

Insights

FALSE CLAIMS ACT (FCA) QUI TAM PROVISIONS SURVIVE AN APPOINTMENTS CLAUSE CHALLENGE IN THE ELEVENTH CIRCUIT: WHAT FCA DEFENDANTS SHOULD STILL THINK ABOUT

Oct 07, 2026

On September 1, 2026, the U.S. Court of Appeals for the Eleventh Circuit issued a significant decision reversing a district court ruling that had declared the False Claims Act's ("FCA") qui tam provisions unconstitutional as a violation of the Appointments Clause. In *United States ex rel. Zafirov v. Florida Medical Associates, LLC*, No. 24-13581, the Eleventh Circuit held that the Appointments Clause challenge to the FCA failed because qui tam relators are not "Officers of the United States" under the Appointments Clause. The Eleventh Circuit vacated the dismissal below and remanded the case for further proceedings, including a decision on the Take Care Clause and Vesting Clause Constitutional challenges.

Background of the FCA

The FCA's qui tam provisions allow private individuals, known as relators, to bring civil fraud suits on behalf of the United States government and to share in any recovery. 31 U.S.C. Secs. 3729-3733. In 2019, Dr. Clarissa Zafirov filed a qui tam suit against her employer and related entities, alleging Medicare fraud based on the submission of unsupported Medicare Advantage risk-adjustment diagnosis codes. The United States declined to intervene and the relator proceeded. In February 2024, the defendants moved to dismiss, arguing that the qui tam mechanism violates Article II of the Constitution on three separate grounds: the Appointments Clause, the Take Care Clause, and the Vesting Clause.

In her September 30, 2024 opinion, Judge Kathryn Kimball Mizelle of the United States District Court for the Middle District of Florida agreed that the qui tam provisions violate the Appointments Clause, reasoning that relators exercise significant governmental authority while occupying a continuing "office of relator," and therefore must be presidentially appointed. *United States ex rel. Zafirov v. Florida Medical Associates, LLC*, 751 F. Supp. 3d 1293 (M.D. Fla. 2024). Because it found an Appointments Clause violation, the district court did not reach the Take Care Clause or Vesting Clause arguments and dismissed the case entirely.

Eleventh Circuit's ruling

The Eleventh Circuit reversed the district court's decision, joining the Fifth, Sixth, Ninth, and Tenth Circuits in rejecting Appointments Clause challenges to the FCA's qui tam provisions. *See Riley v. St. Luke's Episcopal Hosp.*, 252 F.3d 749, 753-758 (5th Cir. 2001) (en banc); *United States ex rel. Taxpayers Against Fraud v. General Elec. Co.*, 41 F.3d 1032, 1040-1042 (6th Cir. 1994); *United States ex rel. Kelly v. Boeing Co.*, 9 F.3d 743, 749-759 (9th Cir. 1993); *United States ex rel. Stone v. Rockwell Int'l Corp.*, 282 F.3d 787, 804-807 (10th Cir. 2002). The Eleventh Circuit found it dispositive that relators do not occupy a "continuing position" established by law and therefore need not reach whether relators exercise "significant authority."

The court's continuing-position analysis focused on three factors: First, a relator's tenure and duration are occasional and temporary. A relator's role lasts only the length of a single case, relators are not required to maintain a place of business, and a relator without an active case has no ongoing duties. Second, a relator is not continually paid for his or her efforts. A relator is paid, if at all, through a one-time contingent share of a judgment or settlement, not a regular government appropriation, and faces no penalty for inaction beyond forfeiting that opportunity. Finally, a relator occupies a role that is personal and cannot be replaced mid-case by another relator; if a relator dies or enters bankruptcy, only a personal representative or trustee may continue the claim on the relator's behalf.

The court also rejected the defendants' argument that the FCA creates a standalone, continuous "office of relator" that exists independent of any individual case. The court noted that no such office is named in the statute, and that the proper constitutional inquiry focuses on whether the individual occupying a role holds a continuing position, not on whether an abstract, sometimes-vacant office could theoretically be filled.

Two Constitutional challenges left undecided: Take Care and Vesting Clause

Notably, the Eleventh Circuit resolved only the Appointments Clause issue. It expressly declined to address the defendants' other two Article II challenges, remanding them to the district court for consideration in the first instance. Defendants maintained in their Take Care Clause argument that qui tam relators wield executive power without sufficient presidential supervision or control, in tension with the President's constitutional duty to "take Care that the Laws be faithfully executed."

Defendants maintained in their Vesting Clause argument that the Constitution vests "executive Power" exclusively in the President, and that relators unconstitutionally exercise that power by prosecuting civil enforcement actions on behalf of the United States. Both arguments remain live on remand and could still provide a path to dismissal or further appellate review.

What FCA defendants should still think about

Following the Eleventh Circuit's ruling, defendants in FCA cases should consider the following three strategies to advance their FCA defense position. First, preserve constitutional defenses. Even though the Appointments Clause theory failed in the Eleventh Circuit, defendants in pending or future qui tam cases should consider preserving Take Care Clause and Vesting Clause challenges, since those questions remain open and may be decided differently by the Middle District of Florida on remand or by other courts. Second, continue to advocate for the government to use its dismissal authority under 31 Sec. 3730 (c)(2)(A) for declined cases that lack merit. Third, continue robust compliance and self-audit practices. Regardless of how the remaining constitutional questions are resolved, the decision confirms that qui tam suits remain a viable and continually expanding enforcement tool. Healthcare providers, government contractors, and other entities subject to FCA exposure should maintain strong compliance programs, coding and billing controls, and internal audit practices to reduce potential underlying fraud exposure.

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