

TESTIMONY IN SUPPORT OF SB 666

TO: Chairman Smith and Members of the Judicial Proceedings Committee
FROM: Brian J. Markovitz, Shareholder, Joseph, Greenwald & Laake, P.A.
DATE: February 27, 2023

Chairman Smith and members of the Judicial Proceedings Committee, my name is Brian Markovitz, and I am a litigation attorney in private practice in Greenbelt, Maryland. My firm, Joseph, Greenwald & Laake, P.A., represents a broad range of clients, including various businesses, as well as number of employees and non-profits.

As part of our practice and throughout the country, we represent whistleblowers who report fraud committed against a governmental entity. As a lifelong Maryland resident, I have personally represented whistleblowers in this capacity for almost twenty years. In the legal community, these types of cases are known as *qui tams* and are usually filed under a state or federal false claims act law like the one we have in Maryland, the Maryland False Claims Act. When this type of fraud happens, it is not localized. It causes harm to all of us that pay taxes and is devastating to whatever government program is robbed. It also directly harms the recipients of these government programs by reducing financial resources. I come before the Committee today to lend my and my firm's full support for SB 666.

SB 666 updates the law in two important ways. First, it allows clients of attorneys like me to pursue a case when the government is unable to do so. As everyone is aware, the government does not have endless resources, including the Attorney General of Maryland. SB 666 would allow attorneys who represent whistleblowers to move forward with cases and attempt to retrieve state taxpayer dollars taken by fraud. This change to the law would bring Maryland's False Claims Act in line with both its federal counterpart, the federal False Claims Act, and that of multiple states, including our neighbors in Virginia and Delaware.

In my federal practice, my office works hand in hand with Assistant U.S. Attorneys and investigators from the United States Department of Justice to recover fraudulently taken federal monies. Sometimes, Assistant U.S. Attorneys from the U.S. Justice Department inform me that they either (1) do not have the resources to pursue my client's whistleblower case or (2) they have other cases where the money illegally taken was much greater than my client's case so they have to concentrate their limited resources on those financially larger fraud cases.

Under these circumstances, I can personally attest that I have had several conversations with Assistant U.S. Attorneys informing me that they believe my client's case has merit, and they would like my law firm to continue to pursue it even though they must decline to do so. In several of those situations, my law firm has had favorable results and recovered stolen money for

U.S. taxpayers. I have been involved in two cases that were not pursued by the federal government but my law firm recovered over a combined total of \$7M in federal funds.

Unfortunately, I have never had a conversation like this with any Assistant Attorney Generals from Maryland as the Maryland False Claims Act does not allow whistleblower attorneys like me to pursue a case declined by the Maryland Attorney General's Office. If the federal False Claims Act lacked the same enforcement mechanism by private attorneys as Maryland's law currently does, then the money that my firm has recovered, and the hundreds of millions of dollars recovered by other private attorneys, would still be in the hands of wrongdoers and crooks instead of at the U.S. Treasury. SB 666 fixes this problem in Maryland and will allow more illegally-taken money to be returned to the state.

The second update to the Maryland False Claims Act accomplished by SB 666 is setting a minimum fine of \$5,000 per illegal claim. The current Maryland law has no such minimum penalty. Setting a minimum penalty of \$5,000 will help deter people who may have an inclination to rip-off the state government and also provides guidance to judges when making such determinations. Furthermore, it is significantly less than half the current, minimum penalty amounts of the Federal False Claims Act, the Virginia False Claims Act, and the Delaware False Claims Act, which all currently sit at \$12,537 per false claim. In this respect, any suggestion that a minimum penalty of \$5,000 is excessive is overblown and wrong, and the Maryland law should be updated.

SB 666 provides commonsense updates to the Maryland False Claims Act and will benefit all Maryland taxpayers. We, therefore, urge a favorable report for SB 666.