

Publications

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FCA at a Crossroads: Eleventh Circuit Case Could Upend Qui Tam Actions

Key Takeaways

- **Eleventh Circuit Hears Landmark Qui Tam Appeal:** The Eleventh Circuit heard oral argument in *United States ex rel. Zafirov*, an appeal from a district court decision holding the FCA's *qui tam* provisions unconstitutional under Article II — an unprecedented ruling that has generated significant national attention.
- **A Highly Engaged Judicial Panel:** Throughout the argument, the panel posed extensive questions to all parties regarding the historical roots of *qui tam* actions and the scope of executive authority, making it unmistakably clear the court is taking the constitutional challenge very seriously and that the court may address a broader range of constitutional issues beyond the Appointments Clause.
- **Potentially Far-Reaching Consequences:** If the Eleventh Circuit affirms, relators in Alabama, Florida and Georgia would be unable to pursue declined FCA actions; other circuits may increase scrutiny of *qui tam* provisions; and the matter could be positioned for Supreme Court review, potentially reshaping FCA enforcement nationwide.

A three-judge panel of the U.S. Court of Appeal for the Eleventh Circuit heard much-anticipated oral argument in *United States ex rel. Zafirov v. Florida Medical Associates, LLC, et al.*, No. 24-13581 (11th Cir. 2025) on Friday, Dec. 12, 2025 — a case widely viewed as a critical constitutional test for the future of False Claims Act (FCA) enforcement. The Eleventh Circuit panel consisted of Judges Branch and Luck, both appointed by President Trump, and Senior District Judge Moreno of the Southern District of Florida, sitting by designation.

District Court Struck Down *Qui Tam* Provisions

The appeal arises from the U.S. District Court for the Middle District of Florida's September 2024 decision, after the government declined to intervene, holding that the FCA's *qui tam* provisions are unconstitutional because they permit private individuals to exercise significant executive authority without appointment under the Appointments clause of Article II of the Constitution. This ruling marked the first time a federal court struck down the FCA's *qui tam* provisions on constitutional grounds.

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Competing Views on Executive Power Take Center Stage

During oral argument, counsel for the Government shared time with relator's counsel and began by noting that all courts of appeals have rejected constitutional challenges. Additionally, they emphasized that relators do not occupy a "continuing office," possess no unilateral authority beyond filing a complaint under seal, and lack the ability to "marshal" government resources. They also highlighted the historical pedigree of *qui tam* actions, with the Government noting that the Eleventh Circuit has previously described them as "routine enforcement mechanisms in the early Republic." Defense counsel countered that relators effectively wield executive authority by initiating actions in the Government's name, pursuing litigation as they see fit, securing treble damages, and binding the Government through judgments — all without meaningful executive oversight or input. In the defendants' view, this dynamic constitutes an unconstitutional "outsourcing" of core executive power and renders relators as quasi-prosecutors.

Judges Probe History and Scope of Qui Tam

The panel was highly engaged throughout the argument, probing counsel for the Government, relator and defendants. Regarding the history of *qui tam* cases, Judge Branch referenced recent Supreme Court "statements" suggesting potential interest in reviewing the constitutional questions presented. The judges also pressed counsel on the extent to which early *qui tam* statutes should inform the analysis. Their remaining questions encompassed all three constitutional challenges at issue — the Appointments Clause, the Take Care Clause and the Vesting Clause — indicating that the Eleventh Circuit may address issues beyond the Appointments Clause, which was the basis for the district court's ruling.

Ruling Could Reshape FCA Enforcement

If the Eleventh Circuit affirms the district court's decision, the consequences would be significant. Such a ruling would disrupt a statutory structure that underpins most modern FCA litigation. In the near term, relators would be unable to pursue declined FCA actions in Alabama, Florida and Georgia. A decision upholding the district court could also prompt other circuits to intensify scrutiny of the FCA's *qui tam* provisions, a trend already emerging since the district court's September 2024 opinion.¹ Over the longer term, an affirmance would likely set the stage for the Supreme Court to address the constitutionality of *qui tam* actions and could reshape the FCA enforcement landscape nationwide.

If you have questions about how this developing Eleventh Circuit case may affect your organization or if you need guidance related to FCA matters, please contact Polsinelli's Government Investigations team.

[1] Courts Renew Scrutiny of the False Claims Act's Qui Tam Provisions (Nov. 13, 2025)