



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007-2601

MICHAEL A. CARDOZO
Corporation Counsel

(212) 788-0800
Fax: (212) 227-5641
mcardozo@law.nyc.gov

March 11, 2009

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington DC 20515

Dear Mr. Chairman:

As you consider S.386, which amends the False Claims Act (FCA) and other statutes, I urge you to protect state and local governments from unintended effects of the bill.

In 2003, the Supreme Court decided that the qui tam provisions of the FCA, which allow lawsuits by private citizens on behalf of the Federal government, do not apply to the States but do apply to local governments. Cook County, Ill. V. U.S. ex rel. Chandler, 538 U.S. 119 (2003). This inequitable result was based solely on unclear language used by Congress. It is now time for Congress to correct the matter.


Local governments and their affiliated entities are often partners with states in federal programs, such as Medicaid, which states administer and distribute through local agencies. The FCA exemption from qui tam lawsuits for states leaves local governments and their affiliates as the only deep pockets for potentially enormous liability. Worse, by making the FCA even more stringent now, S.386 would exacerbate the problem at a time of great fiscal challenges.

Of course, the federal government must be reimbursed for improper or erroneous claims by local public entities. However, there are other statutory and judicial means to address these issues, without bankrupting local government and their affiliates.

Further, S.386 expands 18 U.S.C. §1031, a statute that formerly concerned only improper acts by federal contractors and subcontractors, in a manner that could inadvertently criminalize funding disputes among public entities while creating new liabilities for state and local governments. The amendment should include an exception for intergovernmental funding matters.

In conclusion, I urge you to amend S.386 to treat local governments on par with the states under the FCA, and to ensure that 18 U.S.C. §1031 does not inadvertently alter the funding relationships between the federal government and state and local governments.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Cardozo". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael A. Cardozo

MAC/ay