfy our longings with Your saving power.

Lord, use us all to help heal the wounds of a divided nation. We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The President pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE PRESIDING OFFICER (Mr. HAWLEY). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business for which time I might consume, and my guess is it will be about 15 minutes.

THE PRESIDING OFFICER. Without objection, it is so ordered.

TRUMP ADMINISTRATION

Mr. GRASSLEY. Mr. President, first of all, my usual 1-minute speech after I open the Senate.

Last week, I spoke about consistent congressional oversight, the checks and balances of government, Congress is to make sure that the executive

branch of government faithfully executes the laws under the Constitution.

In that speech, I talked about how the Democrats have ignored their own party's use of Russian and Ukrainian Government connections to undermine Trump. I noted how the Democrats' action literally fit their own definition of collusion.

Congress ought to conduct aggressive oversight. It is a constitutional demand. However, if you want to be taken seriously in this body and by the American public, you have to be very consistent. Of course, I am pointing out some inconsistencies by the other political party.

When Democrats ignore their own leadership collusion with foreign governments, yet investigate the President after alleging he did the same, that is a lack of consistency and creates doubts about credibility.

WHISTLEBLOWER PROGRAMS IMPROVEMENT ACT OF 2019

Mr. GRASSLEY. Mr. President, on another subject, I recently introduced the Whistleblower Programs Improvement Act of 2019, a bipartisan bill, and I have the support of the bipartisan whistleblower caucus.

This legislation strengthens whistleblower protection for whistleblowers working in a variety of key sectors, including our securities and commodities industries and the foreign service.

There has been a lot of talk about government whistleblowers lately that is very appropriate. It is important to remember that many of our whistleblower laws are there to protect just ordinary average Americans who don't work in government at all. Many of the groups helped by this bill work in private industry. In some cases, they are investors or businesspeople who have been on the receiving end of financial fraud.

In other cases, they are employees, like stockbrokers, traders, investment

advisers, administrative professionals, and other support staff, who see activities in the course of their work that they know are outright wrong, and these good people decide to speak out. Speaking out, many times, causes you to eventually seek whistleblower protection.

Among these brave whistleblowers are people like the three employees at Merrill Lynch who had evidence that between 2009 and 2015 their company was misusing customer cash. Now, just think how lucky these savers were who were helped by whistleblowers willing to come out and say a wrong has been committed.

They did it this way: The whistleblowers told the Security and Exchange Commission what they knew. In doing so, they provided information critical to an investigation of the company's practices. That investigation uncovered multiple violations of Federal rules.

Among other things, the Securities and Exchange Commission found the company was not depositing cash in reserve accounts as law required. Instead, the company was using tricky accounting maneuvers to free up billions of dollars per week and then using that money to finance its own trading practices. In the process, it is quite obvious the company was putting its customers' cash at risk.

The Securities and Exchange Commission said: "Had Merrill Lynch failed in the midst of these trades, the firm's customers would have been exposed to a massive shortfall in the reserve account."

The information provided by whistleblowers led to a successful enforcement action, which involved an admission of wrongdoing by the company and a \$415 million settlement.

Now, getting back to the importance of whistleblowers. If these whistleblowers hadn't stepped forward, then, who knows, those shady accounting practices might still be going on this

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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very day instead of having been stopped—stopped cold. Investors might still be facing the same unnecessary risks.

Now, there are plenty of examples from the commodities industry as well—people like Edward Siedle, a whistleblower who informed the Commodity Futures Trading Commission that JPMorgan Chase was failing to disclose conflicts of interest with some of its clients. Because Mr. Siedle decided to speak out about what he knew, the government collected hundreds of millions of dollars in settlements.

Whistleblowers like Mr. Siedle and the employees at Merrill Lynch deserve our gratitude, and they deserve our support. They help the Security and Exchange Commission and the Commodity Futures Trading Commission to do their job, and they help to promote transparency. With transparency comes accountability—in this case, for our financial system.

I will tell you something else they deserve. They deserve assurance that when they put their jobs and their reputation on the line, they will not be fired just for trying to do the right thing.

They deserve to know that if the government recovers money because of their disclosures, they will be able to get a decision on their award application in a timely fashion. Currently, whistleblowers don't have these assurances.

Last year, despite strong objections that I raised in a brief to the Supreme Court in the case of *Digital Realty v. Somers*, the Court ruled that a whistleblower who reports violations of our Nation's securities laws is protected from retaliation not all the time but only when he or she discloses the wrongdoing directly to the SEC.

Because of this ruling, if a whistleblower in the securities industry reports a concern to a supervisor at their place of work without also going to the SEC, they can be fired without any recourse; in other words, fired for the so-called crime they did, and what did they do? They did nothing more than what you might call the crime of committing truth. They have no legal protection or means of getting their job back.

That is not what Congress intended when it created the current Security and Exchange Commission Whistleblower Program, and that was done back in 2010. It is not what I intended when I voted for that whistleblower protection.

That law was supposed to protect whistleblowers who report wrongdoing. It was supposed to prevent them from being fired without just cause.

This decision has far-reaching implications that potentially affect others beyond those working in the securities industry.

Because the commodities whistleblower program was established through the same public law as the Security and Exchange Commission pro-

gram, that program incorporates many of the same provisions, including similar language to that which the Supreme Court ruled on during the *Digital Realty* case.

That means whistleblowers in yet another program face the prospects of having anti-retaliation provisions Congress put in place a decade ago suddenly yanked away from them. That is unacceptable to me. It is a scenario that should be unacceptable to every Member of this body who cares about keeping our financial system very strong, protecting the investor.

My bill prevents the Supreme Court ruling from becoming the status quo. It makes it clear that whistleblowers who report concerns about possible violations of our Federal securities and commodities laws are fully protected, whether they take their concerns to the Security and Exchange Commission or to the Commodity Futures Trading Commission, or to anyone else in their company who they reasonably believe has the ability to address their concerns. That is what companies should want. They should want it anyway, to keep their public respectability.

It is also a commonsense goal that we ought to be seeking, and it is commonsense.

When an employee tells his or her company about a concern, it gives the company a chance to investigate and address the concerns, and, if necessary, to self-report any problems to the Federal regulators.

Companies that come clean and self-report almost always receive reduced penalties. That is an outcome that is better for the company, and it is obviously better for the investors.

On another matter, my bill addresses concern for securities and commodities whistleblowers. I said before that if the government recovers money as a result of a whistleblower's disclosure, the whistleblower deserves at least an initial decision concerning their award application and to do it in a timely fashion. Unfortunately, my office has heard of far too many cases where whistleblowers have had to wait years to get a decision from the Securities and Exchange Commission after they apply for an award, and you apply for the award after you make the case for the government. Waiting that long is unacceptable. A year should be more than enough time for regulators to reach an initial determination regarding an award application.

My bill makes the 1-year standard law for both the Securities and Exchange Commission and the Commodity Futures Trading Commission whistleblowers. If the agency takes longer than a year to reach an initial decision, the whistleblower office must notify the chairman and the whistleblower of the cause for the delay.

Recently, I had the chance to sit down with Securities and Exchange Commission Chairman Clayton to discuss these changes. My staff worked

closely with the Securities and Exchange Commission and the Commodity Futures Trading Commission to craft the language. Now I urge all of my colleagues to support change, as well.

In addition to these changes, my bill irons out other differences between the Securities and Exchange Commission and the Commodity Futures Trading Commission whistleblower programs and ensures that whistleblowers reporting to both of these bodies have access to the same judicial remedies.

It also enables the Commodity Futures Trading Commission to hold more in the consumer protection fund. That is the fund used to pay out its awards to the whistleblower, and it allows the Commodity Futures Trading Commission to use money from the fund to teach stakeholders about the opportunities that are available to them through the whistleblower program.

Finally, my bill addresses a critical gap in protections provided to Foreign Service employees through the Whistleblower Protection Act. Due to a drafting error in the law, the Office of Special Counsel has stated that it doesn't have the authority to investigate instances of possible retaliation against Foreign Service workers when the retaliation comes in the form of a poor performance evaluation. That is an important task of the Office of Special Counsel and an important protection that Congress has afforded to other government whistleblowers. The Foreign Service office's people should have that as well. My bill closes that gap and makes it clear that Foreign Service workers should receive those same protections.

In closing, this bill contains commonsense changes. It reinforces and extends protections that Congress already granted in the past and ensures that whistleblowers working in different industries who make similar kinds of disclosures are equally treated and equally protected under the law. It also tells the Supreme Court of the United States: You didn't get it right. That is something I am certain we can all get behind—straightening out the Supreme Court when they don't follow congressional intent.

The bipartisan coalition of support for this bill is a strong testament to that. I thank my original cosponsors, Senators BALDWIN, DURBIN, and ERNST, for their enthusiastic support of this legislation. When it comes before the Senate for a vote, I urge all of my colleagues to do the same.

I yield the floor.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER. The majority leader is recognized.