Press Release

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WLF Asks Supreme Court to Curtail Abusive Lawsuits Brought Under Federal False Claims Act

(Universal Health Services, Inc. v. U.S. and Massachusetts ex rel. Escobar)

> **"The courts must not permit the plaintiffs' bar to turn garden-variety breach-of-contract actions into fraud claims. The False Claims Act employs powerful weapons—including treble damages and bounties for whistleblowers—that can and will be abused unless courts carefully circumscribe the statute's use."**
> **—Richard Samp, WLF Chief Counsel**

WASHINGTON, DC—Washington Legal Foundation this week called on the U.S. Supreme Court to curtail efforts by the plaintiffs' bar to misuse the federal False Claims Act (FCA). In an *amicus* brief filed in *Universal Health Services, Inc. v. United States and Massachusetts ex rel. Escobar*, WLF argues that Congress adopted the FCA to fight outright fraud committed by government contractors, not to permit self-proclaimed whistleblowers to seek bounties for alleging ordinary breaches of contract.

The case involves the operator of a mental-health clinic in Massachusetts. No one disputes that it actually performed all the services that it billed to Medicaid. But two individuals allege the clinic did not comply with several state regulations applicable to the clinic. They filed suit in the name of the United States and the Commonwealth of Massachusetts, alleging that the clinic operator, by submitting invoices to the government for reimbursement, implicitly (and falsely) certified that it had complied with all regulations—thereby defrauding the government. *Qui tam* attorneys and plaintiffs have strong financial incentives to file such suits, because the FCA provides lucrative bounties to anyone who recovers funds for the government.

WLF's brief urges the Supreme Court to reject the plaintiffs' "implied certification" theory as an unwarranted extension of the FCA meant to enable the *qui tam* bar to extort funds from lawful businesses. It argues that the FCA only permits recovery when a contractor makes an actual false claim. The brief notes that if the federal government itself concludes that a contractor has violated applicable regulations or contractual provisions, it can make use of numerous other enforcement tools—including a suitfor breach of contract.

Upon filing its brief, WLF issued the following statement by Chief Counsel Richard Samp: "The courts must not permit the plaintiffs' bar to turn garden-variety breach-of-contract actions into fraud claims. The False Claims Act employs powerful weapons—including treble damages and bounties for whistleblowers—that can and will be abused unless courts carefully circumscribe the statute's use. The FCA imposes liability based on claims affirmatively made, not by inferring certifications not actually made."

WLF is a free-market, public-interest law firm and policy center that seeks to ensure that economic liberty is not impeded by excessive litigation.

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