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November 3, 2025

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WLF Urges Seventh Circuit to Rehear En Banc Misguided False Claims Act Ruling (*United States ex rel. Streck v. Eli Lilly & Co.*)

“The panel’s decision imposes hindsight liability on good-faith regulatory compliance, turning the FCA into a trap for the unwary.”

— 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 Seventh Circuit to grant rehearing en banc to reconsider its ruling that Eli Lilly violated the False Claims Act (FCA) by relying on a reasonable interpretation of ambiguous Medicaid Drug Rebate Program regulations. WLF contends that the decision conflicts with fair notice principles by punishing manufacturers for objectively reasonable conduct amid regulatory uncertainty.

The case stems from a qui tam suit alleging that Eli Lilly underpaid Medicaid rebates from 2005 to 2017 by excluding post-sale price increases from “average manufacturer price” calculations, as permitted by contemporaneous CMS guidance. The U.S. District Court for the Northern District of Illinois granted summary judgment for Eli Lilly, but the Seventh Circuit reversed, holding the exclusions improper and remanding for FCA liability determination.

In its amicus brief, WLF argues the panel’s ruling creates an intra-circuit split on fair notice and diverges from the Third Circuit’s reasonable interpretation of the same statute. WLF’s brief also contends that the FCA’s qui tam provision violates Article II by empowering unaccountable relators to usurp executive enforcement. The panel’s holding risks stifling pharmaceutical innovation and invites abusive copycat litigation. WLF urges en banc review to restore regulatory certainty and constitutional bounds.

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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