

CHUCK GRASSLEY, IOWA, CHAIRMAN

MIKE CRAPO, IDAHO  
PAT ROBERTS, KANSAS  
MICHAEL B. ENZI, WYOMING  
JOHN CORNYN, TEXAS  
JOHN THUNE, SOUTH DAKOTA  
RICHARD BURR, NORTH CAROLINA  
JOHNNY ISAKSON, GEORGIA  
ROB PORTMAN, OHIO  
PATRICK J. TOOMEY, PENNSYLVANIA  
TIM SCOTT, SOUTH CAROLINA  
BILL CASSIDY, LOUISIANA  
JAMES LANKFORD, OKLAHOMA  
STEVE DAINES, MONTANA  
TODD YOUNG, INDIANA

RON WYDEN, OREGON  
DEBBIE STABENOW, MICHIGAN  
MARIA CANTWELL, WASHINGTON  
ROBERT MENENDEZ, NEW JERSEY  
THOMAS R. CARPER, DELAWARE  
BENJAMIN L. CARDIN, MARYLAND  
SHERROD BROWN, OHIO  
MICHAEL F. BENNET, COLORADO  
ROBERT P. CASEY, JR., PENNSYLVANIA  
MARK R. WARNER, VIRGINIA  
SHELDON WHITEHOUSE, RHODE ISLAND  
MAGGIE HASSAN, NEW HAMPSHIRE  
CATHERINE CORTEZ MASTO, NEVADA

# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL  
JOSHUA SHEINKMAN, DEMOCRATIC STAFF DIRECTOR

September 17, 2019

## VIA ELECTRONIC TRANSMISSION

Eugene Scalia  
Secretary of Labor Nominee  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, D.C. 20520

Dear Mr. Scalia:

If confirmed as the next Secretary of Labor, you will be responsible for enforcing over twenty of our nation's most important whistleblower laws.<sup>1</sup> These laws provide critical protections for individuals who report a wide array of issues to include violations of the law, waste of funds, abuses of authority, and dangers to public health and safety. In light of several anti-whistleblower positions you have taken in the past, it is important for Congress and the American people to understand precisely how you would perform the duties of the Secretary of Labor and to receive assurances that should you be confirmed by the Senate, you will enforce whistleblower protections to the fullest extent of the law.<sup>2</sup>

Whistleblowers are critical to ensuring public safety and preventing waste, fraud, and abuse. In the private sector, they alert government authorities to fraud, safety violations, and criminal activity. Congress has enacted dozens of whistleblower laws designed to protect these individuals from retaliation for reporting wrongdoing.<sup>3</sup> For example, whistleblower laws allow airline pilots and nuclear power plant workers who witness safety violations to make protected disclosures to a variety of government agencies.<sup>4</sup> The Department of Labor (DOL) is tasked with enforcing more whistleblower laws than any other government agency, including the Sarbanes-Oxley Act, Occupational Safety & Health Act, Asbestos Hazard Emergency Response Act, Safe

---

<sup>1</sup> See *OSHA Fact Sheet: Your Rights as a Whistleblower*, OSHA.gov (last visited September 13, 2019), available at [https://www.osha.gov/OshDoc/data\\_General\\_Facts/whistleblower\\_rights.pdf](https://www.osha.gov/OshDoc/data_General_Facts/whistleblower_rights.pdf).

<sup>2</sup> See Brief for The Assistant Secretary for Occupational Safety and Health as Amicus Curiae, *Sasse v. United States Dept. of Justice*, ARB Case Nos. 02-077 and 02-078 (September 12, 2002) (hereinafter "Brief").

<sup>3</sup> *Supra* note 1.

<sup>4</sup> See 49 U.S.C. § 42121; 42 U.S.C. § 5851.

Drinking Water Act, Food Safety Modernization Act, Clean Air Act, and the Aviation Investment and Reform Act, among many others.<sup>5</sup>

I have long said that an attorney's advocacy on behalf of a client does not necessarily reflect the attorney's own views. However, in a 2002 brief you filed as Solicitor General for DOL, in a case involving an Assistant United States Attorney who had communications with a Member of Congress regarding environmental contamination at a NASA facility in Ohio, you contradicted then President George W. Bush and erroneously argued that a whistleblower disclosure made to Congress is not protected under the law unless the disclosure is part of a "duly authorized" congressional investigation.<sup>6</sup> In the same brief, you argued that the Separation of Powers doctrine prohibits whistleblowers from disclosing certain information to Congress, despite the fact that several Supreme Court opinions have strongly reaffirmed Congress' broad power to conduct oversight of the Executive Branch.<sup>7</sup>

These prior statements, especially since they appear to have contradicted legal jurisprudence and the Executive Branch's own stance, need further clarification. As a longtime advocate for whistleblower protections and the Chairman of the Whistleblower Protection Caucus, it is critically important for me to understand your views on this issue. More importantly, the American people both expect and deserve a Secretary of Labor who will fully and faithfully enforce our nation's whistleblower laws. In order to better understand your stance on these issues, please answer the following questions no later than September 25, 2019:

1. If confirmed as Secretary of Labor, will you commit to faithfully enforce all whistleblower protection laws under DOL's jurisdiction?
2. Do you believe whistleblowers are only protected if a disclosure to Congress is done in the course of a duly authorized congressional investigation?
3. Absent a declaration of executive privilege, do you believe there is a Separation of Powers issue when an Assistant United State Attorney or any other government employee shares information or documents with a member of Congress? If yes, please explain your reasoning.
4. Will you work with Congress to identify weaknesses in whistleblower protection laws and identify ways to strengthen whistleblower protections?
5. Do you believe whistleblowers provide a benefit to the workforce and society as a whole?

---

<sup>5</sup> See *supra* note 1; See also 29 U.S.C. § 660(c); 15 U.S.C. § 2651; 42 U.S.C. § 300j-9(i); 12 U.S.C. § 5567; 42 U.S.C. § 7622; 18 U.S.C. § 1514A; 42 U.S.C. § 42121.

<sup>6</sup> See Brief at 24-26; see also Letter from Senators Charles E. Grassley and Patrick J. Leahy, Senate Comm. on the Judiciary, to Alberto R. Gonzales, Counselor to the President (July 31, 2002); Letter from Alberto R. Gonzales, Counselor to the President, to Senators Charles E. Grassley and Patrick J. Leahy, Senate Comm. on the Judiciary (Aug. 1, 2002) (clarifying the administration's view that the new whistleblower provision neither expands nor contracts congressional investigative authority).

<sup>7</sup> See Brief at 15, 17, 20, 24, 27.

Should you have questions, please contact Dario Camacho of my Committee staff at (202) 224-4515. Thank you for your attention to this important mater.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley  
Chairman  
Senate Committee on Finance