SUPREME COURT OF LOUISIANA

DOCKET NO. 2025-C-502

STATE OF LOUISIANA, BY AND THROUGH
ITS ATTORNEY GENERAL, LIZ MURRILL,

Plaintiff-Respondent,

v.

ABBVIE, INC., *et al.*,

Defendants-Relators.

A CIVIL PROCEEDING

ON APPLICATION FOR REVIEW
OF THE JUDGMENT RENDERED ON MARCH 24, 2025
BY THE LOUISIANA THIRD CIRCUIT COURT OF APPEAL
(CASE NO. CA 25-136)

BRIEF ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA AS *AMICI CURIAE* SUPPORTING DEFENDANTS-RELATORS

Respectfully submitted,

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INTRODUCTION

The Louisiana Medical Assistance Program Integrity Law ("MAPIL") is the State's Medicaid-fraud statute. In a "common" Medicaid-fraud case, a pharmacy or a doctor's office bills the medical assistance program for "services or goods that were not actually performed or provided," "office visits that never took place," "a more expensive service or good than was actually performed or provided," or "personal expenses" on top of the price of the product or service. Nat'l Ass'n of Attys. Gen., *About the Medicaid Fraud Control Units*, NAAG.org (2025)[1]; *see also Caldwell v. Janssen Pharm., Inc.*, 2012-2447 (La. 1/28/2014), 144 So. 3d 898 (MAPIL prohibits "fraud or misrepresentations against the medical assistance programs").

This case looks nothing like those typical cases. This is an antitrust case that the State is trying to shoehorn into MAPIL. The State alleges that Defendants — pharmaceutical companies that do not themselves bill Medicaid — delayed market entry of a generic drug and consequently enjoyed patent-protected monopoly pricing for too long. *See generally Impax Labs., Inc. v. FTC*, 994 F.3d 484, 492 & n.3 (5th Cir. 2021). While Defendants were allegedly enjoying unlawful monopoly prices, the theory goes, the downstream businesses providing drugs to Medicaid patients submitted claims for reimbursement. Those reimbursement claims would have been made, and paid, at the then-current, actual price of the drug. The State cannot link the alleged antitrust violations to the core element of a claim under MAPIL: a "false or fraudulent claim." Indeed, no one is alleged to have misstated, or caused the State to pay more than, the prevailing price, or to have billed for a different product or service. In short, this is not a case of fraud against the State's medical assistance programs (or anyone).

The Court of Appeal nevertheless sustained the State's MAPIL theory, in contradiction of MAPIL's text and this Court's on-point decision in *Janssen*, 144 So. 3d at 910-13. This Court should grant the writ to correct the lower court's mistake and prevent the harmful consequences of its decision. If a MAPIL claim can be brought whenever any business at any level of a supply chain that produces anything covered by Louisiana's medical assistance program allegedly violates any law, then the statute — enforceable not only by the State but also by *qui tam* relators — amounts to a roving warrant to police general conduct nationwide. That is not the Medicaid-fraud statute the Legislature passed. Reaffirming *Janssen* would honor the scope of the statute and confirm its

[1] *Available at* https://www.naag.org/about-naag/namfcu/about-the-medicaid-fraud-control-units/.

alignment with the federal False Claims Act — the statute on which MAPIL was based. *See Janssen*, 144 So. 3d at 912.[2]

LAW & ARGUMENT

I. THE DECISION BELOW CONTRADICTS MAPIL'S TEXT AND THIS COURT'S DECISION IN *JANSSEN*

The State alleges violations of MAPIL subsections (A), (B), and (D). *See* Petition ¶¶ 384-386, *Louisiana v. AbbVie, Inc.*, C-2300114 (La. Dist. Ct. Jan. 23, 2023) (hereinafter "State's Petition"). Each of those subsections requires the submission of "false or fraudulent claim[s]." La. Rev. Stat. § 46:438.3(A), (B), (D). MAPIL defines those terms. A "false or fraudulent claim" is a claim that the submitting party "submits knowing the claim to be false, fictitious, untrue, or misleading in regard to any material information." *Id.* § 46:437.3(7). This definition includes "a claim which is part of a pattern of incorrect submissions in regard to material information or which is otherwise part of a pattern in violation of applicable federal or state law or rule." *Id.* "Claim" is separately defined. A "claim" is, in material part, a "request or demand . . . for money . . . that is drawn in whole or in part on medical assistance programs funds." *Id.* § 46:437.3(5).

These definitions leave no doubt that the State must allege, and ultimately prove, that Defendants' conduct was connected to a "claim" — a request for money from the State's medical assistance program — that is false, fictitious, untrue, or misleading. This the State cannot do. The State acknowledged in its district court briefing that it "has not identified particular" — that is to say, *any* — "false or fraudulent claims submitted by Defendants." State of La.'s Memo. in Opp. to AbbVie Defs.' Exceptions at 8, *Louisiana v. AbbVie*, C-2300114-C (La. Dist. Ct. filed Nov. 27, 2024) ("State's MTD Opp.").

The Court of Appeal reasoned that the State's MAPIL allegations could survive because they alleged that unidentified Medicaid "claims" were "part of a pattern by Defendants . . . in violation of applicable federal or state law or rule." *Louisiana ex rel. Murrill v. AbbVie, Inc.*, 2025-136 (La. App. 3 Cir. 3/24/25), ---So. 3d ---, 2025 WL 892736 (cleaned up) (quoting the district court). In the appellate court's view, and the State's, it is enough that the alleged antitrust violations were part of a chain of events that included, at some point in time, claims being presented to the State by other people — truthful claims seeking reimbursement at the actual price. *See, e.g.*, State's Petition ¶ 384 (Defendants "knew" the drug prices "were being manipulated and misrepresented

[2] *Amici* take no position on any issues presented in this litigation apart from those addressed herein concerning the reach of MAPIL.

via Defendants [sic] own unscrupulous conduct"); State's MTD Opp. 8 ("the State has instead alleged an entire fraudulent scheme based on millions of claims presented by and through Defendants' business practices").

This Court's decision in *Janssen* forecloses the State's exact theory. There, the State alleged that a drug manufacturer had engaged in deceptive marketing, in violation of FDA rules, and that the marketing led downstream providers to prescribe the defendant's drug more often than indicated. *See* 144 So. 3d at 902. The State argued that the alleged misrepresentations in marketing caused additional prescriptions to be issued "that the State would not have purchased, or reimbursed" if not for the misrepresentations. *Id.* Mirroring its argument here, the State argued that the manufacturer's marketing conduct was "part of a pattern in violation of applicable federal or state law or rule." *Id.* at 910 (quoting La. Rev. Stat. § 46.437.3(7)).

This Court rejected the State's theory. The Court held that, under "the clear wording of the statute," "*the 'claim'*" itself — *i.e.*, the request for payment — "must be shown to be part of" the allegedly law-violating pattern. *Id.* (emphasis added). Pointing to the manufacturer's marketing conduct as the "pattern" and then asserting that any resulting claims for payment were false or fraudulent was an "overly expansive" interpretation of the "pattern" language that "loses sight" of the required link between the allegedly unlawful conduct and the "present[ation of] a claim for payment." *Id.* This Court was clear throughout *Janssen* that MAPIL is concerned with the truth or falsity of only a specific and narrow universe of information — the "information *required on a claim for payment*" — and is not triggered by allegations of falsity disconnected from the claim itself or relating more broadly to "any information required by any federal or state agency or source" in other contexts beyond the submission of claims to the State's assistance programs. *Id.* at 913, 911 (emphasis added).

As in *Janssen*, the State here cannot allege a sufficiently close (really, any) link between the supposed misconduct and a claim for payment. Indeed, the State's only basis for labeling claims "false or fraudulent" is the vague notion that they were "presented by and through Defendants' business practices." State's MTD Opp. 8; *see also* State's Petition ¶¶ 384-386. That says nothing about the submission of the claims themselves — nor about the parties submitting them — and it is precisely the attenuated liability theory this Court rejected in *Janssen*.

The Court of Appeal also suggested (2025 WL 892736, at *28) that MAPIL liability might lie under subsection (D) of the statute, which prohibits "conspir[ing] to defraud, or attempt[ing] to

defraud, the medical assistance programs through misrepresentation." La. Rev. Stat. § 46:438.3(D). *Janssen* again addressed and foreclosed the theory. As to that subsection (which was subsection (C) of the version of MAPIL at issue in that case[3]), the Court held that, even if the subsection applies to "an expanding circle of violators" beyond the person who submits a claim, it still only applies to (i) schemes concerning "information required *on a claim for payment*" to the assistance program or (ii) statements "*made to the department* relative to" the program. 144 So. 3d at 912 (emphasis added).[4] Again, nothing close to this is alleged here.

II. ABANDONING *JANSSEN* WOULD CAUSE HARMFUL AND ABSURD CONSEQUENCES

Allowing the Court of Appeal's decision to stand would expand MAPIL's reach in damaging ways that far exceed the Legislature's intent. This Court should step in to prevent those harms, enforce the statutory text, and restore MAPIL's intended operation.

First, the lower court, and the State, would read MAPIL to prohibit any misconduct by anyone up the supply chain for a product that can be subject to a Medicaid reimbursement claim. But in keeping with MAPIL's focus on the claim itself, MAPIL "logically places the obligation of truthful and full disclosure *on the health care provider or any person seeking to obtain payment through a claim* made against medical assistance program funds." *Id.* at 912 (emphasis added).

Second, the lower court would expand MAPIL liability to any *type* of conduct that violates any state or federal law, no matter how disconnected from the claim itself. *Janssen* again:

> Such a result would lead to absurd consequences, in that potentially any information required by any federal or state agency or source, which is not fully disclosed by any person who ultimately receives Medicaid funds, directly or indirectly, could, if not truthfully or fully disclosed, subject that person to civil penalties under MAPIL.

Id. at 911. That result would turn MAPIL into a general-purpose consumer protection statute, and not the targeted anti-fraud statute that the Legislature passed. (Louisiana, of course, has a consumer protection statute. *See* La. Rev. Stat. § 51:1401 *et seq.*)

Third, the harmful consequences of the lower court's holding are compounded by the fact that MAPIL can be enforced by private *qui tam* relators. *See* La. Rev. Stat. § 46:439.1. MAPIL and similar statutes (like the False Claims Act) authorize *qui tam* suits to create "incentives for whistle-

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[3] *Janssen* interpreted "MAPIL as it read in November 2003." 144 So. 3d at 901. In 2007, the Legislature passed S.B. 281, which amended MAPIL by adding a new subsection (C). *See* Medical Assistance Program Integrity Law (Amdt.), 2007 La. Sess. Law Serv. Act 14 (S.B. 281). The amendment dropped what was then subsection (C) — the conspiracy subsection — down one spot.

[4] The Court ruled similarly as to MAPIL subsection (B). *See* 144 So. 3d at 911-12.

blowing insiders with genuinely valuable information" to help the government catch and penalize fraud that is hard to detect. *United States ex rel. Springfield Terminal Ry. Co. v. Quinn*, 14 F.3d 645, 649 (D.C. Cir. 1994); *see also United States ex rel. Green v. Northrop Corp.*, 59 F.3d 953, 963 (9th Cir. 1995) (noting the "difficulties in detecting fraud that stem largely from the unwillingness of insiders with relevant knowledge of fraud to come forward"). But *qui tam* provisions also strive to balance the difficulties of enforcement against the need to "prevent parasitic *qui tam* actions in which relators simply feed off" public information. *United States ex rel. Jones v. Horizon Healthcare Corp.*, 160 F.3d 326, 335 (6th Cir. 1998).[5]

The Court of Appeal's decision upsets that balance. It would convert MAPIL into a catchall mechanism for any private citizen to police, under any and all laws, the conduct of any company that produces any product or service that might end up the subject of a Louisiana medical assistance program reimbursement request. Indeed, taking this case's facts, private citizens under MAPIL would become nationwide antitrust enforcers — a dramatic expansion of private enforcement in an "already complex" field. *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 138 (1998). That outcome would upend the expectations — including of *amici* and their members — that this Court settled in *Janssen* when it declared MAPIL a statute focused on "false or fraudulent claim[s] for payment." 144 So. 3d at 913.

This Court's intervention would prevent that outcome and realign MAPIL with the federal False Claims Act on which it "was based." *Id.* at 912. "The False Claims Act is not," the U.S. Supreme Court has warned, "'an all-purpose antifraud statute,'" nor is it "a vehicle for punishing garden-variety breaches of contract or regulatory violations." *Universal Health Servs., Inc. v. United States ex. rel. Escobar*, 579 U.S. 176, 194 (2016) (quoting *Allison Engine Co. v. United States ex rel. Sanders*, 553 U.S. 662, 672 (2008)); *accord United States ex rel. Vargas v. Lincare, Inc.*, No. 24-11080, 2025 WL 1122196, at *4 (11th Cir. Apr. 16, 2025) ("The FCA targets false claims — not regulatory violations, not internal misconduct, and not abstract theories untethered from government payment."). Rather, the False Claims Act is limited to a narrower set of violations and violators. Consistent with this Court's reasoning in *Janssen*, there is no FCA liability without an actual *false claim*. *See Vargas*, 2025 WL 1122196, at *6 (FCA "penalizes the actual submission

[5] Many *qui tam* provisions present serious separation-of-powers concerns. *See generally United States ex rel. Zafirov v. Fla. Med. Assocs., LLC*, 751 F. Supp. 3d 1293 (M.D. Fla. 2024) (holding that *qui tam* provisions of federal False Claims Act violate Article II of the U.S. Constitution), *appeal docketed*, Nos. 24-13581, 24-13583 (11th Cir. Oct. 30, 2024).

of false claims"); *United States ex. rel. Hebert v. Dizney*, 295 F. App'x 717, 722 (5th Cir. 2008) ("an actual false claim is an indispensable element of a FCA violation" (quoting *United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 501 F.3d 493, 505 (6th Cir. 2007))); *United States ex rel. Clausen v. Lab'y Corp. of Am., Inc.*, 290 F.3d 1301, 1311 (11th Cir. 2002) (FCA does not impose liability for violating government regulations or policies "unless, as a result of such acts, the provider knowingly asks the Government to pay amounts it does not owe"). The same should be true under MAPIL.

CONCLUSION

This Court should grant the writ to correct the Third Circuit's erroneous interpretation of MAPIL and clarify the scope of that statute.

Respectfully submitted,

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