



October 20, 2021

Senate Judiciary Committee
U.S. Senate
Washington, D.C. 20510

Dear Members of the Senate Judiciary Committee:

Ahead of a legislative [hearing](#) on October 21, 2021, National Whistleblower Center would like to offer its strong support for Senator Grassley's Manager's Amendment for Senate Bill 2428, the [False Claims Act Amendments of 2021](#).

The Manger's Amendment is needed because a number of lower courts have interpreted the U.S. Supreme Court's decision in [United Health Services v. United States ex rel. Escobar](#) to reduce the ability of the United States to hold fraudsters accountable. Specifically, some courts have decided that in instances where the government continues payment on a contract the United States somehow waives its right to allege fraud. This interpretation clearly violates the intent and plain meaning of the False Claims Act. It also opens the door to potential collusion in procurement and contracting.

An example of the harm that the "government knowledge" or "government payment" defense can cause was exemplified in bullet proof vest case that the National Whistleblower Center supported. In that case a whistleblower informed the government that a company (Second Chance Body Armor) was selling defective vests. Although the government was made aware of these allegations, the government continued to pay for the vests during the time period the allegations were investigated. *Eventually* all the vests were withdrawn from the market and the government collected all of its damages. But if the "government payment" defense was applicable to that case, the United States never would have recovered its damages, and the dangerous vests may never have been removed from the market. The importance of this case was highlighted in a press release, where former [Attorney General Jeffery Sessions](#) comments on the significance of holding these fraudsters accountable. The proceeds obtained from the fraudsters permitted the United States to buy [18,000 properly working](#) vests for law enforcement. The role of the whistleblower was acknowledged during the [National Whistleblower Appreciation Day](#) celebration held at the U.S. Senate Dirksen Building.

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The amendments also include crucial protections for whistleblowers by clarifying that existing anti-retaliation provisions of the False Claims Act apply *post-employment*. This is an important protection against blacklisting, an unfair labor practice covered under all other whistleblower and employment discrimination laws. The amendment also places a reasonable limit on the government's ability to dismiss whistleblower lawsuits without due process. This is an important check on the government's ability to hide its own misconduct or negligence that may have occurred when approving a fraudulent contract.

These amendments would protect the success of the False Claims Act, which has been a crucial tool for protecting taxpayers and the medical system. The False Claims Act has been particularly effective in reducing Medicare and Medicaid fraud, helping to recover billions for taxpayers while protecting patients from overcharging, overbilling, and dangerous drugs. Further, the False Claims Act was a powerful tool for policing Covid-19 related fraud and should continue to be fortified to ensure that wrongdoers are not able to take advantage of the American people in times of crisis.

On behalf of the National Whistleblower Center, we ask, in the strongest terms that you support Senator Grassley's Manager's Amendment to S. 2428, the False Claims Amendments Act of 2021.

Sincerely,

Siri Nelson
Executive Director
National Whistleblower Center