



Powering Nonprofits. Advancing Justice.



## Undermining Civil Rights Today



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The False Claims Act (FCA), enacted [during the Civil War](#) to punish war profiteers, has become a weapon against diversity, equity, and inclusion (DEI) work. In May 2025, Deputy Attorney General Todd Blanche announced the [Civil Rights Fraud Initiative](#), which reframes civil rights compliance as potential fraud—exposing universities, healthcare providers, and nonprofits to [treble damages](#) and whistleblower suits.

In an [official release](#) establishing the initiative, the US Department of Justice (DOJ) warned that “institutions that take federal money only to allow anti-Semitism and promote divisive DEI policies are putting their access to federal funds at risk.”

The fact that the FCA is being mobilized to restrict civil rights is highly ironic. As Steven J. Schwartz, special counsel (and former executive director and litigation director) for the [Center for Public Representation](#), explained to *NPQ*:

The False Claims Act was enacted as a democratic strategy to protect federal taxpayer dollars from federal contractors, providers, insurers, and other entities that submit illegitimate claims for payment to the federal government. It was democratic in vision because it empowered, even encouraged, private citizens to be watchdogs of federal dollars by authorizing them to bring claims—called [qui tam claims](#), or claims in the name of the sovereign—to challenge fraud or error in federal billing.

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## The Chilling Effect

The new initiative creates profound uncertainty for organizations receiving federal funds. Legal scholars Benjamin J. McMichael, Mackenzi Barrett, and W. Kip Viscusi argued in Washington University's [Law Review](#) that the effort to employ FCA to restrict civil rights has occurred "arbitrarily and capriciously," increasingly punishing ambiguity rather than intentional deception.

James Wiseman wrote in the [Columbia Law Review](#) about how organizations attempting in good faith to navigate contradictory regulations can get ensnared in FCA rules.

The [DOJ strongly encourages](#) qui tam actions, noting that successful claimants receive 15 to 30 percent of any "fraud" uncovered. As [Wiley Law](#) observed, the initiative's encouragement of private enforcement "will likely lead to a significant increase in investigations and, eventually, litigation relating to DEI initiatives."

Global law firm [Morrison Foerster](#) highlighted the particular risk when "the government has yet to define what constitutes 'DEI programs or principles'" or "which of those programs might violate federal antidiscrimination laws." This creates a regulatory trap, where organizations face liability regardless of their choices.

Chief [Judge Albert Diaz](#) of the Fourth Circuit observed that the relevant executive order does not "define DEI or its component terms."

For his part, Schwartz noted that "this same law allows anyone to bring an FCA case against any entity that receives federal funding, including nonprofit organizations, social service organizations, disability and aging advocacy organizations, and civil rights organizations."

## Nonprofits Under Pressure

[Recent enforcement](#) demonstrates the scope of exposure. In September 2025, six nonprofits—including the Armenian National Committee of America, Center for Immigration Studies, and National Organization for Women—paid over \$3 million to resolve FCA allegations related to Paycheck Protection Program (PPP) loans. In July 2025, an [Ohio nonprofit healthcare foundation](#) paid \$3.61 million for allegedly billing Medicare and Medicaid for substandard services. These cases target advocacy organizations serving vulnerable populations.

FCA investigations are "burdensome, disruptive to operations, expensive, and result in negative reputational consequences," noted Wiley Law. The qui tam mechanism means "current or former employees who feel they were illegally fired, passed up for promotion, or disadvantaged based on protected traits" may file whistleblower suits, transforming personnel disputes into federal fraud investigations.

[The 2025 National Defense Authorization Act](#) raised the maximum FCA claim from \$150,000 to \$1 million. Employment and labor law firm [JacksonLewis](#) noted that this "significantly expand[s] the scope of cases that federal agencies can handle administratively without...judicial processes."

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## What Nonprofits Can Do

As Schwartz indicated, "The FCA has now become a powerful tool not only to enlist 'citizen enforcers,' but also to intimidate recipients of federal funding with threats of FCA enforcement actions."

Despite these challenges, nonprofits can take several concrete steps to protect themselves while continuing mission-driven work. Legal guidance from multiple sources provides a roadmap for mitigating risk:

- **Document deliberate good-faith efforts.** Legal services firm [Venable LLP](#) emphasizes documenting decisions and their rationale to show "deliberate, good-faith efforts to comply with all statutory, regulatory, and contractual provisions." Written records of counsel consultation, agency guidance, and policy rationale are vital to defending against FCA scienter requirements establishing knowledge of wrongdoing.

- **Establish robust internal controls.** Global firm [White & Case](#) urges strengthening internal complaint systems and training HR and compliance officers on “investigative protocols and documentation.” Venable advises developing ethics programs addressing red flags specific to each nonprofit’s sector. Morrison Foerster notes that robust compliance systems can demonstrate the absence of acting “knowingly” required for FCA liability.
- **Seek agency guidance on ambiguous requirements.** [Venable](#) suggests maintaining a written dialogue with federal agencies for unclear regulations, showing proactive good faith even if interpretations later change.
- **Prepare response plans for investigations.** [Morrison Foerster](#) advises that “federal contractors and organizations receiving federal funds should prepare to see an influx of DOJ enforcement and whistleblower complaints,” such as [Civil Investigative Demands \(CIDs\)](#) and FCA inquiries, and should plan in advance—designating counsel, point persons, and procedures for cooperation while preserving privilege. Their guidance emphasizes preparing *before* potential enforcement actions occur.
- **Build coalition and advocacy capacity.** Networks such as the [Charity & Security Network](#) help nonprofits collaborate for clearer standards, safe harbors for good-faith efforts, and limits on speculative qui tam cases. [Collective advocacy](#) can push for legislative, regulatory, or [judicial reforms](#) that distinguish genuine fraud from policy disagreements.

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## The Path Forward

The Civil Rights Fraud Initiative represents a fundamental challenge to equity-focused work. When civil rights compliance becomes a source of catastrophic legal risk, organizations predictably retreat from serving marginalized communities. That of course is [part of a larger effort](#) to roll back civil rights in President Donald Trump’s administration.

As global law firm [Freshfields](#) warns, predicating FCA actions on new or novel theories of antidiscrimination law creates liability that even legally compliant organizations cannot avoid. Accountability and justice need not be antagonists. Nonprofits can comply while sustaining equity. The task is to navigate a landscape where [rules themselves remain contested](#).

[Morrison Foerster](#) observed the “significant risk federal contractors and fund recipients now face related to FCA enforcement” but indicated they also have “viable defenses” through demonstrating good faith and lack of fraudulent intent.

If past is prologue, ignoring this threat is not an option; in July 2025, one firm paid a [\\$9.8 million penalty](#) for alleged cybersecurity vulnerabilities as part of an FCA program initiated by the administration of President Joe Biden in 2021. [The combination of treble damages, qui tam incentives, and vague compliance standards](#) creates major risk.

But through counsel, documentation, and advocacy, nonprofits can continue mission-driven work while protecting themselves from weaponized enforcement. The alternative—abandoning equity work entirely—would achieve precisely what the administration’s initiative appears designed to accomplish.

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### About the author



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