

Written Testimony to the New York City Council

October 8, 2026

Concerning File No. T2026-2605: Civilian enforcement of artificial intelligence violations.

Written Testimony of

- (a) Jackie DeMar, President and CEO of *The Anti-Fraud Coalition*
- (b) Randall Fox, Partner, Kirby McInerney LLP
- (c) Neil Getnick, Managing Partner, Getnick Law LLP
- (d) Colette Matzzie, Partner, Phillips & Cohen LLP
- (e) Claire Sylvia, Partner, Phillips & Cohen LLP

Interest of the Testifiers:

The Anti-Fraud Coalition (“TAF Coalition”), is a non-profit public interest organization dedicated to combating fraud against the government and protecting public resources through public-private partnerships. TAF Coalition educates the public and the legal community about the *qui tam* provisions of the False Claims Act (“FCA”), 31 U.S.C. §§ 3729-3733, and frequently provides testimony to legislative bodies about whistleblower laws. TAF Coalition is supported by *qui tam* relators and their counsel, by membership dues and fees, and by private donations. TAF Coalition is the 501(c)(3) arm of Taxpayers Against Fraud, which was founded in 1986.

Ms. DeMar is the President and CEO of TAF Coalition, and she is submitting this testimony on behalf of TAF Coalition.

Mr. Fox, Mr. Getnick, Ms. Matzzie, and Ms. Sylvia are all members of TAF Coalition and are attorneys with deep experience representing whistleblowers in the various whistleblower award programs, including the federal and state False Claims Acts, and agency programs such as the whistleblower programs of the IRS, SEC, CFTC, DOJ, DOT, and FinCEN. Copies of their biographies are attached at Exhibit 1. All of them have spoken and written extensively about whistleblower programs and ways to maximize the public good through the use of whistleblower information. Mr. Fox and Mr. Getnick are submitting this testimony on behalf of themselves and their firms; Ms. Matzzie and Ms. Sylvia are submitting this testimony on behalf of themselves.

Comments on the Proposed New York City AI Whistleblower Program

We are pleased to see that the New York City Council wishes to make effective use of whistleblowers to report on information relating to violations of laws and regulations governing artificial intelligence. Programs that incentivize whistleblowers who have concrete information about legal violations have been an enormously successful part of the federal and state governments’ enforcement regimes, and have returned billions of taxpayer dollars to the government and to investors. The reason for this success is that when whistleblowers are protected and incentivized to come forward, they often do so with focused information that is unlikely to be discovered by the government on its own.

T2026-2605 contemplates a whistleblower award program focused on violations set out in the sister legislation at T2026-2602. That proposed sister legislation provides for artificial intelligence models to be validated by third-party validators following rules set out in the legislation or rules to be promulgated by the Director of the Office of Cyber Command, and, further, requires that artificial intelligence models include shut down capabilities.

We respectfully submit that the proposed legislation be modified to maximize the use of whistleblower information to protect the public from violations of these and other regulations governing artificial intelligence. We set forth below a description of the elements of a successful whistleblower law, and how a law can best set enforcers on the path to vigorous enforcement. We also make some specific suggestions for revisions that the Council might consider in formulating its AI whistleblower reward program.

A. Elements of a Successful Whistleblower Program

A successful whistleblower program should encourage persons with unique and useful information about violations of law to report on those violations to the government authorities who are in a position to address them.

Based on our experience, the following are some of the key hallmarks of a successful program:

1. Protection of whistleblowers against retaliation. Whistleblowers commonly risk their careers and sometimes their safety by coming forward with information of violations by powerful, well-resourced corporations and individuals. Retaliation can take many forms, including but not limited to adverse actions in the terms and conditions of employment, interfering with future job prospects or “blacklisting”, and lawsuits against the whistleblower for conduct related to the reporting, such as providing documents to the government in violation of an NDA.

To encourage whistleblowing, a program should include a right of action for a whistleblower who faces retaliation for reporting to seek a recovery against the perpetrator of the retaliation and protect them from retaliatory lawsuits.

2. A realistic prospect of a sufficient financial award if a claim is successful. A key aspect of successful whistleblower programs is the recognition that in addition to providing protection from retaliation, providing a financial incentive for individuals to step forward is highly effective and often critical to the decision to step forward. Whistleblowers commonly face the economic calculus of whether the risks of reporting on violations, such as losing their job and possibly their career, are worth it. Programs that have offered awards that are discretionary or that have set caps on awards have had limited success because they do not provide the level of assurance that many whistleblowers need to resolve the balance of risks in favor of reporting.

3. Clarity about what constitutes a violation. For a whistleblower to weigh the risks of coming forward and the prospect of receiving an award, or being protected from retaliation, there must be a clear set of rules about what constitutes a violation in the first place. Lack of

clarity diminishes the prospect of an award or protection, while leaving the risks that a whistleblower might face if they report.

4. Clarity about who can be a whistleblower. The program should be established with a clear statement about who can qualify as a whistleblower entitled to a reward, and who is excluded. The False Claims Act, for example, reduces the potential awards for one who planned or initiated the violation, and excludes from receiving an award a person who has been convicted of the violation at issue. It also prohibits actions based on certain types of publicly disclosed information. The FCA also limits the award to the first whistleblower to report, whereas the SEC and CFTC programs can reward multiple whistleblowers regarding a violation, based on each whistleblower's contribution.

5. A robust promise of confidentiality. The prospect of being disclosed as a whistleblower is often a deal-breaker for a prospective whistleblower. Offering some form of confidentiality to whistleblowers, with clear parameters about when the whistleblower's identity might be disclosed to the target or the general public, will be an important factor in encouraging reporting. Similarly, whistleblower submissions should be excluded from disclosure under freedom of information laws.

6. A commitment that claims will be addressed on the merits. Whistleblowers are more likely to come forward with useful information if they are comfortable that their allegations will be addressed. The False Claims Act, for example, requires the government to investigate claims and provides a safety mechanism by authorizing whistleblowers to proceed with claims even when the government has decided not to take action.

7. Encouraging the use of counsel. Whistleblower submissions prepared with the assistance of counsel are generally of higher quality and more likely to result in an award. That is because contingency-fee counsel have every incentive to pursue only cases that they believe are likely to result in an award and will vet claims before they are submitted. The SEC, CFTC, and FinCEN whistleblower programs permit a whistleblower to file anonymously if they are represented by counsel. Under the False Claims Act, counsel is required and the statute provides for attorney fees to be paid by the defendant if the whistleblower's case is successful. Those fees are treated as tax deductible expenses so the whistleblower is not penalized for retaining counsel.

B. Putting Enforcers on the Path to Success

A whistleblower program must be structured with an eye toward how enforcers may use it effectively. It should clearly define the roles of governmental agencies and of the whistleblowers.

Where the whistleblower can proceed with claims without the government, as is contemplated in T2026-2605, the law should spell out the role of the government in such cases. Whistleblowers proceeding with cases should have a way to access relevant government information and investigatory materials. The law should provide that the whistleblower cannot bind the government.

The program should focus on the most critical and impactful matters. One way to do that is to set dollar thresholds so that claims are focused only on large violators or violations that have caused the most significant harm.

Government enforcers should receive appropriate funding to investigate and pursue claims, recognizing that they will be confronting some of the best-resourced companies in the nation.

The program should provide government enforcers with the tools to gain the maximum benefit from whistleblowers and their counsel. It should provide for appropriate information sharing and work product or attorney-client protection over substantive communications about the claims. It should provide for whistleblowers or their counsel to be deputized to assist the government in its investigations or lawsuits as a way to expand the government's resources.

Government enforcers should clearly communicate with whistleblowers or their counsel about why claims are being turned down by the government so that the whistleblowers can make informed decisions about whether to proceed with a claim on behalf of the City.

C. Suggestions for the Legislation

With these principles in mind, we respectfully make the following suggestions for the City's AI whistleblower program:

1. Benefit from the models presented by the False Claims Act and the agency whistleblower programs. These programs, and particularly the False Claims Act, have a long history of court decisions that have interpreted relevant terms. A new program can incorporate that history without starting anew. The City also has an existing whistleblower law that creates a structure for reporting fraud claims and the Council could consider building on that framework and experience.

2. Consider a hybrid of the False Claims Act and the agency whistleblower programs. As a first step in a claim, a whistleblower can maintain the maximum degree of anonymity by submitting a claim to the City, similar to the filing of claims in existing agency whistleblower programs. As a second step, if the government is not going to pursue a claim itself, the whistleblower can then pursue the claim in court, as is possible under the False Claims Act..

3. Add appropriate limits on who can be a whistleblower. Not all reports of information warrant an award. As with the False Claims Act, rewards should be reduced if the whistleblower planned or initiated the violation, and should not be available to a person who is convicted of a crime related to the violation. If claims are based on publicly disclosed information already acted upon by the government, they should be permitted to proceed if the government permits it, or if the relator brings valuable information or expert analysis that has not been publicly disclosed..

4. Allow whistleblowers to reasonably predict the likelihood and amounts of awards. Clarity in defining the violations and how and when awards will be granted can help

whistleblowers determine whether they wish to assume the risks of blowing the whistle. At present, it is unclear how the \$25,000 penalties in T2026-2602 would be calculated. For example, if the instance of marketing an unvalidated AI platform means that an entire marketing campaign is a single violation resulting in a single penalty of \$25,000, that is unlikely to serve as a significant incentive for whistleblowers to risk their livelihood.

5. Add anti-retaliation provisions. While the companion legislation at T2026-2604 includes whistleblower protections specifically with respect to city contractors and subcontractors, a broader anti-retaliation provision is necessary to apply to the full extent of the City's AI whistleblower program.

6. Protect whistleblower complaints from public disclosure. Because of the potential sensitive nature of information about AI safety violations and the need to protect whistleblowers, there should be mechanism for submitting complaints in confidence, at least initially. Whistleblower complaints should be made exempt from disclosure under freedom of information laws.

7. Clarify the continuing relationship between the City and the whistleblower when the City declines the claim. If the whistleblower takes the claim forward, she should be able to gain access to appropriate, relevant information held by the City and access to potential witnesses who work for the City. The City should have the ability to contribute to the litigation of the case, including by joining the case at a later time. It should be made clear that the whistleblower cannot bind the City.

8. Encourage, and don't discourage, the use of counsel to promote high quality submissions. Provide for a successful whistleblower to recover their attorneys' fees and costs from the defendant, and make attorneys' fees and costs tax deductible to the whistleblower.

D. Conclusion

We appreciate this opportunity to provide comments to the City Council, and we would be pleased to be of further assistance in the process of developing the City's AI whistleblower program.