

GIBSON DUNN

Appellate and Constitutional Law Update

November 3, 2025

Texas Supreme Court Justices Urge Defendants to Challenge Constitutionality of Texas *Qui Tam* in New Court of Appeals

In re Novartis Pharmaceuticals Corp., No. 24-0239 – Statement Issued October 24, 2025

On October 24, 2025, two Texas Supreme Court Justices issued a statement respecting the denial of mandamus, urging defendants to re-raise constitutional challenges to Texas *qui tam* in the new Fifteenth Court of Appeals.

“This case presents weighty issues worthy of our full attention But the decision to deny the petition is understandable given that there is a new statewide appellate court that has already held that it has jurisdiction over disputes like this one.”

STATEMENT RESPECTING DENIAL OF PETITION

Background:

Texas's Health Care Program Fraud Prevention Act (previously called the Texas Medicaid Fraud Prevention Act) is the State's primary anti-fraud tool for Medicaid and related programs. Like the federal False Claims Act, it permits private relators to bring *qui tam* suits on the State's behalf and seek civil penalties for both the State and the relator. Tex. Hum. Res. Code §§ 36.51–55, .101. The State can intervene, but the relator may proceed even without the State's participation. *Id.* § 36.104(b).

In 2020, a relator corporation sued Novartis under the Act. After the State declined to intervene, Novartis moved to dismiss, arguing that (1) the relator lacked standing because it suffered no injury, and (2) the Act's *qui tam* provisions violate the Texas Constitution's separation-of-powers clause. The trial court denied the motion. Novartis sought mandamus in the Texarkana Court of Appeals, which denied relief without analysis. Novartis then petitioned the Texas Supreme Court.

While Novartis's petition was pending, the newly created Fifteenth Court of Appeals—vested with exclusive jurisdiction over civil appeals involving the State—began its inaugural term and held that its exclusive jurisdiction extends to *qui tam* suits under the Act, whether or not the State has intervened. *In re Sanofi-Aventis U.S. LLC*, 711 S.W.3d 732 (Tex. App.—15th Dist. 2025).

On October 24, 2025, the Texas Supreme Court denied Novartis's mandamus petition. Justices Young and Sullivan wrote separately respecting the denial.

Statement Respecting Denial:

The two Justices began by recognizing that Novartis's challenges to the Act presented “weighty issues worthy of [the Court's] full attention.” Statement at 1. But they agreed that Novartis should first raise its challenges in the new Fifteenth Court because “that court's view of the issues presented may assist this Court in its eventual and inevitable consideration of the constitutional concerns surrounding *qui tam* litigation” under the Act. *Id.*

Although the two Justices didn't weigh in on the merits of the constitutional challenges, they did provide helpful guidance about the interplay between the Texas statute and the federal False Claims Act and how those similarities and differences may impact the analysis.

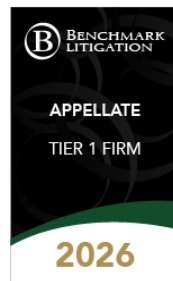
Standing. The Justices indicated that although the federal cases analyzing standing were a good starting point, the Texas Act, unlike the federal statute, doesn't provide for the recovery of damages—it only authorizes civil penalties. *Id.* at 3–4. The Justices seemed skeptical that the State could assign its interest in collecting *penalties* to a private litigant. *Id.* at 4.

Separation of powers. The Justices directed litigants to the separate opinions of several U.S. Supreme Court justices questioning the federal *qui tam*'s constitutionality. The Justices noted that although the Texas Constitution's separation-of-powers provision “uses very different language” from the federal Constitution, “that may just generate different constitutional doubts about *qui tam* litigation.” *Id.* at 5.

What It Means:

- Whether in this case or another one like it, the Texas Supreme Court appears poised to take up “the constitutional concerns surrounding *qui tam* litigation” in Texas and settle those issues “once and for all.” Statement at 1, 10.
- The statement by Justices Young and Sullivan gives defendants a Texas-specific roadmap for standing and separation-of-powers arguments likely to gain traction in Texas courts.
- Litigants should tailor their strategy to the new Fifteenth Court—which has ruled that it’s the proper forum for appeals and mandamus in Texas *qui tam* cases.

Gibson Dunn Appellate Honors



The Court’s opinion is available [here](#).

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Texas Supreme Court. Please feel free to contact the following practice group leaders:

Appellate and Constitutional Law

Thomas H. Dupree Jr.
+1 202.955.8547
tdupree@gibsondunn.com

Allyson N. Ho
+1 214.698.3233
aho@gibsondunn.com

Julian W. Poon
+1 213.229.7758
jpoon@gibsondunn.com

Brad G. Hubbard

+1 214.698.3326
bhubbard@gibsondunn.com

Related Practice: Texas General Litigation

Trey Cox
+1 214.698.3256
tcox@gibsondunn.com

Collin Cox
+1 346.718.6604
ccox@gibsondunn.com

Andrew LeGrand
+1 214.698.3405
alegrand@gibsondunn.com

Related Practice: False Claims Act/Qui Tam Defense

Winston Y. Chan
+1 415.393.8362
wchan@gibsondunn.com

Jonathan M. Phillips
+1 202.887.3546
jphillips@gibsondunn.com

This alert was prepared by Texas of counsel Ben Wilson and associates Elizabeth Kiernan, Stephen Hammer, and Rebecca Roman.

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