

**Testimony of Randall M. Fox in Support of Pennsylvania House Bill 1697**

**House Democratic Policy Committee**

**May 7, 2026**

**POSITION: FAVORABLE**

Honorable members of the House Democratic Policy Committee:

My name is Randall Fox, I am a partner in the law firm of Kirby McInerney LLP in New York.

I am here to testify in support of HB 1697 (Taxpayer Prevention Against Fraud Act) whereby the State of Pennsylvania would enact a False Claims Act to put in place a powerful and effective tool to protect the integrity of state and local government dollars and make sure they are spent and collected as they are meant to be.

First, allow me to share my background, which focuses heavily on False Claims Acts.

I was a “Big Law” lawyer in New York for 16 years, including several years as a partner. I then joined the government, first in the New York Attorney General’s Medicaid Fraud Control Unit, where in 2007 I brought the State’s first government-initiated state False Claims Act case under the New York’s brand new law. In 2011, I became the founding Bureau Chief of the New York Attorney General’s Taxpayer Protection Bureau, which enforced the state False Claims Act in all areas other than Medicaid matters. In 2014, I joined Kirby McInerney where I represent whistleblowers. Many of my cases are under the federal and state False Claims Acts. I also represent clients in various government agency whistleblower programs such as the IRS, SEC and CFTC programs.

In 2021, I was honored to be named the Whistleblower Lawyer of the Year by the nation-wide association of whistleblower lawyers, The Ant-Fraud Coalition (or the “TAF” Coalition).

TAF recently established a State False Claims Act committee to be a resource for states concerning the enactment and administration of effective whistleblower programs to protect state and local government dollars. I am a co-chair of that committee.

**I. THERE IS FRAUD IN PENNSYLVANIA THAT A FALSE CLAIMS ACT CASE WILL ADDRESS**

A False Claims Act is a non-partisan law about protecting the integrity of government dollars. That is why the Federal law has prominent support from across the aisle, including having a champion in Senator Chuck Grassley.

The False Claims Act is pro-business because it protects businesses that follow the rules from competitors who do not.

The False Claims Act is pro-citizen because it promotes having government dollars spent as intended without being siphoned off by fraud.

The fundamental theme of any False Claims Act case is that government dollars have been knowingly ripped off. It is fair to say that there have been, are, and will always be persons and businesses willing to perpetrate those frauds and trying to stay under the radar when they do so.

Enacting a False Claims Act will give Pennsylvania enforcers a powerful tool to fight that fraud. It will help identify and prosecute the perpetrators, and it will deter frauds because would-be perpetrators will know that anyone with knowledge of a fraud will be incentivized to report it.

I have years of data showing this to be the case.

Without a False Claims Act, Pennsylvania will miss out on these benefits.

I can say from my own experience that I have seen matters where multi-state frauds were reported to New York and other states with False Claims Acts, but were not reported to Pennsylvania because it lacks the statute.

Pennsylvania is now in a position to make sure it does not miss out.

## **II. THE PROPOSED LEGISLATION**

In a nutshell, the proposed law prohibits contractors, suppliers, and others from knowingly making false claims for payment by the government and, further, prohibits knowingly misrepresenting or avoiding payments that must be made to the government. It imposes treble damages and per-violation penalties when liability is found.

The law can be used either by the government on its own or with the help of whistleblowers who are incentivized to come forward with concrete information. The whistleblower awards are between 15 and 30%, and whistleblowers are protected against retaliation. Even where a case is brought by a whistleblower, there is significant government involvement and oversight.

Importantly, the proposed law, and False Claims Acts in general, are enforcement tools. They are not about setting policy, but rather are about recovering the government dollars lost to violations of existing rules.

## **III. FALSE CLAIMS ACTS ARE A PROVEN MEANS OF PROTECTING THE INTEGRITY OF GOVERNMENT DOLLARS**

We are not operating on a clean slate. Rather, we have the well-developed history of the federal False Claims Act and many state False Claims Acts to show us how effective False Claims Acts have been.

Since 1986, the federal government has recovered more than \$85 billion under the False Claims Act. For just last year, the number was \$6.8 billion.

New York has recovered, just on the non-Medicaid side, more than \$841.7 million under its False Claims Act.

Key to these recoveries is the False Claims Act's positive financial incentive to whistleblowers with direct, concrete information about frauds that commonly would not have become known to government enforcers. The False Claims Act provides a positive financial incentive to battle against the negative financial incentives that fraudsters have.

The money recovered does not tell the full story of the effectiveness of False Claims Acts because the Acts also deter fraud. One academic study from 2023, for example, found that when New York added tax claims to its False Claims Act, the impact was greater tax compliance, which the authors measured to be the collection of an additional \$281 million dollars each year in New York State corporate franchise taxes, which represented a 7.7% increase in compliance.<sup>1</sup>

#### **IV. NEARLY 20 YEARS OF THE NEW YORK FALSE CLAIMS ACT DEMONSTRATE THE LAW'S SUCCESS IN FIGHTING FRAUD**

##### **A. Overview of the New York Law**

New York passed its False Claims Act in 2007. It is largely similar to the proposed Pennsylvania legislation.

One important distinction is that the New York law has some special provisions concerning cases about tax violations. In order to avoid claims such as neighbors suing neighbors about paying baby sitters off the books, it imposes a two-part thresholds for these cases: the person against whom the action is brought must have net income or sales of more than \$1 million for any tax year at issue, and the damages pled must exceed \$350,000.

The pending legislation does not include a threshold provision like this, and I urge the Pennsylvania Legislature to include a similar provision to keep the tax cases focused on the big-ticket matters.

##### **B. Lessons from the New York False Claims Act**

Both as Bureau Chief and then as a private whistleblower lawyer, I have closely tracked the non-Medicaid cases under the New York False Claims Act. I am pleased to share the lessons from that nearly two decades of on-the-ground experience.

I have submitted to the Committee a spreadsheet with detailed data on every one of the 190 public New York False Claims Act case on the non-Medicaid side. And from that data, I have extracted several lessons about the importance of the law.

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<sup>1</sup> Lee, et al., "The Deterrence Effects of Tax Whistleblower Laws: Evidence from New York False Claims Acts," *Management Science*, Aug. 14, 2024, <https://pubsonline.informs.org/doi/10.1287/mnsc.2023.02999>.

## 1. Lesson 1: The Nay Sayers Were Very Wrong

When the New York law passed, and then when it was amended to add tax claims, there were some who made sky-is-falling claims that the law would result in huge numbers of meritless cases.

The data shows that the nay-sayer's parade of horrors predictably did not happen.

### a. Only a Modest Number of Cases Have Been Filed

The flood gates did not open. In nearly 20 years, there have been 190 non-Medicaid cases that have gone public. That is an average of 10 per year.

In the spreadsheet I submitted, there is a table showing the breakdown of those 190 cases. 163 were brought by whistleblowers. 27 were brought by the government.

Those numbers do not include whistleblower cases that are still under seal, but there is reason to believe the number of those cases is also modest.

The New York Attorney General recently disclosed to Bloomberg Tax that there have been 224 tax whistleblower cases under the law since 2010, including cases that are under seal. That is an average of 14 cases a year. That is still a modest number.

The table below shows the breakout of the New York cases currently in the public record:

Number of Cases	All Cases	Qui Tams (Whistleblower cases)	Non-Qui Tams
All Case Types	190	163	27
By Subject Area			
Procurement	75	58	17
Tax	72	64	8
Financial	13	13	0
Education	10	10	0
Fees	6	6	0
Escheat	5	5	0
Labor	5	4	1
Grants	3	2	0
Unknown	1	1	0

### b. The Cases Have Not Been Frivolous

On the whole, the cases have been very successful, resulting in more than \$841 million in settlements on the non-Medicaid side. That record contradicts the predictions by some of only, or predominantly, meritless cases.

My spreadsheet shows the disposition of the 190 public cases: 86 were settled, and some of those were settled only after surviving motions to dismiss. Other cases are pending or were dismissed or withdrawn.

The table below shows the disposition of the public New York cases:

<b>Disposition of Cases</b>	<b>Total</b>	<b>Settled</b>	<b>Pending</b>	<b>Dismissed</b>	<b>Withdrawn</b>
All Cases	190	86	16	41	45
<b>By Subject Area</b>					
Tax	72	34	8	19	11
Procurement	75	39	4	14	15
Financial	13	1	1	3	8
Education	10	2	0	2	6
Fees	6	2	2	2	0
Escheat	5	2	1	0	2
Labor	5	5	0	0	0
Grants	3	1	0	0	2
Unknown	1	0	0	0	1

\* There is no record of the disposition of two cases.

## 2. Lesson 2: The State's Return on Investment Is Enormous

The data shows us that the State's return on its investment in applying the New York False Claims Act is 2,663.02%. That tells us that the False Claims Act is an extremely efficient and productive way to fight fraud.

The table below shows my calculation of the return on investment under the New York False Claims Act:

<b>Return on Investment</b>	
Number of Years since NYAG's Taxpayer Protection Bureau formed in 2011	15
Estimated Avg. Annual Cost of Bureau	\$ 1,700,000.00
Cost of Bureau since Inception	\$ 25,500,000.00
Settlements	\$ 841,745,525.55
Whistleblower Awards	\$ 137,174,935.15
Net Recoveries	\$ 704,570,590.40
Return on Investment (\$)	\$ 679,070,590.40
<b>Return on Investment (%)</b>	<b>2663.02%</b>

## 3. Lesson 3: The Cases Extend Beyond State Lines

The historical record also shows us that there have been several cases about fraud schemes that crossed state lines, where New York would have missed out if it did not have a False Claims Act.

Nearly all the Medicaid cases involve at least the state and the federal government, and many of them involve multiple states as well. On the non-Medicaid side, there are 47 cases that included

either the state and the federal government or a number of states plus the federal government. That number does not capture cases where similar suits have been brought in various state courts alleging similar violations of state False Claims Acts by the same defendants.

The table below shows the public New York False Claims Act cases (non-Medicaid) that cross state-lines:

<b>Levels of Government in Whistleblower Cases</b>	
NYS + USA Cases	17
USA + Multistate Cases	30

#### **4. Lesson 4: A Broad Variety of Frauds Has Been Uncovered**

The data also tells us that the cases cover a broad range of frauds committed against government dollars, and that many of these frauds will go on undetected without a False Claims Act.

The 190 public non-Medicaid claims in New York have consisted primarily of 75 procurement claims, 72 tax claims, and smaller numbers of cases about financial frauds mostly based on misleading government pension funds, escheatment frauds, and labor, education, and grant frauds.

#### **5. Lesson 5: The Biggest Recoveries of Government Dollars Are in Tax Cases**

The data shows that tax cases dominate in terms of the dollars recovered. About 80% of the recoveries in New York have been from tax violations. That compares to about 12% coming from cases about procurement fraud.

From my own involvement in many of these cases, I can report that the State would not have found out about the violations underlying some of the largest tax cases without whistleblowers. That includes the sales tax case against Sprint that settled for \$330 million, and the \$105 million settlement of a corporate income tax case against a hedge fund billionaire who falsely claimed to have moved his business out of New York even while it operated out of an office on Madison Avenue.

The table below shows the distribution of settlements across case types:

<b>Settlements</b>	<b>Settlement Amounts</b>	<b>Settlement Amounts as % of All Settlements</b>
All Settlements	<b>\$ 841,745,525.55</b>	
By Subject Area		
Tax	\$ 679,334,979.05	80.71%
Procurement	\$ 97,454,883.26	11.58%
Financial	\$ 12,500,000.00	1.49%
Education	\$ 42,000.00	0.00%

Fees	\$ 374,309.11	0.04%
Escheat	\$ 40,375,000.00	4.80%
Labor	\$ 11,606,756.13	1.38%
Grants	\$ 57,598.00	0.01%

## V. CONCLUSION

I wish to thank the Committee for this opportunity to testify, and respectfully offer my voice in favor of enacting a Pennsylvania False Claims Act.