

Testimony of Timothy J. McInnis, Esq.

In Support of Intro. 346, The New York City False Claims Act

To the Council of the City of New York, Committee on Government Operations

June 23, 2004

My name is Timothy J. McInnis. I am an attorney in private practice here in New York City and represent whistleblowers in *qui tam* law suits under various false claims acts.¹ I am also on the Board of Advisors of Taxpayers Against Fraud (TAF), a non-profit organization in Washington, D.C., that supports false claims act whistleblowers and their attorneys.² I am here today in both capacities to encourage the Council to enact the New York City False Claims Act. It is my opinion that this Act will go a long ways towards fighting fraud against New York City taxpayers.

There can be no dispute that false claims laws, similar to the one presented here, work. They work well, in terms of generating large amounts of monies for government treasuries. And, they work efficiently in terms of their respective costs and benefits. The federal government currently recovers on average nearly \$1 billion per year from cases brought under its statute, Title 31, United States Code, Section 3729 *et seq.* See www.taf.org/statistics.htm. Additionally, approximately a dozen states have enacted such laws, while many other states are currently considering them, including the State of New

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York and the Commonwealth of Pennsylvania. California has one of the most comprehensive state false claims acts. Texas has recently fortified its statute and has realized large recoveries. I mention these two states because representatives from their Attorney General Offices spoke at an ABA Conference on False Claims Act litigation which I attended last week in Washington, D.C. and they described how successful their programs have become. See [The Fifth Annual National Institute on the Civil False Claims Act and Qui Tam Enforcement](#), Washington, D.C. June 14-16, 2004 (ABA).

The proposed City False Claims Act would fill a gap in the aggressive prosecution of persons and entities who defraud the City of New York and ultimately the New York City taxpayer. The City already has some statutory weapons in its arsenal to combat municipal fraud. But, none has the three vital components contained in the proposed City False Claims bill. These are: (1) a bounty provision, (2) a *qui tam* provision and (3) a whistleblower protection provision. Let me take a minute and explain how these three provisions interact to produce a very effective tool in the fight against government fraud.

First, the prospect of a bounty is needed to get persons with information about fraud to come forward. My experience confirms what most people know intuitively: many potential whistleblowers will not take the risk of sounding the alarm without the possibility of being rewarded for doing so. And for good reason. There are both tangible and intangible costs associated with blowing the whistle. These include loss of jobs and income, time, legal fees and an incredible amount of stress. Obviously, the City gets information from citizens acting without regard to their own financial gain, as well as from wrongdoers who are cooperating against others for non-monetary benefits. But

nothing will open up the world of fraud to investigators, prosecutors and civil enforcement attorneys like the bounty system. The City Law has a bounty provision and it is both specific (a share expressed in a range of percentages of the total recovery) and mandatory, unlike some toothless bounty provisions that leave it solely to the discretion of the affected agency to decide whether to pay a bounty and if so how much.

Second, the City Law has a *qui tam* provision. This permits the whistleblower to initiate a law suit and pursue the case on his or her own if for some reason the government chooses not to use its resources to take over or intervene in that particular case. In short, the *qui tam* language empowers the citizen to become a private attorney general. A *qui tam* provision gives the whistleblower greater confidence in coming forward because he or she knows that the ultimate decision in prosecuting the case rests with them. And, it motivates investigating agencies and helps ensure that they will be responsive to the whistleblowers' allegations. In other words, with a *qui tam* provision there is no chance of a complaint getting lost in a bureaucratic black hole or a whistleblower simply getting brushed off. As a practical matter, most successful cases under the federal false claims act are ones where the government intervenes. Still, the filing of the action by the private party starts a judicial process which puts pressure on the government to conduct a timely and thorough investigation before making an intervention or declination decision.

As an example of an anemic bounty law, one need only consider the current federal tax law for rewarding persons coming forward with allegations of tax fraud. See Title 26, United States Code, Section 7623. It lacks a specific formula for determining the bounty and leaves it totally to the discretion of the IRS to decide whether to pay a

reward and if so how much. Additionally, the tax law lacks a qui tam mechanism. As a result of these two shortcomings, there are almost no whistleblower cases being pursued.³ Because the amount of a recovery is so small and uncertain, I almost always decline to take tax whistleblower cases.

The third important provision is the one that protects the whistleblower against retaliation. The need for this should be self-evident. The targets of fraud investigations frequently feel inclined to take measures against those people who have exposed their frauds. Most of the time, the company committing the fraud is able to deduce who the likely whistleblower is. A whistleblower protection section discourages retaliation against the whistleblower and compensates him or her if the wrongdoer is not deterred. This provision is particularly important for current employees of a company that is committing fraud; often they are the ones with the best information and in the best position to assist government investigators.

Clearly, there is a need for a statute with the three provisions I have just outlined. I have been contacted by persons with knowledge of fraud against the City and have had to advise them that while they can report the fraud, there is no means by which they will be rewarded or protected for doing so. For example, I was contacted by someone who worked for a company that received City funding to provide vocational training and employment assistance to young persons. He brought me allegations that the recipient of the funds was not properly training its students and was not providing them with adequate job placement services. The essence of his allegation was that the recipient was merely taking the money and not delivering the promised services. This was a case that could

³ The U.S. Senate, through the efforts of Charles E. Grassley (R-Iowa), is now considering expanding its false claims act to cover tax fraud and evasion because of the act's success in fighting program and goods and services fraud). See <http://finance.senate.gov/press/Gpress/2004/prg050304d.pdf>

have been investigated further and might have yielded a recovery to the City if there had been a City False Claims Act. It might also have brought improper practices to a halt. Since there was not an applicable law, the whistleblower (who was an employee of the company receiving the program funds) elected to just let the matter drop. I have received similar inquiries from other people who had strong allegations of the City being ripped off. In each case I had to explain to them that if their claims did not involve federal money there was simply no way for them to share in any recovery or even protect themselves against retaliation. Without a New York City false claims law there was nothing more they or I could do. That is how I know there is a need for the proposed statute.

To summarize, it is my testimony that false claims laws have been proven to work effectively. They work because of three key provisions I have discussed: a defined and mandatory bounty provision, a qui tam provision and a whistleblower protection provision. New York City does not have a false claims act with these provisions on its books. Given the large amount of money the City spends on goods, services and programs and the near certainty that there is fraud in these areas, the City needs such a statute. I know from personal experience that fraud is going undetected because there is no City false claims law. Passing a City False Claims Act would be a simple and inexpensive way to help replenish the City's coffers with money obtained improperly.

For all these reasons, on behalf of myself and TAF, I urge the Council to enact Intro. 346 and would be happy to answer any questions this Committee might have for me. Thank you.