

**Testimony of**

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**Hearing on**

**Senate Bill 279  
Maryland False Health Claims Act of 2010**

**and**

**HB 525  
Maryland False Claims Act of 2010**

**Maryland Legislature  
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## **Introduction**

My name is Zach Kitts and I submit this testimony in support of the SB 279 (the Maryland False Health Claims Act of 2010), as well as in support of the HB 525 (the Maryland False Claims Act of 2010). I strongly support this much-needed legislation, and I do so from vantage point of someone who has experienced the implementation of Virginia's state FCA, known as the Virginia Fraud Against Taxpayers Act, and the difference it has made in the Commonwealth.

I have not been paid to be here today, and I am not a professional witness. I am here today because this legislation is needed for so many reasons that I scarcely know where to begin. While I am a Virginia resident, I am licensed to practice law in Maryland, and so I am honored to contribute this small piece to what will hopefully become a cornerstone in the public-private partnership that Senator Grassley and President Ronald Reagan (among many others) envisioned in 1986 when they worked tirelessly on the original efforts to strengthen the federal False Claims Act.

Virginia's Fraud Against Taxpayers Act ("VFATA") has been an unparalleled success, and even today, six years after it became law, the best is yet to come. No one can argue with Virginia's results. In the three-year period from FY 2006-FY 2009, Virginia recovered on average more than \$228 million per year. Virginia recovers more than \$5 million per employee of the MFCU.

Prior to passage of the VFATA, the average recoveries per year hovered in the seven-digit range.

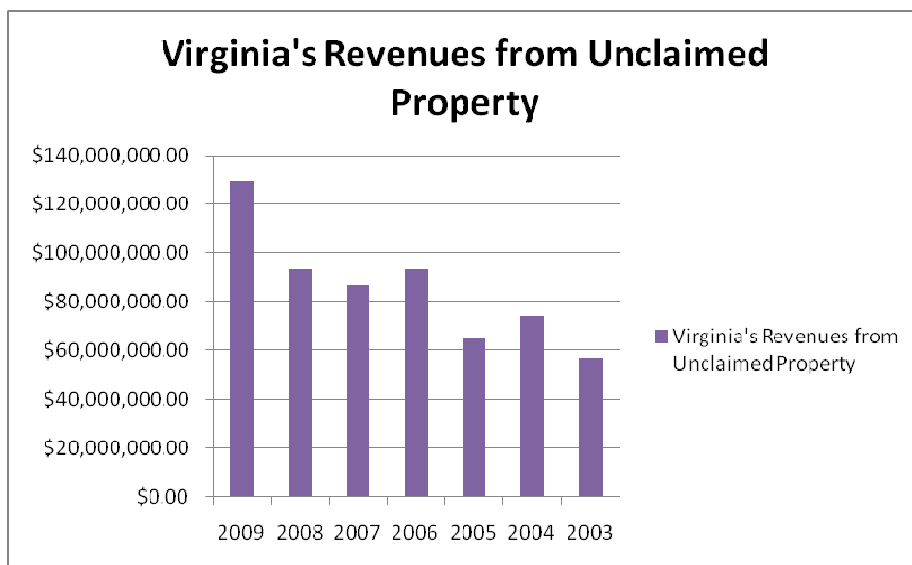
### **Increased Compliance with the Law**

It is easy to measure the results in the healthcare area, but there is another important facet of FCA prosecutions I want to share with you, and that is the increased compliance with the law that follows vigorous FCA prosecutions. There are also many reasons why a true false claims act like HB 525 is the better alternative to a healthcare-only bill.

The incentives of the DRA of 2005 cover healthcare fraud because that is the single biggest area of loss to federal and state governments, and that, in turn, is because healthcare is the biggest budget item. But if you think for a moment that other industries are not feasting themselves at the state's expense, you need to think again.

I want to give you an example from a case of mine in Virginia that dealt with the largest federal credit union in the world, and unclaimed property that was due to the Commonwealth. This is also a good way to measure the value of increased compliance, which is typically difficult to evaluate.

At the end of calendar year 2008, I settled the first non-intervened, non-healthcare state case under the VFATA. The case received some media coverage. The chart below shows Virginia's average recoveries from unclaimed property from 2003 to 2009.



In FY 2009, Virginia received more than \$40 million more than its average over the previous five years. While a portion of this increase arose directly from the case and was received from the same credit union, some of it also came from increased compliance with the law.

I am of course limited in what I can say today, because I am unable to discuss with you any cases currently under seal, but I want to say this—in the same way that defense industry procurement cases were the big ticket item of the late 1980s, and pharmaceutical cases were the big ticket item of the previous decade, I believe that the next decade is going to see an incredible amount of money recovered by those states that make full use of the tools available to protect their public fisc.

### Conclusion

False claims act cases combine a number of things that ordinary people find very exciting—intentional wrongdoing, secret combinations, and big, big, money. And certainly stopping fraud is a good idea, and it is also a good idea to return money to the treasury, but in my view, false claims act legislation is not primarily about money. In fact, we could even live without the money.

What we could not live without is respect for the law and respect for our government institutions and our American way of life. Once cynicism about government programs gets entrenched; once people begin to view government as nothing more than a source of ill-begotten riches, and once honest taxpayers begin to perceive that their hard-earned tax dollars are mostly wasted, we will have a cancer

that is not easily cured, if it is curable at all, and our way of life will eventually be doomed.