

Moreover, if the public disclosure provisions continue to be misinterpreted, relators and their counsel will be deterred from filing truly meritorious claims.

Further, not all of the cases in which the public disclosure bar is raised are those in which the government has declined to intervene. Defendants make public disclosure motions after the government has joined a case, and they do so for only one reason: to deprive the government of the resources that relators and their counsel bring to the case. Yet in those cases, too, the Department is typically silent, refusing to take a position on the public disclosure issue. That stance, too, may well undermine Congress' expressed intent.

One of the principal goals of the 1986 Amendments was to ameliorate the "lack of resources on the part of Federal enforcement agencies." S. Rep. 99-345 at 7. That was one of the reasons we strengthened the *qui tam* provisions of the law. Thus, we expected some meritorious cases to proceed without the Government's intervention, and we fully expected that the Government and relators would work together in many cases to achieve a just result. By dismissing relators based on spurious interpretations of the public disclosure bar, the courts are depriving the government of these additional resources. And those resources have been considerable. In numerous cases, relators and their counsel have contributed thousands of hours of their time and talent and spend hundreds of thousands of their own dollars investigating and pursuing their allegations. The Department must act to protect those resources, even in cases where it has not intervened. When a question of statutory interpretation arises, particularly with respect to the public disclosure bar, the Department must make its views known to the court. As we stated emphatically at the time the Amendments were adopted, Congress enacted the Amendments based on the belief that "only a coordinated effort of both the Government and the citizenry will decrease this wave of defrauding public funds." We continue to hold that view.

Sincerely,

HOWARD L. BERMAN,
Member of Congress.
CHARLES E. GRASSLEY,
U.S. Senator.

FOOTNOTES

¹The same is true for civil complaints filed in state court or discovery obtained as a result of state court proceedings, which several Circuits have held constitute public disclosures within the meaning of §3720(3)(4)(A). See e.g. U.S. ex rel. *Kreindler & Kreindler v. United Technologies Corp.*, 985 F.2d 1148, 1158 (2d Cir.), cert. denied, 113 S.Ct. 2962 (1993) (holding that discovery materials contained in unsealed court records was "publicly disclosed"); U.S. ex rel. *Stinson, Lyons, Gerlin & Bustamante v. Prudential Ins. Co.*, 944 F.2d 1149, 1155-56 (3d Cir. 1991) (holding that the disclosure of discovery material—even if not filed in court—constitutes a public disclosure). We believe those cases are wrongly decided. Disclosure of fraud in a state court proceeding, even a state criminal proceeding, is unlikely to get to the attention of the federal government, unless it is publicized in the news media, a contingency the public disclosure bar addresses.

²Some courts do get it right. In U.S. ex rel. *Fallon v. Accudyne Corp.*, 921 F.Supp. 611 (W.D. Wisc. 1995), the court held that an audit report produced by a state agency did not constitute a public disclosure. "Under these circumstances there is no reason to believe that the United States would become aware of such information." *Id.*, at 625.

³Senator Grassley made a similar comment during the debate on the 1986 Amendments: "The publication of general, non-specific information does not necessarily lead to the discovery of specific, individual fraud which is the target of the *qui tam* action." False Claims Act Implementation: Hearing Before the Subcomm. On Admin. Law and Gov. Relations of the House Comm. On the Judiciary, 101st cong. 6 (1990) Statement of Senator Grassley.

PRESCRIPTION DRUGS

HON. BARBARA LEE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 14, 1999

Ms. Lee. Mr. Speaker, I rise to today in strong support of the President's plan to modernize and strengthen Medicare for the 21st century. This proposal will create an affordable prescription drug benefit program that will expand the accessibility and autonomy of all Medicare patients.

Currently, Medicare offers a very limited prescription drug benefit plan for the 39 million aged and disabled persons obtaining its services. Many of these beneficiaries have to supplement their Medicare health insurance program with a private or public health insurance in order to cover the astronomical costs not met by Medicare. Unfortunately, most of these plans offer very little drug coverage if any at all. Therefore, Medicare patients across the U.S. are forced to pay over half of their total drug expenses out-of-pocket. Due to these circumstances, patients do not get the adequate medication needed to successfully treat their conditions.

In 1995, we find that persons with supplementary prescription drug coverage used 20.3 prescriptions per year compared to 15.3 for those individuals lacking supplementary coverage. The patients without supplementary coverage are forced to compromise their health because they cannot afford to pay for the additional drugs they need. The quality and life of these individuals continues to deteriorate while we continue to limit their access to basic health necessities. The President's measure will tackle this problem by allowing our patients to purchase prescription drugs at a lower price.

Why should our patients have to continually compromise their health by being forced to decide which prescription drugs to buy and which drugs not to take, simply because of budgetary caps that limit their access to treat the health problems they struggle with? These patients cannot afford to pay these burdensome costs. We must work together to expand Medicare by making it more competitive, efficient, and accessible to the demanding needs of our patients. The federal government is expecting a surplus of \$2.9 trillion over the next 10 years. By investing directly in Medicare, we choose to invest in the lives, health, and future of our patients.

The House Committee on Government Reform conducted several studies identifying the price differential for commonly used drugs by senior citizens on Medicare and those with insurance plans. These surveys found that drug manufacturers engage in widespread price discrimination, forcing senior citizens and other individual purchasers to pay substantially more for prescription drugs than favored customers, such as large HMOs, insurance companies, and the federal government.

According to these reports, older Americans pay exorbitant prices for commonly used drugs for high blood pressure, ulcers, heart problems, and other serious conditions. The report reveals that the price differential between favored customers and senior citizens for the cholesterol drug Zocor is 213%; while favored customers—corporate, governmental, and institutional customers—pay \$34.80 for

the drug, senior citizens in the 9th Congressional District may pay an average of \$109.00 for the same medication. The study reports similar findings for four other drugs investigated in the study: Norvasc (high blood pressure): \$59.71 for favored customers and \$129.19 for seniors; Prilosec (ulcers): \$59.10 for favored customers and \$127.30 for seniors; Procardia XL (heart problems): \$68.35 for favored customers and \$142.21 for seniors; and Zoloft (depression): \$115.70 for favored customers and \$235.09 for seniors. If Medicare is not paying for these drugs, then the patient is left to pay out-of-pocket. Numerous patients are forced to gamble with their health when they cannot afford to pay for the drugs needed to treat their conditions. Every day, these patients have to live with the fear of having to encounter major medical problems because they were denied access to prescription drugs they could not afford to pay out of their pocket. Often times, senior citizens must choose between buying food or medicine. This is wrong.

Many Medicare patients have significant health care needs. They are forced to survive on very limited resources. They are entitled to medical treatments at affordable prices. The President's plan will benefit 31 million patients each year. This plan will address many of the problems relating to prescription drugs and work to ensure that patients have adequate access to their basic health needs. Let's stop gambling with the lives of Medicare patients and support this plan to strengthen and modernize Medicare for the 21st century.

TRIBUTE TO VIKKI BUCKLEY

HON. BOB SCHAFFER

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, July 14, 1999

Mr. SCHAFFER. Mr. Speaker, I rise today to recognize the life and contributions of Vikki Buckley, Colorado's Secretary of State, who passed away this morning after suffering an apparent heart attack on Tuesday. Quoting a friend of hers, "Vikki's no longer in the hands of doctors. She's now in the arms of God."

Vikki, who proudly proclaimed herself to not be a hyphenated American, but a proud American. She held the distinction of being the first Black Secretary of State and the first Black Republican woman elected to a statewide constitutional office. Winning her first election by 57 percent to 36 percent in 1994, she was re-elected last November. Running for office for the first time, Vikki was selected for the Republican ballot after defeating several opponents at the Colorado Republican State Assembly in 1994. She distinguished herself from her opponents when she stood up and delivered one of the best speeches I've had the pleasure of hearing.

An outspoken conservative, Vikki served as the state's chief election official and traveled around the state and country continuing to speak out on varying issues of importance to her, enduring the wrath of liberals. Most recently, she gave the opening remarks at the National Rifle Association's annual meeting in Denver, CO. Her speech has been acknowledged nationwide and most insightful concerning the heart of humanity and the preservation of the entire Constitution of the United States, including the Second Amendment.