

THE PUZZLE OF WHISTLEBLOWER PROTECTION LEGISLATION: ASSEMBLING THE PIECEMEAL

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I. INTRODUCTION

Corruption continues to exist in all aspects of society in the United States.¹ Corruption harms society politically, economically, socially, and environmentally.² However, there exists a tool for combatting this corruption. Three recent scientific studies concluded that whistleblowers, which will be specifically defined later, are the most effective method for combatting corruption.³ Indeed, there seems to be a modern trend toward more whistleblowing, and the culture of the United States seems to view whistleblowers in a more positive light. However, the legislative framework under which whistleblowers operate must be examined.

Section II of this note provides all of the relevant historical and background information. It examines the growing number of whistleblower reports and the shift in societal views in favor of reporting. The section also creates a definition for the term whistleblower for the purposes of this Note and the legislative recommendation in Section V. It then proceeds to examine the levels of corruption in the United States and the value of whistleblowers in the face of that corruption. Finally, the section examines the federal whistleblower legislation scheme currently in place in the United States, honing in on the protections offered and the patchwork nature of the coverage. Section III of this note shifts the focus to both foreign and international whistleblower legislation. Specifically, the whistleblower protection law of Bosnia and Herzegovina is examined in detail. Section IV of this Note analyzes the current federal whistleblower legislation in the United States, pointing out its deficiencies and deciding whether whistleblowers can operate effectively. The section also practices the comparative law method, analyzing the differences between the United States and Bosnia and Herzegovina. Section V of this note discusses the need for a more comprehensive and unified whistleblower protection legislation, similar to that of Bosnia and Herzegovina. The section argues for the passage of this legislation, the establishment of a single federal agency designed to handle whistleblower reports

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1. *Corruption Perceptions Index 2015*, TRANSPARENCY INT'L, <http://www.transparency.org/cpi2015> (last visited Oct. 11, 2016) [<https://perma.cc/R5GU-HY9R>].

2. *What is corruption?*, TRANSPARENCY INT'L, <http://www.transparency.org/what-is-corruption/#costs-of-corruption> (last visited Oct. 11, 2016) [<https://perma.cc/VT8M-K7SV>].

3. *Proven Effectiveness of Whistleblowers*, NAT'L WHISTLEBLOWERS CTR., http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/NWC_NationalWhistleblowersCenter_Annex2.pdf [<https://perma.cc/RLL6-B96L>] (last visited Oct. 11, 2016).

without regard to private or public status, and for proper whistleblower protections to be afforded to those who disclose corruption. Section VI, the final section, will briefly summarize and conclude the Note.

II. HISTORY/BACKGROUND

A. Modern Prevalence of Whistleblowing

In May 2013, Edward Snowden met with two Guardian journalists and Laura Poitras, a filmmaker, at a hotel in Hong Kong.⁴ In the years since, Snowden and his confidants have exposed the National Security Agency's (NSA) massive cyber surveillance activities of American citizens, foreign governments, and even ordinary foreign citizens.⁵ Snowden's name may evince mixed attitudes on the part of the reader, but it is important to note that this is not an argument on whether Snowden's particular actions were right or wrong, illegal or justifiable. This is simply one example of the modern prevalence of whistleblowing in society. Edward Snowden has become a household name and it would be almost negligent to not mention him in a note on whistleblowing.

There are many other examples of the modern prevalence of whistleblowers. WikiLeaks is a recognized term in Microsoft Word's dictionary. For the uninitiated, WikiLeaks "specializes in the analysis and publication of large datasets of censored or otherwise restricted official materials involving war, spying and corruption."⁶ WikiLeaks is essentially an organization dedicated almost exclusively to whistleblowing. Perhaps its most famous (or infamous) whistleblowing activity was the release of thousands of classified documents on the wars in Afghanistan and Iraq.⁷ Another relatively recent whistleblowing example is the leak of the Panama Papers in April 2016, in which the International Consortium of Investigative Journalists revealed a trove of documents that show an offshore tax haven run through the Panama law firm Mossack Fonseca.⁸ Once again, this Note is not commenting on or debating the

4. Zheping Huang, *Edward Snowden got out of Hong Kong by Hiding in the One Place the Government Would Never Think to Look*, QUARTZ (Sept. 7, 2016), <http://qz.com/775250/nsa-whistleblower-edward-snowden-escaped-from-hong-kong-thanks-to-the-wretched-lives-of-some-of-the-citys-11000-refugees/> [<https://perma.cc/JDM2-7J4V>].

5. Paul Szoldra, *This is Everything Edward Snowden Revealed in One Year of Unprecedented Top-secret Leaks*, BUSINESS INSIDER (Sept. 16, 2016, 8:00 AM), <http://www.businessinsider.com/snowden-leaks-timeline-2016-9> [<https://perma.cc/ENY3-2JWA>].

6. *What is WikiLeaks*, WIKILEAKS (Nov. 3, 2015), <https://wikileaks.org/What-is-Wikileaks.html> [<https://perma.cc/VZB8-SS7T>].

7. Frances Romero, *The WikiLeaks War Logs*, TIME (Nov. 29, 2010), http://content.time.com/time/specials/packages/article/0,28804,2006558_2006562_2006567,00.html [<https://perma.cc/W6N4-X2DY>].

8. *The Panama Papers: 7 things to know*, CNN <http://www.cnn.com/2016/04/04/world/panama-papers-explainer/> [<https://perma.cc/D2TJ-JKCD>] (last updated Apr. 6, 2016, 9:48 PM).

merits of these particular instances of whistleblowing activity; they are simply modern examples used to show the increasing levels of whistleblowing.

Of course, whistleblowing in the United States is not a new phenomenon.⁹ In fact, there have been whistleblowers in this society since before the United States gained its independence.¹⁰ Benjamin Franklin is listed as the first notable whistleblower in the United States, as he exposed the corrupt practices of the Massachusetts governor of the time.¹¹ However, if one looks at the timeline of whistleblowers, there is clear trend.¹² More than half of the most notable whistleblowing activities in the history of the United States occurred in the year 2000 or later.¹³ The Securities and Exchange Commission (SEC) has seen a growing number of whistleblower reports since 2011.¹⁴ The Occupational Safety and Health Administration (OSHA) received seventy percent more whistleblowing reports in 2015 than in 2005.¹⁵ Overall, it appears that whistleblowing is an increasingly important part of the modern culture of the United States. Societal views toward whistleblowing seem to be shifting into a more positive light.

B. What is a Whistleblower?

Although the introduction focused on controversial and well-known whistleblowers, these types of individuals and organizations are not the average whistleblower. It is important now to take a small step back to consider and define the term whistleblower. It is perhaps somewhat of a buzzword and should be defined for the scope of this Note. For the purposes of this Note and the legislation recommendations, discussed *infra*, the term should be kept simple and general, for reasons that will be explained below. Thus, a whistleblower is an individual who provides information relating to the corruption of another person or an organization. This could be an employee within that organization or it could be an external person who somehow gained access to information on potential misconduct.

Of course, several of the words in that definition of whistleblower could be

9. *A Timeline of US Whistleblowers*, GOV'T ACCOUNTABILITY PROJECT, <https://www.whistleblower.org/timeline-us-whistleblowers> [<https://perma.cc/TE75-7ZC8>] (last visited Oct. 11, 2016).

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Kevin LaCroix, *SEC Whistleblower Reports Continue to Increase*, THE D&O DIARY (Nov. 18, 2015), <http://www.dandodiary.com/2015/11/articles/securities-laws/sec-whistleblower-reports-continue-to-increase/> [<https://perma.cc/2BEY-X5JQ>].

15. *Whistleblower Investigation Data*, OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, <https://www.whistleblowers.gov/sites/default/files/3DCharts-FY2007-FY2017.pdf> [<https://perma.cc/LUH5-WZBJ>] (last visited Oct. 11, 2016).

defined as well, but that would be largely unnecessary here and more relevant for actual legislation and subsequent statutory interpretation. Nonetheless, it is relevant to define the term corruption. Corruption is dishonest or illegal conduct or wrongdoing by an individual with authority. Simply using the term “an individual with authority” is perhaps too vague and broad, but oftentimes, wrongdoing by lower-level employees within an organization is not thought of as corruption nor easily reportable. A person with authority, however, has the potential to exercise that authority to silence others who have witnessed or have access to evidence of corruption. Once again, these terms could continue to be refined for the purpose of actual legislation drafting, but the current definition will suffice for this Note.

C. Corruption in the United States

We have seen that whistleblowing activities in the United States have steadily risen in recent years. The natural response is to question the cause. The technological revolution of the late twentieth and early twenty-first century has undoubtedly played a two-part role. First, the manner in which governments and organizations store information has shifted almost exclusively into the electronic realm. Second, the whistleblower’s ability to collect and share this evidence of corruption is dramatically enhanced by technology. Combining these two notions may partially explain the whistleblowing trend. However, it can also be partially explained by the fact that there is a lot of corruption in the United States today.

Transparency International is an organization that works to fight corruption around the world.¹⁶ Every year, the organization publishes a Corruption Perceptions Index that both rates and ranks the countries of the world in terms of corruption in the public sector.¹⁷ The rating system is from zero to one hundred, with zero as highly corrupt and one hundred as perfectly clean.¹⁸ In 2015, the United States scored a seventy-six out of one hundred.¹⁹ Of course, this is relatively good in contrast to the countries at the bottom. For example, North Korea scored an eight out of one hundred.²⁰ However, the United States is still far from the highest ranked country, which is Denmark with a score of ninety-two.²¹ In addition, the United States is uniquely positioned in the world. Many countries look to the United States to set an example for the world, and in terms of corruption, we are failing to do so. Fighting corruption in this country can contribute to fighting corruption in other places in the world, which is crucial, as

16. *Our Impact*, TRANSPARENCY INT’L, <http://www.transparency.org/impact/> [https://perma.cc/A2JW-RBAJ] (last visited Oct. 11, 2016).

17. *Corruption Perceptions Index*, TRANSPARENCY INT’L, <https://www.transparency.org/research/cpi/> [https://perma.cc/Q2U9-WM2G] (last visited Oct. 11, 2016).

18. *Corruption Perceptions Index 2015*, TRANSPARENCY INT’L, <http://www.transparency.org/cpi2015> [https://perma.cc/CR3H-MHDC] (last visited Oct. 11, 2016).

19. *Id.*

20. *Id.*

21. *Id.*

“more than 6 billion people live in countries with a serious corruption problem.”²²

Not only is the United States uniquely positioned to set an example, but the corruption that exists is inimical to our country. In an individual sense, in the worst settings, corruption causes loss of life.²³ More often, corruption “costs people their freedom, health or money.”²⁴ The costs of corruption to society as a whole can be separated into four broad categories: political, economic, social, and environmental.²⁵

The political cost of corruption is particularly relevant and pronounced. Corruption harms the very fabric and legitimacy of a democracy, for constituents does not know if his or her representatives are truly serving in the interests of the public. Indeed, this political cost is easily seen in the United States today. As of this writing, the Congressional approval rating has averaged around sixteen percent in 2016.²⁶ A poll in 2015 revealed that three out of four Americans believe there is widespread corruption within our government.²⁷

This political cost of corruption feeds directly into the economic cost of corruption. “Economically, corruption depletes national wealth. Corrupt politicians invest scarce public resources in projects that will line their pockets rather than benefit communities”²⁸ In addition, private organizations feed (sometimes illegally) massive sums of money into election campaigns, causing even more incentive for politicians to invest in private rather than public benefits. Arguably, this type of corruption was held to be protected by the Constitution in *Citizens United*,²⁹ but that is beyond the scope of this Note. Either way, corruption harms the country both politically and economically.

The social cost of corruption is also tied in closely. Corruption erodes the very fabric of society, causing distrust in the political system.³⁰ This is clearly reflected in the polls mentioned, *infra*. The environmental cost of corruption is not mentioned as often. Corrupt systems that look out only for private interests wreak havoc on the environment. This is easily seen in the United States. The country ranked second in the world in carbon dioxide emissions in 2011.³¹ If

22. *Id.*

23. *What is corruption?*, TRANSPARENCY INTERNATIONAL, <http://www.transparency.org/what-is-corruption/#costs-of-corruption> [<https://perma.cc/7TZH-48ZR>] (last visited Oct. 11, 2016) [hereinafter *What is corruption?*, TRANSPARENCY].

24. *Id.*

25. *Id.*

26. *Congress and the Public*, GALLUP, <http://www.gallup.com/poll/1600/congress-public.aspx> [<https://perma.cc/AG4G-CTG8>] (last visited Oct. 11, 2016).

27. *75% in U.S. See Widespread Government Corruption*, GALLUP (Sept. 19, 2015), <http://www.gallup.com/poll/185759/widespread-government-corruption.aspx> [<https://perma.cc/N7VC-4E3F>].

28. *What is corruption?*, TRANSPARENCY, *supra* note 23.

29. *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010).

30. *What is corruption?*, TRANSPARENCY, *supra* note 23

31. *Each Country’s Share of CO2 Emissions*, UNION OF CONCERNED SCIENTISTS,

politicians were truly serving the public interest rather than private interests, it seems impossible to think that a country as advanced as the United States could not have switched to alternative forms of energy and reduced its impact on global warming. There are countless other examples of the costs that corruption imposes, but for the purposes of this Note, it is sufficient to have established that corruption exists in the United States and is harming society in a tangible, widespread manner.

D. Value of Whistleblowers

The value of whistleblowers to society cannot be understated. Three relatively recent scientific studies have shown that whistleblowers are the most effective method for combatting corruption.³² The first was conducted by PricewaterhouseCoopers (PWC) in 2007.³³ PWC examined over 5,000 companies in forty countries and found that whistleblowers were responsible for 43% of corruption detection.³⁴ In contrast, law enforcement was found to be responsible for just 3% of corruption detection.³⁵ The study noted, “there is no substitute for the perceptiveness and acuity of the individual when it comes to discerning those patterns of odd behavior, unlikely coincidences and atypical work methods that often signal the presence of economic crime.”³⁶ The second study was conducted by the Association of Certified Fraud Examiners (ACFE) in 2008.³⁷ The ACFE cases of corruption and found similar statistics as the PWC study; whistleblowers were responsible for about 46% of the corruption detection, while law enforcement was responsible for only 3%.³⁸ The third study was conducted by the Ethics Resource Center (ERC) and took a different approach.³⁹ The study found that “government employees are increasingly working in environments that are conducive to misconduct.”⁴⁰ The study also concluded that “signs point to a future rise in misconduct if deliberate action is not taken.”⁴¹

These results are perfectly logical. Employees within an organization, who are typically the person that becomes a whistleblower, are incredibly well-positioned to observe corruption. They have the most access to the information

http://www.ucsusa.org/global_warming/science_and_impacts/science/each-countrys-share-of-co2.html [<https://perma.cc/JH9W-U25C>] (last updated Nov. 18, 2014).

32. *Proven Effectiveness of Whistleblowers*, NAT'L WHISTLEBLOWERS CTR., http://lib.ohchr.org/HRBodies/UPR/Documents/session9/US/NWC_NationalWhistleblowersCenter_Annex2.pdf [<https://perma.cc/WYF5-PVT4>] (last visited Oct. 11, 2016).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

and more effective means of exposing the corruption. Where does this leave us in the overall framework then? Corruption permeates all levels of society in the United States, causing political, economic, social, and environmental harm. There exists a known tool for combatting this corruption and subsequent costs, as it has been shown that whistleblowers are the most effective means of revealing corruption. There has been an increase in recent whistleblower reports, showing that the culture surrounding whistleblowing is changing towards a more positive view of blowing the whistle. Thus, we must now examine the historical and current legislative framework and scrutinize whether it allows whistleblowers to operate effectively.

E. U.S. Federal Whistleblower Legislation

Whistleblower protection legislation in the United States was born in the aftermath of the American Revolutionary War.⁴² During the winter months of 1777, when the United States was barely over one-year-old, a group of revolutionary sailors and marines were on board the American warship *Warren* in the waters outside of Providence, Rhode Island.⁴³ Ten of these men met in secret to discuss their concerns over the actions of Commodore Esek Hopkins, the commander of the Continental Navy.⁴⁴ Commodore Hopkins “treated prisoners in the most inhuman and barbarous manner,”⁴⁵ torturing the British sailors captured in the war.⁴⁶ However, the meeting was risky for the sailors, as the Hopkins were a powerful family.⁴⁷ The Commodore’s brother was a signatory to the Declaration of Independence and a former governor of the Colony of Rhode Island.⁴⁸

Despite the risks, the group of sailors wrote a petition to suspend Commodore Hopkins from his post and presented the petition to the Continental Congress.⁴⁹ The Continental Congress voted to suspend Commodore Hopkins on March 26, 1777.⁵⁰ Commodore Hopkins immediately retaliated with a criminal libel suit against the sailors.⁵¹ As a result, two of the men, Samuel Shaw and Richard Marven, were imprisoned in Rhode Island.⁵² In a second petition to the Continental Congress on July 23, 1778, Shaw and Marven argued they had been

42. Stephen M. Kohn, *The Whistle-Blowers of 1777*, N.Y. TIMES (June 12, 2011), <http://www.nytimes.com/2011/06/13/opinion/13kohn.html> [<https://perma.cc/BG35-4NQJ>].

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. Kohn, *supra* note 42.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

“arrested for doing what they then believed and still believe was nothing but their duty.”⁵³ In response, the Continental Congress enacted the country’s first whistleblower protection legislation.⁵⁴ The statute read:

That it is the duty of all persons in the service of the United States, as well as all other inhabitants thereof, to give the earliest information to Congress or any other proper authority of any misconduct, frauds or misdemeanors committed by any officers or persons in the service of these states, which may come to their knowledge.⁵⁵

This was not all the Continental Congress did for the whistleblowers.⁵⁶ Despite the financial struggles of the newly formed country, the Continental Congress authorized the payment of Marven and Shaw’s legal fees in the libel case.⁵⁷ With this support, Marven and Shaw won the case.⁵⁸

The Continental Congress’s mentality toward whistleblowing was instilled into the U.S. Constitution. The first ten amendments to the Constitution, known as the Bill of Rights, were ratified on December 15, 1791.⁵⁹ One of the major concerns during the debates for the ratification of the Constitution was “protecting individual rights from abridgment by the federal government.”⁶⁰ As Supreme Court Justice William Orville Douglas wrote, “The dominant purpose of the First Amendment was to prohibit the widespread practice of government suppression of embarrassing information.”⁶¹ This is essentially a prohibition on the government suppressing whistleblowers. A full examination of whistleblowing activities under the First Amendment is beyond the scope of this article, but it is important to note that the foundational legislation of the United States considers the protection of whistleblowers.

The next federal whistleblower legislation was also enacted in response to a war.⁶² Congress passed the False Claims Act of 1863 during the height of the Civil War.⁶³ The major concern the legislation addressed was private, military

53. *Id.*

54. Kohn, *supra* note 42.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. *Bill of Rights is Finally Ratified*, HISTORY, <http://www.history.com/this-day-in-history/bill-of-rights-is-finally-ratified> [<https://perma.cc/39FX-N49C>] (last visited Dec. 22, 2016).

60. *Constitution of the United States of America*, THE CONSTITUTION CENTER.ORG, <https://www.constitutioncenter.org/media/files/constitution.pdf> [<http://perma.cc/N548-4X52>] (last visited Dec. 22, 2016).

61. *N.Y. Co. v. United States*, 403 U.S. 713, 723-24 (1971).

62. *The False Claims Act: A Primer*, THE UNITED STATES DEPARTMENT OF JUSTICE, https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf [<https://perma.cc/P2AS-LU3D>] (last visited Dec. 22, 2016) [hereinafter *False Claims Primer*].

63. *Id.*

contractors defrauding the federal government.⁶⁴ The crux of the law is the imposition of a civil penalty on those who knowingly bring a false claim against the government.⁶⁵ The law provides a mechanism through which whistleblowers may report a violation of the False Claims Act.⁶⁶ In this situation, a private person files a complaint on behalf of the government, known as a *qui tam* action, alleging violations of the False Claims Act.⁶⁷ The government has the responsibility for deciding whether to prosecute *qui tam* actions.⁶⁸ The whistleblower who filed the complaint on behalf of the government, known as the “relator” under the language of the False Claims Act, is entitled to certain awards and protections.⁶⁹

If the government decides to proceed with the prosecution of the *qui tam* action, the whistleblower is entitled to receive between fifteen and twenty-five percent of the proceeds of the action or settlement.⁷⁰ The exact amount depends on the extent to which the whistleblower contributed to the prosecution of the *qui tam* action.⁷¹ If the government chooses not to proceed with the prosecution of the *qui tam* action, the whistleblower is entitled to receive between twenty-five and thirty percent of the proceeds of the action or settlement.⁷² The court decides what is reasonable within the given range.⁷³ In both scenarios, the whistleblower is entitled to receive reasonable attorneys’ fees.⁷⁴ The whistleblower who happens to be an employee, contractor, or agent of an organization against which he or she filed the complaint receives some additional protection under the False Claims Act.⁷⁵ Essentially, that employee, contractor, or agent cannot be fired, demoted, or discriminated against in any manner because of their whistleblowing activities under the False Claims Act.⁷⁶ This is an archetypal whistleblower protection that will appear in virtually all of the upcoming whistleblower legislation.

“In 1902, President Theodore Roosevelt issued an executive order prohibiting all federal employees from making disclosures to Congress without the permission of their supervisor. In 1909, President Howard Taft issued the same order.”⁷⁷ In response to these gag rules, Congress enacted the Lloyd-La Follette

64. *Id.*

65. False Claims Act, 31 U.S.C. §§ 3729–3733 (2009).

66. *Id.*

67. *Id.*

68. *False Claims Primer*, *supra* note 62.

69. 31 U.S.C. §§ 3729–3733.

70. *Id.* at § 3730(d)(1).

71. *Id.*

72. *Id.* at § 3730(d)(2).

73. *Id.* at § 3730(d)(1).

74. *Id.* at § 3730(d)(1)-(2).

75. 31 U.S.C. § 3730(h).

76. *Id.*

77. NWLDEF, *Happy Birthday! Lloyd-La Follette Act*, WHISTLEBLOWERS PROTECTION BLOG (Aug. 24, 2012), <http://www.whistleblowersblog.org/2012/08/articles/government->

Act in 1912.⁷⁸ The most important section for whistleblowers read as follows: “The right of employees, individually or collectively, to petition Congress or a Member of Congress, or to furnish information to either House of Congress, or to a committee or Member thereof, may not be interfered with or denied.”⁷⁹ The purpose of this provision was “to protect employees against oppression and in the right of free speech and the right to consult their representatives.”⁸⁰ This evinces strong notions of First Amendment protections, while also adding elements of separation of powers and checks and balances. The entire act is the legislature’s response to the executive branch attempting to gag federal employees. Once again, a full analysis of the Constitutional bases for whistleblower protection legislation is beyond the scope of this article, but it is still important to note that there are multiple sources within the Constitution and the Constitution was written with whistleblowers in mind.

Employee is defined earlier in the legislation,⁸¹ and the Lloyd-La Follette Act is exceptional and holds modern relevance in that it applies across the entire spectrum of federal employment.⁸² This is in stark contrast to the Whistleblower Protection Act, which will be examined below, that provides alternative procedures for national security employees.⁸³ However, the actual protections offered to federal employee whistleblowers are unclear. There is an argument to be made that the federal government cannot fire the whistleblower who discloses information to Congress, but the Lloyd-La Follette Act does not explicitly provide for retaliatory protections.⁸⁴

The Freedom of Information Act was passed in 1966 and provides “the public the right to request access to records from any federal agency.”⁸⁵ There are, of course, limits to the breadth of this right. Federal agencies must disclose any information that is requested under the Freedom of Information Act, unless the information falls into any of the nine enumerated exemptions in the statute.⁸⁶ Examples of these protected interests are national security, law enforcement, and personal privacy.⁸⁷ As the Second Circuit’s Judge Hays notes:

The broad legislative intent behind the enactment of the Freedom of

whistleblowers/national-security/happy-birthday-lloyd-la-follette-act/

78. *Id.*

79. Lloyd-La Follette Act, 5 U.S.C. § 7211 (1978).

80. H.R. REP. NO., 388, 62d Cong., 2d Sess., 7 (1912).

81. 5 U.S.C. § 2105.

82. NWLDEF, *supra* note 77.

83. *Id.*

84. 5 U.S.C. § 7513 (Because an employee can only be fired in order to promote efficiency, there is an argument that this protects whistleblowers, as firing a whistleblower in retaliation would not be to promote efficiency).

85. *Frequently Asked Questions*, FOIA, <https://www.foia.gov/faq.html#thefoia> (last visited Dec. 22, 2016).

86. 5 U.S.C. § 552(b)(1)-(9).

87. *Id.*

Information Act, as disclosed by the Report of the Senate Committee on the Judiciary and the Report of the House Committee on Government Operations, was to give the electorate greater access to information concerning the operations of the federal government.⁸⁸

Thus, the intent behind the Freedom of Information Act is similar to the goals of a whistleblower. The Act serves as a private citizen's check on the power and potential corruption of federal agencies, similar to a whistleblower serving as a check on the corruption within his or her organization. However, the Freedom of Information Act is a different type of whistleblower legislation than the acts that have been analyzed thus far. It does not offer any explicit whistleblower protections. Rather, the Freedom of Information Act is more accurately classified as whistleblower-enabling legislation. There are circumstances in which a whistleblower (or an investigator) will need to submit a request under this act in order to have full information for or to defend his or her whistleblower action.

In addition, the act serves as a symbolic piece of legislation in terms of society's attitude towards corruption and the general interplay between the public and the federal government. It appears that Congress and its constituents believe that the public deserves to know some details about the activities of federal agencies. Overall, while the Freedom of Information Act offers no direct whistleblower protections, its mechanisms certainly do provide a tangible benefit to whistleblowers and the general public.

The Lloyd-La Follette Act of 1912 proved to have its shortcomings, as it gave federal employees the right to petition the government without giving them any true bargaining power.⁸⁹ In 1962, President John F. Kennedy issued Executive Order 10,988 in an attempt to give federal employees more collective bargaining power.⁹⁰ From 1969 to 1971, President Richard Nixon signed two executive orders that also addressed collective bargaining power.⁹¹ These executive orders and the complications that arose paved the way for Congress to revisit this issue and ultimately enact the Civil Service Reform Act of 1978.⁹² The Act was also passed during a time in which American citizens had little trust of the federal government.⁹³ The Watergate scandal was still fresh in the public's mind, having occurred less than five years before.⁹⁴ The Organization of Petroleum Exporting

88. Frankel v. SEC, 460 F.2d 813, 816 (2d Cir. 1972).

89. Charles Coleman, *The Civil Service Reform Act of 1978: Its Meaning and Its Roots*, 31 LABOR LAW JOURNAL 200 (1980).

90. Carlton J. Snow & Elliott M. Abramson, *Rights to Official Time for Unions Representing Federal Employees*, 34 CASE W. RES. 17, 19 (1983).

91. *Id.* at 20.

92. *Id.*

93. James L. Sundquist, *Jimmy Carter as Public Administrator: An Appraisal at Mid-term*, PUBLIC ADMINISTRATION REVIEW (1979).

94. *Watergate Chronology*, WATERGATE.INFO, <http://watergate.info/chronology/brief-timeline-of-events> [https://perma.cc/U5AR-V6ZU] (last visited Dec. 22, 2016).

Countries' embargo on the United States and the economic effects of the resulting oil crisis were also still in the public's recent memory.⁹⁵ The Vietnam War, which arguably kick-started decades of distrust with the federal government, was fresh.⁹⁶ All of these factors contributed to the embodiment of whistleblower protections in the Civil Service Reform Act of 1978. In fact, "the protection of employees from reprisal for protected activity, in particular 'whistleblowing,' was a primary purpose of the Act."⁹⁷

Once again, the Civil Service Reform Act of 1978 in a way added on to (or replaced) the Lloyd-La Follette Act of 1912 and provided whistleblower protections for federal employees. The relevant section of the statute reads:

(b) Any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority . . . (8) take or fail to take, or threaten to take or fail to take, a personnel action with respect to any employee or applicant for employment because of (A) any disclosure of information by an employee or applicant which the employee or applicant reasonably believes evidences (i) any violation of any law, rule, or regulation, or (ii) gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if such information is not specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs . . .⁹⁸

This provision protects a whistleblower from being fired (and from losing an already promised promotion) because of his or her disclosure. This is the archetypal whistleblower protection that will continue to appear. The Civil Service Reform Act also established three new agencies to help manage the aims of the legislation.⁹⁹ The Federal Labor Relations Authority was created to facilitate the collective bargaining aims mentioned previously and to arbitrate labor disputes.¹⁰⁰ The Office of Personnel Management generally manages the hiring and firing procedures of the federal government.¹⁰¹ The Merit Systems

95. *Oil Embargo, 1973-1974*, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1969-1976/oil-embargo> [<https://perma.cc/2C2A-BHUZ>] (last visited Dec. 22, 2016).

96. David Webber, *Vietnam Kicked Off Decades of Distrust*, COLUMBIA DAILY TRIBUNE (Feb. 25, 2014), <http://www.columbiatribune.com/c760056e-9e4f-11e3-9af2-10604b9ffe60.html> [<https://perma.cc/C7XG-SC3D>].

97. Bruce D. Fong, *Whistleblower Protection and the Office of Special Counsel: The Development Of Reprisal Law in the 1980S.*, 40 AM. U.L. REV. 1015, 1016 (1991).

98. Civil Service Reform Act, 5 U.S.C. § 2302(b)(8)(A)(i)-(ii) (1978).

99. Steven Knudsen et al., *The Civil Service Reform Act of 1978*, PUBLIC PERSONNEL MANAGEMENT, May-June 1979.

100. *Mission*, U.S. FEDERAL LABOR RELATIONS AUTHORITY <https://www.flra.gov/about/mission> [<https://perma.cc/QS6F-VZX6>](last visited Dec. 22, 2016).

101. *Our Agency*, OPM.GOV, <https://www.opm.gov/about-us/> [<https://perma.cc/5S4A-SW97>](last visited Dec. 22, 2016).

Protection Board is the agency that actually handles the whistleblower complaints filed under the above provision, unless the complaint concerns reprisal from the Federal Bureau of Investigations.¹⁰²

The Civil Service Reform Act, and its statutory protections for whistleblowers, continually struggled to realize Congress's intent.¹⁰³ "In the decades following the passage of the [Civil Service Reform Act], judicial decisions frequently tipped the scales in favor of the government employer."¹⁰⁴ In addition, the Civil Service Reform Act only applied to federal government employees. In order to address whistleblowers in the private sector, and to address the imbalanced judicial decisions under the Civil Service Reform Act, Congress passed the Whistleblower Protection Act of 1989.¹⁰⁵ "Congress added several provisions in the [Whistleblower Protection Act] to make it easier for whistleblowers to prevail over government employers."¹⁰⁶ For example, the Whistleblower Protection Act decreased the burden that the whistleblower must meet to show a prima facie case of whistleblower retaliation.¹⁰⁷ At the same time, it also "increased the burden on the federal government to prove that a personnel action was taken for legitimate management reasons."¹⁰⁸ The new burden is that the federal agency must prove by clear and convincing evidence that, even in the absence of the whistleblower's disclosure, the agency would have taken the personnel action.¹⁰⁹

However, while it became easier for whistleblowers to receive the protections because of the shifts in burdens, the actual protections themselves remained largely unchanged from the Civil Service Reform Act. Though it did extend the protections to the private sector, the Whistleblower Protection Act still only guaranteed that whistleblowers will not have adverse personnel action taken against them. However, they are now eligible for some attorneys' fees as well.¹¹⁰

There are many limits on the breadth of the Whistleblower Protection Act. Although any person may blow the whistle under this Act, the protections only apply to a "covered employee."¹¹¹ The list of exceptions to the Whistleblower

102. *About MSPB*, U.S. MERIT SYSTEMS PROTECTION BOARD, <http://www.mspb.gov/About/about.htm> [https://perma.cc/3XTL-F296](last visited Dec. 22, 2016).

103. Liz Brown & Shayla Silver-Balbu, *A Triumph for a Transparent and Accountable Government: Maclean's Place in the History of Whistleblower Protection Law*, 19 EMPL. RTS. & EMPLOY. POL'Y J. 189, 200 (2015).

104. *Id.* at 202.

105. *Id.* at 203.

106. *Id.*

107. *Id.* at 204.

108. *Id.*

109. Brown & Silver-Balbu, *supra* note 103, at 204-05.

110. Whistleblower Protection Act, 5 U.S.C. §1221(g)(1)(B) (2012).

111. Congressional Research Service, *Whistleblower Protections Under Federal Law: An Overview*, FEDERATION OF AMERICAN SCIENTISTS (Sept. 13, 2012), <https://fas.org/sgp/crs/misc/R42727.pdf> [https://perma.cc/KA7A-EXDF].

Protection Act are as follows:

the statute does not apply to federal workers employed by the U.S. Postal Service or the Postal Rate Commission, the Government Accountability Office, the Federal Bureau of Investigation, the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, and any other executive entity that the President determines primarily conducts foreign intelligence or counter-intelligence activities.¹¹²

In addition, the Whistleblower Protection Act does not cover tax law or money used in political activities.¹¹³ Overall, the Whistleblower Protection Act added private sector employees, maintained limitations for federal government employees, maintained the same protection of no adverse personnel action, and included a provision for reasonable attorneys' fees.

Many of the whistleblower protection laws were passed in the aftermath of wars or major scandals, such as the Watergate scandal. This next piece of legislation is certainly no exception, as it was enacted in the wake of one of the most notorious scandals in the history of the United States.¹¹⁴ Enron was viewed as one of the most financially stable companies in the country.¹¹⁵ However, Enron took advantage of the deregulation of the oil and gas industry, and committed massive corporate fraud.¹¹⁶ The company was lying on its earnings reports, and when it finally failed, many investors suffered devastating losses.¹¹⁷ As Robert Mueller said, "The collapse of Enron was devastating to tens of thousands of people and shook the public's confidence in corporate America."¹¹⁸

In response to this massive scandal and corporate fraud in general, Senator Paul Sarbanes and Representative Michael Oxley worked together to draft the Sarbanes-Oxley Act of 2002.¹¹⁹ The intent of the Act was to "protect investors by improving the accuracy and reliability of corporate disclosures."¹²⁰ One of the major ways in which this was accomplished was through enhanced whistleblower

112. *Id.*

113. *See generally*, Whistleblower Protection Act (2012).

114. *Easy Guide to Understanding ENRON Scandal Summary*, FINANCE LAWS, <http://finance.laws.com/enron-scandal-summary> [<https://perma.cc/E9MS-W9XS>] (last visited Dec. 22, 2016).

115. Rosemary Peavler, *Sarbanes-Oxley Act and the Enron Scandal - Why Are They Important?*, THE BALANCE, <https://www.thebalance.com/sarbanes-oxley-act-and-the-enron-scandal-393497> [<https://perma.cc/9BHA-QMYB>] (last updated Oct. 18, 2016).

116. *Id.*

117. *Id.*

118. *Enron's Impact on Society*, SPARTANS MEAN BUSINESS (Mar. 10, 2012, 1:00 PM), <http://gbnbusiness.blogspot.com/search?q=Enron's+Impact+on+Society> [<https://perma.cc/UZ4X-EVR2>].

119. Peavler, *supra* note 115.

120. *Id.*

protections.¹²¹ The Sarbanes-Oxley Act contains several whistleblower protections and is considered by some to be one of the most important pieces of whistleblower legislation.¹²²

One of the key aspects of the Act is that its definition of protected whistleblowing is very broad.¹²³ It covers reports to supervisors, government officials, and the news media, as well as participation in shareholder legal proceedings.¹²⁴ It reaches auditors as well.¹²⁵ The main crux of the law is similar to what has been seen thus far: employers cannot retaliate against whistleblowers.¹²⁶ If a whistleblower makes a disclosure and believes he or she is facing retaliation, the whistleblower files a complaint with OSHA.¹²⁷ If it is determined that the employer did retaliate against the whistleblower, OSHA “must order the employer to provide a complete ‘make whole’ remedy to the employee.”¹²⁸ This includes reinstatement of their job, back pay, attorneys’ fees, and the potential for emotional distress.¹²⁹ While the central remedy is focused on keeping their job, the Sarbanes-Oxley Act does add new whistleblower protections to the list of remedies that have been examined thus far.

The massive corporate fraud scandals (such as Enron), combined with the 9/11 terrorist attacks and the technology bubble burst, caused the U.S. economy to enter a small recession in the early 2000s.¹³⁰ Although the recession was small and the economy bounced back, the fear of another recession was in the back of everyone’s minds.¹³¹ The Federal Reserve responded to these fears by lowering the interest rate from 6.5% to 1.75%.¹³² This resulted in “a flood of liquidity in the economy.”¹³³ Suddenly, borrowers with little to no income or assets were buying houses with subprime mortgages.¹³⁴ Housing prices continued to soar

121. *Id.*

122. Stephen M. Kohn, *Sarbanes-Oxley Act: Legal Protection for Corporate Whistleblowers*, NATIONAL WHISTLEBLOWER CENTER, http://www.whistleblowers.org/index.php?option=com_content&task=view&id=27 [https://perma.cc/Q4D9-SY7A] (last visited Dec. 22, 2016).

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. Kohn, *supra* note 122.

129. *Id.*

130. Manoj Singh, *The 2007-08 Financial Crisis in Review*, INVESTOPEDIA, <http://www.investopedia.com/articles/economics/09/financial-crisis-review.asp> [https://perma.cc/EX9L-MQ4P] (last visited Jan. 15, 2017).

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

while the Federal Reserve continued to cut interest rates.¹³⁵ By June 2003, the interest rates were at 1%, which was the lowest rate since the 1950s.¹³⁶

At the same time, the banks that were giving out these mortgages were repackaging them into a financial instrument known as collateralized debt obligations (CDOs).¹³⁷ An enormous secondary market emerged for these subprime loans packaged as CDOs.¹³⁸ Even worse, the same banks that were bundling these loans were essentially betting that they would fail.¹³⁹

By 2004, there were effectively no more houses to purchase, and U.S. homeownership peaked at seventy percent.¹⁴⁰ During the same year, the Federal Reserve began raising interest rates again.¹⁴¹ Towards the end of 2005, housing prices began to fall.¹⁴² During 2006, the U.S. Home Construction Index declined forty percent.¹⁴³ The subprime mortgages were failing. The real estate bubble burst, and many large banks began to fail.¹⁴⁴ Actions by governments around the world managed to avoid total financial collapse, but the result pushed the world into the worst global recession since World War II.¹⁴⁵

As was the case with many of the prior whistleblower protection laws, Congress felt that something had to be done about the corruption and wrongdoing that harmed so many. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank) was enacted in the wake of the Great Recession.¹⁴⁶ The intention of Dodd-Frank was to prevent another financial collapse and protect borrowers from the questionable mortgage practices that banks employed during the 2000s.¹⁴⁷ From the mandates of Dodd-Frank, the Securities and Exchange Commission (SEC) created the Office of the Whistleblower,¹⁴⁸ making it easier to report suspected misconduct in the realm of financial securities. As the Chairman of the SEC Mary L. Schapiro said, “Today’s

135. *Id.*

136. Singh, *supra* note 130.

137. *Id.*

138. *Id.*

139. Gretchen Morgenson & Louise Story, *Banks Bundled Bad Debt, Bet Against It and Won*, THE NEW YORK TIMES (Dec. 23, 2009), http://www.nytimes.com/2009/12/24/business/24trading.html?pagewanted=all&_r=0 [<https://perma.cc/XT9D-HAHZ>].

140. Singh, *supra* note 130.

141. *Id.*

142. *Id.*

143. *Id.*

144. Andrew Beattie, *Market Crashes: Housing Bubble and Credit Crisis (2007-2009)*, INVESTOPEDIA, <http://www.investopedia.com/features/crashes/crashes9.asp> [<https://perma.cc/6LTE-GDSX>] (last visited Jan. 15, 2017).

145. *Id.*

146. Mark Koba, *Dodd-Frank Act: CNBC Explains*, CNBC (May 11, 2012, 4:01 PM), <http://www.cnbc.com/id/47075854> [<https://perma.cc/CHY5-L7B4>].

147. *Id.*

148. *Welcome to the Office of the Whistleblower*, U.S. SECURITIES AND EXCHANGE COMMISSION, <https://www.sec.gov/whistleblower> [<https://perma.cc/MR3U-B4HK>].

rules are intended to break the silence of those who see a wrong ... I believe it is critical to be able to leverage the resources of people who may have first-hand information about potential violations."¹⁴⁹

The Office of the Whistleblower and the SEC offer similar protections to whistleblowers as the legislation that has been examined thus far. The whistleblower is protected from adverse personnel action and is given confidentiality protections.¹⁵⁰ This has been the archetypal whistleblower protection. The SEC also offers potentially substantial financial awards, a protection that, of the whistleblower legislation examined thus far, only appeared under the limited umbrella of the False Claims Act.¹⁵¹ However, in practice, this protection is rarely used. In fact, only twenty-two whistleblowers have received a financial award out of over 14,000 whistleblowers that have reported potential corruption to the Office of the Whistleblower.¹⁵²

Overall, there are more than fifty federal statutes on whistleblowing.¹⁵³ OSHA alone recognizes over twenty statutes.¹⁵⁴ The main pieces of federal whistleblower protection legislation that have been examined cover many different areas, such as military contractors, employees of the federal government, employees of corporations, and individuals who witness wrongdoing in the area of financial securities. These are only a few examples of the narrowly tailored categories created by this patchwork of legislation. Depending on where one is classified, the whistleblower may be eligible for varying protections that depend on that classification.

III. INTERNATIONAL APPROACHES/PROTECTIONS

A. Bosnia and Herzegovina

A recent United States report on the Balkans concluded that government corruption is one of the most serious problems Bosnia and Herzegovina faces.¹⁵⁵

149. Shanti Atkins, *SEC Issues its First Whistleblowing Report Under Dodd-Frank*, NAVEX Global (Oct. 5, 2011), <http://www.navexglobal.com/blog/sec-issues-its-first-whistleblowing-report-under-dodd-frank> [https://perma.cc/NHB4-TZ57].

150. 17 C.F.R. pt. 240, 249.

151. *Id.*

152. Kevin LaCroix, *The SEC Wants You to Know that It Intends to Protect Whistleblowers' Rights*, THE D&O DIARY (Aug. 21, 2016), <http://www.dandodiary.com/2016/08/articles/uncategorized/the-sec-wants-you-to-know-that-it-intends-to-protect-the-rights-of-whistleblowers-to-come-forward/> [https://perma.cc/P9VP-CLPE].

153. Mary Kreiner Ramirez, *Blowing the Whistle on Whistleblower Protection: A Tale of Reform Versus Power*, 76 U. CIN. L. REV. 183, 191 (2007).

154. *Your Rights as a Whistleblower*, OSHA, https://www.osha.gov/OshDoc/data_General_Facts/whistleblower_rights.pdf [https://perma.cc/H4Z7-QD4G].

155. Rodolfo Toe, *US Rights Report Highlights Corruption in Balkans*, BALKAN INSIGHT (Apr. 14, 2016), <http://www.balkaninsight.com/en/article/us-reports-highlights-balkans-human->

Indeed, this has been an issue in the country for a long time.¹⁵⁶ In Transparency International's Corruption Perceptions Index (examined in the context of the United States previously), Bosnia and Herzegovina scored forty-two out of one hundred in both 2012 and 2013.¹⁵⁷ This level of corruption causes economic harm of an estimated one billion dollars (USD) every year.¹⁵⁸ Phrased another way, corruption costs Bosnia and Herzegovina thirty dollars (USD) every second.¹⁵⁹ An examination into the sources of this corruption and the institutions it affects revealed it is a widespread phenomenon within many areas of the country.¹⁶⁰

Bosnia and Herzegovina recognized the severity of the situation and several organizations launched a civic campaign advocating for the passage of new legislation to combat corruption.¹⁶¹ It was not a simple task.¹⁶² Many different sectors worked together over a two-year period to draft the legislation, including non-governmental organizations, parliamentarians from several different political parties, and representatives from other institutions.¹⁶³ On January 1, 2014, Bosnia and Herzegovina finally enacted the whistleblower protection legislation (the Law), one of the first of its kind in Europe.¹⁶⁴

The first Article of the legislation provides the subject matter and scope of the Law:

The Law on protection of whistleblowers in the Institutions of Bosnia and Herzegovina (hereinafter referred to as: the Law) regulates the status of persons reporting acts of corruption in the institutions of Bosnia and Herzegovina and legal persons established by the institutions of Bosnia and Herzegovina, the reporting procedure, the obligations of the institution in regard to reporting acts of corruption, procedure for protection of the whistleblowers, and shall lay down sanctions for violation of provisions of the Law.¹⁶⁵

rights-violations-04-14-2016 [https://perma.cc/NZ7V-8F7S].

156. *Bosnia and Herzegovina: Overview of corruption and anti-corruption measures*, TRANSPARENCY INTERNATIONAL, <https://www.transparency.org/files/content/corruptionqas/2014-16.pdf> [https://perma.cc/TA2N-5A5H].

157. *Corruption Perceptions Index 2013*, TRANSPARENCY INTERNATIONAL, <http://www.transparency.org/cpi2013/results> [https://perma.cc/K6NN-XBU5] (last visited Jan. 10, 2016).

158. *Protecting Whistleblowers in Bosnia and Herzegovina*, USAID, <https://www.usaid.gov/results-data/success-stories/protecting-whistleblowers-bosnia-and-herzegovina> [https://perma.cc/JA4T-K9R2] (last updated Mar. 01, 2017).

159. *Id.*

160. *Overview of corruption*, *supra* note 156.

161. *Protecting Whistleblowers*, *supra* note 158.

162. *Id.*

163. *Id.*

164. *Id.*

165. LAW ON WHISTLEBLOWER PROTECTION IN THE INSTITUTIONS OF BOSNIA-HERZEGOVINA, <http://rai-see.org/wp-content/uploads/2015/08/LAW-ON-WHISTLEBLOWER-PROTECTION-IN-THE-INSTITUTIONS-OF-BiH-en.pdf> [https://perma.cc/WQ2G-RESL][hereinafter LAW ON

The Law is a unified piece of legislation that addresses whistleblower protection. However, the scope is limited to only the corruption that exists within the government of Bosnia and Herzegovina. In other words, the legislation does not address or protect whistleblowers that report corruption in private industry. The second Article of the Law specifically defines a whistleblower as:

. . . a person employed in the institutions of Bosnia and Herzegovina . . . who due to reasonable belief or circumstance indicating to existence of corruption in any of the institutions of Bosnia and Herzegovina in good faith reports to the authorized persons or institutions any suspected acts of corruption in line with this law.¹⁶⁶

Thus, the Law is limited to protecting whistleblowers who report on corruption in the government and are themselves employees of the government. The procedures under which these whistleblowers operate and the protections that the Law affords to them must now be examined.

The third Article of the Law addresses the whistleblower's act of reporting. It provides, "Any person employed in the institutions of [Bosnia and Herzegovina] referred to in Article 1 of this Law, may report a suspected act of corruption or circumstances of possible corruption to the competent authorities if such a person has information and/or physical evidence showing the existence of corruption."¹⁶⁷ The Law also defines what qualifies as a competent authority and gives numerous examples, including one's superior or another person within the whistleblower's institution, the relevant criminal authorities, and, most importantly, the Agency for Prevention of Corruption and Coordination of Fight Against Corruption (APCCFAC).¹⁶⁸ These are both internal and external disclosures, and indeed the Law includes separate articles for each type of reporting.¹⁶⁹

Good legislation will require businesses and government institutions to establish internal whistleblowing reporting mechanisms. However, this is beyond the scope of this Note, and many businesses and institutions in the United States already have some type of internal procedure in place. Thus, this Note is focused on the external reporting through the centralized agency APCCFAC.

The seventh Article of the Law is the legislation's most important and provides:

(1) The [APCCFAC] shall decide on affording an employee with the whistleblower status within 30 days following his or her request, made in a good faith, to the Agency for Prevention of Corruption and Coordination of the Fight Against Corruption regardless of whether the

WHISTLEBLOWER PROTECTION].

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

employee claims that detrimental actions have been taken or only suspects that they could be taken.

(2) Protected reporting/disclosure shall commence from the day of submitting the report referred to in Article 3 of this Law.

(3) The whistleblower shall not be subjected to material, criminal or disciplinary liability for disclosing an official secret in case of he or she reports an act of corruption to the competent authority.

(4) The [APCCFAC] shall inform the whistleblower of the decision to afford the whistleblower status.¹⁷⁰

Thus, the basic procedure is rather straightforward. An employee within the institutions of Bosnia and Herzegovina first reports suspected corruption to the competent authorities. The competent authorities give a copy of the report to the APCCFAC (if not originally filed with the agency). The APCCFAC then has thirty days to decide whether to afford the employee “whistleblower status,” a key aspect to this legislation, and notifies the whistleblower of its decision. In addition, the tenth Article of the Law generally gives the APCCFAC, along with the Administrative Inspectorate of the Ministry of Justice of Bosnia and Herzegovina (law enforcement), the right to oversee the enforcement of the Law.¹⁷¹

After this procedure occurs, assuming the employee is afforded “whistleblower status,” there will most likely be investigations and civil and/or criminal suits involving the reported corruption. The Law for Bosnia and Herzegovina does not include any information on this time period.¹⁷² It is not clear whether there are any specific whistleblower protections offered while these investigations and cases (which may involve a suit by the employer against the whistleblower, much like the criminal libel suit against the sailors mentioned previously) are pending.

The eighth Article of the Law addresses the whistleblower protections that the legislation affords.¹⁷³ The first section of the Article provides the procedure for issuing protections:

(1) In case that the whistleblower informs the [APCCFAC] that any detrimental action has been taken against him/her as referred to in . . . this Law, the [APCCFAC] shall be required to request all relevant documentation from the institution and/or to request from the Administrative [I]nspectorate of the Ministry of Justice of Bosnia and Herzegovina to investigate allegations, establish the fact, and to undertake measures set by the law, and to submit its minutes thereof to the [APCCFAC].¹⁷⁴

170. *Id.*

171. LAW ON WHISTLEBLOWER PROTECTION, *supra* note 165.

172. *Id.*

173. *Id.*

174. *Id.*

The whistleblower is therefore responsible for notifying the APCCFAC of detrimental action taken by his or her employer, which is then investigated. The second section of the Article provides the remedy for the detrimental action:

(2) If, based on the documentation received from the institution and/or the minutes specified in paragraph (1) of this Article, the [APCCFAC] establishes that any detrimental action has been taken against the whistleblower, in relation to the reported case of corruption, referred to in . . . this Law, the [APCCFAC] shall issue an instruction to the director of the institution as to remove the consequences of detrimental action that the whistleblower suffered.¹⁷⁵

The protection offered to whistleblowers by the Law is worded broadly; any consequence of detrimental action the employer takes against the whistleblower must be removed. On the other hand, the protections are simultaneously narrowed by the requirement that they must be the consequence of a detrimental action.

IV. ANALYSIS

A. United States Deficiencies

The current whistleblower protection legislation in the United States does not allow whistleblowers to operate effectively. There are deficiencies in the framework, which can be explained by four central reasons as to why whistleblowers are not afforded effective protection. First, the statutory protections that are currently provided to whistleblowers do not manifest as promised in practice. Second, the overall patchwork of whistleblower protection laws that have been enacted has become far too piecemeal, resulting in confusion about where to report and arbitrary differences in protections. Third, closely aligned with the second point, there is a forced, artificial dichotomy between public and private whistleblowers that need not exist. Lastly, even the statutory protections that are currently promised in theory (though do not pan out in practice) are insufficient to properly incentivize whistleblowers to report corruption. A combination of all of these rationales amounts to disincentives to reporting and minimal protections when one does report, which in turn does not allow whistleblowers to operate effectively.

The statutory whistleblower protections promised in the pieces of legislation that have been examined do not occur as frequently as they should in real world application. There are, however, different perspectives for the theoretical grounds on which these protections rest and evaluating the overall effectiveness.¹⁷⁶ An instrumentalist view of the effectiveness of a provision says that it is effective as long as at least some whistleblowers that expose corruption receive protection,

175. *Id.*

176. Robert Vaughn, *Statutory Protection of Whistleblowers in the Federal Executive Branch*, 1982 U. ILL. L. REV. 615, 662 (1982).

even though many other deserving employees that report are not protected.¹⁷⁷ An ethical view of the effectiveness of the provision says that it is effective “if it protects those employees most deserving of protection, thus reinforcing sound ethical judgments.”¹⁷⁸ However, as it has been shown that corruption exists in and harms all aspects of society, a utilitarian view should be adopted. The aim of the legislation should be to afford the protections to as many deserving whistleblowers as possible. There is evidence that suggests that under this view, these whistleblower provisions are far from effective.

For example, there are many critics of the effectiveness of the Civil Service Reform Act’s whistleblower provision.¹⁷⁹ These critics argue that there are numerous cases in which whistleblowers who act out of unselfish motives and deserve protection do not receive it.¹⁸⁰ This has led to overall disincentives to reporting. An examination of the Whistleblower Protection Act in practice highlights this notion. Congress included several provisions of the Whistleblower Protection Act specifically targeted at incentivizing reporting through adjusting the respective burdens to make it easier for whistleblowers to prevail over the government.¹⁸¹ This was in direct response to the Civil Service Reform Act’s disincentives to reporting.¹⁸² For, despite the promises of protection, “most employees with knowledge of government wrongdoing chose not to report it.”¹⁸³

However, the Whistleblower Protection Act did not meet its goals of incentivizing reporting via the burden adjustment. In the Federal Circuit, in Whistleblower Protection Act decisions that occurred from 1994 to 2012, the court ruled against the whistleblower in 226 out of 229 appeals.¹⁸⁴ A similarly troubling statistic was presented in the examination of the SEC’s whistleblower protections. Only twenty-two whistleblowers have received a financial award out of over 14,000 whistleblowers who have reported potential corruption to the SEC Office of the Whistleblower.¹⁸⁵

As the earlier statutory examination showed, whistleblowers in different sectors of society are promised some protection. It may be promised that if the whistleblower reports suspected corruption in good faith, he or she will not lose their job. In other situations, it may be promised that he or she will get attorney’s fees or financial awards. However, it is apparent that these promises, while guaranteed in theory by statutory provisions, are not fully manifested in practice. This is an issue in U.S. whistleblower protection legislation and both creates

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. Liz Brown & Shayla Silver-Balbus, *A Triumph for a Transparent and Accountable Government: MacLean’s Place in the History of Whistleblower Protection Law*, 19 *EMPL. RTS. & EMPLOY. POL’Y J.* 189, 203

182. *Id.*

183. *Id.* at 203-204.

184. *Id.* at 212.

185. LaCroix, *supra* note 152.

disincentives to reporting and decreases protections when one does report.

The second major reason, and perhaps the largest contributor, for the U.S. whistleblower protection deficiencies is the piecemeal evolution of the legislation. This piecemeal evolution leads to confusion about where to report and arbitrary differences in protection. A hypothetical exemplifies this best. Imagine an employee who has been working diligently as a lower-level accountant in corporate America. She genuinely enjoys her job, even though the hours can be demanding. She recently purchased an expensive, large home that comes with a sizeable mortgage payment. It is nothing she cannot afford with her reasonable salary though. One day, she drives her car (this year's model) into work. However, as she is going about her day, the employee notices something inconspicuous but unusual in one of the corporation's accounts. She investigates it at length, ultimately coming to the conclusion that one of her superiors is committing fraud. The employee is not certain, as it is a complex trail, but she holds a fairly strong suspicion of the corruption. It seems to be connected to one of the corporation's smaller accounts and not related to financial securities in any way. To whom does she report?

The employee may do some research on where to report. Perhaps the corporation has internal channels, but let us suppose this particular one has no system in place. Thus far, it seems relatively clear that the employee would fall under the whistleblower provisions of Sarbanes-Oxley. This is a relatively recent whistleblower protection law and does offer some decent protections. She will be eligible for protection against workplace retaliation, back pay, and attorney's fees if she is sued. Suppose the hypothetical is slightly different. The employee once again finds something strange in one of the accounts. However, this time, the corruption has a tenuous but arguable connection to financial securities. The employee is not sure whether she should report under the Sarbanes-Oxley Act or the Dodd-Frank Act and, consequently, the SEC Office of the Whistleblower. If she reports under the latter, she will be eligible for substantial financial penalties, simply because the type of the corruption that she witnessed can be categorized as dealing with financial securities. It is neither equitable nor logical that this employee could obtain vastly different protections for minor changes in the details of the corruption.

There are many other examples in which small details surrounding the nature and circumstances of the corruption greatly affect the protections afforded to the whistleblower. These differences are arbitrary and have no rationale; they are simply the result of the piecemeal evolution of whistleblower protection legislation. Corruption permeates and harms all aspects of society. Awarding vastly varying protections among these different aspects ignores the aggregate and widespread nature of corruption and its harms. Overall, the piecemeal evolution of whistleblower protection legislation is a major problem in the U.S. framework and causes confusion in where to report and arbitrary differences in protections.

The third major point that causes the deficiencies ties in closely with the second; an artificial dichotomy (perhaps formed in part due to the piecemeal evolution of the legislation) exists between public and private whistleblowers.

Once again, there are different awards and protections simply for being categorized as working in a different sector of society. This distinction is unnecessary. Corruption in the private industry inevitably harms the public sector and vice versa. Both sides have interests in political, economic, social, and environmental spheres, which are all areas that corruption harms. Whistleblowers need to be categorized by what they are; individuals that report corruption, no matter in which particular industry that corruption occurs. This is the reason the previous definition of a whistleblower is broad and general, and this type of definition will be required for effective legislation. Overall, the aim of whistleblowers in both the public and private industry is the same. The corruption that they report harms both public and private industries. There is no need to continue this artificial dichotomy, and it is a contributing cause to the deficiencies of U.S. whistleblower protection legislation.

The final contributing cause to the deficiencies is also somewhat borne from the piecemeal evolution. The current statutory protections, even if they panned out as promised, are insufficient to adequately protect whistleblowers. Whistleblowing, by definition, is a risky act. A whistleblower exposes the wrongdoing of a person with authority, and the prototypical whistleblower is an employee of that person with authority. Without proper protections, reporting is essentially a bet with high risk and minimal rewards. Of course, some of the statutory schemes that were examined do offer relatively strong protections. Offering financial rewards is certainly an incentive to report and a protection. However, no statute alone offers a comprehensive list of whistleblower protections that both effectively incentivizes reporting and fully protects those who report. In addition, there is a key protection that no statute currently offers. Oftentimes, a whistleblower, though statutorily guaranteed no employer retaliation, will not want to remain at his or her job. This would be especially true in a case in which a whistleblower reports potential corruption in good faith, but a subsequent investigation reveals he or she was mistaken. That whistleblower may have confidentiality protections, but sometimes the natural course of an investigation must compromise that. Who would want to continue working at that location? Thus, there must be some protection offered for this risk. None of the major U.S. whistleblower protection laws examined provides any protection for this concept. None of the pieces of legislation combine all of the proper protections and afford them. Consequently, the current whistleblower legislation does not provide adequate protection, even if the guarantees manifested fully in practice.

B. Comparison with Bosnia and Herzegovina

There are similarities and differences between whistleblower protection legislation in the U.S. and Bosnia and Herzegovina. These will be examined and explained. Overall, the Law of Bosnia and Herzegovina is a good model for U.S. whistleblower legislation for three reasons. It is a unified piece of legislation, it utilizes a unified agency for reporting, and it has the potential to provide adequate whistleblower protections.

As for similarities, both the patchwork legislation of the U.S. and the Law of

Bosnia and Herzegovina make a distinction between public and private employees. However, there is evidence that Bosnia and Herzegovina wanted to do more and intend to pass amendments to broaden the legislation.¹⁸⁶ In addition, this might be explained by historical differences. Bosnia and Herzegovina was formerly a communist state, and it most likely still has a high percentage of state-run institutions while the private sector continues to develop.¹⁸⁷ As for differences, the legislation in Bosnia and Herzegovina limits the definition of a whistleblower to only an employee of a state institution. U.S. whistleblower legislation both allows for employees of private institutions to be whistleblowers (though in separate legislation from that which addresses public institutions) and allows for third party whistleblowers. Once again, this difference can be partially explained by Bosnia and Herzegovina's history. Another difference is Bosnia and Herzegovina's utilization of a Parliamentary agency for reporting. The U.S. has no such agency. This can be explained by the fact that Bosnia and Herzegovina is a civil law system, in which the Parliament is the supreme federal branch.¹⁸⁸

Despite these differences between the current whistleblower protection legislation in the two countries and their respective legal systems, the Bosnia and Herzegovina Law is a good model for U.S. whistleblower legislation in three ways. First, the U.S. can take the notion of a unified piece of whistleblower legislation and expand on its scope. Bosnia and Herzegovina passed a single law that covers whistleblowing activity within the country. This unified legislation would solve many of the issues that cause the U.S. deficiencies. A unified piece of legislation would resolve confusion about where to report and piece together the piecemeal evolution of whistleblower legislation. In addition, by expanding the scope of Bosnia and Herzegovina's example and including private whistleblowing activities as well, the issue of the artificial dichotomy between public and private whistleblowers will be resolved. Second, the U.S. can create a unified agency for whistleblower reports. Centralizing this clears up confusion about where to report. Because the U.S. is a common law system rather than a civil law system, an executive branch agency would be more appropriate than Bosnia and Herzegovina's Parliamentary agency. Third, the U.S. can learn from Bosnia and Herzegovina's attempt to provide adequate whistleblower protections. The protections the Law affords are worded extremely broadly, seemingly giving great deference to the type of corrective actions that may be awarded. Overall, the U.S. should learn from the Bosnia and Herzegovina experience, take the best parts of the Law, adapt them to its common law system, and add other aspects that are clearly needed after an examination of the current U.S. whistleblower

186. *Protecting Whistleblowers*, *supra* note 158.

187. Noel R. Malcom, et al., *Bosnia and Herzegovina*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/place/Bosnia-and-Herzegovina> [<http://perma.cc/8MHK-LY9E>] (last updated Mar. 03, 2017).

188. *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/fields/2100.html> [<http://perma.cc/H4AN-BRGQ>] (last visited Mar. 14, 2017).

protection legislation.

V. RECOMMENDATIONS

A. Unified U.S. Whistleblower Legislation

The piecemeal evolution of whistleblower protection legislation in the U.S. is a major contributor to the U.S. deficiencies of underreporting and lack of adequate protections. Thus, the U.S. should follow Bosnia and Herzegovina's example and enact a single, unified piece of whistleblower legislation. While Bosnia and Herzegovina's Law is limited to only employees of state institutions, there is no need to continue the artificial dichotomy between public and private whistleblowers. There are many situations in which the distinction is appropriate, but concerning whistleblowers and corruption, it is unnecessary. Corruption permeates and harms all aspects of society and should be treated accordingly. The unified U.S. legislation should encompass all types of whistleblowers, whether it be an employee of a public institution or a third party to a private institution who discovers evidence of corruption. It may be argued that the legislation should provide a specific exception for employees in the intelligence community. This may have merit, as they deal with extremely sensitive information. However, it is a complicated issue and involves complex notions of national security, so a full analysis of whether this should be included is beyond the scope of this Note.

Certain whistleblower statutes, such as Sarbanes-Oxley, impose a legal obligation to report corruption.¹⁸⁹ This is not completely necessary, as affording the proper protections listed below should incentivize reporting. In addition, the burden on the whistleblower must be quite low. Some may argue that this will lead to a lot of false reporting, but this can be controlled by the legislation imposing moderate to severe penalties for reporting in bad faith or outright lying.

Overall, the piecemeal evolution was a factor in all four of the contributing causes to the U.S. current whistleblower legislation deficiencies. The natural solution is to follow Bosnia and Herzegovina's example, put the pieces of the puzzle together, and enact a unified piece of whistleblower legislation. The definitions used in the legislation should be simple and broad to encompass both private and public whistleblowing, whether the source is an employee or third party individual. However, unified legislation is only the first step towards effective whistleblower protection. Much like Bosnia and Herzegovina, the legislation should establish a federal executive agency for handling whistleblower reports brought under the umbrella of the law.

B. United States Whistleblowing Agency (WBA)

The U.S. unified whistleblower protection legislation should establish a federal executive agency known as the United States Whistleblowing Agency (WBA). This agency will follow a similar procedure to Bosnia and Herzegovina's Agency for Prevention of Corruption and Coordination of Fight Against

189. Kohn, *supra* note 122.

Corruption (APCCFAC). It will be an external reporting mechanism offered as an alternative to the internal reporting procedures that organizations may already have in place. The WBA will accept reports of potential corruption. Then, much like the APCCFAC, the WBA will investigate the complaint and decide whether or not to give the individual “whistleblower status.” Once the individual is awarded this status, he or she will be eligible for the whistleblower protections outlined in the following section as they become temporally available. In order to properly incentivize the initial reports of suspected corruption, the burden to establish whistleblower status must be fairly low. However, to combat false reporting, the penalties for reporting in bad faith must be moderate to severe. This should include civil penalties or, in extreme cases, criminal liability on the part of the false whistleblower. The WBA should then have the resources to ensure all of the following whistleblower protections are properly afforded to those who have been awarded the whistleblower status. Some of the protections will only become available if and when there is a suit brought against the whistleblower, while others will only be available if the whistleblower’s report results in the detection of corruption. The WBA will have the ultimate discretion on when to award the specific protections, as the nature and circumstances of each case will vary greatly.

C. Whistleblower Protections

The examination of the piecemeal evolution of U.S. whistleblower legislation illuminated several different types of protection afforded to whistleblowers. Bosnia and Herzegovina’s Law provides broad wording for its protections, giving great deference to its agency that handles whistleblowing reports. The U.S. unified legislation should similarly unify all of the whistleblower protections currently offered in different sectors and afford them to every meritorious whistleblower. The protections, listed somewhat chronologically in terms of the life cycle of a whistleblowing activity, that the legislation should offer and the WBA should enforce are: complete whistleblower confidentiality when filing the initial report with the WBA; a guarantee that retaliatory personnel decisions taken by the employer will be corrected; back pay for the time unemployed in the situations in which an employer did take retaliatory action; attorney’s fees in situations in which a suit is brought against the whistleblower by the individual suspected of corruption; financial rewards (that are truly awarded) upon the ultimate conclusion that the whistleblower exposed corruption; resources provided by the WBA for finding a new job in the situations in which the whistleblower does not wish to return; and, the catchall, any other type of corrective action that the WBA deems reasonably necessary.

Overall, this is a combination of the current U.S. protections (though offered in a patchwork), the broadly worded Bosnia and Herzegovina protections, and a new protection that recognizes the whistleblower may not wish to continue working in the same institution. As for confidentiality, this is a staple for whistleblower protection. An individual should not be outed or penalized for reporting suspected corruption in good faith. If nothing comes of the

investigation, life will continue as normal for the whistleblower. Protection from retaliatory personnel decisions by the whistleblower's employer is the prototypical whistleblower protection and must be included in the comprehensive U.S. legislation. If one thinks back to the hypothetical of the employee who uncovers potential corruption in her workplace, she may be hesitant to report if there are doubts as to whether her job will be in jeopardy. The employee, much like many others, have a mortgage and car payment to consider. In the same vein, that employee must be awarded back pay if there is retaliatory action taken against her due to her report. The WBA should provide this pay in advance in the cases in which the whistleblower cannot afford to continue on without it.

Awarding attorney's fees is another common protection, and it is quite logical in the situations in which an honest whistleblower has a retaliatory suit brought against him or her by the individual accused of corruption. This protection was the first that we examined, when the Continental Congress awarded attorney's fees to the whistleblowers in the Navy. As for financial rewards, these are a key protection and showed up rarely in the examination of the current whistleblower legislation. However, it would make economic sense to provide these and incentivize reporting. Corruption causes major economic harm. By giving a portion of that economic harm saved to the whistleblower who helped stop the corruption, the economy (and other aspects of society) will still yield an overall net positive.

As for the newly suggested protection, it is easy to imagine scenarios in which a whistleblower who reveals corruption will not want to continue working at his or her job. The WBA should provide resources (albeit limited in scope) to assist the whistleblower in a transition to a new job. The final whistleblower protection that the unified U.S. legislation should afford is a catchall provision, similar to the one provided in the Bosnia and Herzegovina law. The WBA should have the discretion to take any type of corrective actions reasonably necessary under the circumstances. This guarantees that even the unusual whistleblower cases have the potential for some type of protection.

VI. CONCLUSION

Corruption is dishonest or illegal conduct or wrongdoing by an individual with authority. It permeates and harms all aspects of society, causing political, economic, social, and environmental damage. The United States is not immune to this. While the corruption in its public sector is not among the worst in the world, it is still far behind the highest rated Denmark. The corruption in the private sector has been a serious issue as well, with recent corporate and financial scandals shaking the U.S. and global markets. By its very nature, corruption is difficult to see. However, there exists an extremely effective tool for exposing and combatting corruption.

A whistleblower is an individual who provides information relating to the corruption of another person or an organization. This could be an employee within that organization, or it could be an external person who somehow gained access to information on potential misconduct. Recent studies have concluded that whistleblowers are the most effective method for exposing corruption.

Whistleblowing activities are nothing new in the United States. In fact, there have been whistleblowers in the territory since before the country was officially formed. The most notable whistleblowers have been in recent years, and overall whistleblowing activities are on the rise. It seems that the cultural attitude toward blowing the whistle is shifting into a more positive light.

However, the U.S. legislative framework in which whistleblowers operate must be examined to determine if it allows these individuals to operate effectively. This Note examined several different federal whistleblower statutes, honing in on the circumstances from which they were born, the breadth of their coverage, and the protections they promise to whistleblowers. The focus then shifted internationally, examining recent whistleblower protection legislation passed in Bosnia and Herzegovina.

An analysis of the current U.S. whistleblower legislation reveals two major deficiencies; the current protection scheme does not adequately incentivize reporting and the protections afforded to whistleblowers are insufficient to allow effective operation. These deficiencies are present for four fundamental reasons. First, the statutory guarantees of whistleblower protections are not fully granted in real world application. Second, the overall patchwork of whistleblower legislation is the result of piecemeal evolution, resulting in confusion about where to report and arbitrary differences in protections. Third, closely aligned with the second point, there exists an unnecessary, artificial dichotomy between whistleblowing activities in the public and private realms. Lastly, even the whistleblower protections that are theoretically guaranteed by statute are insufficient to properly incentivize whistleblowers to report corruption and obtain proper protection.

An analysis and comparison of the whistleblower legislation in Bosnia and Herzegovina reveals three major points from which the U.S. should learn and implement in future whistleblower legislation. The United States should enact comprehensive, federal whistleblower legislation similar to that enacted in Bosnia and Herzegovina. This unified legislation should merge the piecemeal protection that currently exists, removing the arbitrary differences that have evolved between different sectors of society. This legislation should also create a federal executive agency, known as the United States Whistleblowing Agency (WBA), dedicated to fielding and investigating whistleblower complaints. The WBA will take a report from individuals, whether it is an employee of a public institution or a third party to a private corporation, and decide if he or she should be awarded “whistleblower status.” Once an individual is awarded this status, the legislation (and the WBA through enforcement) should afford the whistleblower all of the proper protections for effective operation. These protections are confidentiality, no retaliatory personnel action, back pay, attorney’s fees, financial rewards, resources for job hunting, and any other corrective actions the WBA deems reasonably necessary under the circumstances.

Corruption will always exist in the world, as long as humans continue to exist. It is often difficult for one to think on a societal, macro scale, as we go about our lives on an individual, micro level. Corruption harms society as a whole, but by incentivizing individuals to report, the wrongdoing can be caught

and corrected before causing substantial, widespread damage. In the information age, with incredible storage and access capabilities, there will generally be witnesses who have access to the corruption and the ability to report it. Incentivizing these individuals to step forward and offering proper whistleblower protections is perhaps increasingly important for the United States and the rest of the world. We are on the precipice of the “post-truth” era. Predicting an increase in falsehoods and corruption in the upcoming years is pure speculation. However, it can be argued that arming those who seek to expose the lies and embolden the truth with proper protections is more critical than ever. Many of the previous pieces of whistleblower legislation were enacted in the midst or wake of great hardship. The time is currently ripe to act preemptively, unify the piecemeal legislation, and usher in the era of the whistleblower.