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**Congressman Charles H. Van Wyck:
Anti-Fraud Warrior of the 37th Congress[©]**

By:

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“Worse than traitors in arms are the men, pretending loyalty to the flag, who feast and fatten on the misfortunes of the nation, while patriot blood is crimsoning the plains of the south, and the bodies of their countrymen are mouldering in dust.”¹

Congressman Charles H. Van Wyck (R – New York), 1863

On March 2, 2013, the federal False Claims Act celebrated its 150th birthday. As qui tam counsel and other False Claims Act practitioners pause this year to pay tribute to



the law’s resounding success, we may want to consider the contributions of Charles H. Van Wyck, a passionate, 19th century abolitionist and anti-fraud warrior who authored the words set forth above. As a member of the U.S. House of Representatives, Van Wyck spearheaded the investigative proceedings that exposed rampant fraud in government contracting and thereby set the stage for enactment of the False Claims Act, a law that to this day remains one of the most effective laws

on the books. Van Wyck’s success in shining the spotlight on the cronyism and corruption found in government procurement led his congressional colleagues within months to yank investigative powers from his hands and to take extreme measures to discredit him. We owe a debt to Van Wyck for the sacrifices he made for the national good.

Van Wyck’s war against fraud commenced at the start of the Civil War, when the New York Congressman persuaded the U.S. House of Representatives to investigate the legality of government procurement activities and to appoint him to lead those efforts.² At the time, Union recruits, 500,000 strong, needed food, clothing, weapons, and shelter. While the army had acquired these basics through a competitive bidding process before the war,³ demand now out-

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stripped supply, and the army began purchasing on an emergency basis. As a result, the Union Army was vulnerable to unscrupulous government procurement agents and dishonest military suppliers. Indeed, at one point, General Fremont bought guns for \$22 apiece only to discover that the guns were the very ones that the government recently had condemned as obsolete and sold at auction for \$3 each. When fired, the guns blew off the soldiers' own thumbs.⁴ Moreover, in violation of military specifications, uniforms and blankets sold to the Army were cobbled together from "shoddy," a trade term for scraps and old cloth that were ground up, glued together, and pounded into shape (and now a synonym for "cheap and poor quality").⁵ The fraud and abuse were so blatant and so damaging to the war effort that, at Van Wyck's urging, Congress moved to stop it: in July of 1861, the House agreed to a resolution submitted by Van Wyck to establish a Select Committee on Government Contracts to investigate,⁶ and then appointed Van Wyck as the Committee's chair.⁷

With an appetite for hard work and a fierce devotion to principle, Van Wyck seemed the right man for the job. Born in Poughkeepsie, N.Y., and educated at Rutgers, he entered state politics in 1850 as an anti-slavery Democrat.⁸ But when Democrats engineered the possible expansion of slavery with the Kansas-Nebraska Act, which allowed those territories to determine whether to allow slavery by popular vote,⁹ Van Wyck defected to the newly-formed Republican Party with its stronger anti-slavery platform.

The Congressmen who appointed Van Wyck as chair of the first Select Committee on Government Contracts had fair warning that Van Wyck had a way with words that raised the profile of his passions and that he would be dogged in the pursuit of his ideals. His speeches against slavery were so powerful that they led extremists among his opposition to attempt to assassinate him; his commitment while under attack was so

unwavering that the pro-slavery forces could not defeat him.

Thus, in March of 1860, Van Wyck railed against slavery on the House floor in remarks aimed at his southern colleagues: "One other gentlemen spoke of Massachusetts burning witches in the ancient times. Does he not know that your own people burn slaves at the stake, and it seems to awaken no horror in your minds?"¹⁰ This charge drew the ire of southern congressmen: one called him "a liar and a scoundrel" and challenged him to a duel.¹¹ A year later, three men jumped him as he walked past the still unfinished capitol building on Washington's unlit dirt streets.¹² One man stabbed at Van Wyck's chest, but the knife was deflected: the congressman had an unusually thick notebook and a folded copy of the Congressional Globe in his coat pocket. Van Wyck had brought a gun to a knife fight; pulling his revolver, he shot one attacker. The men fled. Van Wyck then calmly continued on to his room at the National Hotel—the same hotel where John Wilkes Booth would stay as he plotted another, more successful assassination attempt.

Van Wyck's committee investigated contractor fraud with admirable zeal. Published in December 1861, the first part of its first report ran to 1,100 pages.¹³

The report presented the transcribed testimony of hundreds of witnesses that the Committee's members had



examined, and it catalogued a litany of frauds: moldy blankets and dying horses purchased from unscrupulous vendors¹⁴; exorbitant rates charged to move men to the front lines by rail¹⁵; ships chartered at \$2,000 per day that never set sail.¹⁶ As Van Wyck explained to his congressional colleagues on the House floor, "[n]early every man who deals with the Government

seems to feel or desire that it would not long survive, and each had a common right to plunder it while it lived.”¹⁷

Like many fraud investigators who came before and after him, however, Van Wyck simply did too good a job, and, as a result, alienated many of those to whom he was beholden for his powerful position. Tensions in the Select Committee first emerged in early 1862 when Van Wyck sought to expand its investigations to examine the inner workings of the New York Custom House—notwithstanding the fact that this investigation would necessarily implicate powerful, well-established interests. At the time, the United States relied heavily on tariffs and duties to fill its coffers,¹⁸ and New York was by far the nation’s biggest and busiest port. This made its Custom House critical to the government’s finances. But the city was also firmly in the grip of machine politics; and the Custom House, with its millions of dollars in annual revenues, was the system’s crown jewel.¹⁹

Government jobs formed the backbone of the New York City machine’s spoils system.²⁰ Once voted into power, party elites rewarded their friends and allies by appointing them to choice government positions.²¹ In return, the elites exacted a percentage of each employee’s salary—a mandatory assessment—which went back into the party’s war chest.²² Employees recouped the



money lost to assessments by taking bribes and stealing public funds.²³ With hundreds of available positions for inspectors, assessors, and collectors and plentiful opportunities for graft, the New York Custom House offered the party politician plentiful opportunities to consolidate power.

The beneficiaries of the New York City political machine predictably resisted Van Wyck’s plan to expose the Custom House’s inner workings. Roscoe Conkling, a machine Congressman from New York, bitterly opposed the Committee’s work, charging that “the nation . . . had suffered in character . . . and that much harm had come, not from detecting or exposing fraud or extravagance, but from . . . charging and publishing to the world what had never happened at all.”²⁴ Van Wyck’s fellow Committee member Elihu Washburne, though not a machine politician himself, also came to oppose the Custom House investigation—possibly because a Custom House official falsely told him that Lincoln did not support it.²⁵ Washburne had replaced Van Wyck as chairman of the Committee in December of 1861²⁶; and when Congress approved Van Wyck’s resolution to investigate the Custom House on February 26, 1862,²⁷ Washburne quietly asked Van Wyck to refrain. Backed by the committee’s other members, Van Wyck refused; he then went to New York and conducted hearings regarding the Custom House’s activities.²⁸ In the space of a few weeks, he used committee resources to examine and document the testimony of 50 witnesses.²⁹

Within a month, though, the rest of the Committee had been persuaded to turn on him, and on March 24, 1862, Washburne with the support of the rest of the committee ordered Van Wyck to stop investigating the Custom House.³⁰ Van Wyck now had no choice but to comply.

His investigative powers effectively removed, Van Wyck focused his energies on ending slavery and keeping the Union intact. In October 1861, he had raised a regiment of troops from New York,³¹ and he now spent long stretches of time away from the Congress commanding his regiment.³² His long absences provided his opponents with plenty of time, unfortunately, to work at undermining his investiga-

tion of the Custom House. Starting in September 1862, other members of the Committee met with the Custom House officials that Van Wyck had already interviewed to take additional testimony—examinations that Van Wyck later maintained were designed solely to “exculpate and clear from the evidence taken in March last.”³³ That December, under Washburne’s leadership, the committee questioned Van Wyck’s propriety in examining Custom House officials the previous February and March in the absence of a committee quorum.³⁴ Finally, while preparing the Committee’s final report in early 1863, the Committee’s other members prevented Van Wyck from accessing the testimony he himself had taken the previous year.³⁵ The feud culminated on the last day of the 37th Congress, March 3, 1863, when Van Wyck refused to join the Committee’s majority report and instead published his own scathing report from the minority.

The majority report largely whitewashed the Custom House irregularities that Van Wyck’s initial inquiries had unearthed. It admitted that an “occasional lack of vigilance” might have led to “some abuses” at the Custom House, but it concluded that there was “no proof to show that the abuses were more numerous now than they have been heretofore.”³⁶

In contrast, Van Wyck’s rabble-rousing, withering minority report pulled no punches. He insinuated that the Committee members were beholden to the Custom House’s powerful revenue officers, who had gotten the investigation called off with a “waive of the magic wand.”³⁷ He set out in detail how the other Committee members had raised procedural barriers to hinder his investigation.³⁸ And he concluded the report with the famous quote at the start of this article—stirring words that are often misattributed to Lincoln:

Worse than traitors in arms are the men,
pretending loyalty to the flag, who feast

and fatten on the misfortunes of the nation, while patriot blood is crimsoning the plains of the south, and the bodies of their countrymen are mouldering in dust.³⁹

The Committee’s other members did not want to see Van Wyck’s report published; after Van Wyck filed it with the House clerk, they refused to give it their approval, calling it a personal diatribe unrelated to the Committee’s business.⁴⁰ They also held off on filing their own report until the Congress’s final hours, hoping to prevent the clerk from having time to print Van Wyck’s minority report.⁴¹ But at the eleventh hour Van Wyck’s report disappeared from the clerk’s office, and copies were somehow printed and ready to distribute when the majority report went out.

Van Wyck’s success in educating the American public about the corruption within the Custom House, and the inclination of their elected representatives to whitewash it, enraged Washburne. On the floor of the House, on March 3, 1863, Washburne rose and accused Van Wyck of indolence and malfeasance, charging that “at the instigation of corrupt contractors” Van Wyck had interfered with the Committee’s early investigations, and that Van Wyck had “never spent two hours in committee.”⁴² Washburne even claimed that Van Wyck only pursued the Custom House investigation because Van Wyck himself had “undertaken” to “get men into the custom-house” and been rebuffed.⁴³ Washburne insisted that a special committee be appointed to investigate the disappearance of Van Wyck’s minority report from the clerk’s office.⁴⁴ However, Congress adjourned shortly thereafter and no investigation was ever taken up.



President Lincoln eventually came to Van Wyck's defense—privately, at least. In a February 12, 1864 letter to his Treasury Secretary, Salmon Chase, the president admonished a special agent of the Treasury in New York for suggesting to Committee chairman Washburne that Lincoln had not supported the Committee's investigation of the Custom House.⁴⁵ In fact, from his early days in politics Lincoln had made known his contempt for government contracting fraud. As a state legislator in Illinois, he had condemned the Postmaster General for directing mail contracts to his friends and paying them "double, triple, and often quadruple what honest and fair bidders had proposed to take at it."⁴⁶ And Lincoln knew about the Committee's work⁴⁷ and agreed with its aims: "as to contracts and jobs," he wrote, "I understand that, by law, they are awarded to the best bidders: and if the government agents . . . do differently, it would be good ground to prosecute them upon."⁴⁸

In the early months of 1863, vindicating Van Wyck's steadfast and courageous efforts, Congress was finally forced to take legislative action to redress the rampant fraud in government contracts. On February 6, 1863, Senator Fessenden introduced the bill that became the False Claims Act.⁴⁹ Designed to "prevent and punish frauds upon the Government of the United States," the bill outlawed the types of acts that the Committee's reports had brought to light: the presentation and procurement of false claims and statements; contracting by members of the armed forces for their own benefit; and the wrongful disposition of military supplies, to name a few.⁵⁰ The bill was reported to the House on February 13th, 1863—the day after Lincoln's 54th birthday.⁵¹

Some parts of the bill were contentious; in the Senate, members wrestled with the issue of scienter.⁵² From the outset, though, legislators agreed on the need for a *qui tam* provision.⁵³ As one of the bill's principal authors, Senator

Pomeroy, put it: "holding out a temptation . . . is the safest and most expeditious way I have ever discovered of bringing rogues to justice."⁵⁴ In the end, the final bill granted the whistleblower fifty percent of the recovery, which was set at twice the amount of damages plus a \$2,000 fine.⁵⁵ The government's attorneys were required to be "diligent in inquiring into any violation of the provisions of this Act by persons liable to such suit" and to "cause him or her to be proceeded against in due form of law for the recovery of such forfeiture and damages."⁵⁶ Congress passed the Act on March 2, 1863, and President Lincoln signed it into law the same day.⁵⁷

That summer, Union victories at Gettysburg and Vicksburg turned the tide of the war. When the war ended, Van Wyck returned to New York and to politics: he was elected to Congress twice more in 1868 and 1870.⁵⁸ He did not seek reelection in 1872, and he moved to Nebraska in 1874—possibly because of opposition from his old enemy, Roscoe Conkling, now a powerful senator with President Grant's ear.⁵⁹ In Nebraska, he served in the state senate before winning a seat in the United States Senate in 1881.⁶⁰ While nominally still a Republican, he declared that he represented Nebraska "without reference to party," and when he lost his seat in 1887 he joined the progressive People's party.⁶¹ He never again held office. In 1895, at age 71, he died of a stroke.⁶²

One hundred and fifty years after its passage, the False Claims Act preserves the legacy of Van Wyck's efforts on the Select Committee. Fundamentally, his efforts involved asking tough questions and printing the answers for all to see. The Committee's success in catalyzing the False Claims Act's passage showed that sunlight truly can be the most effective disinfectant. Strengthened by the 1986 and 2009 Amendments, the Act now shines a bigger and brighter light than ever. Van Wyck, one imagines, would be pleased.

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- ¹ H.R. Rep. No. 37-50, View of the Minority (Rep. Van Wyck), at 47 (1863).
- ² See H. JOURNAL, 37th Cong., 1st Sess. 45 (1861) (resolving to create the Select Committee on Government Contracts and appointing Van Wyck chairman); H. JOURNAL, 37th Cong., 2d Sess. 365 (1862) (resolving to investigate the finances of the United States Custom House in New York).
- ³ See James F. Nagle, A HISTORY OF GOVERNMENT CONTRACTING 181–84 (1992).
- ⁴ *Id.* at 199.
- ⁵ *Id.* at 205.
- ⁶ H. JOURNAL, 37th Cong., 1st Sess. 45 (1861).
- ⁷ *Id.* at 72; see Nagle, *supra* note 3, at 263.
- ⁸ AMERICAN NATIONAL BIOGRAPHY, VOL. 22, at 263 (John A. Garraty and Mak C. Carnes, eds., 1999).
- ⁹ *Id.*
- ¹⁰ See CONG. GLOBE, 36TH CONG., 1ST SESS. 1032 (1860).
- ¹¹ *Id.*
- ¹² *Affairs of the Nation; Interesting News From Washington*, N.Y. TIMES, Feb. 23, 1861, available at <http://www.nytimes.com/1861/02/23/news/affairs-nation-interesting-washington-better-feeling-peace-conference-murderous.html>.
- ¹³ See H.R. Rep. No. 37-2, pt. 1 (1861). The second part of the report added another 1,700 pages. See H.R. Rep. No. 37-2, pt. 2 (1862).
- ¹⁴ H.R. Rep. No. 37-2, pt. 2, at LVI, 33.
- ¹⁵ *Id.* at LII.
- ¹⁶ *Id.* at X–XI.
- ¹⁷ CONG. GLOBE, 37TH CONG., 2ND SESS. 711 (1862).
- ¹⁸ See, e.g., H. JOURNAL, 37th Cong., 3rd Sess. 16 (message from the President) (1863) (noting that, of non-borrowing revenue, \$49 million was derived from customs, while just \$2.9 million was derived from other non-loan sources).
- ¹⁹ See DORMAN B. EATON, THE “SPOILS” SYSTEM AND CIVIL SERVICE REFORM IN THE CUSTOM-HOUSE AND POST-OFFICE AT NEW YORK (1881).
- ²⁰ See Sean M. Theriault, *Patronage, the Pendleton Act, and the Power of the People*, 65 J. POL. 50, 54 (2003).
- ²¹ *Id.*
- ²² *Id.*
- ²³ See EATON, *supra* note 19, at 14, 26.
- ²⁴ 39 BANKERS’ MAGAZINE AND STATISTICAL REGISTER 744 (1885).
- ²⁵ See Letter from Abraham Lincoln to Salmon P. Chase (Feb. 12, 1864), in 10 THE COMPLETE WORKS OF ABRAHAM LINCOLN, at 6 (John G. Nicolay and John Hay, eds., 1894) (discussing the Custom House official’s attempt to “smother the investigation” by falsely representing that the president did not support it).
- ²⁶ H.R. Rep. No. 37-2, pt. 2, at ii (1862).

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- ²⁷ H. JOURNAL, 37th Cong., 2nd Sess. 365 (1862).
- ²⁸ H.R. Rep. No. 37-50, View of the Minority (Rep. Van Wyck), at 1 (1863).
- ²⁹ *Id.* at 1–2.
- ³⁰ *Id.* at 2.
- ³¹ Nagle, *supra* note 3, at 263; *see* History, 56th Infantry Regiment, NEW YORK STATE MILITARY MUSEUM AND VETERANS RESEARCH CENTER, <http://dmna.ny.gov/historic/reghist/civil/infantry/56thInf/56thInfMain.htm> (last visited October 11, 2013).
- ³² Nagle, *supra* note 3, at 263; *see* History, 56th Infantry Regiment, NEW YORK STATE MILITARY MUSEUM AND VETERANS RESEARCH CENTER, <http://dmna.ny.gov/historic/reghist/civil/infantry/56thInf/56thInfMain.htm> (last visited October 11, 2013).
- ³³ *Id.* at 5.
- ³⁴ H.R. Rep. No. 37-50, View of the Minority (Rep. Van Wyck), at 4–5.
- ³⁵ *Id.*
- ³⁶ H.R. Rep. No. 37-49, at 4 (1863).
- ³⁷ H.R. Rep. No. 37-50, View of the Minority (Rep. Van Wyck), at 3.
- ³⁸ *Id.* at 4–7.
- ³⁹ *Id.* at 47.
- ⁴⁰ *See* CONG. GLOBE, 37TH CONG., 3RD SESS. 1550–51 (1863) (statement of Representative Van Wyck).
- ⁴¹ *See id.*
- ⁴² *Id.* at 1550 (statement of Representative Washburne).
- ⁴³ *Id.*
- ⁴⁴ *Id.* at 1551.
- ⁴⁵ Letter from Abraham Lincoln to Salmon P. Chase (Feb. 12, 1864), *in* 10 THE COMPLETE WORKS OF ABRAHAM LINCOLN, at 6 (John. G. Nicolay and John Hay, eds., 1894).
- ⁴⁶ Abraham Lincoln, Speech to the Sub-Treasury (Dec. 26, 1839), *in* 1 THE COMPLETE WORKS OF ABRAHAM LINCOLN, at 34.
- ⁴⁷ Letter from Abraham Lincoln to George McClellan (Nov. 10, 1861), *in* UNCOLLECTED LETTERS OF ABRAHAM LINCOLN, at 197 (1917).
- ⁴⁸ Abraham Lincoln, Memorandum Concerning Patronage in St. Louis (Apr. 16, 1863), *in* 6 COLLECTED WORKS OF ABRAHAM LINCOLN, at 178 (2008)
- ⁴⁹ S. 506, 37th Cong. (1863).
- ⁵⁰ *Id.*
- ⁵¹ H. JOURNAL, 37th Cong., 3d Sess. 391 (1863).
- ⁵² *See* CONG. GLOBE, 37TH CONG., 3RD SESS. at 954 (statement of Senator Cowan); *id.* at 955 (statement of Senator Pomeroy).
- ⁵³ As the Select Committee on Government Contracts noted, it was already a well-established practice to award part of the recovery to customs officials who discovered frauds and other violations. *See* H.R. Rep. No. 37-49, at 3

(1863) (“[S]timulus . . . has been found necessary to impel even the most conscientious officials to extraordinary vigilance in the detection of frauds.”).

⁵⁴ CONG. GLOBE, 37TH CONG., 3RD SESS. 956.

⁵⁵ S. 506, 37th Cong., 12 Stat. 696 (1863).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Nagle, *supra* note 3, at 263.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 264.