

In The News

Akerman Partner Jeremy Burnette Suggests FCA Amendment to Ensure Whistleblower Compliance

March 26, 2025

Healthcare Partner Jeremy Burnette was quoted in a *Bloomberg* article titled “Whistleblower Law Strike-Down Would Force Allies to Get Creative,” which reviews the potential consequences of a legal challenge to the whistleblower provisions of the False Claims Act (FCA) that allow private individuals to sue and recover on behalf of the government for fraud. The U.S. Court of Appeals for the Eleventh Circuit is reviewing whether these provisions violate the U.S. Constitution’s Appointments Clause, with the case potentially headed to the Supreme Court.

Jeremy, who represents FCA defendants, suggested that the most viable solution if the Supreme Court ultimately concludes the whistleblower provisions violate the Appointments Clause would be for Congress to amend the FCA to ensure its compliance with the Constitution.

Bloomberg quoted Jeremy: “Only whistleblowers—likely not their attorneys—would need the inferior officer appointment, Burnette said, because inferior officers can choose outside counsel within their agency’s legal parameters, ‘and such outside counsel are generally not considered inferior officers because of that representation.’ Congress could grant the president the power to appoint FCA whistleblowers as inferior officers, Burnette said, but because of case volume, a more practical provision

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would give judges, the attorney general, and/or the secretary of Health and Human Services the power to appoint them as inferior officers.”

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