NO. 20-2330

IN THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

UNITED STATES *EX REL.* DEBORAH SHELDON,
EXECUTRIX OF THE ESTATE OF TROY SHELDON,

Plaintiff-Appellant,

v.

ALLERGAN SALES, LLC,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Maryland
(Case No. 1:14-cv-02535-ELH)
(District Judge Ellen L. Hollander)

BRIEF OF WASHINGTON LEGAL FOUNDATION AS *AMICUS CURIAE* SUPPORTING APPELLEE AND AFFIRMANCE

John M. Masslon II
Cory L. Andrews
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave. NW
Washington, DC 20036
(202) 588-0302
jmasslon@wlf.org

Counsel for Amicus Curiae
Washington Legal Foundation

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TABLE OF CONTENTS

DISCLOSURE STATEMENT i

TABLE OF AUTHORITIES iii

INTEREST OF *AMICUS CURIAE* 1

INTRODUCTION AND SUMMARY OF ARGUMENT 1

ARGUMENT 4

I. RELATOR'S EMPHASIS ON THE THREE TYPES OF SCIENTER SUPPORTING FCA LIABILITY IS A RED HERRING 4

II. THE CONSTITUTIONAL-DOUBT CANON RESOLVES ANY QUESTION ABOUT HOW TO APPLY *SAFECO* TO FCA CLAIMS 8

A. Treble Damages Trigger Heightened Due-Process Protections 9

B. Criminal Penalties Trigger Heightened Due-Process Protections 10

C. Relator's Interpretation Of The FCA Flouts These Heightened Due-Process Protections 11

CONCLUSION 23

CERTIFICATE OF COMPLIANCE 24

TABLE OF AUTHORITIES

Page(s)

Cases

Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.,
492 U.S. 257 (1989) 9, 10

Champlin Ref. Co. v. Corp. Comm'n,
286 U.S. 210 (1932) 14

City of Chicago v. Morales,
527 U.S. 41 (1999) 14

Connally v. Gen. Const. Co.,
269 U.S. 385 (1926) 12, 13, 14, 15

Farmer v. Brennan,
511 U.S. 825 (1994) 6

FCC v. Fox Television Stations, Inc.,
567 U.S. 239 (2012) 12

Hindo v. Univ. of Health Scis./Chi. Med. Sch.,
65 F.3d 608 (7th Cir. 1995) 16, 17

Iancu v. Brunetti,
139 S. Ct. 2294 (2019) 8

Int'l Harvester Co. of Am. v. Kentucky,
234 U.S. 216 (1914) 12

Leocal v. Ashcroft,
543 U.S. 1 (2004) 11

Manning v. Caldwell for City of Roanoke,
930 F.3d 264 (4th Cir. 2019) 11, 12

Opati v. Republic of Sudan,
140 S. Ct. 1601 (2020) 12

Rehab. v. Kozlowski,
42 F.3d 1444 (4th Cir. 1994) 20, 21

Ruckh v. Salus Rehab., LLC,
963 F.3d 1089 (11th Cir. 2020) 1

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Safeco Ins. Co. of Am. v. Burr,
551 U.S. 47 (2007) 2, 8

Satellite Broad. Co. v. FCC,
824 F.2d 1 (D.C. Cir. 1987) 10

Schaub v. VonWald,
638 F.3d 905 (8th Cir. 2011) 6

Skilling v. United States,
561 U.S. 358 (2010) 14

St. Louis, I. M. & S. R. Co. v. Williams,
251 U.S. 63 (1919) 10

State Farm Mut. Auto. Ins. Co. v. Campbell,
538 U.S. 408 (2003) 13

United States ex rel. Complin v. N.C. Baptist Hosp.,
818 F. App'x 179 (4th Cir. 2020) 5, 16

United States ex rel. Drakeford v. Tuomey,
792 F.3d 364 (4th Cir. 2015) 7, 16

United States ex rel. Garbe v. Kmart Corp.,
824 F.3d 632 (7th Cir. 2016) 21

United States ex rel. Hagood v. Sonoma Cnty. Water Agency,
929 F.2d 1416 (9th Cir. 1991) 17

United States ex rel. Harman v. Trinity Indus. Inc.,
872 F.3d 645 (5th Cir. 2017) 17

United States ex rel. Hochman v. Nackman,
145 F.3d 1069 (9th Cir. 1998) 16

United States ex rel. Owens v. First Kuwaiti Gen. Trading & Contracting Co.,
612 F.3d 724 (4th Cir. 2010) 7

United States ex rel. Phalp v. Lincare Holdings, Inc.,
857 F.3d 1148 (11th Cir. 2017) 17, 18

TABLE OF AUTHORITIES
(*continued*)

Page(s)

United States ex rel. Purcell v. MWI Corp.,
807 F.3d 281 (D.C. Cir. 2015) 5, 10, 12

United States ex rel. Siewick v. Jamieson Sci. & Eng'g, Inc.,
214 F.3d 1372 (D.C. Cir. 2000) 5

United States ex rel. Watson v. King-Vassel,
728 F.3d 707 (7th Cir. 2013) 6

United States v. Bornstein,
423 U.S. 303 (1976) 9

United States v. Brookdale Senior Living Communities, Inc.,
892 F.3d 822 (6th Cir. 2018) 18

United States v. Thompson/Ctr. Arms Co.,
504 U.S. 505 (1992) 11

Universal Health Servs., Inc. v. United States ex rel. Escobar,
136 S. Ct. 1989 (2016) 1, 16

Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.,
455 U.S. 489 (1982) 10, 11

Vt. Agency of Nat. Res. v. United States ex rel. Stevens,
529 U.S. 765 (2000) 9

Winters v. New York,
333 U.S. 507 (1948) 11

Statutes

18 U.S.C. § 287 10

31 U.S.C. § 3729 ..... 2, 4, 5, 17

False Claims Amendments Act of 1986,
Pub. L. No. 99-562, 100 Stat. 3153 ..... 9, 17

Model Penal Code § 2.02 6

Okla. Stat. § 7255 (1921) 13

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Other Authorities

H.R. Rep. No. 99-660 (1986) 19

Lauren R. Nichols, Note, *Spare the Rod, Spoil the Litigator? The Varying Degrees of Culpability Required for an Adverse Inference Sanction Regarding Spoliation of Electronic Discovery*, 99 Ky. L.J. 881 (2011) 7

Michael S. Moore, *Prima Facie Moral Culpability*, 76 B.U. L. Rev. 319 (1996) 7

S. Rep. No. 99-345, *reprinted in* 1986 U.S.C.C.A.N. 5266 ..... 9, 18, 19

INTEREST OF *AMICUS CURIAE*[*]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as *amicus* in important False Claims Act cases. *See, e.g.*, *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 136 S. Ct. 1989 (2016); *Ruckh v. Salus Rehab., LLC*, 963 F.3d 1089 (11th Cir. 2020). This case presents a vital question of first impression in this circuit about the FCA's scienter requirement. As courts of appeals are so far unanimous on the issue, a ruling for Relator would cause uncertainty for firms doing business both inside and outside the Fourth Circuit.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the FCA during the Civil War to deter war profiteers from intentionally bilking the government out of much-needed funds. Today, the FCA limits similar abuses in the ever-growing

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[*] No party's counsel authored any part of this brief. No one, apart from WLF and its counsel, contributed money intended to fund the brief's preparation or submission. All parties consented to WLF's filing this brief.

healthcare industry. But unlike in the past, today a cottage industry of lawyers pursues actions against companies for innocent mistakes.

A key element of any fraud claim is scienter. That is why the FCA requires the plaintiff prove that the defendant "knowingly present[ed], or cause[d] to be presented, a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1)(A). To act knowingly, a defendant must (1) have "actual knowledge" that the information is false, (2) show "deliberate ignorance of the truth or falsity of the information," or (3) show "reckless disregard of the truth or falsity of the information." 31 U.S.C. § 3729(b)(1)(A)(i-iii). Without this showing of scienter, a government contractor may still be liable for its breach of contract. But a lack of scienter eliminates the threat of criminal penalties, treble damages, attorneys' fees, and costs under the FCA. The scienter requirement therefore serves as a critical due-process protection.

This case presents a straightforward legal question about the scienter requirement: Does the test the Supreme Court outlined in *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47 (2007) for willfulness under the Fair Credit Reporting Act apply to FCA actions? The courts of appeals to have

considered this question are unanimous—yes. And the District Court used similar rationale when dismissing the complaint.

Relator and Taxpayers Against Fraud Education Fund, however, ask this Court to create a circuit split on this important FCA question. They seek to confuse the issues by conflating the three levels of scienter that can support FCA liability. Although failure to show the lowest level of scienter necessarily forecloses proving the higher levels of scienter, Relator argues that the District Court erred by determining that she failed to satisfy the lowest burden.

Relying on this confusion, Relator seeks a ruling that would raise serious due-process concerns. She believes that a company's reasonable interpretation of a contract or statutory provision susceptible to competing interpretations should lead to liability, even when no clear guidance casts doubt on that objectively reasonable interpretation. In short, she seeks a rule that would obliterate the FCA's scienter requirement.

A ruling for Relator would force the Court to address whether the FCA is constitutional. Although that issue is not presented here, it will arise if the scienter requirement is so relaxed. Under the constitutional-

doubt canon, this Court should decline to interpret the FCA in this way. Rather, if the Court finds that the FCA's text is ambiguous, it should give it the meaning that does not raise constitutional concerns. And that construction is the reading Forest offers.

ARGUMENT

I. RELATOR'S EMPHASIS ON THE THREE TYPES OF SCIENTER SUPPORTING FCA LIABILITY IS A RED HERRING.

Relator insists (Br. 38-46) that the District Court erred by focusing on whether Forest exhibited "reckless disregard of the truth or falsity of the" submitted claims. 31 U.S.C. § 3729(b)(1)(A)(iii). According to Relator, the District Court had also to examine whether Forest had "actual knowledge" of the falsity of the submitted claims or showed "deliberate ignorance" to the truth or falsity of the submitted claims. 31 U.S.C. § 3729(b)(1)(A)(i-ii). But because Relator could not satisfy the *Safeco* test, it was impossible for her to prove any level of scienter required for FCA liability.

Under *Safeco*, when deciding whether a defendant acted with reckless disregard for the truth or falsity of a claim, courts consider whether the defendant had "an objectively reasonable" interpretation of a provision susceptible to competing interpretations and whether any

"interpretive guidance . . . might have warned the defendant away from the view it took." *United States ex rel. Purcell v. MWI Corp.*, 807 F.3d 281, 288 (D.C. Cir. 2015) (cleaned up).

It is impossible to have "actual knowledge" of the falsity of a claim if these requirements are satisfied. If the defendant had "actual knowledge" that a claim was false, it could not have had an objectively reasonable interpretation of a provision open to differing interpretations. Similarly, a defendant could not have acted with "deliberate ignorance" unless binding guidance warned away from the defendant's objectively reasonable interpretation.

To be liable under the FCA, a defendant must have "knowingly present[ed], or cause[d] to be presented, a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1)(A). As the D.C. Circuit has aptly explained, the "loosest standard of knowledge" is "acting in reckless disregard of the truth or falsity of the information." *United States ex rel. Siewick v. Jamieson Sci. & Eng'g, Inc.*, 214 F.3d 1372, 1378 (D.C. Cir. 2000) (quotation omitted). This and other circuits agree that this is the lowest level of scienter under the FCA. *See United States ex rel. Complin v. N.C. Baptist Hosp.*, 818 F. App'x 179, 184 (4th Cir. 2020) (*per curiam*)

(citation omitted); *United States ex rel. Watson v. King-Vassel*, 728 F.3d 707, 712 (7th Cir. 2013).

These FCA-specific decisions confirm that Relator's failure to show reckless disregard under *Safeco* is fatal to her claims. This hierarchy of scienter is not unique to the FCA. It is familiar to all areas of law. For example, in the deliberate indifference context, "recklessness, [] is 'more blameworthy than negligence,' yet less blameworthy than purposefully causing or knowingly." *Schaub v. VonWald*, 638 F.3d 905, 914-15 (8th Cir. 2011) (quoting *Farmer v. Brennan*, 511 U.S. 825, 835, 839-40 (1994)).

The Model Penal Code similarly recognizes three types of scienter in most cases: purposefully, knowingly, and recklessly. Model Penal Code §§ 2.02(2), (3). And "[w]hen recklessness suffices to establish an element, such element also is established if a person acts purposely or knowingly." *Id.* § 2.02(5). So if a jury finds that a defendant acted with actual knowledge, it must find that the defendant also satisfied a reckless disregard standard. The same applies for a defendant who acted purposefully. Acting purposefully satisfies a recklessness standard.

In the civil arena, courts often apply "the traditional 'sliding scale' encompassing mere negligence, gross negligence, recklessness, bad faith,

and intentional misconduct." Lauren R. Nichols, Note, *Spare the Rod, Spoil the Litigator? The Varying Degrees of Culpability Required for an Adverse Inference Sanction Regarding Spoliation of Electronic Discovery*, 99 Ky. L.J. 881, 882 (2011) (citing Michael S. Moore, *Prima Facie Moral Culpability*, 76 B.U. L. Rev. 319, 325 (1996)). The "traditional sliding scale" of scienter in civil cases thus mirrors that in the Model Penal Code. The FCA tracks this three-level scienter scale. The only difference is that, under the FCA, negligence cannot support liability. *See United States ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 380 (4th Cir. 2015) (citing *United States ex rel. Owens v. First Kuwaiti Gen. Trading & Contracting Co.*, 612 F.3d 724, 728 (4th Cir. 2010)). If a company makes an innocent mistake or negligently submits false claims, it must reimburse the government. But it is not subject to treble damages. That is what separates the FCA from a negligence statute.

Disparate authority—from FCA-specific to criminal to civil—highlights this basic principle of scienter. Relator's failure to satisfy the reckless disregard standard is fatal to her FCA claim. Yet Relator devotes nine pages of her brief dwelling on the difference between actual knowledge and reckless behavior. She does so as a distraction because

the District Court properly held that she failed to plead scienter. *Cf. Safeco*, 551 U.S. at 56-60 (*Safeco*'s standard applies to "knowing" violations).

* * *

Relator's reliance on the three standards of scienter fails. If Relator cannot satisfy the "loosest" standard of knowledge, she cannot—by definition—satisfy a higher standard of knowledge. Her attack on the District Court for failing to analyze the other two types of scienter supporting FCA liability should thus be seen for what it is—a red herring. The District Court properly determined that Relator's failure to satisfy the "reckless disregard" scienter standard forecloses any chance at proving knowledge.

II. THE CONSTITUTIONAL-DOUBT CANON RESOLVES ANY QUESTION ABOUT HOW TO APPLY *SAFECO* TO FCA CLAIMS.

Under the constitutional-doubt canon, courts interpret "ambiguous statutory language to avoid serious constitutional doubts." *Iancu v. Brunetti*, 139 S. Ct. 2294, 2301 (2019) (cleaned up). Here, even if two reasonable interpretations existed for the FCA's scienter requirement, this Court should adopt the interpretation incorporating *Safeco*'s test.

The other possible interpretation—advanced by Relator—would raise serious doubts about the FCA's constitutionality.

A. Treble Damages Trigger Heightened Due-Process Protections.

Before 1986, an FCA violation subjected companies to only double—not treble—damages. *United States v. Bornstein*, 423 U.S. 303, 305 (1976). The Supreme Court therefore said that FCA damages were "compensat[ory]." *Id.* at 314. But "evidence of fraud in Government programs and procurement [wa]s on a steady rise." S. Rep. No. 99-345, 2, *reprinted in* 1986 U.S.C.C.A.N. 5266, 5267. So Congress amended the FCA to provide for treble damages. False Claims Amendments Act of 1986, Pub. L. No. 99-562, § 2(7), 100 Stat. 3153, 3153.

This changed FCA damages. After the 1986 amendments, "the FCA impose[d] damages that are essentially punitive in nature." *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 784 (2000). This transformation of FCA damages from compensatory to punitive means that FCA defendants enjoy greater due-process protections than they did before 1986.

The "Due Process Clause places outer limits on the size of a civil damages award made pursuant to a statutory scheme." *Browning-Ferris*

Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 276 (1989) (citing *St. Louis, I. M. & S. R. Co. v. Williams*, 251 U.S. 63, 66-67 (1919)). Purely compensatory damages cannot violate substantive due-process protections if supported by sufficient evidence. Yet FCA damages can violate the Due Process Clause because they are punitive. Besides procedural due-process protections, then, courts consider substantive due-process principles when analyzing the FCA's scienter requirement. *See Purcell*, 807 F.3d at 287 (citing *Satellite Broad. Co. v. FCC*, 824 F.2d 1, 3 (D.C. Cir. 1987)).

B. Criminal Penalties Trigger Heightened Due-Process Protections.

Along with punitive treble damages, FCA violations may carry criminal penalties. 18 U.S.C. § 287. This also has important implications for the due-process protections afforded defendants in FCA actions. "[T]he relative importance of fair notice and fair enforcement" mandated by the Due Process Clause "depends in part on the nature of the enactment." *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982). The Supreme Court has "greater tolerance of enactments with civil rather than criminal penalties because the

consequences of imprecision are qualitatively less severe." *Id.* at 498-99 (citing *Winters v. New York*, 333 U.S. 507, 515 (1948)).

Although this is a civil action, because the FCA carries both criminal and civil penalties, courts "must interpret the statute consistently, whether [they] encounter its application in a criminal or noncriminal context." *Leocal v. Ashcroft*, 543 U.S. 1, 12 n.8 (2004). "[T]he rule of lenity" therefore applies so that civil and criminal provisions are interpreted consistently. *Id.* (citing *United States v. Thompson/Ctr. Arms Co.*, 504 U.S. 505, 517-18 (1992) (plurality)).

C. Relator's Interpretation Of The FCA Flouts These Heightened Due-Process Protections.

Both the punitive nature of the FCA's treble damages and the criminal penalties for FCA violations require enhanced due-process protections. Yet Relator asks this Court to sidestep Forest's due-process rights and hold it liable despite her failure to satisfy the *Safeco* test.

The key constitutional problem with Relator's proposed standard is that it deprives Forest of the right to fair notice of which conduct could lead to criminal penalties and punitive civil sanctions. "[F]air notice" that "enable[s] citizens to conform their conduct to the proscriptions of the law" lies at the core of the Due Process Clause. *Manning v. Caldwell for*

City of Roanoke, 930 F.3d 264, 274 (4th Cir. 2019) (*en banc*) (citation omitted).

1. History shows the importance of scienter for a statute to satisfy due-process principles.

The Supreme Court has long recognized the importance of fair notice under the Due Process Clause. It has explained that "due process interests" require that companies "know what the law is before they act." *Opati v. Republic of Sudan*, 140 S. Ct. 1601, 1607 (2020) (cleaned up). In the early-20th century, the Court described the fair notice requirement as "the first essential of due process of law." *Connally v. Gen. Const. Co.*, 269 U.S. 385, 391 (1926) (citing *Int'l Harvester Co. of Am. v. Kentucky*, 234 U.S. 216, 221 (1914)).

The Due Process Clause does not limit fair notice to criminal cases. Rather, all "laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) (citation omitted). In other words, there are "due process problems" if a private party is penalized "for violating a rule without first providing adequate notice of the substance of the rule." *Purcell*, 807 F.3d at 287 (quotation omitted).

The fair-notice requirement in civil cases is broad. It covers both notice of what conduct risks liability and the extent of potential liability. *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 417 (2003) (citation omitted). This recent case law applying the Due Process Clause's fair-notice requirement in civil cases shows why this Court should require similar notice in FCA actions.

These cases highlight why disregarding *Safeco* violates Forest's due-process rights. In *General Construction*, an Oklahoma statute required that firms performing under contract with the State pay their workers "the current rate of per diem wages in the locality where the work is performed." Okla. Stat. § 7255 (1921). Finding that the statute violated the Due Process Clause, the Court explained that the phrase "current rate of wages" was "indeterminate[]" and obscure. *Gen. Const. Co.*, 269 U.S. at 393. And because the statute was "so uncertain that" it could "reasonably admit of different constructions," it violated the Due Process Clause. *Id.*

The FCA regulates economic agreements between private companies and the federal government: To participate in government-funded programs, businesses must agree not to submit false claims.

Other 20th-century cases show that the Court has long guaranteed the right to fair notice for economic-regulation statutes. *See generally*, *e.g.*, *Champlin Ref. Co. v. Corp. Comm'n*, 286 U.S. 210 (1932) (Oklahoma Curtailment Act).

The trend continued at the end of the 20th century. The Court reiterated that "the fair notice requirement" ensures individuals are not placed "at peril of life, liberty or property" because they must "speculate as to the meaning of penal statutes." *City of Chicago v. Morales*, 527 U.S. 41, 58 (1999) (quotation omitted). A recent case reveals what fair notice requires when heightened due-process protections apply. In *Skilling v. United States*, the Court held that the defendant received fair notice that bribery and kickbacks violated the honest-services statute. 561 U.S. 358, 412 (2010). The Court explained that this was "as plain as a pikestaff." *Id.* (quotation omitted). But other behavior was not so clear. And since the defendant did not receive fair notice that that conduct violated the statute, the Court vacated the conviction. *Id.* at 413-14.

Yet under Relator's proposed standard, it is immaterial if there are objectively reasonable interpretations of statutes that could "reasonably admit of different constructions." *Gen. Const. Co.*, 269 U.S. at 393. If this

Court were to adopt Relator's proposed standard, it would raise serious doubts about the FCA's constitutionality.

Although it was "plain as a pikestaff" that purposefully submitting the wrong best prices violated the FCA, that is not what happened here. At worst, it was unclear whether total rebates to all sources must be included when calculating a drug's best price. No binding guidance counseled against Forest's objectively reasonable interpretation of the "best price" term. So even if Relator's interpretation of the statute is correct, Forest lacked fair notice.

For 150 years the Supreme Court has repeatedly returned to the idea of fair notice. Each time, the Court has explained why this fair-notice requirement is critical to due process of law. As explained above, the FCA's civil provisions are punitive. An FCA violation also carries potential criminal liability. So the Supreme Court's heightened fair-notice requirements should govern FCA cases. Otherwise, the FCA's constitutionality would be in doubt. Because Forest's construction of the FCA—employing the *Safeco* standard—avoids these constitutional concerns, this Court should reject Relator's proposed standard.

2. Relator's proposed standard transforms the FCA into a statute subjecting defendants to punitive sanctions for regulatory violations.

As described above, the FCA's treble damages provision and the potential for criminal liability means that FCA defendants enjoy heightened due-process protections. Many cases show that fair notice is at the core of these heightened due-process protections. Unsurprisingly, the Supreme Court has acknowledged that the scienter requirement is critical in FCA litigation.

"[S]trict enforcement of the" FCA's "scienter requirement[]" is key to preventing open-ended FCA liability. *Universal Health Servs.*, 136 S. Ct. at 2002 (cleaned up). Allowing for lax application of the scienter requirement raises serious due-process concerns. Yet that is what Relator invites this Court to do by rejecting the *Safeco* test in FCA cases.

Due process is why "[t]he scienter requirement is critical to the operation of the [FCA]." *United States ex rel. Hochman v. Nackman*, 145 F.3d 1069, 1073 (9th Cir. 1998); *see Complin*, 818 F. App'x at 183. As this Court has explained, merely violating a federal statute or regulation is insufficient to trigger FCA liability. *Drakeford*, 792 F.3d at 379-81; *see Hindo v. Univ. of Health Scis./Chi. Med. Sch.*, 65 F.3d 608, 613 (7th Cir.

1995) ("[i]nnocent mistakes or negligence are not actionable under" the FCA (citing *United States ex rel. Hagood v. Sonoma Cnty. Water Agency*, 929 F.2d 1416, 1420 (9th Cir. 1991))).

Courts are unanimous that an innocent mistake or negligence triggers no FCA liability. *See*, *e.g.*, *United States ex rel. Harman v. Trinity Indus. Inc.*, 872 F.3d 645, 657 (5th Cir. 2017) (citation omitted); *United States ex rel. Phalp v. Lincare Holdings, Inc.*, 857 F.3d 1148, 1155 (11th Cir. 2017) (citation omitted). These decisions flow naturally from the FCA's plain language, which requires that a defendant "knowingly" submit a false claim. 31 U.S.C. § 3729(a)(1)(A). This language reflects Congress's concerns that due process would be denied if the FCA imposed treble damages and criminal penalties for mistakenly submitting false claims.

The legislative history of the FCA's current scienter requirement reflects this well-settled due-process principle. First, Congress amended the FCA's scienter requirement at the same time it provided for treble damages. *See* False Claims Amendments Act of 1986, Pub. L. No. 99-562, § 2, 100 Stat. at 3153-54. When it increased FCA damages to a punitive

level, Congress knew that not defining the level of scienter would cause due-process problems.

During hearings on the FCA amendments, the Department of Justice understood the proposed scienter standard to mean "that mere negligence could not be punished by an overzealous agency." S. Rep. No. 99-345 at 21, 1986 U.S.C.C.A.N. at 5286. The Senate Judiciary Committee agreed with this statement. *See id.*

Both DOJ and the Senate focused on government-initiated actions. They did not consider the possibility of overzealous *qui tam* counsel and litigants seeking windfalls for a company's innocent mistakes. This is because the vast *qui tam* bar did not exist in 1986. Today, however, it is hard not to encounter advertisements promising big rewards for those willing to serve as whistleblowers for *qui tam* counsel.

Courts of appeals often look to this legislative history when discussing the FCA's scienter requirement. *See*, *e.g.*, *United States v. Brookdale Senior Living Communities, Inc.*, 892 F.3d 822, 837 (6th Cir. 2018); *Lincare Holdings, Inc.*, 857 F.3d at 1155. This Court should do the same when deciding whether the *Safeco* test applies in FCA actions.

The legislative history also shows why the *Safeco* test furthers Congress's other goals in defining "knowingly." The House Judiciary Committee explained that "those who play 'ostrich'" would be held liable under the new definition. H.R. Rep. No. 99-660, 21 (1986). The Senate echoed these sentiments. S. Rep. No. 99-345 at 21, 1986 U.S.C.C.A.N. at 5286 ("an individual [who] has 'buried his head in the sand' and failed to make simple inquiries which would alert him that false claims are being submitted" would be liable under the knowingly definition).

The *Safeco* test ensures that companies cannot bury their heads in the sand to avoid FCA liability. It does so by asking whether the relevant governmental agency or courts of appeals issued binding guidance warning away from the objectively reasonable interpretation. Here, for example, if CMS promulgated regulations showing that drug companies must aggregate rebates to all sources when calculating best prices, Forest could not plead ignorance. Rather, under *Safeco*, Forest could be held liable under the FCA because it would have acted with reckless disregard.

But that is not what happened here. No binding guidance led Forest away from its objectively reasonable interpretation of the statutory term.

Safeco provides Forest with due process by not penalizing it if it made an innocent mistake or acted negligently—which it did not. *Safeco* does so while accomplishing Congress's goal of ensuring that companies do not bury their heads in the sand when submitting claims.

Relator and Taxpayers Against Fraud Education Fund cannot explain why using the *Safeco* test fails to accomplish both goals. They stress the importance of deterring companies from burying their heads in the sand. But the *Safeco* test accomplishes this goal. Relator and Taxpayers Against Fraud Education Fund avoid meaningful discussion of Congress's first stated goal—ensuring due process by not imposing FCA liability for innocent mistakes or negligent acts. Applying *Safeco* is the best way to satisfy this objective. In contrast, Relator's proposed standard raises serious constitutional concerns that can be avoided by applying *Safeco* in FCA actions.

3. The maze of federal medical regulations shows the need for the *Safeco* test to protect companies' due-process rights.

This Court has noted that the "Medicare and Medicaid" regulations "are among the most completely impenetrable texts within human experience." *Rehab. v. Kozlowski*, 42 F.3d 1444, 1450 (4th Cir. 1994).

Reading and understanding the regulations is "tortur[e]." *Id.* This maze of statutes and regulations is important because it shows that Relator's proposed standard would wreak havoc on the medical industry.

Even the largest, well-resourced companies in the world will make mistakes when submitting Medicare or Medicaid claims. Most errors are innocent mistakes or negligence. Despite rigorous checks, companies will read a complex regulation in a manner that courts will eventually reject. *Cf. United States ex rel. Garbe v. Kmart Corp.*, 824 F.3d 632, 643-45 (7th Cir. 2016) (rejecting an objectively reasonable interpretation of the term "usual and customary price"). But if the regulation is amenable to multiple interpretations, the interpretation is objectively reasonable, and no binding guidance cautions against that interpretation, the company has not committed fraud. Rather, it has made an innocent mistake or acted negligently for which it should reimburse the government.

The company should not have to pay treble damages and face criminal liability for innocent mistakes or negligence. That, however, is what Relator wants. She asks this Court to reject the *Safeco* standard, which is critical to meaningful due-process protections. She seeks a

standard that would severely punish companies for mere innocent mistakes or negligence.

* * *

The FCA's plain language supports applying *Safeco*'s test. But even if the FCA is ambiguous, this Court should use the constitutional-doubt canon and apply *Safeco* here. The criminal penalties and treble damages accompanying FCA liability mean that FCA defendants are entitled to heightened due-process protections. The Supreme Court has long recognized that this includes fair notice of what conduct is prohibited. The legislative history shows that Congress acknowledged this right to heightened due-process protections when amending the FCA in 1986. Applying *Safeco* in FCA cases thus accomplishes the FCA's goals while providing constitutionally mandated due-process protections.

CONCLUSION

This Court should affirm.

Respectfully submitted,

/s/ John M. Masslon II
John M. Masslon II
Cory L. Andrews
WASHINGTON LEGAL FOUNDATION
2009 Massachusetts Ave. NW
Washington, DC 20036
(202) 588-0302
jmasslon@wlf.org

Counsel for Amicus Curiae
Washington Legal Foundation

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the type-volume limits of Federal Rule of Appellate Procedure 29(a)(5) because it contains 4,139 words, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

I also certify that this brief complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 32(a)(5) and (6) because it uses 14-point Century Schoolbook font.

/s/ John M. Masslon II
JOHN M. MASSLON II
Counsel for Amicus Curiae
Washington Legal Foundation

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