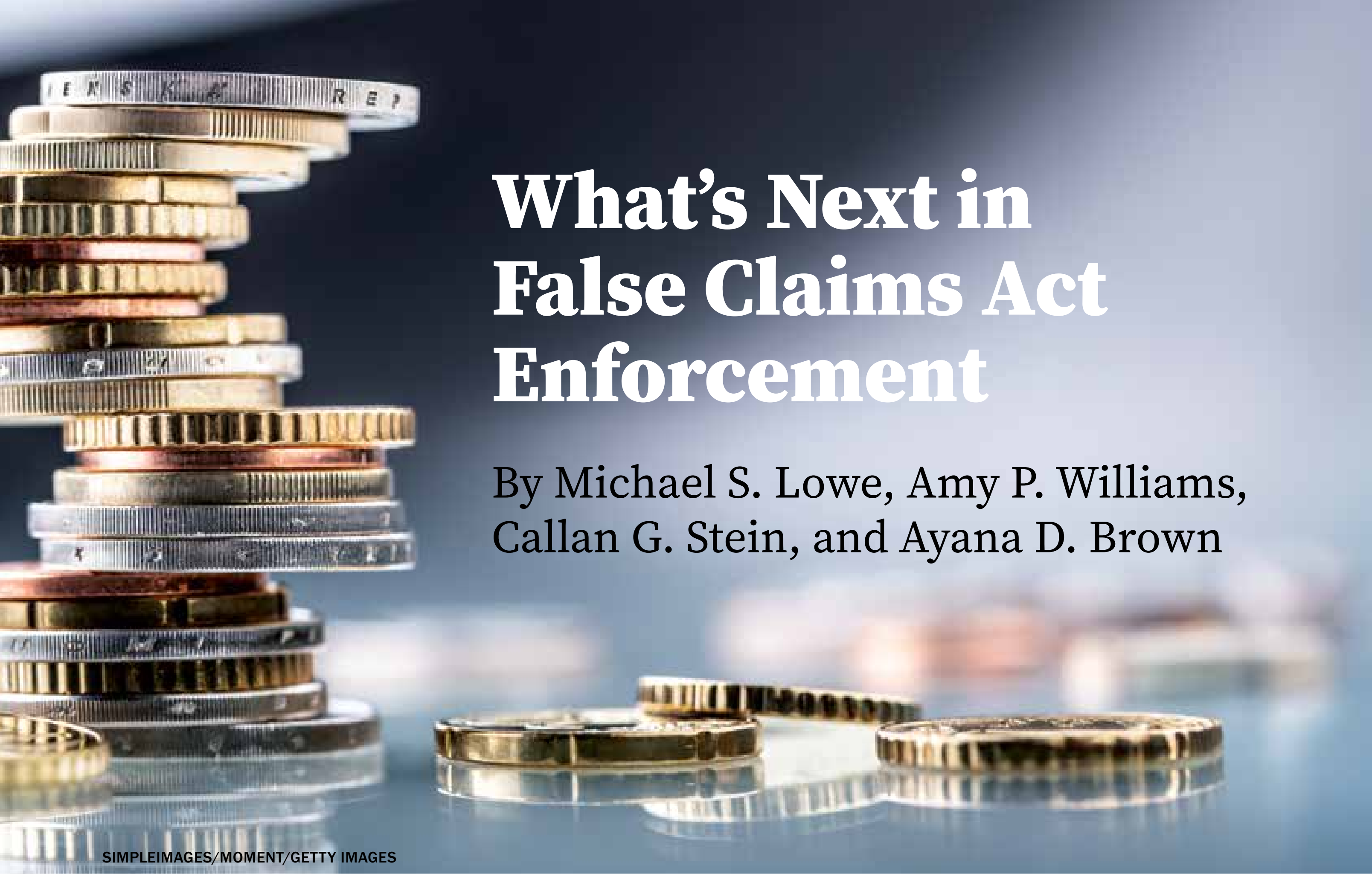

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What's Next in False Claims Act Enforcement

By Michael S. Lowe, Amy P. Williams, Callan G. Stein, and Ayana D. Brown

Congress passed the False Claims Act (FCA) during the Civil War to prevent and punish fraud in war procurement contracts. Recognizing the severity of the frauds committed against the government, Congress enacted the FCA as an effective measure for safeguarding critically needed resources during the ongoing war. The FCA is a criminal and civil statute. But it also contains a unique feature in the form of its "qui tam" provision. Unlike other criminal statutes that may only be enforced by government prosecutors, the FCA qui tam provision permits private citizens to bring civil lawsuits against parties they believe have violated the FCA in the name of the government and allows such plaintiffs, commonly referred to as relators, to keep a percentage of any ultimate settlement or award. Over time, plaintiffs of all types have sought to harness the power of the FCA's qui tam provision by bringing civil lawsuits even where government prosecutors have declined to pursue the case. And although the wartime conditions that initially prompted the passage of the FCA are now long gone, plaintiffs continue to take full advantage of the FCA's qui tam provision.

Changes to the False Claims Act Over Time

1863 act. The original FCA passed on March 2, 1863. The 1863 act came at a time when the United States was desperate to secure resources like rations, horses, and weapons from anyone who could provide them. This desperation set the stage for rampant fraud. Congressional testimony leading up to the FCA's enactment revealed that "the United States had been billed for nonexistent or worthless goods, charged exorbitant prices for goods delivered, and generally robbed in purchasing the necessities of war."[1] Congress responded by adopting the FCA, which "allowed any person to bring suit against the offending profiteers under its *qui tam* provisions" and "stimulate[d] action to protect the government against war frauds."[2] Senator Jacob Howard, a key proponent of the FCA, stated that the United States Treasury "ha[d] been plundered from day to day by a band of conspirators who are knotted together for the purpose of defrauding and plundering the Government."[3] He explained that the law would "hold out to a confederate a strong temptation to betray his coconspirator, and bring him to justice."[4]

In response to the explosion of wartime fraud, the FCA made it illegal for any person "in the land or naval forces of the United States" to "present or cause to be presented for payment or approval" any "false, fictitious, or fraudulent" claims.[5] Those who violated the act were subject to a fine of $2,000 and required to pay two times the United States' damages. The person prosecuting the suit to final judgment was entitled to 50% of the total of the fine and all damages owed. One notable feature absent from the initial act was a mechanism for the United States to intervene.

TIP: Litigators who practice in the FCA space should closely monitor relevant decisions, not just for the main holdings but also for the underlying themes.

1943 amendments. The first major amendments to the FCA came in 1943. At that time, the United States was embroiled in World War II, and the prevailing perception of the usefulness of the FCA was waning. In fact, leading up to the amendments, Attorney General Francis Biddle raised concerns that excessive FCA suits were harming war efforts by draining government resources, diminishing government recovery, and forcing the government to make hasty decisions regarding whether it would prosecute civil actions. Biddle emphasized that the government should have full control over the pace and strategy of its litigation, but that with the impending threat of civil FCA suits from relators, the government was forced to make quick decisions on whether it would file civil suits along with criminal indictments. According to Biddle, effective law enforcement required that the attorney general have complete control over any litigation involving the United States. Biddle was particularly concerned with "cut and paste" FCA suits in which relators would merely repeat language they discovered in criminal indictments filed in federal courts in their civil complaints under the FCA. According to Biddle, these parasitic actions subverted the FCA's true purpose of rewarding the informer for their disclosure of unknown wrongdoings and not merely for the prosecution of the action.[6]

The U.S. Supreme Court addressed Attorney General Biddle's concerns in its opinion in *United States ex rel. Marcus v. Hess*, where it ultimately concluded that a qui tam suit based on copied information could proceed.[7] The Court acknowledged the strong policy arguments Biddle raised in his amicus brief but concluded that these arguments were better suited for Congress rather than the courts to address. The Court stressed that "[t]he very fact that Congress passed th[e] statute shows that it concluded that other considerations of policy outweighed those . . . emphasized by the government."[8]

In December 1943, the same year that the Court published its opinion in *Hess*, Congress made significant changes to the FCA through several amendments. First, Congress added a provision prohibiting FCA actions based on information that was already in the United States' possession. Second, the 1943 amendments cut in half the amount of the recovery that qui tam relators could receive, slashing what had previously been an award equal to 50% of the government's recovery to 25%. The amendments did not alter the requirement that defendants pay two times the damages incurred by the United States. Lastly, Congress added an intervention provision that allowed the Department of Justice (DOJ) to take 60 days to decide whether it wanted to intervene in and take over prosecuting the relator's suit.[9] As a result of these amendments, the number of FCA filings dropped significantly.

1986 amendments. Congress amended the FCA again in 1986. The amendments were driven by multiple high-profile scandals involving defense contractor fraud. In these scandals, the government learned that it had been charged hundreds, and in some instances thousands, of dollars for basic items like hammers, toilet seat covers, and coffee makers. In response to the public outrage related to these scandals, Congress took an opposite approach to its 1943 amendments and passed amendments that broadened the scope of the act. The amendments once again embraced a more substantial recovery framework, increasing penalties from $2,000 to up to $10,000. They also increased the double damages provision included in the original FCA to treble damages. The introduction of more substantial penalties and treble damages increased the overall government recovery amount from which the relators' share would be calculated, further incentivizing relators to file lawsuits under the FCA. In other words, even though the percentage of recovery a relator was owed may not have significantly increased under the amendments, relators could still anticipate higher recoveries due to the rise in overall damages from which their recovery was calculated. The amendments also added additional incentives for relators in the form of an attorney fee provision and certain protections for relators against retaliation from their employers.[10]

Lastly, the 1986 amendments also added the public disclosure bar, which bars relators from bringing claims based on information that is already publicly accessible. The public disclosure bar requires courts to dismiss claims that are "substantially the same" as claims that have been previously disclosed through federal hearings, reports, audits, and investigations or news media, unless the claim falls under the original

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source exception. The original source exception applies when a relator (1) has voluntarily disclosed the allegations to the government prior to the public disclosure or (2) possesses knowledge that "independently and materially" adds to the publicly disclosed information and provides this knowledge to the government before initiating a case.[11]

The 1986 amendments resulted in a sharp increase in FCA litigation. In 1987, only 31 qui tam suits were filed, but by 1997, that total was up to 547. As the total number of cases increased, so did the total amount of money recovered. The total amount recovered rose from just over $86 million in 1987 to $1.09 billion in 1997. The total number of cases remained high through the early 2000s, and by 2007, the annual recovery amount for qui tam suits was $1.54 billion.[12] The significant uptick in cases revealed that both the government and relators understood how lucrative FCA suits could be.

2009 amendments. The last major amendments to the FCA came in 2009, when Congress made additions that largely reinforced the 1986 amendments. For example, Congress added a "reverse false claims" provision permitting suits in instances when companies attempt to evade the collection of fees from the government. Congress also added a materiality element to the FCA. This addition has become a critical component of the FCA, particularly for companies defending against FCA suits (brought by both the government and civil qui tam relators). Pursuant to this change, in order to be actionable, the government or qui tam plaintiff must prove that the alleged false claim was material, i.e., that it had "a natural tendency to influence, or [was] capable of influencing, the payment or receipt of money or property."[13] Furthermore, in these amendments, Congress expanded the FCA's conspiracy provision to encompass all substantive FCA violations.

In 2009, Congress also eliminated the need for a direct link between the false statement and the government's decision to pay or approve a false claim. This requirement was initially announced in *Allison Engine Co. v. United States ex rel. Sanders*, in which the Court considered whether the FCA required that a false record or statement made "to get" a false claim paid must have been submitted directly to the government for payment, or if it was sufficient that the record or statement sought payment from government funds.[14] The Court ultimately concluded that plaintiffs must demonstrate that defendants' actions were aimed at securing payment of a false or fraudulent claim directly from the government, not just that the payment would involve government funds.[15] Following the decision, President Barack Obama signed the Fraud Enforcement and Recovery Act of 2009 (FERA), which broadened actionable claims under the FCA to include any instances where "money or property is to be spent or used on the Government's behalf."[16] Since the 1986 amendments, the DOJ has recovered more than $55 billion through qui tam suits.[17]

Today's False Claims Act

Today, plaintiffs continue to see the FCA as a lucrative tool for exposing fraud on the government. The current act maintains a qui tam provision allowing private citizens to sue on behalf of the government. To prove liability under the current FCA, qui tam plaintiffs must show that the defendant knowingly presented, or caused to be presented, a material false claim or fraudulent claim to the government. The Supreme Court's case law regarding the FCA has largely focused on clarifying the meaning of each of these elements. In doing so, the Court has subtly but consistently illustrated a desire to reign in the power of relators.

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Scienter. In *United States ex rel. Schutte v. SuperValu Inc.*, the Supreme Court addressed the interpretation of the FCA's scienter requirement, which imposes liability only on a defendant who "knowingly" presents a false claim to the government.[18] In *SuperValu*, a grocery chain's pharmacies ran a discount pricing program for prescription drugs in which customers who paid cash received discounts similar to those offered by competitor pharmacies. Federal regulations require companies to charge Medicare and Medicaid their "usual and customary" prices, which prompted the question of whether the "usual and customary" prices for SuperValu's drugs were the discounted prices charged to cash-paying customers or the standard prices charged outside of the discount program. To determine the "usual and customary" price, the Court considered whether SuperValu had the requisite scienter when it submitted its claims.[19]

The Court held that defendants could be liable for FCA claims if they knowingly submit false claims based on their actual belief at the time of the submission. Under the FCA, "knowingly" means to act with (1) actual knowledge,

(2) deliberate ignorance, or (3) reckless disregard of the truth or falsity of the claim.[20] In ruling for the relators, the Court in *SuperValu* held that a defendant may act with the requisite scienter under the FCA and be held liable for an FCA violation if there is sufficient evidence that the defendant believes that its interpretation of a governing legal standard is incorrect—even if the defendant's adopted interpretation is otherwise objectively reasonable. Specifically, the Court explained that both the text of the FCA and the common law point to what the defendant thought when submitting the false claim as the relevant inquiry for determining scienter, not what the defendant thought after submitting it. Although the decision in *SuperValu* initially appears to favor relators, the Court's dicta and reasoning can benefit defendants in many instances. Under the subjective standard adopted by the Court, if there is no proof of actual knowledge of the falsity of a claim, a company's honest, but mistaken, interpretation of an ambiguous regulation can negate scienter.

Falsity. In *Universal Health Services, Inc. v. United States ex rel. Escobar*, the Supreme Court addressed the falsity element of the FCA.[21] At issue in *Escobar* was the so-called "implied false certification" theory, which posited that every time a defendant submits a claim to the government, it impliedly certifies that it is in compliance with all terms and conditions of payment (including all terms and conditions of any government program pursuant to which the payment is being made). In *Escobar*, the relator alleged that a Universal Health subsidiary violated the FCA by submitting claims to Medicaid while not in compliance with the Medicaid conditions of participation. Specifically, the relators alleged that the claims were implicitly false because the Universal Health subsidiary submitted claims for certain provider codes and, in doing so, implicitly certified that its staff had certain qualifications and/or credentials that they actually lacked.[22]

The views expressed in Polansky *suggest that several justices on the current Court believe that qui tam suits are or could be wholly unconstitutional.*

The Court in *Escobar* ultimately rejected the relator's blanket request to fully adopt the implied false certification theory. However, the Court concluded that based on the narrow set of facts in front of it, certification may have been implied by the defendant and thus provided a basis for liability. The Court explained that when "a defendant makes representations . . . but omits its violations of statutory, regulatory, or contractual requirements, those omissions [could] be a basis for liability if they render the defendant's representations misleading with respect to the goods or services provided."[23] The Court employed a fact-specific inquiry and emphasized that it "need not resolve whether all claims for payment implicitly represent that the billing party is legally entitled to payment" since the specific claims in *Escobar* fell squarely within what the Court viewed as a half-truth that would constitute actionable misrepresentations.[24] The Court ended its opinion noting that the FCA was not "an all-purpose antifraud statute," signaling that there are limits on the statute's reach.[25]

Government's authority to dismiss. In *United States ex rel. Polansky v. Executive Health Resources, Inc.*, the Court addressed the government's authority to dismiss qui tam suits.[26] The Court specifically answered whether the government could dismiss a qui tam action over a relator's objection in instances where it had declined to intervene during the seal period. In 2012, relator Dr. Jesse Polansky filed a qui tam lawsuit under seal against Executive Health Resources for allegedly overbilling Medicare for inpatient stays in violation of the FCA. The government declined to intervene in the suit during its seal period, and as a result, Polansky exercised his right to conduct the action under § 3730(c)(3) of the FCA. The case progressed through an extended discovery period with Polansky at the helm. In 2019, despite the government's initial decision not to participate and with summary judgment motions pending, the government moved to dismiss the case based on § 3730(c)(2)(A). Section 3730(c)(2)(A) permits the government to "dismiss [an] action notwithstanding the objections of the person initiating the action" so long as the "person has been notified by the Government" and the "court has provided the person with an opportunity for a hearing on the motion."[27] Polansky vigorously opposed the late-stage dismissal.

The Supreme Court affirmed the Third Circuit and held that the government had the authority to dismiss the action even if it had declined to intervene during the seal period. The Court explained that relators are "no ordinary civil plaintiff[s]" and are "subject to special restrictions."[28] The Court went on to explain that under § 3730(c), intervention is required to move to dismiss suits, but the timing of the intervention does not impact the right to dismiss. In other words, once the government intervenes, the right to pursue dismissal of qui tam suits is unaffected by how far the case has progressed. The Court's decision in Polansky suggests that although relator plaintiffs may initiate qui tam suits and even lead those suits when the government has not intervened, their control of those suits is particularly limited in contexts where the government chooses to intervene.

Justice Thomas filed a dissenting opinion in *Polansky* that notably provided an invitation for FCA defendants to challenge the constitutionality of the qui tam provisions. He stated that "[t]here are substantial arguments that the *qui tam* device is inconsistent with Article II [of the U.S. Constitution] and that private relators may not represent the interests of the United States in litigation."[29] Justice Thomas explained that because a "private relator under the FCA . . . is not 'appointed as an officer of the United States' under Article II[,] . . . Congress cannot authorize a private relator to wield executive authority to represent the United States' interest in civil litigation."[30] Justices Kavanaugh and Barrett agreed in their concurring opinion, which stated that "the Court should consider the competing arguments on the Article II issue in an appropriate case."[31] The views the dissenting and concurring justices expressed in *Polansky* went further than expressing a narrow view of the relator's role in qui tam suits, suggesting that several justices on the current Court believe that qui tam suits are or could be wholly unconstitutional.

Claim. Until recently, the Court had provided little guidance on what constitutes a claim. However, the Court's February 21, 2025, decision in *Wisconsin Bell, Inc. v. United States ex rel. Heath* sheds some light on how the Court views the claim element.[32]

Wisconsin Bell and the Meaning of "Claim"

The Court's opinion in *Wisconsin Bell* focused only on answering the narrow question of whether reimbursements under the Federal Communication Commission's (FCC's) Education-Rate (E-Rate) program were encompassed in the FCA's definition of claims.[33] The relator asserted that Wisconsin Bell violated the FCA by charging prices that were not in compliance with certain rules governing the E-Rate program. In Wisconsin Bell's view, an E-Rate reimbursement request could never qualify as a "claim" under the FCA's definition since the money funding the E-Rate program was purely private. The Court held that requests for reimbursements submitted to the E-Rate program constituted "claims" under the FCA.[34]

As a part of Congress and the FCC's joint mission of ensuring internet access to all, the FCC requires providers to offer schools and libraries internet services at the lowest price that they charge similarly situated nonresidential customers for similar services. This provision is known as the "lowest corresponding price" rule.[35] The funds that cover the difference between standard pricing and the prices guaranteed under the lowest corresponding price rule are held in the Universal Service Fund (Fund) as prescribed by FCC regulations. The FCC has appointed the Universal Service Administrative Company to manage the daily operations of the Fund.[36]

The schools and libraries that are guaranteed the lowest corresponding price have two options for obtaining their subsidies from the Fund. First, they can simply pay the carrier the discounted price and require the carrier to seek the remaining moneys from the Fund. Alternatively, they can pay the carrier's full rate and apply for reimbursement on their own.[37] A significant portion of the funds for the E-Rate program comes from private telecommunications corporations. However, some of the funding, including funds collected based on delinquent contributions and funds collected through civil settlements and criminal restitution payments from the DOJ, comes from the U.S. Treasury.[38]

The Court in *Wisconsin Bell* explained that two requirements must be met to prove a claim: first, the money requested must be "spent or used on the Government's behalf or to advance a Government program or interest," and second, the government must "'provide[] or ha[ve] provided a portion of the money' requested."[39] Because the first requirement was not in dispute, the Court only addressed the second requirement. Specifically, the Court answered the narrow question of whether the government "provided" money to the E-Rate program.[40]

The critical question informing the Court's analysis centered on what it meant to "provide." Noting that the FCA did not define "provide," the Court looked to the ordinary meaning of the word. Based on its ordinary meaning, the Court concluded that "provide" meant to supply, furnish, or make available. Accordingly, the Court reasoned that if the government had supplied, furnished, or made available any portion of the money funding the E-Rate program, the E-Rate reimbursement requests counted as claims. The Court ultimately concluded that it did.[41] The Court explained that the government provided at least some portion of the money to the E-Rate program when it transferred more than $100 million from the U.S. Treasury into the program fund. The Court did not find the fact that the government funds were intermingled with private funds or the fact that they constituted a small portion of the total funds to be relevant to its inquiry. Instead, it concluded that "all the [FCA] require[d] is that [federal funds] provide 'any portion'—not the whole—of the sums requested."[42]

The narrow holding in *Wisconsin Bell* provides clarity on what the Court views as a claim and clarifies that any portion of government funding will bring companies into the scope of the FCA. However, concurrences from Justices Thomas and Kavanaugh also provide a glimpse into the Court's continued careful reading of the FCA. In his concurrence, Justice Thomas reiterated that the holding in *Wisconsin Bell* only addressed the narrow issue of what constituted a claim, but he also emphasized that the government's position on some of the unanswered questions in the case could "have significant implications for . . . the scope of the FCA."[43]

Justice Thomas expressed concern with the government's view that it provided all the money in the Fund simply because federal law required private carriers to contribute to the Fund. Justice Thomas explained that the Court's case law strongly suggests that the FCA does not cover fraud against purely private entities. He further explained that lower courts have held that a "program does not receive FCA protections unless it receives money that belongs to the Government or the Government controls the program."[44] Justice Thomas emphasized that in *Wisconsin Bell*, the Court failed to consider that "courts historically have not applied the FCA to cover fraud on nongovernment entities unless the Government itself will face a financial loss" and that such a risk of financial lost did not seem to be at play when the government required private parties to fund the E-Rate program.[45] Justice Thomas ended by noting that the political branches intentionally separated the E-Rate program from the public fisc and that regardless of what motivated that choice, he suspected that it might carry consequences for the applicability of the FCA. All in all, Justice Thomas's concurrence suggests that if the government had not contributed to the Fund, the government merely mandating that private companies contribute to the Fund would not be sufficient to allow the FCA to reach the E-Rate reimbursement funds.

In Justice Kavanaugh's short concurrence, he reiterated that the Court decided a narrow question, but he also highlighted that the statutory issue decided was presented to the Court through a qui tam suit.[46] Justice Kavanaugh stated that qui tam suits "raise substantial constitutional questions under Article II."[47] Justice Kavanaugh did not dig into the precise nature of those questions since they were not before the Court but suggested that "in an appropriate case, the Court should consider the competing arguments on the Article II issue."[48] Both Justice Thomas's and Justice Kavanaugh's concurrences indicate that neither the FCA's relator provision nor the broad reading of claim is on solid ground with the Court. Justice Thomas's view suggests that if given the opportunity to address whether the private nature of the funds matters to whether a "claim" under the FCA exists, the Court could conclude that purely private funding sources do not give rise to FCA claims—regardless of whether the government facilitates the distribution of those funds.

What's Next for the False Claims Act

The Supreme Court's interpretation of "claim" in *Wisconsin Bell* suggests that private companies should be prepared for additional enforcement activity. This is especially true in light of certain policy goals that have been highlighted by the Trump administration and the current DOJ. For example, the Trump administration has signaled significant interest in using the FCA as a tool to end diversity, equity, and inclusion (DEI) programming in both the public and private sectors. Recently, Attorney General Pam Bondi published a memorandum announcing that the DOJ's Civil Rights Division and the Office of Legal Policy were preparing a report on how the DOJ should approach "encourag[ing] the private sector to end illegal discrimination and preferences, including policies relating to DEI and DEIA."[49] Bondi's memo cites heavily to Executive Order (EO) 14173, which mandates that private companies certify that they do not operate any programs promoting DEI that violate applicable federal antidiscrimination laws.[50] EO 14173's certification requirement is an apparent signal of pending FCA enforcement efforts against private companies that receive federal funds while operating DEI programming. The types of claims contemplated by the EO and memo could be brought by any individual who identified DEI programs that allegedly ran afoul of antidiscrimination laws at their place of employment. However, since the public disclosure bar prevents lawsuits based on public information, such suits would likely only be viable in instances where a company represented that it was not operating any illegal DEI programs but continued to do so covertly.

Though we have not yet seen any FCA suits based on continued DEI programming activity, both the history of the FCA and prior FCA case law provide hints on what is to come in DEI-based FCA suits. First, when analyzing the existence of a "claim," courts will likely be especially concerned with whether relators can show that a private company receives funding from the government. Based on *Wisconsin Bell*, companies that receive even a small amount of funding from the government may be subject to FCA claims if they maintain what the Trump administration views as illegal DEI. However, Justice Thomas's concurrence suggests that if a government entity merely manages funding from private companies to facilitate a government program, it may avoid FCA liability. The Court's primary concern in determining what constitutes a claim under the act appears to be the source of funding.

Second, when assessing whether a claim is false, the Court will likely employ a highly fact-specific analysis. Under *Escobar*, the Court will be more inclined to find that a claim is false when faced with omissions related to violations of statutory, regulatory, or contractual requirements if the omissions render the defendant's representations misleading with respect to the goods or services provided. However, given the novelty of DEI-based liability and their remoteness to many of the goods and services contractors provide, it is unclear if the Court would consider DEI-related omissions to be false.

Finally, courts' analyses of whether companies knowingly submitted claims may provide a defense in certain FCA claims. Based on *SuperValu*, courts will be most interested in whether companies subjectively believed that they operated DEI programs that were illegal at the time of their existence. While assessing a company's understanding may be straightforward in the context of pricing or billing laws, the same cannot be said of assessing a company's subjective understanding of what constitutes illegal DEI. And while the DOJ has released guidance providing some insights into what it views as illegal DEI, it is unclear how courts will weigh that guidance. Overall, based on the Court's reasoning in *SuperValu*, evidence suggesting that a company did not believe that it operated a DEI program could support a defense in an FCA suit. The next phase of FCA enforcement may force courts to further clarify the many nuances inherent in the current statute.

Will the Court Take Up the Article II Issue?

Multiple concurrences and dissents in the Supreme Court's major qui tam cases have questioned the constitutionality of the qui tam provision. Most recently, Justice Kavanaugh stated that given the appropriate case, "the Court should consider the competing arguments on the Article II issue."[51] In each of these cases, the justices have signaled that the arguments under Article II could ultimately convince the Court to do away with the qui tam provision of the FCA altogether. A recent decision from the Middle District of Florida may provide the Court with the "appropriate case" it has been looking for.

In 2019, the relator in *United States ex rel. Zafirov v. Florida Medical Associates, LLC* sued her former employer and other defendants, alleging that they misrepresented patients' medical conditions to the federal government in violation of the FCA.[52] After the United States did not intervene in the case, the defendants moved to dismiss the qui tam complaint on the grounds that the FCA's qui tam provision violated both the appointments clause by allowing a relator to act as an officer of the United States without appointment and also the take care and vesting clauses by denying the president necessary removal or supervisory authority over relators. The court granted the defendants' motion to dismiss.[53] In its reasoning, the court explained that FCA relators exercise significant authority pursuant to the laws of the United States because they initiate enforcement actions on behalf of the United States without government oversight. The court explained that if the government does not intervene in the case, relators prosecute and control enforcement actions designed to vindicate public rights through final judgment, including litigating appeals that may become binding precedent. Because of this role, the court concluded that relators exercised an executive power despite having never been appointed by the executive as is required by the Constitution.[54]

Given the Supreme Court's apparent appetite for a case that would allow it to address the FCA's constitutionality, it would not be surprising to see the constitutionality issue presented in *Zafirov*—which is currently pending before the Eleventh Circuit—reach the high Court in the near future. ◀

Notes

1. United States v. McNinch, 356 U.S. 595, 599 (1958).
2. United States *ex rel.* Springfield Terminal Ry. Co. v. Quinn, 14 F.3d 645, 649 (D.C. Cir. 1994); United States *ex rel.* Marcus v. Hess, 317 U.S. 537, 547 (1943).
3. Cong. Globe, 37th Cong., 3d Sess. 955–56 (1863) (remarks of Sen. Jacob Howard).
4. *Id.*
5. Act of Mar. 2, 1863, ch. 67, 12 Stat. 696, 696–97.
6. Brief for the United States as Amicus Curiae, *Hess*, 317 U.S. 537 (Nos. 173, 236), 1942 WL 54209, at *18.
7. 317 U.S. at 545.
8. *Id.* at 547.
9. Act of Dec. 23, 1943, ch. 377, 57 Stat. 608.
10. False Claims Amendments Act of 1986, Pub. L. No. 99-562, 100 Stat. 3153.
11. *Id.*
12. *Fraud Statistics: October 1, 1986–September 30, 2024*, U.S. Dep't of Just., https://www.justice.gov/archives/opa/media/1384546/dl (last visited Aug. 21, 2025).
13. Fraud Enforcement and Recovery Act of 2009 (FERA), Pub. L. No. 111-21, 123 Stat. 1617.
14. 553 U.S. 662, 668–69 (2008).
15. *Id.* at 673.
16. FERA, 123 Stat. at 1622–23.
17. *Fraud Statistics*, *supra* note 12.
18. 598 U.S. 739, 749 (2023).
19. *Id.*
20. *Id.* at 749–50.
21. 579 U.S. 176 (2016).
22. *Id.* at 181, 184.
23. *Id.* at 187.
24. *Id.* at 188.
25. *Id.* at 194.
26. 599 U.S. 419, 427 (2023).
27. 31 U.S.C. § 3730(c)(2)(A).
28. *Polansky*, 599 U.S. at 425.
29. *Id.* at 449 (Thomas, J., dissenting).
30. *Id.* at 449–50.
31. *Id.* at 442 (Kavanaugh, J., concurring).
32. 145 S. Ct. 498 (2025).
33. *Id.* at 502.
34. *Id.* at 505.
35. *Id.* at 503.
36. *Id.* at 502.
37. *Id.* at 503.
38. *Id.* at 505–06.
39. *Id.* at 503–04 (alterations in original).
40. *Id.* at 504–05.
41. *Id.* at 505–06.
42. *Id.* at 508.
43. *Id.* at 509 (Thomas, J., concurring).
44. *Id.* at 511.
45. *Id.* at 512.
46. *Id.* at 515 (Kavanaugh, J., concurring).
47. *Id.*
48. *Id.*
49. Memorandum from Att'y Gen. to All Dep't Emps., Ending Illegal DEI and DEIA Discrimination and Preferences (Feb. 5, 2025), https://www.justice.gov/ag/media/1388501/dl?inline.
50. Exec. Order No. 14,173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity, 90 Fed. Reg. 8633 (Jan. 31, 2025).
51. *Wisconsin Bell*, 145 S. Ct. at 515.
52. 751 F. Supp. 3d 1293, 1303 (M.D. Fla. 2024).
53. *Id.* at 1304.
54. *Id.* at 1322.