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WLF Asks Texas Supreme Court To End Abusive Serial Qui Tam Litigation

(In re Gilead Sciences, Inc.)

“This case presents all the hallmarks of the abuses and perverse incentives that can arise when qui tam suits are brought by bad-faith actors.”

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

WASHINGTON, DC—Washington Legal Foundation today asked the Supreme Court of Texas to put an end to abusive serial qui tam litigation. WLF’s amicus brief was prepared with the generous pro bono assistance of Allyson Ho, Bradley Hubbard, Benjamin Wilson, Jason Muehlhoff, and Catherine Frappier of Gibson, Dunn & Crutcher LLP.

The qui tam relator in this case, Health Choice Advocates, LLC (“HCA”), is an LLC whose only business is bringing cookie-cutter qui tam suits against the country’s leading pharmaceutical companies. This case is the fourth qui tam suit this relator has brought against Gilead for the same Texas Medicaid Fraud Prevention Act claims based on the same allegations. Gilead moved to dismiss this latest action, based on settled preclusion principles. The trial court denied Gilead’s motion without opinion, and the Sixth Court of Appeals denied Gilead’s mandamus petition without opinion less than 24 hours after the petition was filed. Gilead then sought a writ of mandamus in the Texas Supreme Court, which directed the parties to brief the case on the merits.

In its amicus brief supporting mandamus relief, WLF argued that if the government chooses to share its treble-damages claims with private qui tam relators, the government must also share the consequences—and that means holding the government to the same preclusion rules that apply to any litigant. Otherwise, qui tam relators could repeatedly sue, voluntarily dismiss, and never face preclusion. But litigation must end. Giving the government a get-out-of-preclusion-free card would encourage gamesmanship, prolong meritless litigation, and impose an enormous litigation tax on Texas businesses and consumers.

Celebrating its 48th 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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