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Maryland Senate Hearing on  
SB 374  
Maryland House of Delegates Hearing on  
HB 405  
Maryland False Claims Act of 2015  
February 25, 2015

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## Introduction

My name is Zachary Kitts and I submit this written testimony in support of Senate Bill 374/House Bill 405, the Maryland False Claims Act of 2015. 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 about the powerful effect these laws on a state's fisc, and to spread the word about Virginia's experience with the Virginia Fraud Against Taxpayers Act.

### **THERE IS NO NEED TO SPECULATE ABOUT THE RESULTS OF A MARYLAND FALSE CLAIMS ACT**

Alexis de Tocqueville first described state governments as the "laboratories of democracy," but it was Justice Brandies who popularized the term. The idea is that state and local governments act as social "laboratories," where laws and policies are created and tested at the state level of the democratic system, in a manner similar (in theory, at least) to the scientific method.

There is nothing new or revolutionary about the federal False Claims Act or state false claims act legislation at this point. The path is well marked and the results Maryland can expect from a true false claims act will clearly benefit state government.

That leads me to my second point.

### **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?**

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

In providing testimony and input to legislators in states across the country I have run into lobbyists from various groups purporting to be pro-business. These lobbyists will tell you that that false claims act laws encourage "frivolous" lawsuits and will be a "bonanza" for trial lawyers.

These lobbyists will tell you that FCA legislation will drive business away from your state. These arguments are completely without merit and are easily shown to be false.

These arguments are false because virtually every state that is usually considered business-friendly has a state false claims act. Every list I have ever seen of the top states for business-friendly includes states like Virginia, 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 Forbes 2013 rankings ranked Virginia as “clearly the No. 1 place to do business.” In 2012 Virginia was number two. Virginia was also the only state to score in the top ten in all six categories Forbes measured;
- In 2014 *Governing* magazine gave Virginia an A+ grade for being friendly to small business;
- CNBC.com ranked Virginia as the most business-friendly state in 2007 and 2009, and as number two in 2008 and 2010. In every other year (including 2014) Virginia was in the top ten.
- 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 ten. These rankings are the result of many factors, not the least of which is that Virginia – like most of the other top states for business – is not known for passing legislation that encourages frivolous lawsuits.

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. The same thing is true in Texas, Florida, Utah, etc.

For you to believe that the Maryland False Claims Act is bad for business, you would have to believe that anti-business interests somehow hijacked the legislative process in all of those states just long enough to get a false claims act law passed. That didn't happen, of course, and there is not one shred of evidence to support the idea that false claims statutes are bad for business.

I urge the Committee to report favorably on SB 374/HB 405.