

## HB22-1119 Colorado False Claims Act

Tuesday, March 15 2022

Judiciary | 1:30 p.m.

Testimony: Amend

Thank you, Mr. Chair. And good afternoon, committee members.

My name is Joshua Weiss, and I'm a Shareholder in the litigation and government relations practice groups at Brownstein Hyatt Farber Schreck. I have personally litigated cases arising under the federal False Claims Act over the past decade, including cases in which tens of billions of dollars in damages were alleged. I'm here to testify on behalf of the Colorado Competitive Council, an affiliate of the Denver Metro Chamber of Commerce. The Colorado Competitive Council participates in the legislative process when proposed bills impact the ability of Colorado businesses to operate in our state. We currently take an Amend position with respect to HB-1119.

We support a number of the amendments and proposals discussed today. I am here to discuss two additional amendments to the legislation that the committee should consider.

First, the bill needs to provide a clear path for defendants to use the decision of the government not to intervene to draw adverse inferences against the party asserting claims.

- Statistically and anecdotally at the federal level, the decision to intervene is strongly correlated with the merits of the underlying case.
- The government gets to review false claims act cases before they are made public; and the government has the discretion to choose the most promising cases and pursue those.
- The decision not to intervene should be available as an arrow in the quiver of companies defending false claims act lawsuits given it's a tacit indicator on the overall strength of the claims asserted.
- In order to balance the interests of the parties and the role of the state or political subdivision, the relevant government body should be required to file a statement – even if that statement cannot be viewed beyond the parties and the court – regarding the reasons for not intervening, in order to give defendants something concrete for use in the litigation.

Second, the bill needs to provide better access to documents to defendants accused of retaliating against qui tam whistleblowers.

- The current draft does not provide a process for defendants to obtain their own documents in assessing the basis of claims made against them. This is akin to boxing with one arm tied behind your back.
- Draft amendments might provide an avenue for obtaining these documents after showing a “substantial need,” but such a test is too burdensome in a context where a company is trying to defend itself against serious allegations of retaliation.

This legislation advances important state interests, but it is imperative that the legislature strike an appropriate balance in crafting this legislation to give defendants a fair shot when complaints are filed against them.



Thank you very much for your time this afternoon.