

**Testimony of  
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**House of Delegates Hearing on  
HB 509  
Maryland False Claims Act of 2013  
Maryland Legislature  
February 20, 2013**

The logo for K&G Law Group, PLLC. It features a large, stylized 'K' in black with a red ampersand to its right. Below the 'K' and ampersand is a large 'G' in black. To the right of the 'G' is the text 'LAW GROUP, PLLC' in a black, serif font.

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&  
G LAW GROUP, PLLC**

## Introduction

My name is Zachary Kitts and I submit this written testimony in support of House Bill 509, the Maryland False Claims Act of 2013. I support this important legislation and I would be happy to answer any questions the Committee may have.

First, for the record, I am not a paid lobbyist and I have not been paid to be here today. I am here because my law practice focuses on *qui tam* litigation under the federal False Claims Act as well as under various state false claims acts, such as the Virginia Fraud Against Taxpayers Act. My experience with state false claims legislation is such that I am often asked by proponents of state false claims act legislation to testify in favor of the legislation, and to spread the word about Virginia's experience with the Virginia Fraud Against Taxpayers Act.

Simply stated, I have never understood the logic behind those states that wish to pass state FCA legislation that covers only health care dollars, and I so I am proud to support Del. Arora's efforts to expand the Maryland False Claims Act to cover non-health care dollars.

### **MARYLAND STATE GOVERNMENT SHOULD PROTECT ITS ENTIRE FISC AND NOT JUST HEALTHCARE DOLLARS**

Below are some examples of non-healthcare state *qui tam* cases I have been involved in recently. There are other cases I am currently involved with, but because those cases are still under seal I cannot discuss them.

#### **Protecting State Pensions**

Beginning in 2009, I was one of the lawyers representing a *qui tam* relator in a case against the Bank of New York Mellon alleging that BNYM had manipulated the pricing of foreign exchange transactions it executed on behalf of Virginia Retirement Systems. The lawsuit, which was filed under seal in 2009 and came unsealed in January of 2011, alleged that BNYM, which executes billions of dollars in foreign-exchange transactions every year, reported a less favorable rate of exchange to its pension fund clients than it actually received. Virginia's Attorney General intervened in the case in January 2011. Last year the Virginia case ended in a manner acceptable to all of parties.

Eventually New York, Florida, California, North Carolina, Massachusetts and other states also intervened in the state false claims act cases filed in those states, for the exact same violations. There are only two providers of foreign-exchange transaction services to public pension funds, so the odds are 100% that Maryland's public pensions were subjected to the same behavior that has all of the rest of the country up in arms.

## Unclaimed Property

The law of unclaimed property (sometimes called "escheat", although, literally speaking, that term only applies to real property) is a prime candidate for states with full false claims acts. In Virginia, I settled the first large non-health care qui tam case in Virginia in 2008 against Navy Federal Credit Union. That case, which resulted in a recovery of more than \$47 million, concerned NFCU's failure to deliver unclaimed property to the Commonwealth.

In April of 2012, the nation's largest life insurance provider (Metlife) agreed to pay \$40 million to settle allegations that it failed to deliver unclaimed property in the form of life insurance proceeds under state unclaimed property laws. In the interests of full disclosure, I was not involved in this case.

## Procurement

Human nature being what it is, state governments are subjected to false claims in every imaginable context. Every vehicle the state maintains, every bullet proof vest the state purchases for law enforcement, and every other dollar spent by the state are subject to abuse by unscrupulous contractors, and should all be protected by the Maryland False Claims Act.

### **THE ONE QUESTION ANTI-FCA LOBBYISTS CANNOT ANSWER: IF FCA LEGISLATION IS ANTI-BUSINESS, WHY DO ALL OF THE MOST BUSINESS-FRIENDLY STATES HAVE STATE FALSE CLAIMS ACT LEGISLATION?**

Finally, I want to mention one important argument to consider as you are approached by the various lobbyists opposing this bill.

As I mentioned earlier, I have provided testimony and input to legislators in states across the country, and in so doing I have run into an entity known as "ALEC." I dare say many of you have heard of this group, the "American Legislative Exchange Council, which purports to be a business-backed group that views false claims laws as encouraging "frivolous" lawsuits.

ALEC also says that FCA legislation is a "bonanza for trial lawyers" and a "liberal ruse" that will drive business away from the state.

This is easily shown to be false. In fact, the opposite is true, and virtually every state that is usually found in the Top Ten states has a state false claims act. I don't know that I have ever seen a list of top states for business that does not include New Hampshire, Texas, North Carolina, Utah, and Nevada -- and every one of those states has a state FCA.

Take Virginia for example. Virginia is always near the top of every pro-business ranking you can find, and we were one of the first states to have a state false claims act. Just a few examples are the following rankings:

- The U.S. Chamber of Commerce ranks Virginia the most business-friendly state in the Union;
- The state rankings done by Forbes show that Virginia is “clearly the No. 1 place to do business.” Virginia was also the only state to score in the top ten in all six categories Forbes measured;
- CNBC.com ranked Virginia the most business-friendly in 2007 and 2009, and as number two in 2008 and 2010.
- Commercial real estate giant Pollina, Inc. ranked Virginia number one in 2010, and in the top three in most of the other years.

In most years where Virginia is not number one among the states most hospitable to business, it is always in the top 5 for being business friendly. If a state False Claims Act drove away business or put legitimate firms out of business, the Virginia Fraud Against Taxpayers Act wouldn't have lasted eight years, and I am certain it wouldn't have lasted eight months.

I urge the Committee to report favorably on HB509.