

November 12, 2019

The Honorable Richard Burr
Chairman
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

The Honorable Adam Schiff
Chairman
House Permanent Select Committee on
Intelligence
Capitol Visitor Center HVC-304
US Capitol Building
Washington, DC 20515

The Honorable Mark Warner
Vice Chairman
Senate Select Committee on Intelligence
211 Hart Senate Office Building
Washington, DC 20510

The Honorable Devin Nunes
Ranking Member
House Permanent Select Committee on
Intelligence
Capitol Visitor Center HVC-304
US Capitol Building
Washington, DC 20515

Dear Chairmen Burr and Schiff, Vice Chairman Warner, and Ranking Member Nunes:

We write to you as a diverse set of organizations that advocate for government accountability and share sincere concerns about longstanding weaknesses in intelligence community (IC) whistleblowing laws and policies. Although issues surrounding these laws have recently been in the political headlines,¹ we write to reiterate our support for urgently needed reforms that have been developed over many years of experience.²

Regardless of the circumstances surrounding any one individual, significant deficiencies in legal protections for all IC whistleblowers have long contributed to an environment of poor oversight and, ironically, less security of sensitive information.³

¹ Dustin Volz, Warren P. Strobel, and Siobhan Hughes, “Whistleblower Alleges White House Effort to Conceal Details of Trump Call With Ukraine,” *Wall Street Journal*, September 26, 2019. <https://www.wsj.com/articles/acting-intelligence-chief-maguire-testifies-on-whistleblower-complaint-11569501934>

² Letter from whistleblower advocates, to Congressional Intelligence Committees about the need for intelligence community whistleblower reforms, October 28, 2019. <https://www.pogo.org/letter/2019/10/whistleblower-advocates-to-congress-time-to-reform-intel-whistleblower-laws/>

³ In testimony before the European Parliament in 2014, Former NSA Contractor Edward Snowden emphasized that he went to the media with his disclosures after exhausting all other internal channels because he had no retaliation protections afforded to him under law at the time as a contract employee. Further, he explained that he had witnessed protected employees go through the proper channels and still face retaliation. Although intelligence community contractors are now protected by name under law at 50 U.S.C. § 3234, they still do not have any clear enforcement mechanism available to them. *Hearing before the Parliamentary Assembly of the Council of Europe*, at 5-6. (March 7, 2017) (Testimony of Edward Snowden, Former NSA Contractor). <http://www.europarl.europa.eu/document/activities/cont/201403/20140307ATT80674/20140307ATT80674EN.pdf>

We therefore ask that you seize the opportunity to reform the law to better protect IC whistleblowers. Recognizing the fundamental role that whistleblowers play in assisting Congress with its oversight responsibilities, we believe these reforms should receive the same bipartisan support that has historically been extended to whistleblowers. This longstanding support is demonstrated through the bicameral, bipartisan Whistleblower Protection Caucuses, as well as Congress' unanimous passage of the Whistleblower Protection Enhancement Act in 2012, which strengthened the primary whistleblower law for federal employees outside of the IC.

Specifically, we support reforms that would help to bring the rights for IC whistleblowers in line with those for other federal employees who are covered under the Whistleblower Protection Act of 1989. Such reforms should include the removal of prior restraint on IC employees to make disclosures to Congress, providing independent due process for IC whistleblowers, and ensuring that Congress is adequately prepared and staffed to receive and act on whistleblower disclosures safely and securely, among other important reforms.

We also request that you do everything in your power to ensure that the IC whistleblower and all supporting whistleblowers' identities are protected and that you protect them from workplace retaliation as well as threats to their personal safety. Whistleblowers put their careers at risk even when they make by-the-book, protected disclosures. This is doubly true for whistleblowers in the IC, as they do not have access to independent due process.⁴ A common tactic to divert attention away from a disclosure is to attack the whistleblower's own credibility, often resulting in a retaliatory investigation.⁵ That is why so many come forward anonymously.

Congress has recognized that a whistleblower's motive for blowing the whistle does not determine their ability to avail themselves of legal protections.⁶ The identity of a whistleblower should not matter. Efforts to uncover the identity of any given whistleblower not only put the individual, their career, and potentially their family at risk, they create a chilling effect that may discourage other whistleblowers from coming forward with disclosures that expose waste, fraud, and abuse in our federal government.⁷ Insofar as any of the whistleblowers' identities are revealed, the need to protect them against workplace retaliation and to protect their personal safety is even more urgent.

⁴ 50 U.S.C. § 3234(d) (2019) leaves enforcement of IC whistleblower retaliation provisions to the President rather than laying out an independent mechanism for enforcement as in civil service whistleblower protections. <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title50-section3234&num=0&edition=prelim>

⁵ Shanna Devine et al., Government Accountability Project, *Whistleblower Witch Hunts: The Smokescreen Syndrome* (2010). <https://www.whistleblower.org/wp-content/uploads/2018/12/WWHfinal-1.pdf>

⁶ Report of the Committee on Homeland Security and Governmental Affairs to Accompany S.743, S. Rep. No. 112-155, sec. II, at 5. (2012). <https://www.govinfo.gov/content/pkg/CRPT-112srpt155/pdf/CRPT-112srpt155.pdf>

⁷ Reis Thebault, "Trump's rhetoric will have a chilling effect on whistleblowing, legal experts say," *Washington Post*, September 20, 2019. <https://www.washingtonpost.com/national-security/2019/09/21/trumps-rhetoric-will-have-chilling-effect-future-whistleblowers-legal-experts-say/>

Congress has designed a legal framework to enable whistleblowers to make protected disclosures to the intelligence committees.⁸ Unfortunately, the task of affording IC whistleblowers full-fledged safeguards available to others remains incomplete.

In addition to strengthening IC whistleblower protections and ensuring the protection of the whistleblowers, we feel it is essential to ask those in positions of influence to remember that whistleblowers are the greatest allies Congress has as it conducts its essential oversight function, and they are crucial for any administration to root out waste, fraud, and abuse. When we fail to protect this vital human resource, we risk an ineffective, inefficient, and unaccountable federal government.

Sincerely,

ACORN 8

American Civil Liberties Union

Citizens for Responsibility and Ethics in Washington

Demand Progress

DemCastUSA

Government Accountability Project

Government Information Watch

Indivisible

Liberty Coalition

National Security Counselors

National Taxpayers Union

PEN America

Project On Government Oversight

Protect Democracy

Public Citizen

Taxpayers Protection Alliance

Whistleblowers of America

cc: Speaker of the House of Representatives
Minority Leader of the House of Representatives
Senate Majority Leader
Senate Minority Leader
House and Senate Whistleblower Protection Caucuses

⁸ 50 U.S.C. § 3033(k)(5)