

Publications

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Sixth Circuit Holds the Line on FCA Qui Tam Challenges as Eleventh Circuit Looms

Key Takeaways:

- **Sixth Circuit FCA precedent remains intact.** The Sixth Circuit declined to entertain constitutional challenges to the FCA's *qui tam* provisions, emphasizing that binding circuit precedent forecloses arguments under the Appointments Clause, the Take Care Clause and Article III standing.
- **Focus remains on the Eleventh Circuit.** With the Sixth Circuit opting not to review the issue, the Eleventh Circuit's forthcoming decision in *Zafirov* represents the most immediate opportunity for a circuit split on the constitutionality of FCA *qui tam* actions.
- **Supreme Court review remains a possibility.** Continued judicial scrutiny regarding the constitutionality of *qui tam* actions suggests the issue is not settled nationally, even if it remains foreclosed in the Sixth Circuit for now.

The Sixth Circuit denied a False Claims Act (FCA) *qui tam* appeal on January 9, 2026, rejecting defendants' attempt to obtain interlocutory review of constitutional challenges to the FCA's *qui tam* provisions.

The petition arose from two FCA actions filed in the U.S. District Court for the Southern District of Ohio. In those cases, the district court denied defendants' motions to dismiss, which argued that the FCA's *qui tam* provisions violate Article II's Appointments Clause and Take Care Clause and that the relators lacked standing under Article III.¹

In denying those motions, the district court relied in part on binding Sixth Circuit precedent holding that the FCA's *qui tam* provisions are constitutional. In *United States ex rel. Taxpayers Against Fraud v. General Electric Co.*, the Sixth Circuit held that a relator is not an "officer" within the meaning of the Appointments Clause and that the FCA does not violate the Take Care Clause. 41 F.3d 1032, 1041 (6th Cir. 1994).² Despite denying the motions to dismiss, the district court certified the Order for interlocutory appeal, citing the pending *United States ex rel. Zafirov v. Florida Med. Assocs., LLC* appeal in the Eleventh Circuit and recent Supreme Court dissents.³

Defendants subsequently filed petitions for permission to appeal. Under Sixth Circuit standards, interlocutory review may be permitted where an order involves a controlling

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question of law, substantial grounds for difference of opinion exist, and an immediate appeal may materially advance the litigation.⁴ Ultimately, the Sixth Circuit rejected defendants' appeal, finding that the court's precedent left "no substantial grounds for difference of opinion on the issue."⁵ The panel emphasized that its "rules and caselaw make clear" that published opinions such as *Taxpayers* are binding and may be overruled only by the court sitting en banc.⁶

Had the Sixth Circuit addressed the merits of the constitutional challenge, its decision could have further advanced the growing scrutiny of the FCA's *qui tam* provisions that have followed Justice Thomas's dissent in *United States ex rel. Polansky v. Executive Health Resources, Inc.* (2023). Instead, attention remains on the Eleventh Circuit as a decision in *Zafirov* holding the *qui tam* provisions unconstitutional could upend FCA enforcement nationwide and create a circuit split, setting the stage for Supreme Court review.⁷

[1] Opinion and Order on Motions to Dismiss at 2, *U.S. ex rel. Murphy v. TriHealth, Inc. et al.*, No. 1:19-cv-168 (S.D. Oh. July 28, 2025).

[2] *United States ex rel. Taxpayers Against Fraud v. Gen. Elec. Co.*, 41 F.3d 1032, 1041 (6th Cir. 1994)

[3] Opinion and Order on Motions to Dismiss at 37-40, *U.S. ex rel. Murphy v. TriHealth, Inc. et al.*, No. 1:19-cv-168 (S.D. Oh. July 28, 2025).

[4] Order on Petitions for Permission to Appeal at 1-2, *In Re TriHealth, Inc. et al.*, Nos. 25-0306/0307 (6th Cir. Jan. 9, 2026).

[5] *Id.* at 2.

[6] *Id.*

[7] For more insight on the *Zafirov* appeal, see Persons & Beato, FCA at a Crossroads: Eleventh Circuit Case Could Upend Qui Tam Actions (Dec. 17, 2025), .