

Government Accountability Project

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Memorandum:

From: Tom Devine, GAP

Re: Secret Senate hold and the Whistleblower Protection Enhancement Act

On December 22, 2010, an hour before Congress adjourned, a secret Republican senator's "hold" blocked final enactment of a major anti-secrecy reform, the Whistleblower Protection Enhancement Act (S. 372). That same day the bill had received unanimous consent approval in the House and approval by 99 other senators. Twelve days earlier the Senate had unanimously approved the reform as well in stronger form. This transparency bill's vulnerability to a fatal stealth attack illustrates how the Senate can be dysfunctional even when there is no gridlock.

There can be no credible disagreement about the need for this reform, which is a prerequisite to expose and act on bureaucratic fraud, waste, abuse and resulting deficits that were the voter's primary concern last fall. Studies consistently confirm that whistleblowers are more effective at exposing institutional fraud than auditors, compliance officers and law enforcement combined. Since being enfranchised to file lawsuits against government contract fraud, recoveries have increased from an average of 10 million dollars to over a billion dollars annually. They have saved literally hundreds of thousands of lives due to government breakdowns, from approval of unsafe prescription drugs to delivery of combat equipment necessary to prevent casualties in Iraq and Afghanistan. Their vigilance challenges threats to freedom from abroad and at home, from exposing bureaucratic breakdowns that could have enabled new terrorist attacks, to exposing blanket illegal domestic surveillance by our own government that reflects an unprecedented threat to Americans' privacy. As the human factor, whistleblowers have been the Achilles heel of bureaucratic corruption sustainable only through secrecy.

House objections made in the lame duck by Intelligence Committee Ranking member Peter Hoekstra (R-MI) and Representative Darrell Issa (D-CA) that the bill would provide comfort for Wikileaks sparked last minute changes that forced Senate re-approval. Ironically, blocking the whistleblower rights was the best Christmas present for which Wikileaks could wish. The intelligence portions of the bill – for which they forced removal -- only would have protected free speech rights for disclosures within the government's institutional channels. Killing whistleblower protection for working within the system clears away Wikileaks' competition, leaving anonymous leak outlets as the only safe alternative for those who do not wish to engage in professional suicide. Before his demagogic last hurrah, Mr. Hoekstra had made this same point.

With a near unanimous legislative mandate, there is no excuse to delay completion of this consensus taxpayer reform supported by over 400 citizen organizations with over 80 million members. Representative Todd Platts (R-PA) a decorated ex-Marine and Goldwater conservative, has agreed to champion the bill in the House. New Oversight Chairman Darrell Issa, who wants to restore credibility with witnesses for his ambitious government oversight agenda, has promised a quick turnaround. The reform's fate will be the first test for new House members elected by the Tea Party to fight business as usual. Whistleblowers are the lifeline for their campaign agenda against abuses sustained by secret government. Whether they protect the public's eyes and ears will determine whether they have a genuine

commitment to make a difference, or are just the latest generation of politicians exploiting campaign rhetoric.

A joint initiative between GAP and NPR's On the Media has received confirmation from 82 of the current 87 Senators that they did not place the hold on this bill. The list of remaining suspects include: Jon Kyl (R-AZ); Mitch McConnell (R-KY); James Risch (R-ID); Jeff Sessions (R-AL); and David Vitter (R-LA).