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Relator, No More? Florida Federal Court Declares Qui Tam Provisions of False Claims Act Unconstitutional, with Potentially Broad Implications for Government Fraud Litigation

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On September 30, 2024, the U.S. District Court for the Middle District of Florida issued an order dismissing a *qui tam* case under the False Claims Act ("FCA") and holding the relator provisions of the FCA to be unconstitutional.[1] In reaching this conclusion, the Court reasoned that the relator in the case qualified as an "Officer" of the executive branch who had been "improperly appointed," thereby violating the Appointments Clause of Article II of the Constitution. This decision will likely be appealed to the 11th Circuit and, potentially, the U.S. Supreme Court.

A copy of the order can be found here.

The Underlying Action & the Court's Analysis of Relator Authority Under the FCA

The FCA, passed during the Civil War, allows private parties known as relators to bring *qui tam* suits when government contractors submit false claims for payment to the government. The statute imposes civil monetary penalties and treble damages on liable parties. Relators are entitled to a portion of any judgment or settlement. Here, the relator alleged that the defendants misrepresented their claims for Medicare Advantage payments to the government. Because the government declined to intervene (which is often the case), the relator was left to proceed independently.

The defendants mounted a constitutional challenge to the FCA's *qui tam* provisions through a motion for judgment on the pleadings. Defendants argued that the *qui tam* provisions violated the Appointments Clause of Article II of the Constitution by impermissibly granting undue authority to private relators who were not properly appointed as officers of the United States. The Court agreed, basing its ruling on two key holdings. First, it concluded that an FCA relator is an "officer of the United States" under the Appointments Clause. Relying on recent Supreme Court precedent holding that SEC administrative law judges, administrative patent judges, and the Director of the Consumer Financial Protection Bureau were unconstitutionally appointed, the Court held that an FCA relator "wields significant authority because she conducts civil litigation in the courts of the United States for vindicating public rights."[2] The Court further reasoned that FCA relators hold a "continuing office" given their "statutorily defined duties, powers, and emoluments,"[3] thereby making them "Officers" under Article II.

Second, the Court rejected the relator's argument that Article II contains a *qui tam* exception in the FCA context. Despite the numerous historical examples that the relator put forth as evidence that *qui tam* provisions have always existed alongside the Constitution, "no amount of countervailing history overcomes" the "clear" text of the Appointments Clause.[4] The Court concluded that to accept the relator's "alternative Article II proposal—that historical existence equals constitutionality—would eviscerate longstanding Article II jurisprudence."[5]

What's Next? Ongoing FCA Enforcement Amid Splits in Authority and Appeals

In the immediate short-term, the Court's ruling calls into question the longstanding practice of allowing private citizens to pursue actions on behalf of the government through the FCA's *qui tam* provision. As a result, the decision is almost certain to be appealed. If upheld, the decision would have broad implications for ongoing and future FCA litigation, including cases involving defendants in the health care industry. The ruling could therefore change FCA enforcement by restricting the ability of private relators to act as *de facto* government officers in prosecuting fraud against federal programs. More broadly, the decision adds an additional wrinkle to the FCA enforcement scheme as different courts have reached conflicting conclusions on this issue, increasing the likelihood of a circuit split and eventual Supreme Court review.[6] Meanwhile, a separate circuit split has emerged over how courts interpret the FCA causation element in cases alleging a violation of the Anti-Kickback Statute. Thus, health care providers and other stakeholders should stay attuned to developments and retain counsel to help them navigate potential shifts in FCA enforcement strategy.

Proskauer's Health Care Group is closely monitoring developments in this area. For more insights on health care law and policy, subscribe to Proskauer's Health Care Law Brief.

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[1] Slip Op. at 52.

[2] *Id.* at 19 (citing *Lucia v. SEC*, 585 U.S. 237, 241 (2018); *United States v. Arthrex, Inc.*, 594 U.S. 1, 13 (2021); *Seila Law LLC v. CFPB*, 591 U.S. 197, 219-20 (2020); *Collins v. Yellen*, 594 U.S. 220, 250-53 (2021)).

[3] *Id.* at 31.

[4] *Id.* at 48.

[5] *Id.* at 39.

[6] *See, e.g.*, *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 757–59 (9th Cir. 1993); *United States ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032, 1041 (6th Cir. 1994); *United States ex rel. Stone v. Rockwell Int'l Corp.*, 282 F.3d 787, 804–05 (10th Cir. 2002) (concluding that meeting Buckley's "significant authority" test is insufficient); *Riley v. St. Luke's Episcopal Hosp.*, 252 F.3d 749, 757–58 (5th Cir. 2001) (en banc).

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