An Emerging Opportunity for the States to Revitalize Their State False Claims Act Enforcement

By Marc S. Raspanti and Alexander M. Owens

While the Trump administration replaces all of the United States Attorneys, as well as many senior-level positions at the Department of Justice, stakeholders will soon be able to evaluate civil enforcement priorities under the Federal False Claims Act. The loss of so many subject matter experts in the Department of Justice nationwide will soon become palpable. Meanwhile, the various agencies that investigate these cases have also experienced substantial staff retirements. Since 1986, over $78 billion has been returned to the United States Treasury as a direct result of the federal False Claims Act. Indirect recoveries, which come from task forces built around successful qui tam cases, have recorded even more funds. Moreover, non-intervened qui tam cases brought by private counsel continue to add significant recoveries to the Treasury each year.

The executive branch is currently determining where it will focus its resources, priorities, and policy initiatives. Some in the Department of Justice may even be reviewing the efficacy of the qui tam provisions themselves based on recent Supreme Court dicta. However, should these priorities differ from some or all of the states or from past federal prosecutorial priorities, there exists a whole cadre of powerful state false claims act statutes that have been passed in 30 states, one district (Washington, D.C.), and one territory (Puerto Rico). Indeed, some of these statutes have been on the books for almost as long as the federal statute. It is puzzling to some that the rest of the states have still failed to pass their own FCA statutes. Due to the current environment, this may change in the coming years. Unfortunately, there is no centralized reporting of state recoveries like the one the federal government issues annually. States should find a way to collectively report their efforts on a yearly basis.

Audit of reported single-case recoveries (e.g., those announced by press release) in state-led actions reveals historically modest results. But there are signs that things are changing. For example, earlier this year, the State of Texas settled an over decade-old qui tam case with Molina Healthcare, Inc. and Molina Healthcare of Texas, Inc. for $40 million. And last year, Washington, D.C. obtained a $40 million recovery in a tax fraud case under its own qui tam law. These results are consistent with a long-term trend in increased state attorneys general enforcement more broadly, even outside of state FCA practice (e.g., in the context of opioid, social media, and forever chemical litigation).

Like the federal False Claims Act, state FCAs are or can be strong enforcement tools. Some of these state statutes even have provisions that are stronger than the current federal statute. For example, some state laws allow for the state to recover its own attorneys' fees and litigation costs in a successful prosecution, permit the state attorney general's office to retain a portion of the recoveries to fund ongoing state FCA enforcement efforts, cover tax violations (which are not allowed under the federal statute), and one state false claims act (Massachusetts) even has a special provision to hold private equity firms liable for fraud occurring at the companies in which they invest. Meanwhile, many of these state laws provide for qui tam actions based, not just on fraud upon the state, but also fraud upon political subdivisions.

The financial opportunity for the states is extremely robust. For example, current state-funded Medicaid expenditures now exceed $270 billion annually. The current administration has made it clear that it is planning massive Medicaid cuts which will impact all states, presumably some more than others. That means protection of state funds will become even more vital. And state spending is hardly limited to Medicaid. Each year, the states spend around $1.8 trillion in total, with political subdivisions spending another $1.9 trillion. Most state FCA statutes are multi-purpose fraud statutes which cover much more than just healthcare fraud.

Candidly, in the past many states have had starts and stops in enforcing their own anti-fraud statutes. For example, some states have had periods when a particular Attorney General has been very active in prosecuting state false claims act actions. Some states have even gone to trial and prevailed against major healthcare companies and other corporations. But aggressive state enforcement has not been the norm. Unfortunately, too many states have taken a back seat to federal enforcers or otherwise been overly deferential to the wishes of their federal counterparts. Some states have not made the investment in their own affirmative enforcement efforts. This should be re-evaluated. Dozens of assistant attorney generals over the years have been clear that they follow the lead of their federal partners. This de facto policy has led to complacency and should be reexamined, where appropriate.

Some states argue that they do not have the manpower and other resources of the federal government (e.g., the investigative tools of the FBI, DCIS, or the OIG), have disparate pay scales, or present a variety of other reasons for their limited enforcement efforts. The turnover rates at some state Attorney General's Offices have historically been greater than their federal counterparts. Sometimes, it is just easier for states to rely on the Department of Justice, using its powerful dictates and resources to move cases forward. States should also consider more widespread re-engagement with private litigants to boost their own litigation arsenal.

Traditional federal options and assets may not be available in the coming years. A record number of experienced FCA practitioners have chosen to leave the De-

Opportunity continued on 8

Attorney Immunity

***U.S. ex rel. Doe v. Planned Parenthood*, 2025 WL 618102 (5th Cir. 2025)**

The Fifth Circuit held that Planned Parenthood had absolute immunity from FCA suits alleging that its attorneys conspired with affiliated clinics to avoid returning Medicaid funding. In 2015, Texas and Louisiana sought to terminate the Medicaid enrollment of clinics affiliated with Planned Parenthood. In response, Planned Parenthood's "Litigation & Law" team helped the clinics obtain injunctions barring Texas and Louisiana from terminating their Medicaid enrollment. The Fifth Circuit ultimately vacated the injunction against Texas, after which Planned Parenthood attorneys initiated another suit in Texas state court. The relator alleged that Planned Parenthood had improperly helped the clinics avoid returning Medicaid funds it received while the injunction was in place. The Fifth Circuit held that, under federal and state common law, attorneys were absolutely immune from suits challenging their representation of clients. Because Planned Parenthood's attorneys had absolute immunity, relator could not sue the organization on a theory of respondeat superior. The Fifth Circuit also rejected relator's argument that the FCA would override attorney immunity, finding in the FCA no explicit statement to that effect.

Caleb Hayes-Deats *is a partner at MoloLamken LLP, where he represents companies and individuals in False Claims Act and other types of whistleblower litigation. He has been recognized as a "Rising Star" in D.C. by the National Law Journal and in New York by Super Lawyers. Previously, he served as an Assistant U.S. Attorney in the Southern District of New York.*

Opportunity continued from 6

partment of Justice for other positions or aged out after a long career in affirmative civil enforcement. Many federal investigative agents have either left the government or will be (or already have been) tasked on different priorities. It is impossible to replace this brain trust overnight.

Accordingly, the states have an unprecedented opportunity to increase their investments and to utilize their expansive but underutilized statutes to target fraud, waste, and abuse of all kinds within their own states. Unfortunately, because state fraud enforcement efforts have generally been constrained, the deterrence value of the state false claims acts has been lower. A poorly guarded public fisc makes for an attractive target for fraudsters. This can easily change if states re-energize their enforcement efforts.

The states must do more than form settlement teams hoping that the federal government will take the lead and then share in a portion of the settlement. States must now forge credible litigation teams. State prosecutors must get in front of the tank and not behind it.

Previously, no matter who was in charge of the Department of Justice, and no matter who occupied the White House, previous administrations found the federal False Claims Act, passed in a bipartisan manner in 1986, to be a powerful moneymaker for the Treasury and a critical deterrent against wrongdoers. It is unclear where the federal enforcement priorities may lie in the near future. However, regardless of the federal government's priorities, this is a unique, and at times divergent, opportunity for the states to step up and step out in a way they have not always done in the past.

Marc Raspanti*, a Partner with Pietragallo, is a seasoned trial lawyer with over 44 years of experience focusing on complex, high-stakes matters in Government Enforcement, Compliance, Internal Investigations, Federal and State White Collar Litigation; Federal and State Qui Tam Litigation; Criminal, Civil and Administrative Health Care Fraud Litigation; and Complex Commercial Litigation. Chambers USA has ranked Mr. Raspanti in Band 1 for his work in the area of Litigation: White Collar Crime & Government Investigations in Pennsylvania and False Claims Act: Plaintiff in the USA- Nationwide.*

Alexander M. Owens *is a partner at Pietragallo Gordon Alfano Bosick & Raspanti, LLP in Philadelphia, Pennsylvania. He represents whistleblowers, providers, and corporations in cases arising under the False Claims Act and other whistleblower statutes.*