

## TEXAS COURT REFUSES MANDAMUS REVIEW OF CONSTITUTIONAL CHALLENGES TO MEDICAID QUI TAM ACTION

Despite acknowledging "weighty" constitutional questions, the Fifteenth Court of Appeals in Texas (the "Court") refused to halt a Medicaid *qui tam* action against Novartis, holding that the company's constitutional challenges to the Texas Medicaid Fraud Prevention Act ("TMFPA") must be addressed through ordinary appellate review, rather than through extraordinary relief. *In re Novartis Pharmaceuticals Corp.*, No. 15-25-00207-CV (Tex. App.—15th Dist. Apr. 30, 2026).

### BACKGROUND

Health Selection Group, LLC ("HSG") brought a *qui tam* action against Novartis under the TMFPA, alleging improper pharmaceutical-marketing practices that resulted in Texas Medicaid reimbursements.

Novartis responded with a plea to the jurisdiction and a motion to dismiss under Rule 91a. It argued that: (1) HSG lacked constitutional standing because it suffered no personal injury; and (2) the TMFPA's *qui tam* provisions violate the Texas Constitution's separation-of-powers requirements by authorizing private parties to pursue punitive claims on the State's behalf without sufficient governmental oversight.

After the trial court denied both motions, Novartis sought mandamus relief. It argued that immediate review was necessary because the case would subject it to extensive discovery and years of litigation despite what it characterized as fundamental constitutional defects.

The Court denied the petition.

### THE COURT'S ANALYSIS

The Court began with familiar principles. Mandamus is an extraordinary remedy available only when a relator demonstrates both a clear abuse of discretion and the absence of an adequate appellate remedy.

Applying the Texas Supreme Court's balancing framework, the Court concluded that ordinary appellate review remained adequate. Although the constitutional questions presented were "weighty" and of "significant importance," the Court held that anticipated litigation costs, discovery burdens and delay do not ordinarily render an appellate remedy inadequate.

The Court relied on longstanding Texas precedent recognizing that litigation expense—even substantial expense—generally does not justify interlocutory intervention. It also distinguished cases in which mandamus was granted because a trial-court ruling effectively deprived a party of the ability to pursue or defend its claims. In the Court's view, allowing the TMFPA action to proceed through discovery did not so distort the litigation process as to warrant extraordinary relief.

Notably, the Court did not address the merits of Novartis's constitutional arguments. Instead, it emphasized that those issues may be raised on appeal after summary judgment or trial, when a more developed factual record is available.

### THE DISSENT

Chief Justice Brister dissented in a lengthy opinion, arguing that the Court should have resolved the constitutional questions before permitting the litigation to proceed.

According to the dissent, the TMFPA's *qui tam* framework permits private, profit-motivated parties to pursue punitive claims "in the name of the State" without constitutionally sufficient executive-branch control. The dissent also concluded that HSG lacked constitutional standing because it alleged no personal injury and sought only to recover on the State's behalf.

Most notably, the dissent would have held that: (1) a relator who has suffered no personal injury lacks standing under the Texas Constitution; and (2) the TMFPA's *qui tam* provisions violate the Texas Constitution's separation-of-powers requirement when private relators prosecute actions on the State's behalf without State intervention. In the dissent's view, those constitutional defects warranted immediate review and dismissal of the action.

Chief Justice Brister further warned that allowing large-scale health care-fraud actions to proceed before resolving threshold constitutional issues creates substantial settlement pressure and risks coercing defendants into resolving claims irrespective of their merits.

## PRACTICAL TAKEAWAYS

- **Mandamus remains difficult to obtain.** Even in complex health care-fraud litigation involving extensive discovery and significant expense, Texas courts remain reluctant to grant mandamus relief absent extraordinary procedural prejudice.
- **The constitutional issues remain unresolved.** The Court declined to reach the merits of Novartis's standing and separation-of-powers arguments, leaving those questions for a future appeal.
- **Judicial skepticism of *qui tam* enforcement persists.** Chief Justice Brister's dissent highlights continuing concerns about private enforcement of punitive state claims without direct executive oversight.
- **Further appellate developments are likely.** Because the Court expressly left the constitutional questions open, future appeals may provide the first merits-based analysis of the TMFPA's *qui tam* provisions.
- **Early dismissal may remain elusive.** Defendants raising constitutional or jurisdictional objections under the TMFPA may still be required to litigate through substantial factual development before obtaining appellate review.

If you have questions or would like more information about this topic, please contact:

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