

Press Coverage | March 21, 2025

Whistleblower Law Strike-Down Would Force Allies to Get Creative

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Michael S. Lowe

Michael Lowe, a partner with Troutman Pepper Locke, was quoted in the March 21, 2025 *Bloomberg Law* article, “[Whistleblower Law Strike-Down Would Force Allies to Get Creative](#).”

If the provisions are stricken, the DOJ could adopt a program similar to the [Corporate Whistleblower Awards Pilot Program](#) announced last year, said Michael S. Lowe, representing FCA defendants with Troutman Pepper Locke LLP.

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“An argument could be made,” Lowe said, that the attorney general has the authority under [28 U.S.C. § 543](#), regarding “Special attorneys,” to turn FCA whistleblowers’ counsel into “inferior officers” to satisfy Article II.

...

But, such appointments could raise questions as to the scope of whistleblowers’ and their counsels’ authority; whether their conduct inside and outside the courtroom could be attributed to the government; and whether they would constitute DOJ employees, Lowe said.

Without new legislation, Lowe said, the existing authority to appoint special assistants under the DOJ isn’t a realistic solution. And the Trump administration “is aggressively looking to downsize the federal government, not expand it.”

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