

**In the United States Court of Appeals  
for the Seventh Circuit**

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UNITED STATES OF AMERICA and STATE OF ILLINOIS ex rel.,  
TRACY SCHUTTE and MICHAEL YARBERRY, Relators,

*Plaintiffs-Appellants, Cross-Appellees,*

v.

SUPERVALU, INC., *et al.*,

*Defendants-Appellees, Cross-Appellants.*

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On Appeal from the United States District Court  
for the Central District of Illinois  
District Court No. 3:11-cv-3290 (Hon. Sue Myerscough)

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**BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF  
THE UNITED STATES OF AMERICA IN SUPPORT OF  
DEFENDANTS-APPELLEES AND AFFIRMANCE**

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**APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

Appellate Court No: 25-3134

Short Caption: Schutte v. SuperValu, Inc.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

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## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, the Chamber of Commerce of the United States of America (“Chamber”) states that it is a non-profit, tax-exempt organization incorporated in the District of Columbia. The Chamber has no parent company, and no publicly held company has a 10% or greater ownership interest in the Chamber.

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## INTEREST OF *AMICUS CURIAE*<sup>1</sup>

The Chamber of Commerce of the United States of America 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 sector, and from every region of the country. 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.

In recent years, the Chamber has highlighted how windfall-driven relations have abused the False Claims Act's *qui tam* mechanism. That abuse has exacted a substantial economic toll on businesses nationwide, and the Chamber has a significant interest in preventing such harms. Many Chamber members participate in federal programs as contractors, grantees, healthcare providers, or program participants and therefore are subject to the False Claims

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus*, its members, or its counsel, made any monetary contribution intended to fund this brief's preparation or submission. The parties have consented to this filing.

Act and its severe remedies, including treble damages and per-claim civil penalties. They have a strong interest in ensuring that the Act’s materiality requirement and constitutional limits on civil penalties are faithfully applied so that the statute remains focused on addressing genuine fraud against the government, rather than imposing extraordinary liability where the government has suffered no loss.

## **INTRODUCTION**

This case illustrates the dangers of converting ordinary regulatory disagreements into fraud actions under the False Claims Act (FCA). The FCA is a powerful tool designed to combat fraud against the federal government. When properly applied, it protects the public fisc by deterring fraud and penalizing those who knowingly submit fraudulent claims for payment. But the statute’s extraordinary remedies—treble damages and substantial per-claim civil penalties—also create powerful incentives for opportunistic litigation. Courts therefore play a critical role in ensuring that the FCA is applied consistent with its text and purpose, and is not transformed into a vehicle for imposing grossly excessive penalties for conduct that did not harm the government.

This case demonstrates why those limits matter. The relators—Michael Yarberry and Tracy Schutte—advanced a novel theory that Defendants (collectively, “SuperValu”) violated the FCA by failing to treat customer-initiated price matches as part of its “usual and customary” price for prescription drugs reimbursed by government healthcare programs. Yarberry, a repeat *qui tam* plaintiff in other actions represented by his same counsel here, encouraged Schutte to obtain employment at a SuperValu pharmacy “to get in stores and see what was going on.” After working only four shifts, Schutte left the job, and nine days later the relators filed this lawsuit against SuperValu.

After fifteen years of litigation—including a previous trip to this Court and the Supreme Court—this case culminated in a three-week trial involving numerous witnesses and extensive documentary evidence. The jury rejected the relators’ claims, finding that SuperValu caused no losses to the government. That judgment should be affirmed.

*Amicus* writes to address two issues of broad importance to FCA litigation generally.

*First*, the district court adopted an erroneous interpretation of the FCA’s materiality requirement. Before trial, the district court granted the

relators summary judgment on materiality on the theory that any misrepresentation about the amount the government owes is *automatically* material. In other words, the court adopted a *per se* “money-is-material” rule.

That rule cannot be reconciled with the Supreme Court’s decision in *Universal Health Services, Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016). *Escobar* makes clear that materiality under the FCA is a “demanding” and holistic, fact-laden inquiry focused on whether the alleged misrepresentation actually mattered to the government’s payment decision. *Id.* at 194. By treating any representation about the amount the government owes as automatically material, the district court replaced that fact-intensive inquiry with a categorical rule. That approach would effectively eliminate the materiality requirement in a wide range of FCA cases and undermine a key safeguard against opportunistic or otherwise meritless FCA actions.

*Second*, relators ask this Court to remand with instructions to impose statutory penalties for more than a million reimbursement claims<sup>2</sup>—penalties that would exceed *\$6 billion*—even though the jury found that the

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<sup>2</sup> Relators request the imposition of penalties only for the claims submitted to Illinois Medicaid, not for those submitted to the federal government. *See* Appellants’ Br. at 51.

government suffered no damages at all. The jury’s finding that the relators failed to prove any loss forecloses the extraordinary penalties they seek and should preclude any remand. And allowing such penalties would transform the FCA from a statute designed to remedy fraud against the government into a mechanism for imposing staggering windfalls where the government has suffered no harm.

The relators’ request for penalties on a per-claim basis underscores a recurring problem in FCA litigation: private individuals seeking grossly excessive penalties that bear no reasonable or proportionate relationship to the harm (if any) that the government sustained. Such requests defy both the purpose of the FCA and basic constitutional limits on punitive penalties.

In affirming the judgment below, this Court should make clear that the FCA does not permit categorical materiality rules and does not authorize extraordinary penalties where the government has suffered no loss.

## **ARGUMENT**

### **I. The FCA Does Not Permit a *Per Se* “Money-Is-Material” Rule**

The district court’s materiality ruling cannot be reconciled with the Supreme Court’s False Claims Act jurisprudence. The district court held that because the alleged misrepresentation here was about the amount the

government reimbursed for prescription drugs, the misrepresentation was necessarily “material.” *See* Dkt. 437. That reasoning amounts to a categorical rule: whenever a claim involves money, materiality is automatically satisfied.

But the Supreme Court has squarely rejected such categorical approaches to the FCA’s materiality requirement. And allowing the district court’s rule to stand uncorrected would effectively eliminate a critical limit on FCA liability.<sup>3</sup>

#### **A. The District Court’s Materiality Analysis Is Wrong**

The Supreme Court’s decision in *Escobar* emphasized that materiality under the FCA is a “demanding” and holistic inquiry. *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176, 194 (2016). The Court could not have been clearer: materiality “cannot rest on a single fact or occurrence as always determinative.” *Id.* (citation omitted). Thus, a “misrepresentation cannot be deemed material merely because the Government designates compliance with a particular statutory, regulatory, or contractual requirement as a condition of payment.” *Id.* Nor is it enough for a finding of materiality that

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<sup>3</sup> As SuperValu explains, the Court can affirm without reaching the materiality question, which is raised by SuperValu on cross-appeal. *Amicus* respectfully submits that in affirming, the Court should emphasize that the district court’s materiality ruling was incorrect.

the Government could refuse payment “if it knew of the defendant’s noncompliance.” *Id.*

The district court’s ruling directly conflicts with that framework. Rather than applying *Escobar*’s demanding, fact-specific inquiry, the court treated materiality as effectively automatic whenever a claim is about the amount the government is owed. By granting summary judgment to relators on that basis, the court removed the question from the jury and replaced *Escobar*’s holistic analysis with the very type of categorical rule the Supreme Court rejected. *See* Dkt. 437 at 26. That rule would effectively eliminate the materiality element in any FCA case involving alleged false claims about money.

The court also disregarded the statutory definition of materiality. A misrepresentation is “material” under the FCA only if it has a “natural tendency to influence, or [is] capable of influencing, the payment . . . of money or property.” 31 U.S.C. § 3729(b)(4). Consistent with that standard, *Escobar* explained that “if the Government regularly pays a particular type of claim in full despite actual knowledge that certain requirements were violated, and has signaled no change in position, that is strong evidence that the requirements are not material.” 579 U.S. at 195. On summary judgment, the district court cast aside evidence—later confirmed by uniform testimony at trial—that payors knew

SuperValu did not treat price-matched prices as “usual and customary” prices yet continued reimbursing claims. Dkt. 437 at 26. Under *Escobar*, such evidence is “very strong” proof that the alleged misrepresentation was not material. 579 U.S. at 195.

Allowing the district court’s approach to stand would dramatically expand FCA liability. Because most reimbursement claims involve representations about money, the district court’s rule would allow nearly any billing dispute to be recast as fraud. That is precisely the result *Escobar* warned against when it emphasized that the FCA is not a vehicle for punishing “garden-variety breaches of contract or regulatory violations.” *Id.* at 194. The district court’s rule would also create serious administrability problems. Because most claims submitted to the government involve representations about the amount owed, if any statement about the amount of payment were automatically material, the materiality inquiry would often collapse into the falsity inquiry. That would eliminate the very safeguard that Congress created and the Supreme Court recognized as essential to prevent the FCA from becoming an all-purpose enforcement tool for regulatory disputes. The consequences of the district court’s categorical rule thus extend far beyond this case.

## **B. The Correct Materiality Standard Is an Important Check on Liability Under the FCA**

1. The FCA was enacted “to prevent and punish frauds upon the Government of the United States” in response to allegations of rampant profiteering during the Civil War. Cong. Globe, 37th Cong., 3d Sess. 348 (1863) (statement of Sen. Wilson); *see also United States v. McNinch*, 356 U.S. 595, 599 (1958).<sup>4</sup> Because the FCA is a fraud-prevention statute, enforcement of its materiality standard plays an important role in limiting the Act’s reach, in order to prevent imposing treble damages and civil penalties for minor errors or disagreements about the interpretation of ambiguous statutes, regulations, and contracts.

For that reason, courts have emphasized that to qualify as a fraud under the FCA, a violation of a provision should go “to the very essence of the bargain” between the government and the defendant. *United States ex rel.*

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<sup>4</sup> Private contractors supporting the Union Army were accused of defrauding the federal treasury through flagrantly wrongful acts: “For sugar[,] [the government] often got sand; for coffee, rye; for leather, something no better than brown paper; for sound horses and mules, spavined beasts and dying donkeys; and for serviceable muskets and pistols, the experimental failures of sanguine inventors, or the refuse of shops and foreign armories.” *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 722 F. Supp. 607, 609 (N.D. Cal. 1989) (quoting 1 F. Shannon, *The Organization and Administration of the Union Army, 1861–1865*, at 58 (1965)).

*Petratos v. Genentech Inc.*, 855 F.3d 481, 489 (3d Cir. 2017) (quoting *Escobar*, 579 U.S. at 193 n.5). And the Supreme Court has stressed that “concerns about fair notice and open-ended liability” in FCA cases should be “addressed through strict enforcement of the Act’s materiality and scienter requirements,” which “are rigorous.” *Escobar*, 579 U.S. at 192 (internal quotes omitted).

If the district court’s approach to materiality is allowed to stand, that safeguard would be significantly weakened. A statute enacted to address flagrant and egregious acts of fraud—such as the provision of worthless goods, inedible food, and “spavined beasts and dying donkeys,” *see* n.3, *supra*—will instead be used to pursue treble damages and per-claim penalties based on purported violations of abstruse laws, regulations, and contractual provisions that have no impact on the government’s actual payment decisions.

2. The need for strict enforcement of the materiality requirement is particularly important because businesses that participate in federal programs must operate within dense and highly technical regulatory and contractual frameworks. In practice, they can be rats’ nests of complex or opaque provisions that interact in unpredictable ways.

Courts have repeatedly recognized that these legal regimes are at a minimum “complex,” *United States ex rel. Vigil v. Nelnet, Inc.*, 639 F.3d 791, 799 (8th Cir. 2011), if not also “poorly[ ]worded,” *H.B. Mac, Inc. v. United States*, 36 Fed. Cl. 793, 816 (1996), *rev’d on other grounds*, 153 F.3d 1338 (Fed. Cir. 1998). Government contracts routinely incorporate “thousands of pages of other federal laws and regulations” of comparable complexity. *United States v. Sanford-Brown, Ltd.*, 788 F.3d 696, 707 (7th Cir. 2015), *superseded in part*, 840 F.3d 445 (7th Cir. 2016).

Many federal regulatory regimes are so reticulated and challenging that courts routinely describe them as “byzantine,” *United States ex rel. Sequoia Orange Co. v. Sunland Packing House Co.*, 912 F. Supp. 1325, 1329 (E.D. Cal. 1995), “intricate[,]” and “almost unintelligible,” *Schweiker v. Gray Panthers*, 453 U.S. 34, 43 (1981); *see also* Steven R. Koltai, *How the Healthcare.gov Mess Happened and How To Fix It*, Brookings Inst. (Nov. 25, 2013) (federal regulations are often “onerous and impenetrable” “to the point of incomprehensibility.”); David Freeman Engstrom, *Agencies as Litigation Gatekeepers*, 123 Yale L.J. 616, 672 n.180 (2013) (referencing the “byzantine” two-thousand-page Federal Acquisition Regulations governing federal government contracting and procurement).

The four different federal public health insurance programs implicated in this case, *see* SuperValu Br. 5-8, embody a complex, often convoluted and confusing, scheme. This Court has described such rules as “among the most completely impenetrable texts within human experience.” *Abraham Lincoln Mem. Hosp. v. Sebelius*, 698 F.3d 536, 541 (7th Cir. 2012) (quoting *Rehab. Ass’n of Va., Inc. v. Kozlowski*, 42 F.3d 1444, 1450 (4th Cir. 1994)). In such an environment, the materiality requirement performs a critical function. It helps ensure that the FCA does not transform every disagreement about the meaning of complicated regulatory or contractual provisions into a fraud claim. And where, as here, the government payor continues to pay claims despite knowledge of the alleged practice, government inaction is a strong indication that the purported violation is immaterial.

3. A rigorous materiality limitation is also essential given the modern landscape of lawyer-driven, opportunistic FCA suits. Since the 1986 FCA amendments, an “army of whistleblowers, consultants, and, of course, lawyers” has been released onto this landscape. John T. Boese, *Civil False Claims and Qui Tam Actions* xxv (5th ed. 2021). Between 1986 and September 30, 2025, nearly 26,000 FCA actions were filed, with over 18,250 of them *qui tam* suits. U.S. Dep’t of Justice, *Fraud Statistics—Overview: Sep. 30, 2025*,

<https://tinyurl.com/m4abby26>. In 2025 alone, FCA relators “filed 1,297 *qui tam* suits, the highest number in a single year.” See U.S. Dep’t of Justice, *False Claims Act Settlements and Judgments Exceed \$6.8B in Fiscal Year 2025* (Jan. 16, 2026) (“*FCA Settlements and Judgments*”), <https://tinyurl.com/mk7hd63d>. But only “about 10 percent of non-intervened cases result in recovery” for the government. *United States ex rel. Hunt v. Cochise Consultancy, Inc.*, 887 F.3d 1081, 1087 (11th Cir. 2018); Ralph C. Mayrell, *Digging Into FCA Stats: In-House Litigation Budget Insights*, Law360 (July 13, 2021), <https://tinyurl.com/499fczaf>.

Meritless *qui tam* actions are “downright harmful” to the business community. See *Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 298 (2010). Businesses face demands for treble damages and civil penalties per claim, which can quickly—as reflected by the relators’ multi-billion-dollar penalty request in this case—mushroom (e.g., in health-care matters involving thousands of patient claims). *Civil Monetary Penalties Inflation Adjustments for 2025*, 90 Fed. Reg. 29,445, 29,447 (July 3, 2025); 31 U.S.C. § 3729(a); 28 C.F.R. § 85.3(a)(9). In 2025 alone, settlements and judgments in FCA cases exceeded \$6.8 billion. *FCA Settlements and Judgments*, *supra*. And simply defending an FCA case 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 health care companies” alone “spend billions each year” dealing with FCA investigations. John T. Bentivoglio et al., *False Claims Act Investigations: Time for a New Approach?*, 3 Fin. Fraud L. Rep. 801, 801 (2011). Thus, even unsuccessful FCA suits impose substantial costs.

Take this case. The previous trip to this Court and the Supreme Court consumed thousands of hours of lawyers’ and judges’ time. On remand, thousands more hours were spent producing and reviewing mountains of discovery and conducting a three-week trial with nineteen witnesses and thousands of pages of exhibits. All of that effort came to naught when the jury recognized the case for what it was.

Moreover, the very existence of allegations, however tenuous, “can do great damage to a firm.” *United States ex rel. Grenadyor v. Ukrainian Vill. Pharmacy, Inc.*, 772 F.3d 1102, 1105 (7th Cir. 2014). “[T]he mere presence of allegations of fraud may cause [federal] agencies to question the contractor’s business practices.” Canni, *supra*, at 11. And a finding of FCA liability can

result in suspension and debarment from government contracting, *see* 2 C.F.R. § 180.800—“equivalent to the death penalty” for many contractors, Ralph C. Nash & John Cibinic, *Suspension of Contractors: The Nuclear Sanction*, 3 Nash & Cibinic Rep. ¶ 24 (Mar. 1989), as well as exclusion from participation in federal healthcare programs, *see* 42 U.S.C. § 1320a-7(b).

Relators are thus keenly aware that mere allegations, regardless 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). While SuperValu stood its ground in this case and proceeded to trial, many FCA cases that survive motions to dismiss result in settlements because punitive liability and the potential that lawsuits will drag on creates intense pressure to settle even “questionable claims.” *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011); *see also 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”); *Haroco, Inc. v. American Nat. Bank & Tr. Co.*, 747 F.2d 384, 399 n.16 (7th Cir. 1984) (noting the “*in terrorem* settlement value that the threat of treble damages may add to spurious claims”).

This pressure will only intensify if the district court's *per se* money-is-material rule is not corrected.

## **II. Massive FCA Penalties Are Unavailable Where the Jury Finds No Damages**

Relators and their *amicus* ask this Court to remand with instructions to impose statutory penalties for more than a million reimbursement claims—penalties that would exceed *\$6 billion*—even though the jury found *no FCA violation* and the government suffered *no damages*. See Appellants' Br. at 57-61; Anti-Fraud Coalition Br. at 8-10.

That request cannot be squared with the jury's verdict or basic constitutional principles. To begin, the jury determined that relators failed to establish FCA liability. That finding alone forecloses the extraordinary penalties relators seek.

Even setting that aside, the requested penalties would raise profound concerns. FCA civil penalties are punitive in nature, and courts have long recognized that penalties must be proportional to the harm caused. Here, however, the jury found that the government suffered no harm at all.

Allowing billions of dollars in penalties under those circumstances would transform the FCA from a statute designed to remedy fraud against the government into a mechanism for imposing staggering windfalls to individuals

where the government suffered no loss. Such an outcome would raise serious constitutional concerns, including concerns under the Eighth Amendment’s prohibition on excessive fines.

### **A. The Constitution Limits Civil Penalties**

The FCA’s civil-penalty provision is “completely punitive.” *United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 388 (4th Cir. 2015) (citing *United States v. Mackby*, 261 F.3d 821, 830 (9th Cir. 2001)).

Such penalties are subject to constitutional limits. The Supreme Court has held that civil penalties cannot be “grossly disproportional to the gravity of [the] . . . offense,” as “[t]he amount of the [penalty] must bear some relationship to the gravity of the offense that it is designed to punish.” *United States v. Bajakajian*, 524 U.S. 321, 334 (1998). Although the Supreme Court has not elaborated on how to assess proportionality in the Eighth Amendment context, its punitive-damages jurisprudence is instructive. *Id.* In that context, the Court has explained that proportionality is the touchstone, and “an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 425 (2003).

The logic underlying those decisions applies with equal force to FCA penalties. Given that the goal of both punitive damages and civil penalties is to punish and deter, “it’s hard to see why the Supreme Court’s approach to punitive damages under the Fifth Amendment would differ dramatically from analysis under the Excessive Fines Clause.” *Grant ex rel. United States v. Zorn*, 107 F.4th 782, 798 (8th Cir. 2024) (cleaned up) (quoting *United States v. Rogan*, 517 F.3d 449, 454 (7th Cir. 2008)); *see also United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 388 (4th Cir. 2015); Kendall Archer Graves, *Reining the False Claims Act Into the Bounds of the Excessive Fines Clause*, 53 Pub. Cont. L. J. 795, 817, 819 (Summer 2024) (Eighth Amendment and courts must provide “meaningful protection to defendants in FCA cases” against exorbitant penalties); Sheila B. Scheuerman, *The Road Not Taken: Would Application of the Excessive Fines Clause to Punitive Damages Have Made a Difference?*, 17 Widener L. J., 949, 951 (2008) (“The standards for assessing both fines and punitive damages awards largely overlap and, indeed, have influenced each other significantly. To the extent any differences exist, they are largely immaterial.”). Accordingly, courts must ensure that FCA penalties remain proportional to the harm they are intended to redress.

Courts confronting extreme FCA penalties have engaged in proportionality review to enforce constitutional limits. In *Zorn*, the Eighth Circuit held that an award of treble damages and civil penalties exceeding \$6 million was a “punitive sanction” that was so grossly excessive that it violated the Excessive Fines Clause. *See Zorn*, 107 F.4th at 800. The court then remanded the case with directions for the district court to “ensure the punitive sanction falls within an appropriate single digit multiplier of the amount of compensatory damages.” *Id.* at 801. Similarly, last year, a district court concluded that a civil penalty exceeding \$448 million in a case involving \$2.8 million in actual damages “constitutes an excessive fine,” and reduced the award to “equal to three times actual damages.” *United States ex rel. Taylor v. Healthcare Assocs. of Tex., LLC*, No. 3:19-cv-2486, 2025 WL 624493, at \*6 (N.D. Tex. Feb. 26, 2025), *appeal docketed*, No. 25-10842 (5th Cir. July 21, 2025). Those decisions reflect an important principle: even where FCA liability exists, penalties must remain tethered to the harm actually caused.

## **B. Per-Claim Penalties Can Produce Grossly Disproportionate Punishments**

Per-claim penalties pose a particular risk of disproportionality. As one commentator has observed, “[w]hen numerous small claims are at issue, the FCA’s per claim fines can metamorphize from rough remedial justice to

grossly disproportionate penalties.” Melissa Ballengee, *Bajakajian: New Hope for Escaping Excessive Fines Under the False Claims Act*, 27 J.L. Med. & Ethics 366, 368 (1999). The resulting totals can quickly reach staggering amounts that bear little relationship to the harmfulness of the underlying conduct. “When statutory damages are multiplied by a large number of statutory violations, they can produce enormous damage awards that are disproportionate to a defendant’s conduct,” and, as a result, “seemingly technical legal violations can lead defendants to bankruptcy.” Ari Goldstein, *Solving the Aggregate Liability Problem*, 10 U. Pa. J. L. & Pub. Aff. 151, 152 (2025).

This case illustrates the problem starkly. If the district court had granted relators’ post-trial motion and imposed penalties for 17,630,692 claims, the minimum statutory penalty—at \$5,000 a claim—would have been more than *\$88 billion dollars*. That amount exceeds the combined total of *all* FCA judgments and settlements since 1986. *See FCA Settlements and Judgments, supra*. In this Court, relators and their *amicus* seek a remand with instructions to award penalties on a subset of those claims, totaling more than *\$6 billion* in penalties. Appellants’ Br. at 60.

Even that subset of the theoretical total penalty would be grossly excessive and constitutionally impermissible. A penalty measured in billions of

dollars for conduct that produced no proven harm, and thus resulted in zero damages, would bear no reasonable relationship to the gravity of the alleged offense.

Neither the Civil War-era Congress that enacted the False Claims Act nor the Framers who adopted the Excessive Fines Clause could have ever contemplated—let alone endorsed—such a result.

### CONCLUSION

For the foregoing reasons and the reasons set forth in the Brief for Defendants-Appellees/Cross-Appellants, this Court should affirm the judgment below.

Dated: March 13, 2026

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## CERTIFICATE OF COMPLIANCE

1. The foregoing Brief of *Amicus Curiae* complies with the type-volume limitations of Seventh Circuit Rule 29 because the brief contains 4,145 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. The brief also with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century Expanded BT 14-point font.

Dated: March 13, 2026

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## CERTIFICATE OF SERVICE

I hereby certify that on March 13, 2026, I electronically filed the foregoing document with the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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