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U.S. Senate
Washington, D.C. 20510

Dear Senator,

It is our understanding Sen. Chuck Grassley (R-Iowa) will introduce Admt. 2435, entitled False Claims Procedures, to H.R. 3684, the bipartisan infrastructure bill. The amendment would amend the False Claims Act (FCA) and is supported by Sens. Patrick Leahy (D-Vt.), Kyrsten Sinema (D-Ariz.), and Rob Portman (R-Ohio.) It combines provisions of two bills introduced by Sen. Grassley on July 22, 2021: S. 2428, the False Claims Amendments Act of 2021 and S. 2429, the Administrative False Claims Act, both of which have four cosponsors. On behalf of the Council for Citizens Against Government Waste (CCAGW), I ask that you oppose this amendment.

Since the FCA was strengthened in 1986, more than \$64 billion has been recovered by the Department of Justice, including more than \$2 billion in every year since 2009. Any effort to amend the law must be approached with deliberation and care, particularly in light of the unanimous Supreme Court decision in the 2016 *Escobar* case, in which Justice Thomas wrote that the materiality element is “demanding” and “rigorous” and the FCA “is not ‘an all-purpose antifraud statute’ or a vehicle for punishing garden-variety breaches of contract or regulatory violations.” The Grassley amendment would undermine several elements of the case by lowering the burden of proof for the government and the evidentiary standards for materiality to the point where a defendant could be considered guilty until proven innocent. The legislation would also apply retroactively. It is unlikely that the implications of the Grassley amendment are fully appreciated or understood by the 95 senators who have not cosponsored S. 2428 or S. 2429, since the Senate Judiciary Committee has not held any hearings on either bill and there is no companion legislation in the House.

While there are many provisions in H.R. 3684 that are not related to traditional infrastructure or even a broader definition of infrastructure, amending the FCA by combining the provisions of two bills that were introduced two weeks ago is clearly unrelated to its underlying purpose. The only process by which the provisions of the Grassley amendment should be considered is if the Judiciary Committee sees fit to hold hearings, mark up the bills, and report them to the Senate.

Again, I ask you to oppose Amdt. 2435. All votes concerning H.R. 3684 will be considered for CCAGW’s *2021 Congressional Ratings*.

Sincerely,