No. 25–0127

In the Supreme Court of Texas

LABORATORY CORPORATION OF AMERICA HOLDINGS,
Petitioner,

v.

THE STATE OF TEXAS AND NPT ASSOCIATES,
Respondents.

On Petition for Review from the
First Court of Appeals, Houston, Texas

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER ON THE MERITS

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IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry, and from every region of the country, including Texas. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber has a strong interest in the question presented here, which is fundamental to the scope of liability under the Texas Medicaid Fraud Prevention Act (the "TMFPA" or the "Act"). The Chamber's members, many of which are subject to complex regulatory schemes like Medicaid, have a direct interest in the correct interpretation of the Act and of similar statutes. Private relators (only sometimes joined by the State) regularly invoke the TMFPA, seeking to transform minor deviations from complex regulatory

[1] Amicus curiae states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Tex. R. App. P. 11(c).

provisions or contractual terms into alleged fraud on the State, triggering the Act's punitive penalties regime. The construction of the TMFPA that the court of appeals adopted below would impose ruinous punitive liability on businesses for minor regulatory and contractual lapses, or even good-faith differences in interpretation, that the State was aware of and deemed unimportant, and in so doing would inflict a devastating impact on the business community and the public.

SUMMARY OF THE ARGUMENT

If permitted to stand, the court of appeals' novel interpretation of the TMFPA would subject the businesses serving millions of Texas Medicaid beneficiaries to the threat of ruinous sanctions for even mundane regulatory lapses—or even for conduct that is entirely lawful. Under the court of appeals' view, the TMFPA's "onerous administrative sanctions," *In re Xerox Corp.*, 555 S.W.3d 518, 525 (Tex. 2018), would extend to minor omissions, including those the State knows about, has investigated, and has deemed immaterial to its payment decisions.

The U.S. Supreme Court recognized this concern in construing the Federal False Claims Act ("FCA"), 31 U.S.C. §§ 3729–3733. Like the TMFPA, the FCA explicitly refers to materiality in some but not all of its provisions.

The U.S. Supreme Court nevertheless held that it is impossible to "conceive[] of 'fraud' without proof of materiality." *Univ. Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 193 (2016) (citation omitted) ("*Escobar*"). The court of appeals here held that "*Escobar* is not analogous," *State v. Lab. Corp. of Am. Hldgs.*, 2024 WL 5249087, at *5 (Tex. App.—Houston [1st Dist.] Dec. 31, 2024, pet. filed) ("*Labcorp*"), but failed to provide any persuasive reason why the TMFPA should be the only "federal [or] state fraud-prevention act[]," *Xerox*, 555 S.W.3d at 535, that does not require proof that an allegedly fraudulent omission or statement actually mattered to the government.

The court of appeals' decision flies in the face of more than 150 years of fraud jurisprudence in this State. It is settled Texas law that a claim for fraudulent non-disclosure lies only for an omission of material facts. *Bombardier Aerospace Corp. v. SPEP Aircraft Hldgs., LLC*, 572 S.W.3d 213, 219–20 (Tex. 2019). That is the law for good reason. Any statement inherently omits all information not stated. And every statement ever made contains omissions. But most of those omissions do not matter to the recipient and thus historically have not been a basis for fraud liability.

The court of appeals' decision in this case upends these commonsense principles by holding that the omission provision of the TMFPA, TEX. HUM. RES. CODE § 36.002(2), imposes liability for *immaterial* omissions. *Labcorp*, 2024 WL 5249087, at *5. This Court should reverse, because the court of appeals' decision is not only wrong but threatens to grossly expand the scope of actionable conduct under the TMFPA.

Materiality is an essential limitation on fraud liability. Materiality is even more important in the context of a *qui tam* statute like the TMFPA, which purports to empower private relators who were not themselves harmed by any alleged violation of law to bring suit on the State's behalf.[2] A strong materiality requirement ensures that onerous TMFPA liability can flow only from omissions that actually mattered to the State. In other words, the requirement helps ensure that an important anti-fraud statute is limited to cases in which the State was actually defrauded. Eliminating the traditional materiality limitation will not only impose needless costs on businesses; it will also have damaging impacts on the State, its taxpayers, and its residents who

[2] As the Chamber has argued in a separate case currently pending before this Court, the *qui tam* provisions of the TMFPA violate the Texas Constitution's separation-of-powers principles. *See* Brief of *Amicus Curiae* U.S. Chamber of Commerce in Support of Petitioner, *In re Novartis Pharma. Corp.*, No. 24–0239 (Tex. Oct. 29, 2024), *available at* https://tinyurl.com/yjwjrjmm.

participate in Texas Medicaid, who collectively bear the ultimate costs of meritless TMFPA litigation.

ARGUMENT

The court of appeals' decision to allow TMFPA liability for immaterial omissions is deeply flawed. This Court should reverse.[3]

I. The TMFPA's Omission Provision Requires Proof of Materiality.

The court of appeals held that the TMFPA's omission provision does not require proof of materiality. That holding is wrong for at least three key reasons.

1. First, while the court of appeals correctly recognized that it should "first look at the statute's text and apply the common, ordinary meaning of those words, unless the text supplies a different meaning or the common meaning leads to absurd results," *id.* at *4 (quoting *Malouf v. State ex rels. Ellis*, 694 S.W.3d 712, 718 (Tex. 2024)), the court failed to consider the full text of the omission provision. Instead, the court focused only on the *absence* of the word "material" from the omission provision (and the inclusion of this word in other TMFPA provisions). *Id.*

[3] This brief focuses on the first issue presented in Labcorp's petition and brief on the merits. However, this Court should also reverse with regard to the second issue presented. Rigorous enforcement of the TMFPA's materiality requirement is essential to weeding out meritless claims.

Beginning with the omission provision's text means looking in the first instance to the provision's express requirement that an actionable omission must "permit[] a person to receive a benefit or payment under a healthcare program that is not authorized or greater than the benefit or payment that is authorized." TEX. HUM. RES. CODE § 36.002(2). "Permit" means to allow, authorize, or make possible.[4] Thus, an omission that permits a person to receive a benefit is one that is, at minimum, actually necessary—*i.e.*, material—to receiving that benefit. The court of appeals should have first examined the omission provision's language rather than making inferences about legislative intent based on other provisions in the statute.

2. Second, the court of appeals was wrong to say that it "need not look to common-law principles to interpret" the TMFPA. *Labcorp*, 2024 WL 5249087, at *5. It is settled law in Texas that "[i]n interpreting a statute, a court … *shall consider at all times the old law*, the evil, and the remedy." TEX. GOV. CODE § 312.005 (emphasis added); *see also Marino v. Lenoir*, 526 S.W.3d 403, 409 (Tex. 2017) (courts must "construe statutory language against the

[4] *See, e.g.*, *Permit*, BLACK'S LAW DICTIONARY (6th ed. 1990) ("To suffer, allow, consent, let; to give leave or license; to acquiesce, by failure to prevent, or to expressly asset to or agree to the doing of an act."); *Permit*, OXFORD ENGLISH DICTIONARY (2d ed. 1989), *available at* https://tinyurl.com/4mtp2ksb ("To allow, suffer, give leave, not to prevent . . . . To admit or allow the doing or occurrence of; to give leave or opportunity for.").

backdrop of common law, assuming the Legislature is familiar with common-law traditions and principles.").

The common law here could not be clearer. This Court's decisions recognizing a materiality requirement for common-law fraud date back almost as far as Texas statehood. *See, e.g.*, *Henderson v. San Antonio & M.G.R. Co.*, 17 Tex. 560, 560 (Tex. 1856) ("If a material misrepresentation be made, although it be not embodied in the contract, it is considered a constructive or legal fraud."). And the common law does not distinguish, for materiality purposes, between affirmative false statements and misrepresentations by omission. Each is actionable only if the allegedly deceptive statement was material to the recipient. *See, e.g.*, RESTATEMENT (SECOND) OF TORTS § 529, cmt. b (1977) (whether nondisclosure constitutes an actionable "fraudulent misrepresentation depends upon whether the person making the statement knows or believes *that the undisclosed facts might affect the recipient's conduct* . . . . The recipient is entitled to know the undisclosed facts *in so far as they are material*[.]" (emphasis added)).

This is precisely why the U.S. Supreme Court concluded in *Escobar* that the FCA's false-presentment provision, which imposes liability on one who "knowingly presents, or causes to be presented, a false or fraudulent claim for

payment or approval," requires proof of materiality, even though the word "material" does not expressly appear in the provision. *Escobar*, 579 U.S. at 187 (quoting 31 U.S.C. § 3729(a)(1)(A)). "This materiality requirement," the Court explained, "descends from common-law antecedents," and "the common law could not have conceived of fraud without proof of materiality." *Escobar*, 579 U.S. at 193 (citation and internal quotation marks omitted).[5]

The U.S. Supreme Court in *Escobar* went on to hold that an "implied certification theory" of the false-presentment provision—namely a claim for failure to disclose statutory violations—"can be a basis for liability," but only if, among other things, the defendant failed "to disclose noncompliance with *material* statutory, regulatory, or contractual requirements [that] make[] those representations misleading half-truths." *Id.* at 190 (emphasis added). The "classic example" of an actionable half-truth, the Court explained, is "the seller who reveals that there may be two new roads near a property he is

[5] The Supreme Court in *Escobar* cited with approval the Brief of the United States as *Amicus Curiae* "describing common-law principles and arguing that materiality under the False Claims Act should involve a similar approach." 579 U.S. at 193 (citing Br. for the U.S. as *Amicus Curiae* at 30). On the cited page, the United States explained that "[a]lthough two of the Act's prohibitions contain the word 'material' [and] Section 3729(a)(1)(A) does not," "consistent with the FCA's common-law antecedents," "[t]he term 'false or fraudulent claim' … has historically been understood as limited to claims that are false or misleading in some *material* respect." Brief for the U.S. as *Amicus Curiae* at 30 n.7, *Universal Health Servs. Inc. v. United States. ex rel. Escobar*, 579 U.S. 176 (2016), *available at* https://tinyurl.com/4xnnt35n.

selling, but fails to disclose that a third potential road might bisect the property." *Id.* at 188–89 (citing *Junius Constr. Co. v. Cohen*, 178 N.E. 672, 674 (N.Y. 1931) (Cardozo, J.)). This type of omission is actionable because "[t]he enumeration of two streets, described as unopened but projected, was a tacit representation that the land to be conveyed was subject to no others, and certainly subject to no others *materially* affecting the value of the purchase." *Id.* (emphasis added) (quoting *Junius Constr. Co.*, 178 N.E. at 674).

The U.S. Supreme Court's adherence to the common law's strict materiality requirements in interpreting the federal FCA—as to claims involving both affirmative misrepresentations *and* fraudulent non-disclosure—is unsurprising. "[T]he FCA is largely a fraud statute." *United States ex rel. Schutte v. SuperValu Inc.*, 598 U.S. 739, 750 (2023). And the Supreme Court has reiterated the indispensable nature of materiality in claims for fraud time and again. *E.g., Neder v. United States*, 527 U.S. 1, 22 (1999) ("[T]he well-settled meaning of 'fraud' require[s] a misrepresentation or concealment of *material* fact." (emphasis in original)); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 579–80 (1996) ("[A]ctionable fraud requires a *material* misrepresentation or omission." (emphasis in original) (citing RESTATEMENT (SECOND) OF TORTS § 538 (1977))). The U.S. Supreme Court

recently reiterated that "the common law has long embraced … materiality as the principled basis for distinguishing everyday misstatements from actionable fraud." *Kousisis v. United States*, 145 S. Ct. 1382, 1392, 1396 (2025).

Since *Escobar*, other courts faced with requests to limit the materiality requirement to only certain provisions of the federal FCA have declined to do so, relying on the U.S. Supreme Court case law discussed above. For example, a March 2025 decision from the special master in *United States ex rel. Poehling v. UnitedHealth Group, Inc.* concluded that materiality is an element of the so-called reverse false-claims provision in Section 3729(a)(1)(G) of the federal FCA, even though that provision does not use the word "material." *See United States ex rel. Poehling v. UnitedHealth Grp., Inc.*, 2025 WL 682285, at *18–20 (C.D. Cal. Mar. 3, 2025). That provision prohibits "knowingly mak[ing], us[ing], or caus[ing] to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceal[ing] or knowingly and improperly avoid[ing] or decreas[ing] an obligation to pay or transmit money or property to the Government." 31 U.S.C. § 3729(a)(1)(G). In *Poehling*, the special master concluded that "a materiality element must apply to that provision, regardless of which of its two prongs is the basis for the government's claim in

a given case, *because of the inconceivability of fraud absent a materiality element*." *Poehling*, 2025 WL 682285 at *19 (emphasis added) (citing *Neder*, 52 U.S. at 22–23).

Here, the court of appeals relied on this Court's decision in *Xerox* to conclude that it "need not rely on the FCA to interpret the TMFPA." *Labcorp*, 2024 WL 5249087, at *5 (quoting *Xerox*, 555 S.W.3d at 522). But *Xerox* does not support the court of appeals' reasoning. In *Xerox*, this Court held that because the TMFPA's remedy provision speaks only of a "civil penalty," amounts recovered under the Act are not "damages," unlike the federal FCA, which provides for 3 times the amount of "damages" which the Government sustains." *Xerox*, 555 S.W.3d at 530–535. But in addressing that narrow issue, this Court never suggested that the TMFPA, which this Court has termed a "fraud-prevention act," departed from the settled common-law understanding of fraud. *See id.* at 535. In fact, this Court described the civil remedy as "the amount of a payment procured by fraud." *Id.* at 526. A payment can be procured by a fraudulent omission only if that omission is material to the State's payment decision. *Cf. Kousisis*, 145 S. Ct. 1396 ("Resembling a but-for standard, materiality asks whether the misrepresentation 'constitut[ed] an inducement or motive' to enter into a transaction.").

3. Third, as Petitioner ("Labcorp") explains, allowing TMFPA claims based on immaterial omissions would lead to absurd results. The court of appeals did not meaningfully engage with this issue, instead suggesting that the TMFPA's knowledge requirement would safeguard against liability for plainly insignificant omissions. *Labcorp*, 2024 WL 5249087, at *5. But it doesn't. Take the example discussed in the court of appeals' opinion: a healthcare provider that omits a patient's middle initial in a claim for payment. *Id.* at *5. Such an omission could very well be knowing. A provider could even implement a policy of omitting middle initials to streamline the process of submitting claims for payment. Under the court of appeals' construction, that "knowing" omission could create TMFPA liability, even if it was immaterial to the State's decision to pay the claim. Indeed, businesses go to great lengths to streamline paperwork (literal and virtual) and to reduce administrative burdens on their clients and consumers that arise from requiring or reporting information that is immaterial. The court of appeals' interpretation would create perverse incentives for businesses to increase such burdens, imposing unnecessary costs and distractions on those they serve.

The court of appeals' decision would also lead to absurd outcomes in the manner in which TMFPA claims are litigated. If, as the court of appeals held,

the TMFPA provisions prohibiting fraudulent misrepresentations are subject to a materiality requirement—but the prohibitions on fraudulent omissions are not—then the State (or private relators) will use the omission provision to circumvent the materiality requirement for fraudulent representations by styling misrepresentation claims as claims for "omission" of information that would have corrected or disabused the misrepresentation. *Cf. Poehling*, 2025 WL 682285, at *20 (reasoning that allowing reverse-FCA claims based on non-material statements would permit the government to "generate reverse-FCA claims for the purpose of avoiding a materiality requirement"). Put bluntly, the court of appeals' elimination of the materiality requirement for the TMFPA omission provision risks reading the materiality requirement out of the rest of the statute—a patently absurd result that could not have been intended by the legislature.

II. The State's Arguments Are Unpersuasive.

None of the State's arguments in its response to Labcorp's petition support its proposition that healthcare providers to Texas Medicaid patients should be subject to civil fraud penalties for *immaterial* omissions. While Labcorp's rebuttals to those arguments are sound, *see* Reply in Supp. of Pet., a few additional considerations warrant the Court's attention.

First, the State urges that the absence of the term "material" from the omission provision in Section 36.002(2) means that the Legislature intended to make immaterial omissions actionable. Res. to Pet. 7–9. Labcorp correctly notes that language the Legislature actually used in the omission provision captures the concept of materiality. Reply in Supp. of Pet. 2; Petr. Merits Br. 16–18. But the State is wrong for another reason: there is no basis for drawing an inference at odds with the "mischief" or "evil" that prompted the statute, which the Legislature made clear is to prevent *fraud*. *See Xerox*, 555 S.W.3d at 526 (recognizing "the statute's overarching objective of rooting out fraud in the Medicaid system."); Act of May 25, 1995, 74th Leg., R.S., ch. 824 § 1, 1995, Tex. Gen. Laws 4202 (describing the act as "relating to the prevention of Medicaid fraud"); *see generally* Samuel L. Bray, *The Mischief Rule*, 109 GEO. L.J. 967 (2021) (articulating the principle that an interpreter should read a statute in light of the mischief or problem that prompted the statute). Indeed, though the State understandably prefers the shorthand "TMFPA," it cannot deny that the statute's original name was the Texas Medicaid *Fraud* Prevention Act, or that even as retitled is the Texas Health Care Program *Fraud* Prevention Act.

"[G]iven this State's rich common-law-history, law is seldom written on a blank slate." *Am. Nat. Ins. Co. v. Arce*, 672 S.W.3d 347, 365 (Tex. 2023) (Young, J., concurring). For that reason, Texas "follow[s] an 'opt-out' approach that incorporates common-law principles absent the Legislature's clear repudiation." *Taylor v. Tolbert*, 644 S.W.3d 637, 650 (Tex. 2022). The State has pointed to nothing that would justify interpreting the statute's provisions in a manner that would impose liability for immaterial omissions—a position fundamentally at odds with the traditional understanding of fraud under Texas law. *See supra* 6–7.

Second, the State wrongfully casts this Court's observation in *Xerox* that the TMFPA employs different language than the Federal FCA as having somehow "unambiguously rejected" the application of common-law principles to the TMPFA. Res. to Pet. 12. That assertion is profoundly wrong, both for the reasons Labcorp explains and because it ignores the traditional relationship between the common law and statutes that are intertwined with it. Justice Young's concurring opinion in *American National Insurance Co. v. Arce* is instructive:

> The more tightly linked a common-law principle is to the statute itself, the more cautious we should be about disturbing it. . . . [U]prooting law that is intertwined with statutory enactment risks

> undermining the statutes. At the very least, destabilizing preexisting common law of which the legislature was aware should be done, if at all, with great care and for only compelling reasons.

672 S.W.3d at 364 (Young, J., concurring). Interpreting the TMFPA to displace the traditional common-law understanding of fraud—which has always required materiality to be actionable—would upset long-settled expectations and should not be done without compelling evidence from the relevant statutory text. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 318 (2012) (articulating the venerable interpretive canon that "[a] statute will be construed to alter the common law only when that disposition is clear").

Finally, the State makes light of the potential for basing TMFPA liability on immaterial omissions by claiming the statute's other elements—such as the requirement of knowledge—provide safeguards. Res. to Pet. 13–14. But this case shows the potential for abuse: the State is suing Labcorp over alleged omissions that Labcorp disclosed it was making, and that the State was aware of, even as it continued paying Labcorp's claims for years. The State's suggestion that it would not incur the cost of trying to prove immaterial omissions (Res. to Pet. 14) fails for similar reasons. Indeed, this is exactly what the State is doing in this case.

Moreover, the State (and, more to the point, private relators) need not *prove* causation or damages to recover; it is well recognized that simply surviving a motion to dismiss is enough in many cases to extract a lucrative settlement because of the enormous expense of discovery and litigation and the *in terrorem* effect of punitive liability such as TMFPA's treble damages. *See, e.g.*, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (pressures can cause parties to settle even "questionable claims"); *Smith v. Duffey*, 576 F.3d 336, 340 (7th Cir. 2009) (discovery costs alone "can be so steep as to coerce a settlement on terms favorable to the plaintiff even when his claim is very weak"); *NicSand, Inc. v. 3M Co.*, 507 F.3d 442, 450 (6th Cir. 2007) (en banc) (noting pressure of treble damages and "the threat [that] discovery expense will push cost-conscious defendants to settle even anemic cases") (citations omitted).

III. This Case Involves Issues Important to Texas Jurisprudence.

Labcorp's petition raises questions important to Texas jurisprudence and the administration of the Texas Medicaid Program, because the court of appeals' decision exposes healthcare providers, pharmaceutical companies, and other businesses that serve Medicaid patients to staggering penalties and unsustainable costs for even minor omissions. Although the State intervened

in this case, the court of appeals' decision (if uncorrected) will apply in all TMFPA cases, including *qui tam* actions in which the State declines to intervene. Even putting aside, for present purposes, the constitutionality of *qui tam* actions under the TMFPA—an issue that is presently before this Court, *see supra* at 4 n.2—the prospect of permitting non-intervened *qui tam* actions for these types of omissions is troubling. Unlike the State, private relators "are motivated primarily by prospects of monetary reward rather than the public good." *Hughes Aircraft Co. v. United States ex rel. Schumer*, 520 U.S. 939, 949 (1997).

Even though the State intervened in this case and has argued that the omissions at issue are actionable (a position with which the Chamber disagrees, as explained above), in many cases this will not happen. And without a strong materiality requirement, private relators will have little reason to pay attention to the important public policy considerations that regulators typically weigh, often with great care, when administering a complex government program. Unless this Court corrects the court of appeals' decision, it will declare open season for even the most trivial omissions on companies that provide important services to Medicaid patients, to the

detriment of the State, its taxpayers, and the millions of Texans who rely on Medicaid.

A. Materiality is an Essential Limitation on TMFPA Liability.

"Strict enforcement" of a "rigorous" and "demanding" materiality requirement is necessary to address "concerns about fair notice and open-ended liability" that the TMFPA presents. *Escobar*, 579 U.S. at 192, 194 (discussing federal FCA) (cleaned up). In a case where the government has paid claims despite knowing of the allegations, a TMFPA suit serves no purpose; in fact, it affirmatively undermines the government's considered judgment that continued payment is appropriate notwithstanding the alleged violations.

The TMFPA is a means of assisting the government in enforcing its rights and protecting the public fisc. Yet "it is frequently in the Government's interest … to avoid excessive concern over minor failings that might threaten a useful course of dealing with the other party," particularly if "the contractor's performance otherwise has been adequate." *Constitutionality of the* Qui Tam *Provisions of the False Claims Act*, 13 Op. O.L.C. 207, 220 (1989). But a construction of a false claims statute that jettisons the materiality requirement allows government counsel and *qui tam* relators to pursue even

the most minor lapses, often reaching judgments far different from those that were made by relevant government officials who authorized payment for a contractor's services.

That is particularly concerning in the Medicaid context. "Federal Medicaid law alone has been described by some impressive legal minds as 'among the most intricate ever drafted by Congress,' 'almost unintelligible to the uninitiated,' and 'an aggravated assault on the English language, resistant to attempts to understand it.'" *Peter G. Milne, P.C. v. Ryan*, 477 S.W.3d 888, 895 n.4 (Tex. App.—Texarkana 2015, no pet.) (quoting Laura Zdychnec, *The Perilous Path to Long-Term Care: It's Not Really About Asset Protection*, BENCH & B. MINN. (Jun. 5, 2013)). Others have described the Medicaid program as "among the most completely impenetrable texts within human experience." *Abraham Lincoln Mem. Hosp. v. Sibelius*, 698 F.3d 536, 541 (7th Cir. 2012). Similarly, States have, in turn, "developed intricate statutory and administrative regimes over the course of many decades to implement their objectives under existing Medicaid." *Nat. Fed. of Indep. Bus. v. Sebelius*, 567 U.S. 519, 581 (2012). Put simply, virtually every interaction that providers have with Medicaid programs will involve what numerous observers have called an impossibly complex web of laws, rules, and regulations.

If not reversed, the court of appeals' decision below will convert the TMFPA into a vehicle for imposing punishing liability on companies for differences of opinion about the interpretation of complex, often trivial requirements, even if a case involves an unquestionably minor omission that the relevant government agency itself knew about and investigated, while yet continuing to pay the underlying claims. These kinds of actions can undermine legitimate government objectives and needlessly increase costs. *Cf. United States ex rel. Connor v. Salina Reg'l Health Ctr., Inc.*, 543 F.3d 1211, 1220 (10th Cir. 2008) (improper use of *qui tam* suits can "undermine the government's own administrative scheme for ensuring that hospitals remain in compliance and for bringing them back into compliance when they fall short of what the Medicare regulations and statutes require"); Jody Freeman, *The Private Role in Public Governance*, 75 N.Y.U. L. REV. 543, 574 (2000) (relators "pursue different goals and respond to different incentives than do public agencies" and they have no "direct accountability" to the public).

B. Excessive TMFPA Litigation For Immaterial Omissions Will Inflict Needless Costs on Businesses, the State, and the Public.

Like the federal FCA, the TMFPA is "essentially punitive." *Xerox*, 555 S.W.3d at 532. "In addition to what could amount to death-penalty administrative sanctions, the statute authorizes a civil remedy equal to treble

the amount of a payment procured by fraud, interest on the fraudulently procured payment, and a hefty variable fine . . . ." *Id.* at 526–27. "When multiple violations are aggregated, the potential financial exposure under Section 36.052(a) could be staggering." *Id.* at 526. The pressure to settle even tenuous TMFPA claims is immense.

The maintenance of actions under the TMFPA and similar false-claims statutes, where the government payor has considered the allegations and continued to pay claims, is "downright harmful" to both the business community and the public. *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 298 (2010). Merely *defending* actions of that sort requires a "tremendous expenditure of time and energy." Todd J. Canni, *Who's Making False Claims, The* Qui Tam *Plaintiff or the Government Contractor? A Proposal to Amend the FCA to Require that All* Qui Tam *Plaintiffs Possess Direct Knowledge*, 37 PUB. CONT. L. J. 1, 11 n.66 (2007). "Pharmaceutical, medical devices, and [other] health care companies"—the companies subject to the most complex regulatory and contractual schemes—alone "spend billions each year" defending false claims matters. John T. Bentivoglio et al., *False Claims Act Investigations: Time for a New Approach?*, 3 FIN. FRAUD L. REP. 801, 801 (2011).

Apart from direct costs and risks, allegations of fraud—even those that are entirely meritless—"send[] a message," and "[r]eputation[,] … once tarnished, is extremely difficult to restore." Canni, *supra*, at p. 11; *accord United States ex rel. Grenadyor v. Ukrainian Vill. Pharmacy, Inc.*, 772 F.3d 1102, 1105 (7th Cir. 2014) ("[A] public accusation of fraud can do great damage to a firm[.]"). Such allegations, irrespective of merit, can "be used to extract settlements." Sean Elameto, *Guarding the Guardians: Accountability in* Qui Tam *Litigation Under the Civil False Claims Act*, 41 PUB. CONT. L.J. 813, 824 (2012); *see also AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (noting that risk of reputational harm, punitive liability, and protracted litigation creates pressure to settle even "questionable claims"). That palpable pressure will be increased many times if companies are exposed to liability for even *immaterial* omissions.

The prospect of choosing between settling a meritless claim and paying potentially millions of dollars in expenses to litigate, only to face the risk of an adverse judgment and ruinous damages, creates a chilling effect for companies considering whether to participate in Texas Medicaid. The resulting economic impacts could well deprive the State and Medicaid patients of valuable options. *Cf. United States v. Data Translation, Inc.*, 984 F.2d 1256, 1262 (1st Cir. 1992)

("[S]ignificantly increasing competitive firms' cost of doing federal government business[] could result in the government's being charged higher … prices."); Memorandum from Michael D. Granston, Dir., Com. Litig. Branch, Fraud Section, U.S. Dept. of Justice, to Attorneys, Com. Litig. Branch, Fraud Section at 5 (Jan. 10, 2018), *available at* https://tinyurl.com/548v5zpz ("[T]here may be instances where an action is both lacking in merit and raises the risk of significant economic harm that could cause a critical supplier to exit the government program or industry."). By contrast, appropriately cabining liability under the TMFPA and similar statutes would ultimately benefit the State, the taxpayer, and the public, as well as contracting businesses.

PRAYER

For the above reasons and those set forth in Labcorp's petition for review and brief on the merits, the Court should reverse the judgment below.

Respectfully submitted October 22, 2025.

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I certify that the foregoing brief complies with the type-volume limitation set forth in Texas Rules of Appellate Procedure 11 and 9.4(i)(2)(B) because it contains 5,159 words, excluding the parts exempted by Rule 9.4(i)(1). I further certify that the foregoing brief complies with the typeface requirements of Rule 9.4(e), because it is a computer-generated brief produced using Microsoft Word in the font Century Expanded BT at size 14 for text and size 12 for footnotes.

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I certify pursuant to Texas Rule of Appellate Procedure 11(d) that a copy of the foregoing brief was served through electronic filing upon counsel of record for all parties who have appeared in this case.

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