H. R. 11

To amend the Labor-Management Reporting and Disclosure Act of 1959 to provide whistleblower protection for union employees.

IN THE HOUSE OF REPRESENTATIVES

Mr. Good of Virginia introduced the following bill; which was referred to the Committee on ___________________

A BILL

To amend the Labor-Management Reporting and Disclosure Act of 1959 to provide whistleblower protection for union employees.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Union Integrity Act”.
5 SEC. 2. WHISTLEBLOWER PROTECTION FOR UNION EM-
6 PLOYEES.
7 The Labor-Management Reporting and Disclosure
8 Act of 1959 (29 U.S.C. 401 et seq.) is amended—
(1) by redesignating section 611 (29 U.S.C. 531) as section 612; and

(2) by inserting after section 610 (29 U.S.C. 530), the following new section:

"WHISTLEBLOWER PROTECTION FOR UNION EMPLOYEES

"Sec. 611. (a) In General.—No labor organization shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee of the labor organization by reason of the fact that such employee, whether at the initiative of the employee or in the ordinary course of the duties of the employee (or any person acting pursuant to a request of the employee), has—

"(1) provided, caused to be provided, or is about to provide or cause to be provided, information to the labor organization, the Department of Labor, or any other State, local, or Federal Government authority or law enforcement agency relating to any violation of, or any act or omission that the employee reasonably believes to be a violation of, any provision of this Act or any other provision of law that is subject to the jurisdiction of the Department of Labor, the National Labor Relations Board, or any rule, order, standard, or prohibition prescribed by the Department of Labor or the National Labor Relations Board;
“(2) testified or will testify in any proceeding resulting from the administration or enforcement of any provision of this Act or any other provision of law that is subject to the jurisdiction of the Department of Labor or National Labor Relations Board, or any rule, order, standard, or prohibition prescribed by the Department of Labor or the National Labor Relations Board;

“(3) filed, instituted, or caused to be filed or instituted any proceeding under this Act; or

“(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of any law, rule, order, standard, or prohibition, subject to the jurisdiction of, or enforceable by, the Department of Labor or the National Labor Relations Board.

“(b) DEFINITION OF COVERED EMPLOYEE.—For the purposes of this section, the term ‘covered employee’ means any employee of a labor organization who receives financial compensation for his or her services to the labor organization, including officers of the labor organization.

“(c) PROCEDURES AND TIMETABLES.—

“(1) COMPLAINT.—
“(A) IN GENERAL.—A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Such a complaint must be filed not later than either—

“(i) 180 days after the date on which such alleged violation occurs; or

“(ii) 180 days after the conclusion of any internal appeals, review, or other judicial or investigative process conducted by the labor organization employing such person.

“(B) ACTIONS OF SECRETARY OF LABOR.—Upon receipt of such a complaint, the Secretary of Labor shall notify, in writing, the person named in the complaint who is alleged to have committed the violation, of—

“(i) the filing of the complaint;

“(ii) the allegations contained in the complaint;
“(iii) the substance of evidence supporting the complaint; and

“(iv) opportunities that will be afforded to such person under paragraph (2).

“(2) INVESTIGATION BY SECRETARY OF LABOR.—

“(A) IN GENERAL.—Not later than 60 days after the date of receipt of a complaint filed under paragraph (1), and after affording the complainant and the person named in the complaint who is alleged to have committed the violation that is the basis for the complaint an opportunity to submit to the Secretary of Labor a written response to the complaint and an opportunity to meet with a representative of the Secretary of Labor to present statements from witnesses, the Secretary of Labor shall—

“(i) initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit; and

“(ii) notify the complainant and the person alleged to have committed the viola-
tion of subsection (a), in writing, of such
determination.

“(B) NOTICE OF RELIEF AVAILABLE.—If
the Secretary of Labor concludes that there is
reasonable cause to believe that a violation of
subsection (a) has occurred, the Secretary of
Labor shall, together with the notice under sub-
paragraph (A)(ii), issue a preliminary order
providing the relief prescribed by paragraph
(4)(B).

“(C) REQUEST FOR HEARING.—Not later
than 30 days after the date of receipt of notifi-
cation of a determination of the Secretary of
Labor under this paragraph, either the person
alleged to have committed the violation or the
complainant may file objections to the findings
or preliminary order, or both, and request a
hearing on the record. The filing of such objec-
tions shall not operate to stay any reinstate-
ment remedy contained in the preliminary
order. Any such hearing shall be conducted exp-
peditiously, and if a hearing is not requested in
such 30-day period, the preliminary order shall
be deemed a final order that is not subject to
judicial review.
“(3) **Grounds for Determination of Complaints.—**

“(A) **In General.—** The Secretary of Labor shall dismiss a complaint filed under this subsection, and shall not conduct an investigation otherwise required under paragraph (2), unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

“(B) **Rebuttal Evidence.—** Notwithstanding a finding by the Secretary of Labor that the complainant has made the showing required under subparagraph (A), no investigation otherwise required under paragraph (2) shall be conducted, if the labor organization demonstrates, by clear and convincing evidence, that the labor organization would have taken the same unfavorable personnel action in the absence of that behavior.

“(C) **Evidentiary Standards.—** The Secretary of Labor may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior de-
scribed in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered under subparagraph (A) if the labor organization demonstrates by clear and convincing evidence that the labor organization would have taken the same unfavorable personnel action in the absence of that behavior.

“(4) ISSUANCE OF FINAL ORDERS; REVIEW PROCEDURES.—

“(A) TIMING.—Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary of Labor shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary of Labor, the complainant, and the person alleged to have committed the violation.

“(B) PENALTIES.—

“(i) ORDER OF SECRETARY OF LABOR.—If, in response to a complaint
filed under paragraph (1), the Secretary of Labor determines that a violation of subsection (a) has occurred, the Secretary of Labor shall order the person who committed such violation—

“(I) to take affirmative action to abate the violation;

“(II) to reinstate the complainant to his or her former position, together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

“(III) to provide compensatory damages to the complainant.

“(ii) PENALTY.—If an order is issued under clause (i), the Secretary of Labor, at the request of the complainant, shall assess against the person against whom the order is issued, a sum equal to the aggregate amount of all costs and expenses (including attorney fees and expert witness fees) reasonably incurred, as determined by the Secretary of Labor, by the complainant for, or in connection with, the bringing of
the complaint upon which the order was
issued.

“(C) Penalty for frivolous claims.—
If the Secretary of Labor finds that a complaint
under paragraph (1) is frivolous or has been
brought in bad faith, the Secretary of Labor
may award to the prevailing labor organization
a reasonable attorney fee, not exceeding $1,000,
to be paid by the complainant.

“(D) De novo review.—

“(i) Failure of the Secretary to
act.—If the Secretary of Labor has not
issued a final order within 210 days after
the date of filing of a complaint under this
subsection, or within 90 days after the
date of receipt of a written determination,
the complainant may bring an action at
law or equity for de novo review in the ap-
propriate district court of the United
States having jurisdiction, which shall have
jurisdiction over such an action without re-
gard to the amount in controversy, and
which action shall, at the request of either
party to such action, be tried by the court
with a jury.
“(ii) PROCEDURES.—A proceeding under clause (i) shall be governed by the same legal burdens of proof specified in paragraph (3). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

“(I) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

“(II) the amount of back pay, with interest; and

“(III) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

“(E) OTHER APPEALS.—Unless the complainant brings an action under subparagraph (D), any person adversely affected or aggrieved by a final order issued under subparagraph (A) may file a petition for review of the order in the United States Court of Appeals for the circuit
in which the violation with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation, not later than 60 days after the date of the issuance of the final order of the Secretary of Labor under subparagraph (A). Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order. An order of the Secretary of Labor with respect to which review could have been obtained under this subparagraph shall not be subject to judicial review in any criminal or other civil proceeding.

“(5) FAILURE TO COMPLY WITH ORDER.—

“(A) ACTIONS BY THE SECRETARY.—If any person has failed to comply with a final order issued under paragraph (4), the Secretary of Labor may file a civil action in the United States district court for the district in which the violation was found to have occurred, or in the United States district court for the District of Columbia, to enforce such order. In actions brought under this paragraph, the district
courts shall have jurisdiction to grant all appropriate relief including injunctive relief and compensatory damages.

“(B) CIVIL ACTIONS TO COMPEL COMPLIANCE.—A person on whose behalf an order was issued under paragraph (4) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

“(C) AWARD OF COSTS AUTHORIZED.—The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

“(D) MANDAMUS PROCEEDINGS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

“(d) LIMITATION OF PREEMPTION.—Nothing in this Act shall be construed—
“(1) to limit the ability of members of a labor organization to remove their elected or appointed officials through a democratic election conducted among such members; or

“(2) to preempt a State or local government from providing additional protections to employees of labor organizations who allege violations of subsection (a), provided that such protections do not limit the ability of members of a labor organization to remove their elected or appointed officials through a democratic ballot.

“(e) UNENFORCEABILITY OF CERTAIN AGREEMENTS.—

“(1) NO WAIVER OF RIGHTS AND REMEDIES.—Notwithstanding any other provision of law, the rights and remedies provided for in this section may not be waived by any agreement, policy, form, or condition of employment, including by any predispute arbitration agreement.

“(2) NO PREDISPUTE ARBITRATION AGREEMENTS.—Notwithstanding any other provision of law, no predispute arbitration agreement shall be valid or enforceable to the extent that it requires arbitration of a dispute arising under this section.”.