

REPUBLICANS ONCE VOWED TO PROTECT WHISTLEBLOWERS—BUT ARE NOW ATTACKING THEM

Republicans Used to Support Protecting Whistleblowers

Although Republicans stood side-by-side with Democrats for decades to protect the legal right of whistleblowers to anonymously report waste, fraud, and abuse, they are now actively trying to expose the identity of a whistleblower in order to protect President Trump.

- In 2017, Rep. Devin Nunes, the Ranking Member of the House Permanent Select Committee on Intelligence, claimed publicly that protecting the legal right to whistleblowers to report abuses anonymously is vital to Congress' constitutional oversight authority. He stated:

“We want people to come forward and we will protect the identity of those people at all cost.”¹

- The same year, Rep. Mark Meadows, the Ranking Member of the Subcommittee on Government Operations, made a similar proclamation, stating:

“[P]rotecting whistleblowers who courageously speak out is not a partisan issue—it is critical to the functioning of our government.”²

- Last Congress, every Republican Member of Congress joined a unanimous vote in the House of Representatives to increase penalties for retaliation against whistleblowers.³ Speaking in support of the legislation, Republican Rep. Martha Roby stated:

“The reason whistleblowers face systematic retaliation is because it works. When a brave whistleblower faces intimidation or persecution for their actions, every other employee sees it and they know what will happen to them if they tell the truth. It has a powerful chilling effect. ... That’s just wrong and it’s time to punish those who do it with harsher penalties.”⁴

¹ Rep. Devin Nunes, *House Intelligence Chair News Conference* (Mar. 24, 2017) (online at <https://www.c-span.org/video/?425953-1/paul-manafort-volunteered-intelligence-committee-chairman-nunes>).

² Letter from Rep. Mark Meadows, Rep. Jason Chaffetz, and Sen. Charles Grassley to White House Counsel Don McGahn (Feb. 1, 2017) (online at <https://www.grassley.senate.gov/sites/default/files/judiciary/upload/2017-02-01%20JEC%20MM%20CEG%20to%20White%20House%20Counsel%20-%20Protecting%20Whistleblowers.pdf>).

³ U.S. House of Representatives, Roll Call Vote Approving S. 585, The Dr. Chris Kirkpatrick Whistleblower Protection Act of 2017 (Oct. 12, 2017) (420 yeas, 0 nays) (online at <https://www.govtrack.us/congress/votes/115-2017/h568>).

⁴ Rep. Martha Roby, *Brave Whistleblowers Need Stronger Protections* (Oct. 11, 2017) (online at <https://roby.house.gov/newsroom/press-releases/roby-brave-whistleblowers-need-stronger-protections>).

Republicans Are Now Attacking the Whistleblower

Despite their past claims, Republicans are now calling for the public exposure of the whistleblower who reported concerns about President Trump's call with the Ukrainian President, including requesting that he or she testify in public.

- On November 9, 2019, Ranking Member Nunes wrote a letter to Chairman Adam Schiff requesting minority witnesses for the impeachment hearing. He wrote:

“[T]he anonymous whistleblower should testify.”⁵

- During a campaign rally with President Trump on November 4, 2019, Senator Rand Paul stated:

“I say tonight to the media: do your job and print his name.”⁶

- At a press conference on October 29, 2019, Rep. Meadows stated:

“If I had a degree of certainty who the whistleblower is, I promise you I would tell you.”⁷

To their credit, some Republicans are opposed to this effort by others in their party to expose the whistleblower. For example:

- During an interview on November 10, 2019, Rep. Will Hurd stated:

“We should be protecting the identity of the whistleblower. I’ve said that from the beginning. Because how we treat this whistleblower will impact whistleblowers in the future.”⁸

- On November 5, 2019, Senator Mitt Romney stated:

⁵ Letter from Ranking Member Devin Nunes to Chairman Adam Schiff, House Permanent Select Committee on Intelligence (Nov. 9, 2019) (online at https://republicans-intelligence.house.gov/uploadedfiles/rm_letter_to_chm_re_witness_request.pdf).

⁶ *‘Do Your Job’: Rand Paul Calls on the Media to Print the Whistleblower’s Name*, Washington Post (Nov. 4, 2019) (online at www.washingtonpost.com/video/politics/do-your-job-rand-paul-calls-on-the-media-to-print-the-whistleblowers-name/2019/11/04/04d6c5f5-8f46-4c0c-a4c1-67c7d2809e5c_video.html).

⁷ *House Republicans Want to Out the Whistleblower Who Kicked Off the Trump Impeachment Inquiry*, BuzzFeed News (Oct. 29, 2019) (online at www.buzzfeednews.com/article/paulmcleod/republicans-want-to-out-whistleblower-trump-impeachment).

⁸ *Fox News Sunday*, Fox News (Nov. 10, 2019) (online at www.foxnews.com/category/shows/fox-news-sunday).

“[W]histleblowers should be entitled to confidentiality and privacy, because they play a vital function in our democracy.”⁹

- On October 1, 2019, Senator Charles Grassley stated:

“This person appears to have followed the whistleblower protection laws and ought to be heard out and protected. We should always work to respect whistleblowers’ requests for confidentiality. Any further media reports on the whistleblower’s identity don’t serve the public interest—even if the conflict sells more papers or attracts clicks.”¹⁰

Those supporting the whistleblower join a chorus of nonpartisan experts and Inspectors General. For example:

- On October 22, 2019, more than 60 Inspectors General, many of whom were appointed by President Trump, stated:

“Whistleblowers play an essential public service in coming forward with such information, and they should never suffer reprisal or even the threat of reprisal for doing so.”¹¹

- On November 7, 2019, a coalition of civil society organizations denounced the attacks on the whistleblower, stating:

“[We] strongly condemn the deliberate and reckless attacks on the whistleblower. These heinous actions undermine the fragile fabric of safe legal channels for disclosing wrongdoing in the intelligence community. As a result future wrongdoing will go unreported or will be disclosed outside legally protected channels.”¹²

⁹ *Republicans Break with Trump and Rand Paul on Whistleblower Unmasking*, Politico (Nov. 5, 2019) (online at www.politico.com/news/2019/11/05/rand-paul-trump-whistleblower-065917).

¹⁰ Senator Chuck Grassley, *Grassley Statement Regarding Intel Community Whistleblower* (Oct. 1, 2019) (online at www.grassley.senate.gov/news/news-releases/grassley-statement-regarding-intel-community-whistleblower).

¹¹ Letter from Michael E. Horowitz and Allison C. Lerner, on behalf of Council of the Inspectors General on Integrity and Efficiency to Steven A. Engel (Oct. 22, 2019) (online at https://ignet.gov/sites/default/files/files/CIGIE_Letter_to_OLC_Whistleblower_Disclosure.pdf).

¹² Project on Government Oversight, *Civil Society Strongly Condemns Attacks on the Whistleblower* (Nov. 7, 2019) (online at www.pogo.org/press/release/2019/civil-society-strongly-condemns-attacks-on-the-whistleblower/).

Violating Legal Protections for Whistleblowers

When the whistleblower account first became public, Republicans tried to discount it, disregard it, and claim it was irrelevant. For example, Ranking Member Nunes dismissed the whistleblower's complaint because "it relied on hearsay evidence provided by the whistleblower."¹³

The whistleblower performed an important function by reporting concerns to the IG and Congress. But in the intervening weeks, Congress has received direct testimony from numerous witnesses. Now that there is substantial, credible, and corroborated evidence of the President's wrongdoing, Republicans are trying to shift focus back to the initial allegations they insisted were unreliable hearsay. Despite their initial claims, they are now trying to argue that it is critical to hear from the whistleblower at a public hearing.

Efforts to expose the identity of the whistleblower are contrary to law and could expose Members of Congress to significant liability. The Intelligence Authorization Act of 2010 and the Intelligence Community Whistleblower Protection Act include specific procedures for employees, detailees and contractors within the Intelligence Community to make protected disclosures to IC elements' inspectors general and to the congressional intelligence committees.¹⁴

As stated in the Committee Report accompanying the Act, "The committee's statutorily established oversight responsibilities cannot be effectively carried out if employees are required to obtain the approval of the heads of their agency before exposing wrongdoing, mismanagement, or waste."¹⁵

A robust statutory framework also prevents obstruction of lawful communications by federal employees with Congress, and of congressional proceedings.¹⁶ The Code of Official Conduct requires that every Member of Congress "shall behave at all times in a manner that shall reflect creditably on the House."¹⁷ The Committee on Ethics has historically viewed this provision as "encompassing violations of law and abuses of one's official position."¹⁸

¹³ House Permanent Select Committee on Intelligence, *Whistleblower Disclosure* (Sept. 26, 2017) Opening statement of Rep. Nunes (online at <https://republicans-intelligence.house.gov/news/documentsingle.aspx?DocumentID=969>.)

¹⁴ 50 U.S.C. § 3033, 5 U.S.C. § 8H; *see also* 50 U.S.C. § 3234 (prohibiting certain reprisals for protected disclosures by IC personnel).

¹⁵ H. Rept. 105-747 (Sept. 25, 1998) at 20.

¹⁶ *See, e.g.*, P.L. 116-6 § 713 (prohibiting funds from being made available to pay the salary of an officer or employee of the "Federal Government" who "prohibits or prevents or attempts or threatens to prohibit or prevent" any federal employee from communicating with Members of Congress); 18 U.S.C. § 1505 (criminalizing corrupt efforts to influence, obstruct, or impede or endeavor to influence, obstruct, or impede, "the due and proper administration of the law of any inquiry or investigation" by "either House, or any committee of either House or any joint committee of the Congress").

¹⁷ U.S. House of Representatives, Code of Official Conduct, clause 1.

¹⁸ Committee on Standards of Official Conduct, *House Ethics Manual* (2008) (online at https://ethics.house.gov/sites/ethics.house.gov/files/documents/2008_House_Ethics_Manual.pdf).