

**Supplemental Testimony of Cleveland Lawrence III
Co-Executive Director
Taxpayers Against Fraud
on
H. 120 – An Act Relating to Creating a Vermont False Claims Act
before the
House Committee on the Judiciary
Vermont General Assembly
Wednesday March 13, 2015**

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Thank you, Members of the Committee, for allowing me to supplement my previous telephonic testimony of February 11, 2015, with additional information regarding the importance of a comprehensive Vermont False Claims Act that would protect the State’s entire Treasury from fraud – not merely its Medicaid dollars. A comprehensive Vermont FCA would level the playing field across numerous industries, including construction and infrastructure, education, procurement, environmental, etc. – not solely in the healthcare context. When I first testified before this Committee, I received several questions regarding applications of state False Claims Act (“FCA”) laws outside the healthcare fraud context – particularly, with respect to fraud schemes against state pension funds. The Committee graciously allowed me an opportunity to research this matter further, and I now submit the following supplemental testimony.

In the past few years alone, many states have joined whistleblower lawsuits under their respective FCAs and/or have filed suits on their own in efforts to protect government employees’ pension funds and other retirement accounts from fraud. For instance, in 2010, the Commonwealth of Massachusetts reached a \$102 million settlement under its False Claims Act with financial services firm Morgan Stanley, to resolve allegations of engaging in a subprime mortgage fraud scheme in the company generated fees by targeting lower-income mortgage borrowers for loans they could not afford. Not only did the settlement provide \$58 million in direct relief to more than 1000 homeowners throughout the Commonwealth, but \$19.5 million of the settlement proceeds went to the Commonwealth’s General Fund, and the remaining \$23 million went to the Massachusetts Pension Fund to remedy losses to the Massachusetts Pension Reserves Investments Trust and the Massachusetts Municipal Depository Trust – both of which unwittingly invested in the predatory subprime lending scheme.¹

Similarly, in 2013 the state of Florida returned \$28 million to its pension fund, as well as \$100,000 in legal fees, in a settlement with Bank of New York Mellon (“BNY”). In addition to the payments, the settlement requires BNY to provide the state with a

¹ See Attorney General of Massachusetts Press Release, *Morgan Stanley to Pay \$102 Million for Role in Massachusetts Subprime Mortgage Meltdown Under Settlement with AG Coakley’s Office*, June 24, 2010, available at <http://www.mass.gov/ago/news-and-updates/press-releases/2010/attorney-general-martha-coakley-reaches-102.html>.

\$500,000/year credit on fees for the next ten years.² The settlement resolved a whistleblower lawsuit under the Florida FCA that alleged that BNY mismanaged and overcharged the state's pension fund by manipulating its fees on foreign currency transactions; the state joined the suit.³

Just last month, the U.S. Justice Department announced a \$1.375 billion settlement with the McGraw-Hill Financial, Inc. and Standard and Poor's Financial Services LLC ("S&P"), to resolve both federal claims and the claims of 19 states and the District of Columbia that, due to its business relationships with investment banks, S&P inflated the ratings of certain securities and thereby defrauded the government investors – many of which were public pension plans. Half of the settlement proceeds – about \$687.5 million – will go to the federal government, with the other half to be shared among the states and the District of Columbia.⁴ The State of California received the largest share of the states' portion – about \$210 million – and most of those funds will be used to offset losses to the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System. Notably, the claims resolved by this settlement were brought under the federal Financial Institutions Reform, Recovery and Enforcement Act, and various unfair competition laws in the states. California, though, was the only government entity to also file claims under its FCA law, seeking treble damages. As a result, California received an additional \$125 million from S&P, to resolve claims under the California FCA that S&P defrauded CalPERS.⁵

The trend of states using their FCA laws to combat financial frauds continues. The State of California has joined a whistleblower lawsuit filed in 2009 against financial services firm, State Street Corporation – the custodian of public pension funds for the California Public Employees' Retirement System and the California State Teachers' Retirement System. The lawsuit alleges that the company violated the California FCA by manipulating when foreign currency exchange (FX) transactions were executed and/or reported in order to overcharge the two pension funds.⁶ Additionally, the Commonwealth of Virginia has filed a

² Attorney General of Florida Press Release, *Pam Bondi Announces \$28 Million Settlement with Bank of New York Mellon*, Nov. 1, 2013, available at <http://myfloridalegal.com/852562220065EE67.nsf/0/B342E613410013CA85257C160065FCD8?Open&Highlight=0.new.york.mellon>.

³ *Florida ex rel. FX Analytics v. Bank of N.Y. Mellon Corp.*, No. 2009-ca-4140 (Fla. Cir. Ct., Leon Cnty.).

⁴ See U.S. Department of Justice Press Release, *Justice Department and State Partners Secure \$1.375 Billion Settlement with S&P for Defrauding Investors in the Lead Up to the Financial Crisis*, Feb. 3, 2015, available at <http://www.justice.gov/opa/pr/justice-department-and-state-partners-secure-1375-billion-settlement-sp-defrauding-investors>.

⁵ See Attorney General of California Press Release, *Attorney General Kamala D. Harris Announces \$210 Million Settlement with Standard & Poor's For Inflating Mortgage-Backed Securities Ratings*, Feb. 3, 2015, available at <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-announces-210-million-settlement-standard-poor>.

⁶ *California ex rel. Assocs. Against FX Insider Trading v. State Street Corp.*, No. 34-2008-00008457 (Cal. Super. Ct., Sacramento Cnty.).

\$1.15 billion lawsuit under the Virginia Fraud Against Taxpayers Act, alleging that a group of eleven banks made false and fraudulent representations to the Virginia Retirement System with respect to sales of residential mortgage-backed securities.⁷ There is every reason to believe that we will see more and more of these cases – at both the federal and state levels – as we continue to recover from the subprime mortgage crisis. With a robust FCA, Vermont will have the sharpest tool available to retrieve its stolen funds and protect its taxpayers.

Again, I thank the Committee for allowing me this opportunity to testify. I am happy to answer any addition questions the Committee might have.

⁷ See Attorney General of Virginia Press Release, *Herring Brings Record \$1.15 Billion Lawsuit Against Banks For Defrauding Virginia Taxpayers*, Sept. 16, 2014, available at <http://www.ag.virginia.gov/index.php/component/content/article?id=265>.