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## WLF Urges Third Circuit to Strike Down FCA's Qui Tam Provisions as Unconstitutional

*(United States ex rel. Penelow v. Janssen Products)*

***“The False Claims Act’s qui tam provisions hand private bounty hunters the Executive’s sword in defiance of the Constitution’s separation of powers.”***

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

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Third Circuit to reverse a district court decision and declare the False Claims Act’s (FCA) qui tam provisions unconstitutional. WLF contends that these provisions disrupt the separation of powers by allowing private relators to wield executive authority without presidential oversight.

The case stems from a lawsuit by relators Jessica Penelow and Christine Brancaccio, who allege that Janssen’s off-label marketing of two HIV/AIDS drugs caused false claims to be submitted to government healthcare programs. Among other things, Janssen responded that the FCA’s qui tam provisions violate Article II of the Constitution. The district court upheld the FCA’s qui tam provisions, relying on circuit precedent without fully addressing the alleged constitutional defects.

In its amicus brief urging reversal, WLF argues that the qui tam provisions violate the Constitution’s Vesting, Appointments, and Take Care Clauses by delegating enforcement power to unaccountable relators driven by financial bounties rather than the public interest. As WLF’s brief clarifies, only the Executive, answerable to the people, may control federal law enforcement and uphold the constitutional balance.

*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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