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SEC's Action Has a Good Precedent

A quarter-century ago the NRC issued a rule outlawing restrictive nondisclosure agreements; the DOL found such agreements void and that they constituted an unfair labor practice.

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In “Blowing the Whistle on the SEC’s Latest Power Move” (op-ed, April 6), Eugene Scalia attacks the SEC’s decision to fine KBR Inc. over restrictive nondisclosure agreements that interfered with employees’ rights to blow the whistle to government regulators. Mr. Scalia warns that this action would undermine legitimate corporate confidentiality rules.

Mr. Scalia ignores the precedent justifying the commission’s action. In 1989 both the Labor Department and the Nuclear Regulatory Commission took similar steps when a whistleblower challenged a nondisclosure agreement restricting his right to communicate to the NRC. These actions led to the following reforms: The NRC issued a rule outlawing restrictive nondisclosure agreements; the DOL found such agreements void as to public policy and that they constituted an unfair labor practice. As a result, it became commonplace in the nuclear industry for companies to inform employees, in writing, of their right to contact government regulators.

In the 25 years since the NRC and DOL first took enforcement actions against restrictive nondisclosure agreements, none of the parade of horrors Mr. Scalia warned of has ever occurred. The SEC’s action will make Wall Street a safer place for investors and hopefully end decades of abuse, wherein thousands of employees were intimidated into silence by highly restrictive nondisclosure agreements. Companies that resist the SEC’s new mandate risk regulatory fines, adverse Labor Department judgments and possible criminal penalties under the obstruction of justice laws.

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Mr. Kohn is the attorney for the whistleblower who challenged KBR's nondisclosure agreements.

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