Press Release

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WLF Asks Supreme Court to Protect Limits on False Claims Act Seal Provision

(*United States ex rel. Hunt v. Cochise Consultancy, Inc.*)

"It's bad enough that the government uses the False Claims Act to conduct lengthy, intrusive, one-sided, secret investigations. The Court should, at the very least, bar the government from starting such an investigation ten years after the conduct in question."
—Corbin K. Barthold, WLF Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation today urged the U.S. Supreme Court to foreclose private parties from invoking a False Claims Act limitation period intended solely for use by the government. A contrary ruling, WLF explained in its brief, would exacerbate government abuse of the False Claims Act's seal provision.

The False Claims Act contains a two-pronged statute of limitations. One section ensures that both a private party—called a "relator"—and the government may sue within six years of an alleged fraud against the United States. The other section ensures that the government may sue within three years of discovering fraud, but in no event more than ten years from when the fraud occurred. Although most courts to consider the issue confirmed that the second section is intended solely for the government, the Eleventh Circuit concluded that a relator, too, may invoke it. The Supreme Court agreed to review the matter.

When a relator files a complaint under the False Claims Act, the lawsuit remains under seal while the government considers whether to intervene in the lawsuit. Although they are supposed to last around 60 days, these government investigations often stretch for years. The government can, in effect, spend years conducting discovery before the defendant may even read the complaint.

If a relator may invoke the False Claims Act's ten-year repose period, WLF observes in its brief, a government investigation of the alleged fraud might not even *begin* until ten years after the conduct in dispute. By the time the government completes its review and the complaint is served on the defendant, 15 or more years might have passed. This cannot be what Congress intended when it created the second part of the False Claims Act's statute of limitations. It is unlikely, moreover, that letting the government conduct one-sided discovery on decade-old allegations squares with due process.

WLF's brief urges the Court to enforce Congress's intent, and to avoid due-process concerns, by limiting relators to the False Claims Act's flat six-year limitation period.

Celebrating its 42nd year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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