TESTIMONY OF JOHN E. CLARK
BEFORE THE HOUSE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CONSTITUTION AND CIVIL JUSTICE

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I respectfully submit this testimony from my perspective as an attorney representing whistleblowers in *qui tam* actions under the False Claims Act and its state counterparts for more than 20 years. My views on government and law enforcement are informed by my previous service in the public sector, as well as by my experience as counsel for whistleblowers. I have been a licensed attorney since 1961.

From 1969 to 1977 I was in federal government service; first as a litigation attorney in the Justice Department's Criminal Division, next as an Assistant U.S. Attorney in Texas, and finally as the U.S. Attorney for the Western District of Texas. In those capacities, I handled and oversaw a wide variety of civil and criminal litigation for the United States. I served as the U.S. Attorney for the Western District of Texas from 1975 to 1977.

In 1981-1982 I served as a Justice of the Texas Court of Appeals (Fourth District), the state's counterpart to the federal circuit courts.

While engaged in the private practice of law I have also served as an appointed board member or commissioner of the National Institute of Corrections (a Bureau of Prisons agency), the Texas Commission on Law Enforcement Officer Standards and Education, and the Texas Ethics Commission.

Since 1992 my law practice has consisted almost exclusively of representing private parties who bring *qui tam* cases on behalf of the United States under the False Claims Act and on behalf of Texas and other states under their similar Medicaid fraud statutes. Those parties are commonly referred to as "whistleblowers" or "relators."

In the course of my *qui tam* practice I have been a member of legal teams representing whistleblowers in cases that have resulted in recoveries totaling more

than three billion dollars ($3,000,000,000) for the United States and state Medicaid programs. The cases have involved both health care fraud and defense contracting fraud, the two primary areas of fraud against the government today. Many of the defendants have been publicly traded companies with familiar names, such as GlaxoSmithKline, HealthSouth Corporation, SmithKline Beecham Clinical Laboratories, SAIC, Boeing, Baxter International, Abbott Labs, and Actavis.

Those clients who, as employees, first reported the fraud to their employers, were all adversely effected in their employment, and the fraud continued. Even the octogenarian physical therapy patient tried first, without success, to get the corporate provider to reform its conduct voluntarily.

Currently, I am Of Counsel at Goode Casseb Jones Riklin Choate & Watson, a San Antonio, Texas law firm I participated in founding in 1991. I also serve on the Board of Directors of Taxpayers Against Fraud (TAF) and Taxpayers Against Fraud Education Fund (TAFEF), the non-profit public interest organizations dedicated to combating fraud against the United States through the promotion and use of the False Claims Act and its *qui tam* provisions.

- **If fraud were easy for government programs to detect and prevent, it wouldn't be so successful.**

With depressing regularity, government agencies estimate how many tens or hundreds of millions – or even billions – of dollars their programs have lost to fraud in a particular reporting period. Not surprisingly, the largest programs, such as Medicare and Medicaid, report the largest losses due to "improper payments," with the most recent estimate, for FY2013, listed as almost $50 billion and $20 billion respectively, and an estimated $125 billion a year lost across all government programs.[1]

A government agency that knows its program is a prime target for fraud doubtless tries to sniff it out. The clumsy, the obvious, and the unlucky sometimes get caught; we see those successes from time to time in the six o'clock newscasts,

[1] [1] See: http://www.gao.gov/assets/670/662845.pdf and http://www.gao.gov/assets/660/652386.pdf and http://www.gao.gov/new.items/d11575t.pdf

complete with film of government law enforcement agents wheeling file cabinets out of storefront, fly-by-night health care businesses. But the more sophisticated fraudsters, knowing their government-program target is expected to be wary, look for unsuspected chinks in the regulatory and administrative armor and fashion clever schemes - some simple, some complex - to exploit them. The more carefully thought-out schemes often fly under the radar for years unless they're exposed by someone outside of government, with inside knowledge about the scheme. Also, some of the most costly schemes result from corporate cultures that nurture and rationalize practices that violate the False Claims Act, but exist because responsibility is spread among many and diluted beyond accountability.

- **Whistleblowers provide valuable aid to law enforcement by exposing frauds government agencies don't know about.**

When the False Claims Act became law in 1863, and again when it was revitalized in 1986, most of the fraud against the government was thought to be in the arena of defense contracting. But since the 1986 amendments became law, about 68% of False Claims Act recoveries have involved health care. Moreover, new fraud schemes against an ever-proliferating array of increasingly large federal programs have been uncovered by whistleblowers – huge government-insured mortgage schemes, construction contract schemes, oil royalty schemes, and frauds against veterans' education, mortgage, and health care programs, to name only a few.

By encouraging whistleblowers to step forward and expose fraud, the False Claims Act has increased the government's awareness of new vulnerabilities in federal programs and assisted in recovering taxpayer funds and restoring integrity to the affected systems. But law enforcement is inherently reactive, while skilled fraud planners are inventive. Thus law enforcement must often play catch-up to learn about, and learn how to detect, new schemes. Whistleblowers are invaluable to that effort.

- **The False Claims Act enhances the government's defenses against fraud without increasing the size or the cost of government.**

Not only do whistleblowers expose fraud schemes otherwise unknown to the government, but through their attorneys they take the necessary steps to initiate damage recovery actions on the government's behalf – the time-intensive tasks of screening cases, interviewing witnesses, analyzing and organizing available evidence, evaluating legal merit, preparing and filing complaints – thereby augmenting the government's resources without any cost to taxpayers. Moreover, after a recovery the whistleblower's attorney fees are paid by the wrongdoer as costs of the legal action.

- **How and why the False Claims Act works.**

The False Claims Act is designed to incentivize integrity. A company or an organization that defrauds the United States is subject to treble damages and penalties for its perfidy. Those remedies are intended to recover the government's losses, pay for whistleblower awards, and deter similar fraud by the same wrongdoer and by others.

When a fraud scheme goes undetected – or is not responded to – by the administrators of an affected program, the role of the whistleblower is vital. The assistance of a non-government source with knowledge of the facts – a whistleblower – is the key to discovering and excising a secret infection. To obtain that assistance, the statute provides an incentive for a whistleblower to come forward, in the form of a "relator's share" of the total amount recovered. The net result is that the wrongdoer is exposed and punished, the government recoups its losses, and the whistleblower is rewarded for making that possible – all paid for, appropriately, by the wrongdoer.

Whistleblowers and their attorneys are compensated only if their cases result in a recovery, and there are serious sanctions for bringing a frivolous case. As a result, cases filed by knowledgeable *qui tam* attorneys tend to be carefully chosen and well developed, providing the government's attorneys with a substantial foundation on which to build a successful case. If the Department of Justice exercises its statutory option to intervene in the case and take the lead in prosecuting it, the whistleblower remains a party and she and her counsel continue in a supporting role and assist the government's attorneys in the litigation. The

value of that assistance is a factor in the Department's decision on the amount of the whistleblower's award, which serves as a further incentive to aid the government effectively in enforcing its rights.

For more than 25 years this idea – making fraud expensive for cheaters, and rewarding whistleblowers who expose them – has worked remarkably well. Since the statute was amended in 1986, False Claims Act cases have returned more than $45 billion to the U.S. Treasury and nearly $10 billion to the states. Over half of that total has been recovered in the last eight years, during which time the law has been strengthened and clarified by further amendments, and appreciation of its effectiveness has increased. In a growing number of meritorious cases, the Department of Justice leaves it entirely up to the relator and its counsel team to pursue the action and recover the taxpayers' funds from the fraudster. In these cases, the augmentation of scarce government resources contemplated by the FCA is most realized.

Today nearly 80 percent of False Claims Act recoveries result from cases initiated by whistleblowers.

An analysis by Taxpayers Against Fraud Education Fund of the return on federal investments in investigation and prosecution of health care fraud cases shows that the United States gets back more than $20 for every $1 invested in qui tam cases.

In addition to direct asset recovery, the False Claims Act also has a powerful deterrent value. National fraud schemes related to drug pricing, hospital upcoding, oil and gas fraud, laboratory bill padding and more, have been exposed and reigned in thanks to whistleblower-driven False Claims Act cases.

The False Claims Act is so effective that 29 states and the District of Columbia have adopted similar statutes, and the SEC, the CFTC, and the IRS now have their own whistleblower programs with reward systems modeled on the Act.

Since Virginia adopted its Fraud Against Taxpayers Act in 2002, the Commonwealth's Medicaid Fraud Control Unit has returned an average of $228 million per year, or more than $3.1 million per Fraud Unit employee.

From 2006 through Fiscal Year 2012, Texas recovered more than $821 million for state and federal taxpayers under its Medicaid Fraud Prevention Act - net of the awards paid to whistleblowers and the state's attorney fees and costs. Under the state-federal cost sharing formula for Medicaid, more than $348 million of this amount was retained for the benefit of Texas taxpayers and over $473 million was paid into the United States Treasury. It should be noted, also, that nearly half of these recoveries – more than $394 million – resulted from fraud cases in which Texas led the investigation and prosecution of the case under the Texas Medicaid Fraud statute – the Texas state version of the False Claims Act.[2]

- **Whistleblowers are natural adversaries for crony capitalism and inaction by overgrown government bureaucracies.**

A *qui tam* case under the False Claims Act cannot be ignored by the government. The United States is not required to join the case, but the Department of Justice must exercise due diligence to determine whether it is in the government's interest to intervene in the case and conduct the litigation. In that process the affected agency will learn that it may have been cheated, perhaps by a contractor with which it has dealt extensively. Because agencies do not relish the embarrassment of revelations that they have been taken advantage of, or have been lax in guarding the public fisc, the availability of whistleblower actions serves as an added incentive for them to be vigilant against fraud.

The GAO estimates that "improper payments" by federal programs total more than $125 billion a year, and that in Fee for Service Medicare the ratio of overpayments to underpayments is 20:1 in favor of companies, many of which systematically exploit government billing and payment protocols to price-gouge, pad bills, and sell defective or unnecessary goods and services.[3] Fraud schemes can be facilitated by commercial kickbacks, or by too-trusting relationships, or by

[2] http://www.taf.org/publications/reports/fighting-medicaid-fraud-texas
[3] http://www.cms.gov/apps/er_report/preview_er_report.asp?from=public&which=long&reportID=15&tab=3#582

regulatory indifference, or by failure to comprehend the problem, or through plans carefully calculated to deceive unwary regulators. But when government, for any reason, cannot – or will not – act to protect the taxpayers, determined whistleblowers and their private attorneys can still protect the public interest and aid the cause of law enforcement by seeking a remedy under the False Claims Act.

A case in point is an extensive and complex course of *qui tam* litigation in which I was a member of a legal team combating a scheme by drug manufacturers nationwide to cause government health care programs to grossly over-reimburse pharmacies for dispensing their drugs. The initial case, asserting fraud by multiple manufacturers, was filed in Miami in 1995, and a similar federal case against additional defendants was filed in 2000 in Boston. The facts – and the truly shocking over-reimbursements being paid by government health care programs because of the false prices reported by manufacturers and relied on by government agencies – were compelling. Top federal officials deferred to the Department of Justice, which delayed making a decision whether to intervene in the cases while continuing to investigate the massive fraud and reaching settlements with a number of the defendant drug manufacturers. Without a decision by the Department of Justice, the cases remained under seal, and we could not pursue active litigation in them. Meanwhile, government health care programs began to address the problems exposed by the cases, but this was a long and complex process during which taxpayers continued to bear the burden.

While the United States continued to pursue resolutions while the cases remained under seal, our team of private lawyers filed similar *qui tam* cases beginning in 1997 under similar state False Claims Acts against many of the same drug companies, alleging they were using the same false pricing scheme to defraud the individual state Medicaid programs. Litigation began in earnest in state courts in Austin, Texas, beginning in 1999, when then Texas Attorney General John Cornyn intervened in our *qui tam* case filed under the Texas Medicaid Fraud Prevention Act. When all of the litigation, both state and federal, was over, more than $3 billion had been recovered for Texas, the United States, and other states; the drug price reporting protocol had been reformed by Congress; and state Medicaid programs, Medicare, and other government health care programs were able, at last, to get drug manufacturers' truthful prices.

The United States finally did elect to intervene and conduct active litigation against three of the manufacturers named in the federal cases. It happened in 2006, 11 years after the 1995 case was filed, and after several federal settlements and many of the state court cases had already been concluded successfully. The cases actively pursued by the Department of Justice generated roughly one-third of the total federal recoveries in the drug pricing cases, with the remainder coming from cases settled without active litigation or by the relator/counsel team proceeding after DOJ declined to intervene.

- **The False Claims Act has been a bipartisan success.**

The False Claims Act was forged during the Civil War at President Lincoln's urging and was designed to combat price-gouging and the sale of defective munitions and supplies to the Union army.

In 1943, the statute was almost completely gutted by the Attorney General, who in 1942 had created a "War Frauds Unit," thinking DoJ could fight fraud against the government on its own from offices here in Washington, D.C.

In 1986 Senator Charles Grassley (R-IA) and Congressman Howard Berman (D-CA) realized the government was paying a high price for not having fraud-fighting assistance from private citizens. Hoping to remedy that situation, they authored legislation to revitalize "Lincoln's Law" with strong, new provisions to encourage whistleblowers to step forward and help once again. Their efforts received overwhelming bipartisan support in both Houses, and President Reagan signed the bill into law.

Reagan-era False Claims Act reforms have been incredibly successful. False Claims Act returns have risen steadily for the last 20 years, and massive fraud schemes against many government programs have been exposed and ended.

- **Nevertheless, government programs remain a target for fraud, and additional efforts are needed to combat it.**

Government programs, with their enormous sums of money to be paid to contractors, providers and suppliers, will always attract those who are willing to take it by fraudulent means from bureaucratic systems ill equipped to discover that they are being cheated. Fraud will never be eradicated completely; but if the government is serious about combating fraud, more needs to be done.

- **The government's litigation resources are inadequate.**

A lack of adequate litigation resources in the Department of Justice's Civil Division and in some United States Attorneys' Offices is one of the reasons why the Department declines to intervene in some meritorious False Claims Act cases. That is also a reason why the Department's decision whether to intervene typically is made only after several six-month extensions of the 60-day statutory "under seal" period that allows the government to conduct its due diligence analysis of the whistleblower's claim discreetly and without interference. And it is a reason why major cases often take years to conclude, even after intervention. The Department often is under-resourced in comparison to the huge law firms typically arrayed against it in major cases More litigation attorneys for the Civil Division and the Affirmative Civil Enforcement (ACE) teams operating in key United States Attorneys' Offices would enable the government to move cases toward resolution more quickly and arm it with more credibility for going to trial – a key factor properly affecting both the government's, and a defendant's, approach to settlement negotiations.

Considering the demonstrably high rate of return on the government's investment in the prosecution of health care fraud cases alone, and the need for additional resources to manage the sizeable inventory of FCA cases effectively, a portion of the government's recoveries in False Claims Act cases should be directed specifically to increasing Justice's litigation resources for FCA cases. That investment would quickly return substantial dividends, and it could be accomplished without additional cost.

- **Congress should allow the United States to recover its attorney fees and expenses in a successful False Claims Act case.**

Under the False Claims Acts of 15 states, including Texas, the state is entitled to recover its reasonable attorney fees from the wrongdoer when it prevails in a fraud case. That is eminently fair, given that the state's damages include not only the money it lost, but also the value of its attorneys' services in effecting a recovery. The federal False Claims Act should be amended to provide the same relief for the United States.

Without the right to recover its attorney fees, the United States - unlike those 15 states - is not fully compensated for the expense of enforcing the statute and the wrongdoer is not held fully responsible for the damage he caused.

Consideration should be given to requiring attorney fees and/or a portion of all funds recovered by the United States in False Claims Act cases to be applied specifically to offset the expenses of the Department of Justice's Civil Division in administering and enforcing the False Claims Act. The False Claims statutes of eight states and the District of Columbia make specific provisions for a portion of the funds recovered by the government to be used in aid of investigating and prosecuting fraud under the statute.[4]

- **The False Claims Act should be clarified to confirm that "damages" caused by fraud means "gross damages."**

The False Claims Act should be amended to clarify that "damages" must be calculated as gross damages rather than net damages, consistent with the Department of Justice's current practice; *i.e.*, without deduction for compensatory value received by the government from any source. For example, defendants sometimes argue that a product they provided to the government was of some value, although it was not what they fraudulently represented it to be and received payment for, and that the government's damages are only the net difference between the two. A few courts have questioned the Department's practice, and clearer legislative language is needed to ensure that the cost of defrauding the government is not reduced to the cost of doing business.

[4] http://www.taf.org/taf-ef-state-fca.pdf

- **Tax fraud should be covered by the False Claims Act**

When the False Claims Act was revitalized in 1986 it was thought that tax fraud cases might be too complex to be dealt with under the law, so those claims were not included. In 2010 New York added tax fraud as an eligible claim under its False Claims Act, and since then several tax fraud cases have been successful under the statute. While the Internal Revenue Service has had its own whistleblower program since 2006, that program is sadly lacking in performance and results. Because it does not include a private right of action if the IRS does nothing, there is no pressure on the agency to resolve cases in order to avoid embarrassment. Civil tax fraud cases are not too complex for federal courts; they manage to deal with the complexities of criminal tax evasion cases without undue difficulty. Including tax fraud cases under the False Claims Act is a simple matter of striking the language in the statute that excludes those cases from its coverage.

- **Big fraud cases should result in personal consequences for the individuals responsible, just as they do in small cases.**

A "small" fraud against the government is not necessarily small in absolute numbers. Because so many frauds against the government involve tens or hundreds of millions, or even billions, of dollars, frauds involving "only" a million, or a few million, are thought of as "small," and the perpetrators are dealt with much more directly and much more severely than those who conceive, manage, conceal, or turn a blind supervisory eye to the big fraud schemes that make headlines in legal and financial journals.

The perpetrators of small frauds typically are often confronted individually with the full panoply of the government's remedies, including damages, penalties, seizure of business and personal assets, prison, and exclusion from doing business with the government in the future.

But in cases where hundreds of millions of dollars, or more, have been taken by fraud, and even when such serious consequences as endangerment of patient safety and health have resulted, personal responsibility is rarely a consideration.

In the typical large fraud case, no one goes to prison, and no one loses their job. Bonuses that resulted from the fruits of the scheme are not clawed back and promotions are kept.

But fraud schemes don't invent or implement themselves. Just as some individual was responsible for the small fraud, some individual - or perhaps more than one - was responsible for the big one. It may be more difficult to determine who was responsible for the big fraud, but it is no less important. Indeed, it may be more important.

The bottom line is that if fraud is to be deterred, there must be personal consequences. Penalties levied against publicly traded corporations may repay the government's cash losses, but those penalties are sometimes inadequate to defer corporate misconduct. This fact is painfully proven by the growing number of large public corporations who are recidivists that repeatedly enter huge – sometimes multi-billion dollar – settlements to resolve False Claims Act violations.

Occasionally a corporate wrongdoer will plead guilty to a criminal offense and pay a fine as part of a global resolution of the case, but typically this is an essentially meaningless gesture the only purpose of which is to allow the government to say it got a criminal conviction. As a practical matter, however, a corporate criminal plea has very little consequence. And without consequence, there is no deterrent effect.

It has been said that we live in an era in which many companies are "too big to fail."

At the same time it is very clear, from reading the newspaper alone, that we also seem to be living in an era in which some individuals are being treated as if they are "too important to go to jail."

What can be done? How can we impose very real personal sanctions on those responsible for fraud against the government?

Fortunately, a sanctioning mechanism already exists.

Federal agencies have authority under existing law to administratively exclude, suspend or debar individuals and entities, for cause, from doing business with the agency.

For example, the Office of Inspector General of the Department of Health and Human Services can exclude individuals or companies "making false statements or misrepresentations of material fact" or who engage in "fraud, kickbacks, and other prohibited activities" in connection with their business with the agency. Any company doing business with the agency that hires an excluded person in a management position is subject to civil monetary penalties, and "no payment will be provided for any item or service furnished, ordered, or prescribed by an excluded individual or entity."

The Department of Health and Human Services excludes about 4,000 people a year. The Department of Defense and the General Services Administration exclude, suspend, or debar a similar number of people and contractors annually.

Remarkably, however, individual and corporate exclusions are rarely levied in cases involving really big frauds.

An orthodontist in Dallas may be excluded, go to prison, and forfeit all of his assets to pay a fine for defrauding Medicaid with false billings; but if a large medical appliance manufacturer engages in a nationwide kickback scheme to increase its sales, no individual consequence is imposed.

No single sanction causes as much concern among individuals who plan and execute large-scale fraud schemes as the prospect of being exposed and held personally accountable.

- **False Claims Act cases are not about accidents or mistakes**.

Every successful False Claims Act case is either the failure of a company or organization to have a compliance program, or the failure of the program. Fraud is dishonest. Fraud is stealthy.

Fraud is not negligence.

Fraud is not an "honest mistake," or a "misunderstanding of complex and confusing regulations."

Fraud that is actionable under the False Claims Act arises only from a legally culpable state of mind ("knowingly"), as defined by the Act.

In a company or organization, fraud typically manifests itself in the planning and active participation of some -- and the tolerance, or ignorance, of that fraud by others.

Because frauds under the False Claims Act are organized, planned, and carried out by company insiders, they are often difficult for company outsiders to detect.

That said, the same planning and organization needed to carry out a fraud often provides the evidence needed to show that a company was knowingly engaged in wrongdoing.

For example, companies may track kickback programs to make sure they are working well and the company is not overpaying or over-gifting.

Spread sheets may be created to detail to doctors and hospitals how they can benefit financially from wasting Medicare and Medicaid money.

Internal emails may show how the company isolated, humiliated, and eventually terminated those who objected to selling the government substandard goods and services.

Price-gouging, double billing, and price manipulations tend to leave a paper trail.

- **Compliance programs do not ensure compliance.**

While companies and organizations may have impressively written compliance programs in place, the reality is that the compliance officers in charge of these programs almost never have the power to change business practices that result in significant profits.

Any competent attorney can write a compliance program that will allow the right boxes to be checked on government forms, but whether the compliance program actually accomplishes compliance with the law depends on whether it is actively administered to enforce an unyielding and thoroughly ingrained institutional culture of integrity.

- **Whistleblowers are not welcome in organizations that lack an institutional culture of integrity.**

Most big fraud schemes are carefully planned and orchestrated for-profit schemes.

When employees in fraud-feasing companies raise their hands internally to question or challenge fraudulent practices, they are not applauded or rewarded. Instead, they are branded as troublemakers and reassigned to other duties and locations in order to limit their access to information and stored data.

The role of compliance officers in these situations is often illuminating. Rather than standing shoulder-to-shoulder with the whistleblower and in support of protecting taxpayer dollars, compliance officers are often part of the management team working on “papering over” the problems while working to terminate the “problem” employee.

- **Education of employees about the False Claims Act should be a requirement of all federal contracts.**

Most corporate fraud schemes that succeed for a significant period of time within an organization do so because of three factors.

First, the scheme itself, whether simple or complex, is not easy to detect, and only a few employees are likely to understand the full scope of it.

Second, those employees who do understand it are likely to be fearful that they will be fired, demoted, or otherwise punished if they question its propriety.

Third, employees see no possible benefit to them or their family for speaking out, either internally or externally.

The False Claims Act was designed to change the last part of this equation, and that part was given a turbo boost by the Deficit Reduction Act of 2005.

In 2005, Congress made education of employees about the False Claims Act a condition of participation for companies that billed Medicare and Medicaid more than $5 million a year.

That part of the law became effective January 2, 2007 and since then False Claims Act recoveries in the health care industry have doubled. *This doubling of False Claims Act recoveries did not occur in any other sector of federal spending.* This experience suggests that a similar requirement, to educate the employees of all federal contractors about the False Claims Act, would have a similarly beneficial effect in the continuing war on fraud.

- **Critics of the False Claims Act would turn back the clock by undermining its effectiveness.**

As awareness of the False Claims Act has increased steadily since Congress revitalized it with the 1986 amendments, so has the Act's effectiveness in exposing

fraud against a broad spectrum of government programs and facilitating the recovery of billions in taxpayers' lost dollars.

It is ironic, but true, that the growth of a well-funded lobby seeking to undermine the law's incentives for whistleblowers is itself evidence that the law works, and that it works because of the whistleblower provisions of the law.

To be clear, the corporate defense lawyers that appear before you today are not here because they seek to save the U.S. government money.

The pharmaceutical companies and hospital associations that are represented here today did not call for smaller government when the Affordable Care Act was being debated.

Military contractors have never led the charge for a smaller footprint on foreign soil when it comes to overseas military interventions.

The banking industry did not rush to Capitol Hill to say they did not want Uncle Sam to relieve them of hundreds of billions of dollars in toxic assets.

It is only in the arena of fraud-fighting that they evince a concern for America's taxpayers.

Their solution to the problem is patently absurd – to reduce the penalties for corporations that have FAILED compliance programs.

Simply put, if government rewards companies for having failed compliance programs, it is sure to get more failed compliance programs, more fraud, and less fraud recovery.

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Top False Claims Act Recoveries

- Cases with an asterisk (*) are cases in which criminal penalties were also assessed.
- Cases with a diamond (♦) are state cases.

Company	Civil Fine ($)
GlaxoSmithKline*	2,000,000,000
Johnson & Johnson*	1,720,000,000
Pfizer*	1,000,000,000
Bank of America	1,000,000,000
Tenet	900,000,000
Abbott*	800,000,000
HCA*	731,400,000
Merck	650,000,000
HCA*	631,000,000
Merck*	628,000,000
JPMorgan Chase	614,000,000
Amgen*	612,000,000
GlaxoSmithKline*	600,000,000
Serono Group*	567,000,000
TAP Pharmaceuticals	559,483,560
New York State and NYC	540,000,000
Astra Zeneca	520,000,000
Ranbaxy Laboratories*	500,000,000
Pfizer*	491,000,000
Schering Plough	435,000,000
Eli Lilly	438,000,000
Abbott Labs*	400,000,000
Fresenius Medical Care of N. America*	385,000,000
Cephalon	375,000,000
United Technologies	365,000,000
Bristol-Myers Squibb	328,000,000
Northrop-Grumman	325,000,000
SmithKline Beecham Clinical Labs	325,000,000
HealthSouth*	325,000,000
National Medical Enterprises*	324,200,000
Gambro Healthcare	310,000,000
Schering-Plough*	292,969,482
Mylan	280,000,000
Roxanne	280,000,000
AstraZeneca*	266,127,844
St. Barnabas Hospitals	265,000,000
Rapamune*	257,400,000
Bayer Corp.*	257,200,000
Schering Plough	250,000,000
Quest Diagnostics♦	241,000,000
First American Health Care Of Georgia (only fractional payment actually made after bankruptcy)	225,000,000
Amerigroup	225,000,000
Deutsche Bank	202,000,000
Actavis (global settlement after verdict)	202,000,000
Oracle	200,000,000
McKesson	190,000,000
BankAmerica*	187,000,000
Laboratory Corp. of America*	182,000,000
Aventis Pharmaceuticals	180,000,000
Endo Pharmaceuticals*	171,900,000
Beverly Enterprises Inc.*	170,000,000

Zimmer Inc.	169,500,000
Purdue Frederick Co	160,000,000
Citigroup	158,000,000
Johnson & Johnson♦ (verdict)	158,000,000
Par Pharmaceutical	154,000,000
Pfizer/Warner-Lambert*	152,000,000
Medco	150,000,000
Sandoz	150,000,000
Amedisys	150,000,000
United Technologies	150,000,000
Maxim	150,000,000
GlaxoSmithKline	150,000,000
Blue Cross Blue Shield Illinois*	140,000,000
Wellcare	137,500,000
Caremark	137,500,000
Mario Gabelli et. al	130,000,000
NetApp	128,000,000
King Pharmaceutical	124,000,000
Northrop Grumman	111,200,000
Shell Oil Company	110,000,000
Sanofi	109,000,000
Vencor Inc./Ventas Inc.	104,500,000
National Health Labs	100,000,000
Oracle / PeopleSoft	98,500,000
Burlington Resources/ ConocoPhillips	97,500,000
Quorum Health Group Inc.	95,500,000
Boehringer Ingelheim Pharmaceuticals	95,000,000
Chevron	95,000,000
Staten Island University Hospital	88,000,000
Lucas Industries*	88,000,000
GlaxoSmithKline	87,600,922
PacifiCare Health Systems	87,300,000
Teledyne	85,000,000
Depuy Orthopaedics	84,700,000
Damon Clinical Laboratories*	83,700,000
Litton Settlement Amount	82,000,000
Northrop Grumman	80,000,000
FMC	80,000,000
Watson Pharmaceuticals	79,000,000
Staten Island Community Hosp.	76,500,000
General American Life Insurance	76,000,000
Kyphon/Medtronics	75,000,000
Boeing Company	75,000,000