Press Release

Washington Legal Foundation
Advocate for Freedom and Justice®
2009 Massachusetts Avenue, NW
Washington, DC 20036
202.588.0302 wlf.org

FOR IMMEDIATE RELEASE June 16, 2023

Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

Supreme Court Affirms Government's Broad Authority to Dismiss Qui Tam Suits

(*U.S. ex rel. Polansky v. Executive Health Resources*)

"Today's decision makes clear that the United States is free to intervene and voluntarily dismiss an FCA suit at any time."
—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—The U.S. Supreme Court today affirmed a decision of the U.S. Court of Appeals for the Third Circuit that confirms the government's right to dismiss a qui tam suit under the False Claims Act (FCA), even after initially declining to intervene in the suit. The decision was a victory for Washington Legal Foundation (WLF), which filed a brief supporting affirmance. WLF's amicus brief was drafted with the pro bono assistance of Kristin Graham Koehler, Joshua J. Fougere, Christopher S. Ross, and Alexandria T. Mushka of Sidley Austin LLP.

The case arose from a qui tam suit alleging that respondent, Executive Health Resources, enabled hospitals to certify inpatient services when, under Medicare rules, those services should have been outpatient. The government investigated the allegations for two years before declining to intervene. When the relator failed to narrow the suit's claims, the government decided to dismiss the action. The Third Circuit affirmed, and the Supreme Court granted review.

The relator asked the Court to interpret the FCA to mean that the Executive Branch has no authority to dismiss an FCA action after declining to intervene. In its amicus brief, WLF explained why adopting that interpretation would undermine the Constitution's separation of powers. Although the Court's majority did not take up that constitutional question, it held that the text of the FCA makes clear that the United States may intervene and voluntarily dismiss the suit at any time—even if it initially declined to intervene. And the Government's motion to dismiss will satisfy Federal Rule of Civil Procedure 41 in all but the most exceptional cases.

Celebrating its 46th 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.

###