

Testimony in support of HB 238
Offered by John Van Doorn
On behalf of the Ohio Association for Justice
Before the House Civil Justice Committee
May 28, 2019

Good afternoon, Chairman Hambley, Vice Chair Patton, Ranking Member Brown and members,

My name is John Van Doorn. I am the Government Affairs Director for the Ohio Association for Justice (or OAJ), a statewide association of attorneys whose mission is to protect our 7th Amendment rights so that all of us can seek justice through our civil justice system.

I am pleased for this opportunity to say a few words in support of HB 238.

The over-riding public good of encouraging and protecting whistleblowers is self-evident, and as you would expect, whistleblower protection laws have been around for a long time. The first whistleblower and false claims act dates back to the Civil War when suppliers were spiking Union gunpowder with sawdust.

Ohio's whistleblower law, enacted almost 30 years ago, is in need of repair. A little-noticed 2013 court ruling found that government employees who report non-criminal misconduct are NOT protected under our existing whistleblower laws that were intended to prevent their bosses from punishing them for reporting violations. The 10th District Court of Appeals here in Franklin County ruled that a state employee who was reprimanded by his employer for reporting to the inspector general a failure to follow state law was not protected by our whistleblower law because the violation being reported was not a crime. The protections of the whistleblower law, the court concluded, extend only to workers who submit complaints about possible criminal conduct, and not to those who report non-criminal concerns. This ruling sent a message to state employees that they can be retaliated against when they speak out against unsafe equipment or contractor violations or any number of non-criminal violations of law or policy. The ruling had a chilling effect on potential whistleblowers for good reason; employees cannot be expected to know the difference between a violation of the law and a criminal act.

HB 238 fixes that problem by expanding the types of activities that an employee may report and be protected under the whistleblower act. The expansion means an employee may report without fear of violation: (see lines 46-52) acts of fraud,

misappropriation of funds, acts that pose a risk to the public or other employees, acts of waste or gross mismanagement, which may not be constitute criminal activity.

HB 238 makes many more important and worthy improvements to Ohio's whistleblower protection act. Other witnesses who will speak in support of HB 238 are more qualified than I to explain why these amendments to Ohio's whistleblower protection act are necessary. Rather, I'd like to present, very briefly, a related legislative topic – enacting an Ohio false claims act with qui tam -- and offer to work with anyone who is interested in advancing good government to pass such legislation.

A state false claims act empowers citizens to uncover fraud and recover money on behalf of taxpayers.

There is a federal False Claims Act that was enacted during the Civil War to combat widespread fraud in the purchase of military supplies. An essential element of that act is the "qui tam" provision, which allows private citizens to bring action on the government's behalf against those defrauding the government. By rewarding employees for the risk they take, qui tam serves as powerful incentive to encourage employees to report fraud and abuse of taxpayer dollars.

In addition to the federal Act, more than 29 states at last count have enacted state false claims acts. Ohio is not one of them. False claim laws have detractors; some allege that false claims acts would be bad for Ohio's business climate. That hasn't been the case for Texas or North Carolina or Indiana, or the many other states that have enacted a false claims act with qui tam. Conservatives elsewhere have advocated for false claims acts – people such as former Governor of California Ronald Reagan signed that state's false claims act. So did George W. Bush when he was Governor of Texas, and Mitch Daniels when he was Governor of Indiana. In Congress, a leading champion of the federal Act is Chuck Grassley of Iowa, a leading conservative in the United States Senate. Here in Ohio, our former Attorney General and now Governor Mike DeWine urged enactment of an Ohio false claims act in 2011.

If anyone on the committee would like to learn more about the false claims act and qui tam, please let me know.

That concludes my remarks, Mr. Chairman. I thank you for allowing me this opportunity to lend OAJ's support for HB 238.