

February 10, 2020

The Honorable Mitch McConnell
Senate Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

The Honorable Chuck Schumer
Senate Minority Leader
322 Hart Senate Office Building
Washington, DC 20510

Dear Majority Leader McConnell, Minority Leader Schumer, and Members of the United States Senate:

The Government Accountability Project, the Liberty Coalition, the Project On Government Oversight (POGO), and the Taxpayers Protection Alliance urge the Senate to send a strong signal to whistleblowers that they are valued and will be protected if they disclose wrongdoing, by amending to the Senate rules to clearly state that senators are prohibited from outing a whistleblower who has worked through proper channels.

Since early November 2019, Senator Rand Paul (R-KY) has engaged in escalating attacks on the confidentiality of the intelligence community whistleblower who used proper channels to report concerns about President Donald Trump's July 25, 2019 call with the president of Ukraine.¹ The whistleblower has expressed their desire to remain anonymous, but Senator Paul's attacks have continued, and he recently delivered remarks on the Senate floor that included the name of a federal employee alleged to be the whistleblower.² It is irrelevant whether Senator Paul has correctly identified the whistleblower; he has made it clear that his goal is to expose the whistleblower's identity, and that alone is enough to deter future whistleblowers from coming to Congress.

Whistleblowers are vital to our system of government. Disclosures from brave public servants have sparked congressional investigations, led to important reforms, returned money to taxpayers, and saved lives.³ When the Department of Justice didn't comply with the congressional investigation into Operation Fast and Furious, the cooperation of federal whistleblowers ensured that oversight continued.⁴ A disclosure by Army whistleblower Mike Helms led the Department of Defense to change its policies on providing medical care to civilians wounded in combat zones.⁵ An anonymous whistleblower worked

¹ Allyson Chiu, "'Do your job and print his name': Rand Paul demands media identify the whistleblower," *Washington Post*, November 5, 2019. <https://www.washingtonpost.com/nation/2019/11/05/rand-paul-whistleblower-rally-kentucky-trump/>; Phil Mattingly, Manu Raju, Paul LeBlanc and Chandelis Duster, "John Roberts publicly rejects Rand Paul's whistleblower question in Senate impeachment trial," CNN, January 30, 2020. <https://www.cnn.com/2020/01/29/politics/rand-paul-whistleblower-senate-impeachment-trial/index.html>

² Kyle Cheney and Burgess Everett, "Rand Paul reads alleged whistleblower's name and Republicans 'fine' with it," *Politico*, February 4, 2020. <https://www.politico.com/news/2020/02/04/rand-paul-reads-alleged-whistleblowers-name-senate-floor-110684>

³ See, for example: Christopher E. Babbitt and Jonathan G. Cedarbaum, "False Claims Act: 2019 Year-in-Review," WilmerHale, January 14, 2020. <https://www.wilmerhale.com/en/insights/client-alerts/20200114-false-claims-act-2019-year-in-review>; Matthew Herper, "Face Of The Year: David Graham," *Forbes*, December 13, 2004. https://www.forbes.com/2004/12/13/cx_mh_1213faceoftheyear.html

⁴ Joint Staff of House Committee on Oversight and Government Reform and Senate Committee on the Judiciary, 115th Cong., *Fast and Furious: Obstruction of Congress by the Department of Justice 3* (Committee Print 2017). <https://www.judiciary.senate.gov/imo/media/doc/Joint%20Committee%20Report%20-%20Fast%20and%20Furious,%20Obstruction%20of%20Congress.pdf>

⁵ Dana Liebelson, "The Whistleblower Who Fell Through the Cracks," Project On Government Oversight, December 7, 2011. <https://www.pogo.org/investigation/2011/12/whistleblower-who-fell-through-cracks/>; House Committee on Armed Services, Subcommittee on Oversight and Investigations, 110th Cong., *Deploying Federal*

with POGO to expose how the Air Force was wasting millions of dollars that had been appropriated for post-9/11 counterterrorism work to instead fund luxury flight accommodations for senior leadership.⁶

These are just a few examples from a long history of whistleblowers' service to our country. Without these insiders coming forward, it is uncertain whether the wrongdoing they expose would ever come to light. They are truly invaluable to Congress.

As the branch of government entrusted with "all legislative powers," Congress has a constitutional duty to conduct oversight of trillions of dollars in spending as a key function of our system of checks and balances.⁷ Congressional oversight benefits when individuals speak up when they see wrongdoing. Whistleblowers are fundamental to Congress's ability to exercise its oversight authority.

Actions like those taken by Senator Paul will do lasting damage to Congress's chances of hearing from whistleblowers in the future. In fact, a recent survey of federal employees highlighted the troubling finding that over one-third are now less likely to report wrongdoing to the appropriate authorities, due to attacks on the intelligence community whistleblower from the president and Members of Congress.⁸

Senator Paul claims that his attacks against the federal employee suspected of being the whistleblower are fully consistent with Senate rules and the law.⁹ While that may be true, it does not make his actions right. It is vital for the Senate to send a signal, stronger than the one sent by Senator Paul, to whistleblowers that if they come forward to expose wrongdoing, Congress will protect them.

We therefore urge you to amend the Senate rules to clearly state that outing a whistleblower who is working either with Congress or through protected channels established in law will not be tolerated by Members or their staff.

Sincerely,

Government Accountability Project

Liberty Coalition

Project On Government Oversight

Taxpayers Protection Alliance

Civilians to the Battlefield 43 (Committee Print 2008). <https://www.documentcloud.org/documents/6768639-Deploying-Federal-Civilians-to-the-Battlefield.html#document/p43/a549019>

⁶ Letter from POGO Executive Director Danielle Brian to Defense Secretary Robert Gates about "extravagant 'Senior Leader In-Transit Comfort Capsules,'" July 17, 2008. <https://www.pogo.org/letter/2008/07/pogo-letter-to-dod-secretary-robert-gates-regarding-extravagant-senior-leader-in-transit-comfort-capsules/>

⁷ U.S. Constitution art. I, § 1.

⁸ Survey Data: Impeachment Findings, Government Business Council, December 16, 2019, 10. https://admin.govexec.com/media/gbc/docs/pdfs_edit/121619results.pdf

⁹ Daniel Chaitin, "Rand Paul says no law can stop him from identifying the Ukraine whistleblower," *Washington Examiner*, November 6, 2019. <https://www.washingtonexaminer.com/news/rand-paul-says-no-law-can-stop-him-from-identifying-the-ukraine-whistleblower>