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## WLF Asks Supreme Court To Clarify Scope Of False Claims Act's Public-Disclosure Bar

*(Valeant Pharmaceuticals Int'l v. United States ex rel. Silbersher)*

**“If outsiders to the alleged fraud can become qui tam relators by merely repackaging allegations that were already litigated in public proceedings before a federal agency, then the FCA’s public-disclosure bar will quickly become a dead letter.”**

—Cory Andrews, WLF General Counsel and Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Supreme Court to review—and ultimately to overturn—a decision of the U.S. Court of Appeals for the Ninth Circuit that would allow opportunistic qui tam bounty hunters to evade the False Claims Act’s (FCA’s) public-disclosure bar.

The FCA bars a qui tam claim if substantially the same allegation or transaction has been publicly disclosed. The relator here is not a true whistleblower with valuable inside information. Rather, Zachary Silbersher is a patent attorney and serial qui tam litigant whose lawsuit is based on publicly available information, including materials disclosed in IPR patent proceedings before the PTO’s Patent Trial and Appeal Board. Although it conceded that the relevant documents “were all publicly disclosed,” the Ninth Circuit held that a stranger to the alleged fraud may nonetheless evade the public-disclosure bar by “stitching together” publicly available information gleaned from two or more public sources, including IPR proceedings.

In its amicus brief urging review, WLF explains that the Ninth Circuit’s holding flouts the FCA’s text and purpose, splits sharply from other circuits on two vital questions of law, and cries out for Supreme Court review. WLF’s brief encourages the Court to rigorously enforce the balance of incentives Congress struck in the FCA and details how the court’s departure from settled law invites disastrous, unintended consequences.

*Celebrating its 47th 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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