

# Press Release



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## **WLF Asks Supreme Court to Correct Fifth Circuit's Relaxing of the False Claims Act's Seal Requirement**

*(State Farm Fire & Casualty Co. v. United States ex rel. Rigsby)*

**"When a court does not dismiss FCA claims even after deliberate, egregious seal violations by a *qui tam* relator, it encourages further abuses by relators who seek to damage a defendant's public reputation in order to pressure that defendant into settling meritless claims."—Cory Andrews, WLF Senior Litigation Counsel**

WASHINGTON, DC—Washington Legal Foundation today asked the U.S. Supreme Court to reverse a decision by the U.S. Court of Appeals for the Fifth Circuit that turns a blind eye to plaintiffs' repeated and flagrant violations of the False Claims Act's mandatory seal provision. WLF's *amicus curiae* merits brief in *State Farm Fire & Casualty Co. v. United States ex rel. Rigsby*, argues that the seal requirement is not a mere procedural formality, but a mandatory prerequisite to filing and maintaining a *qui tam* suit. WLF's *amicus* brief was joined by the Allied Educational Foundation.

The case arises from allegations that State Farm submitted a false claim to the federal government's flood insurance program in connection with a homeowner's property insurance claim after Hurricane Katrina. Although it is undisputed that plaintiffs deliberately violated the FCA's mandatory seal provision by informing news organizations and a Member of Congress about the existence and nature of their *qui tam* suit while it was still under seal, the Fifth Circuit affirmed the district court's refusal to dismiss plaintiffs' suit as a sanction for those egregious violations. WLF contends that ruling contradicts the plain language and structure of the FCA and creates a perverse incentive for other relators in similar *qui tam* cases to disregard seals.

As WLF's brief demonstrates, the FCA's seal requirement is not a mere procedural formality, but rather a statutory prerequisite to filing and maintaining a *qui tam* suit. That understanding flows from Congress' repeated and unambiguous use of the word "shall" in the statute's seal provision, and from the fact that Congress enacted the *qui tam* seal requirement as part of the private right of action. WLF further argues that, even if district courts enjoy broad discretion to fashion the appropriate remedy for *qui tam* seal violations in any given case, such discretion is not boundless. Unfortunately, the lax Fifth Circuit standard fails to align relators' interests with the government's interest. By setting too high a bar for dismissal, it improperly discounts the severe reputational harm and settlement pressure that relators are able to exert on defendants through calculated violations of the *qui tam* seal requirement.

Shortly after filing, WLF issued the following statement by Senior Litigation Counsel Cory Andrews: "When a court does not dismiss FCA claims even after a deliberate, egregious seal violation by a *qui tam* relator, it encourages further abuses by relators who seek to damage a defendant's public reputation in order to pressure that defendant into settling meritless claims."

*WLF is a national, public-interest law firm and policy center that regularly litigates in False Claims Act cases to ensure that unwarranted qui tam lawsuits do not drive up costs for all consumers.*

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