

TESTIMONY OF ROBERT PATTEN
PRESIDENT, TAXPAYERS AGAINST FRAUD EDUCATION FUND
SUBMITTED TO THE GUAM LEGISLATURE
IN SUPPORT OF BILLS NO. 205-34 AND NO. 220-34
JANUARY 12, 2018

INTRODUCTION

Good afternoon Chairman Cruz and distinguished members of the Guam legislature. I am Robert Patten, President of Taxpayers Against Fraud Education Fund (TAFEF). Before assuming my current position, I served for 21 years as an Assistant Attorney General for the Commonwealth of Massachusetts, most recently as Managing Attorney in the Medicaid Fraud Division, where I was responsible for the Attorney General Office's Medicaid False Claims practice.

The Taxpayers Against Fraud Education Fund is a public interest non-profit organization dedicated to fighting fraud against the government by incentivizing integrity. Our mission is to maintain the integrity and advance the effectiveness of whistleblower reward and private enforcement provisions contained in federal and state laws, including the federal and state False Claims Acts, the Securities Exchange Act, the Internal Revenue Code, and the Commodity Exchange Act. TAFEF, the 501(c)(3) entity, serves as a membership organization for attorneys who are practitioners and educators concentrating in these fields of law. We are supported by our membership of over 400 experienced litigators, and by donations from successful whistleblowers, foundation grants and citizen advocates. TAFEF is the 501(c)(3) arm of Taxpayers Against Fraud, which was founded in 1986.

We're submitting testimony today to commend the Guam Legislature and to offer our insights to the public, the legal community, government officials, and advocacy organizations concerning the process, history and impact of whistleblower lawsuits filed under federal and state False Claims Acts and the U.S. Securities and Exchange Commission (SEC), U.S. Commodities Futures Trading Commission (CFTC), and Internal Revenue Service (IRS) whistleblower programs.

Guam spends significant sums of money to fund various governmental programs. It is essential to ensure that these funds are not lost to fraud, but are spent for their intended purposes. The federal False Claims Act and similar laws in 32 states financially incentivize integrity and work to create public-private partnerships that have helped recover more than \$65 billion for the federal and state governments over the course of the last 32 years.

The success of the False Claims Act has prompted Congress to pass similar incentivized integrity laws to help expose fraud against the IRS, the SEC, and the CFTC. Since 2000, the number of states with false claims acts has grown from five to 32.

THE FALSE CLAIMS ACT: A 32-YEAR RECORD OF SUCCESS

The False Claims Act, popularly known as "Lincoln's Law," was originally enacted during the Civil War in response to rampant procurement fraud against the Union Army. However, the statute was not widely used in the early 20th century, and prior to 1986, the Department of

Justice recovered less than \$50 million a year in False Claims Act cases. Beginning in the mid-1980s, Senator Charles Grassley (R-Iowa) and Representative Howard Berman (D-California) led a successful bipartisan effort in Congress to amend and strengthen the False Claims Act, and in particular to improve the provisions of the law that encourage whistleblowers to come forward with allegations of fraud against the government. In the ten years following the 1986 amendments, DOJ recovered \$1 billion in false claims actions. Last year alone, *qui tam* relators filed more than 700 new FCA cases, and DOJ reported recoveries of more than \$3.7 billion, making 2017 the eighth consecutive year in which the federal government has recovered more than \$3 billion in False Claims Act cases.

THE FALSE CLAIMS ACT: A 32-YEAR RECORD OF PRIVATE CITIZENS HELPING THE GOVERNMENT

The false claims acts are the most important and cost-effective tools used by the federal and state governments to ferret out and deter fraud, and the partnerships between private litigants and government attorneys have proved extraordinarily successful. The procedural and evidentiary burdens of filing a False Claims Act lawsuit require a whistleblower to hire an attorney, and virtually all successful *qui tam* lawyers are hired on a contingent fee basis. Experienced false claims practitioners not only screen cases for the federal and state governments, they also investigate and develop whistleblower claims, organize and explain relevant documents, and screen out potentially privileged materials, giving defrauded agencies and government attorneys an understanding of how funds were lost and a roadmap for recovering them. The work done on the front end by the whistleblower and his or her attorneys can save the government years of effort and significant investigation costs.

The federal and state governments often discover fraud not because of agency oversight or a government audit, but through the efforts of a private whistleblower using the False Claims Act. Over 80 percent of the cases brought under the federal False Claims Act are initiated by whistleblowers, and an even larger percentage of the funds recovered can be ascribed to whistleblower actions. Incentivized integrity provisions in the False Claims Act encourage and protect whistleblowers, helping to offset fears about the impact of bringing a suit on the whistleblower's financial situation and career, and empowering citizens and private companies to present evidence of fraud to the government. Those who step forward to blow the whistle on corrupt business practices typically receive between 15 and 25 percent of a recovery if the government joins the case, and between 25 and 30 percent if the government declines to join a case that ultimately ends with a successful result.

Perhaps most importantly, beyond rewarding those who speak out against corruption, the False Claims Act has prompted the elimination of corrupt industry practices, stopped unethical and illegal sales and marketing schemes, and in some cases saved lives. The False Claims Act has:

- Made healthcare safer by rooting out the unethical marketing of prescription drugs and faulty medical devices sold to an unsuspecting public;¹
- Stopped the provision of unnecessary and ineffective medical services to Medicare and Medicaid patients and paid for by taxpayers;²
- Exposed corrupt military contractors selling substandard or flawed weapons systems and protective gear for our troops;³
- Protected small business opportunities reserved for veterans, people of color and women-owned businesses;⁴
- Exposed the exploitation of vulnerable students by for-profit educational institutions.⁵

THE FALSE CLAIMS ACT: A 32-YEAR RECORD OF IMPROVING HEALTHCARE

Successful use of the False Claims Act promotes efficient and effective government, and has resulted in an extraordinary return on investment in fighting health care fraud. According to some

¹ See, e.g., *United States ex rel. Eckard v. GlaxoSmithKline*, No. 04-10375 (D. Mass. 2004); Wearden, Graeme. "GlaxoSmithKline whistleblower awarded \$96m payout." *The Guardian*, Guardian News and Media, 27 Oct. 2010, www.theguardian.com/business/2010/oct/27/glaxosmithkline-whistleblower-awarded-96m-payout.

² See, e.g., *United States ex rel. Burks v. Dylewski*, No. 14-cv-22079, 2016 WL 9526685 (S.D. Fla. June 30, 2016); "South Miami Hospital Agrees to Pay the United States \$12 Million to Settle False Claims Act Allegations." *The United States Department of Justice*. N.p., 07 Dec. 2016. Web. 11 Jan. 2018. <https://www.justice.gov/usao-sdfl/pr/south-miami-hospital-agrees-pay-united-states-12-million-settle-false-claims-act>

³ See, e.g., *United States ex rel. Badr v. Triple Canopy, Inc.*, 857 F.3d 174 (4th Cir. 2015); "Government Contractor Pays \$2.6M to Settle False Claims Act Suit." *The United States Department of Justice*, 16 Oct. 2017, www.justice.gov/usao-edva/pr/government-contractor-pays-26m-settle-false-claims-act-suit.

⁴ See, e.g., *United States ex rel. Rubar v. The Hayner Hoyt Corp.*, No. 5:14-cv-00830 (N.D.N.Y. 2016); "The Hayner Hoyt Corporation To Pay \$5 Million To Resolve False Claims Act Liability." *The United States Department of Justice*, 14 Mar. 2016, www.justice.gov/usao-ndny/pr/hayner-hoyt-corporation-pay-5-million-resolve-false-claims-act-liability.

⁵ See, e.g., *United States ex rel. Washington v. Edu.Mgmt. Corp.*, No. 07-461 (W.D. Pa. 2015); "For-Profit College Company to Pay \$95.5 Million to Settle Claims of Illegal Recruiting, Consumer Fraud and Other Violations." *The United States Department of Justice*, 16 Nov. 2015, www.justice.gov/opa/pr/profit-college-company-pay-955-million-settle-claims-illegal-recruiting-consumer-fraud-and.

estimates, for every dollar that the Federal government spends on Federal False Claims Act healthcare enforcement, it recovers \$20 in return.

\$2.4 billion of the taxpayers dollars recovered by the Department of Justice in Fiscal Year 2017 involved actions against healthcare companies, including drug manufacturers and wholesalers, hospitals, pharmacies, laboratories, and physicians. This is the eighth consecutive year that the department's civil healthcare fraud settlements and judgments have exceeded \$2 billion. The recoveries included in the \$2.4 billion figure reflect only federal losses and do not incorporate the significant additional funds recovered as related criminal fines and in Medicaid dollars returned to the states.

THE FALSE CLAIMS ACT: A 32-YEAR RECORD OF HELPING BUSINESSES

Successful False Claims Act cases can promote industry-wide reform that works to deter misconduct and eradicate corrupt business practices. When one company gets penalized, others in the industry are more likely to change their conduct to avoid similar sanctions. Government contractors that engage in bid-rigging, kickbacks, illegal subcontracting, prevailing wage violations and other schemes can obtain an unfair competitive advantage over honest competitors when vying for government contracts. The False Claims Act serves as a great equalizer by reducing these frauds and leveling the playing field so that honest companies can compete successfully for government contracts.

CONCLUSION

By exposing and penalizing industry-wide fraud schemes, incentivized integrity whistleblower programs have recovered billions that otherwise would have been lost to fraud. Since 1986, 32 states, the District of Columbia, and a number of cities have followed the federal government in adopting False Claims Acts based on the federal model. These acts have been passed in "red states" and "blue states" and have been effective fraud-fighting tools for Republican and Democratic Attorneys General alike. The bipartisan success of the Federal False Claims Act extends the benefits of public-private partnerships to protect public funds and better serve the American people. We are confident that a well-crafted incentivized integrity program in Guam, based on the U.S. False Claims Act, would reap benefits for many years to come.