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SCOTUS REJECTS SEC'S EXPANDED DEFINITION OF WHISTLEBLOWER

In [Digital Realty Trust Inc. v. Somers](#), the U.S. Supreme Court has unanimously overruled a Ninth Circuit decision that had relied on the Securities and Exchange Commission's (SEC) broad interpretation of the definition of a whistleblower under the Dodd-Franks Act.

Dodd-Franks defines whistleblowers as employees who provide "information relating to a violation of the securities laws to the [Securities and Exchange] Commission." The SEC had passed a regulation expanding the definition to include whistleblowers who report either internally to their employers or to the SEC. *Digital Realty Trust* involved an employee who reported to management that a vice president had eliminated some internal corporate controls in violation of the Sarbanes-Oxley Act. The employee did not report the violation to the SEC.

In upholding the SEC's expansive definition of whistleblower to include employees who report internally, the Ninth Circuit relied on the Supreme Court's decades-old *Chevron* doctrine, which gives regulatory agencies much leeway for interpreting federal law. But the Supreme Court's decision to overrule the Ninth Circuit appears to roll back the ability of federal agencies to interpret their own statutes. As Justice Kagan stated during oral argument, "You have this definitional provision, and it says what it says."

The Supreme Court's *Digital Realty Trust* ruling means that federal agencies cannot ignore unambiguous language in statutes in order to make a decision that suits the agency's purpose. With respect to Dodd-Frank whistleblower protections in particular, while the outcome in *Digital Realty Trust* is good news for employers because individuals who only report securities violations internally will no longer qualify for Dodd-Frank protection, the decision should not be seen as a green light for employers to ignore internal complaints or become lax with regard to enforcing anti-retaliation policies. More employees may be incentivized now to go directly to the SEC to gain Dodd-Frank protection, and there may be other whistleblower protections that apply to an employee who reports a violation internally.

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