

Statement of

# **The Honorable Patrick Leahy**

United States Senator  
Vermont  
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Chairman, Senate Judiciary Committee  
Hearing on "The False Claims Act Corrections Act of 2007 (S. 2041): Strengthening the Government's Most Effective Tool Against Fraud for the 21st Century"  
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Nearly a century and half ago, President Abraham Lincoln pushed through the False Claims Act in order to combat rampant fraud and war profiteering during the Civil War. It is fitting that we hold this hearing on legislation to strengthen "Lincoln's Law" the same month we celebrate President Lincoln's birth.

Today, again in the midst of war and facing reports of billions lost to fraud and waste in Iraq and Afghanistan, we are considering important new improvements to the False Claims Act - not only to punish and deter those who seek to defraud our nation, but also to recover billions in taxpayer dollars stolen from the public trust.

In recent years, the False Claims Act has become the government's most effective tool against fraud. Since 1986, it has been used to recover more than \$20 billion lost to fraud, about half of that coming in just the past five years. It has been used to punish contractors selling defective body armor to our police, to recover hundreds of millions from oil and gas companies bilking the government on valuable leases on federal land, to thwart major technology corporations from colluding in bids for government contracts, and to uncover massive fraud by insurance companies illegally shifting their losses from Hurricane Katrina to the Federal Government.

Perhaps the Act's greatest success has been to expose complex schemes that have defrauded billions from federal health care programs. Just this month, the drug company Merck agreed to pay a \$650 million false claims settlement for illegally overcharging Medicaid for Vioxx, Zocor, and other drugs. This settlement was among the largest ever under the False Claims Act, and part of more than five billion dollars recovered in health care cases just this decade.

More than 600 false claims cases are still pending against health care and drug companies, and 150 of those involve overcharging the government for pharmaceuticals. It seems clear that future false claims settlements will soon dwarf what we have seen so far.

But these recent successes do not tell the full story, as the False Claims Act has yet to fulfill its true potential for combating fraud. In 1986, Senator Grassley led the effort to reinvigorate the False Claims Act by amending the law to encourage citizens to report fraud against the government. Since then, citizen whistleblowers have become the greatest source for uncovering

complex frauds against the government, and their cases now account for about 70 percent of all the money recovered under the False Claims Act. Yet, opponents of the False Claims Act, those who defend the major defense contractors and big drug companies, have worked hard to undermine the original intent of these amendments, and a series of recent court decisions have placed new, technical impediments on false claims cases. These court decisions threaten to weaken the law, and undo the successes of recent years.

Today, we consider bipartisan legislation - the False Claims Act Corrections Act of 2007 - that will correct these judicial interpretation problems and strengthen the False Claims Act for the 21st Century. In doing so, I want to recognize the longstanding leadership of my friend Senator Chuck Grassley, who recently introduced this bill in order to restore the original intent of his 1986 amendments. Senator Grassley has worked tirelessly over the years in defense of the False Claims Act, and I am proud to join with him, as well as Senators Durbin, Specter, and Whitehouse, in support of this bill. I look forward to working with all these Senators and the Committee to make the False Claims Act even more effective, and to provide important, new protections for the citizen whistleblowers, who are so vital to uncovering these frauds.

At our hearing today, we will ask important questions of the Justice Department, about its failure to dedicate sufficient lawyers and investigators to pursue these fraud cases. The Justice Department has a backlog of more than 1,000 false claims cases, which at its current pace would take nearly 10 years to resolve, even if no new cases were brought. When one considers that a recent study found that for every dollar spent enforcing the law in health care cases, the government recovered 15 dollars on behalf of the American taxpayer, there's no excuse for failing to pursue these cases aggressively.

In light of the politicization of the Bush Justice Department, many wonder whether it has resisted pursuing certain false claims cases for political reasons - most notably those involving contracting fraud related to the war in Iraq and Afghanistan. Over the past five years, the Justice Department has participated in more than 600 false claims settlements nationwide and recovered more than \$10 billion. Yet, during that same time, the Justice Department participated in only five cases involving contracting fraud in Iraq and Afghanistan and has recovered a mere \$16 million - that's less than two tenths of one percent of the overall total. Since 2002, our government has spent nearly \$500 billion on the wars in Iraq and Afghanistan, much of it on government contracting, and billions of taxpayers' dollars have been lost to fraud, waste, and abuse. The False Claims Act was designed to attack such rampant war profiteering, and it is just as necessary today, as it was during the Civil War. Iraq Study Group Chairman Lee Hamilton said in testimony to this Committee that nothing undermines our efforts in Iraq more than abuse and fraud in the reconstruction of the country. I share these concerns with Chairman Hamilton and others who have recognized the tremendous harm this conduct causes. Yet, this administration has apparently decided that pursuing unscrupulous defense contractors would be embarrassing and aggressively pursuing these frauds is not their priority.

This morning we will hear from a courageous citizen whistleblower, who will tell us how she used the False Claims Act not only to hold one of our nations' largest defense contractors to account, but also to keep the Justice Department honest. Tina Gonter was a quality engineer was working for a submarine parts supplier in Ohio when she discovered the valves produced at her

plant were faulty and could lead to catastrophic failure for our nation's submarine fleet. She reported the problem to her superiors, but they did nothing. After contacting a lawyer, she reported her observations to criminal investigators, she agreed to volunteer as an undercover informant, and wore a secret tape recorder gathering evidence against her bosses. After the criminal investigation was complete, she filed a False Claims Act case, but even after her immediate bosses went to jail, the Justice Department refused to join her case against the defense contractors who also knew about and benefited from the fraud, and she pursued the case alone, until a judge scolded the Justice Department for not taking action and they joined in the settlement at the last minute.

Ms. Gonter is a testament to the courage of citizen whistleblowers. She risked her job and was retaliated against but she took on the powerful, moneyed defense contractors anyway. These whistleblowers should be recognized as "citizen soldiers," as President Lincoln called them when the False Claims Act was first passed so many years ago. They keep government contractors honest and are responsible for returning billions to the American taxpayers. Her story demonstrates how the False Claims Act works for all Americans, and why new protections for citizen whistleblowers in the bill we consider today are necessary to encourage others to come forward and tell their stories.

I expect that some may suggest that citizens should not be allowed to bring these cases against their employers, or that this law creates unnecessary incentives for lawsuits against defense contractors and drug companies. But no one can deny that these citizen whistleblowers are now the single, most important source for uncovering fraud against the government, and their cases have returned tens of billions to the American taxpayers, money that the government would never have recovered without them.

I hope all Senators will join us to honor the legacy of Lincoln's Law and take action now to strengthen and improve the False Claims Act for the next century.

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