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WLF Asks Ninth Circuit to Adhere to *Escobar*, Protecting Businesses from Burdensome Liability

(*U.S. ex rel. Campie v. Gilead Sciences, Inc.*)

“The False Claims Act is intended to root out actual fraud against the federal government, not to police compliance with every regulatory requirement imposed on a government contractor. If noncompliance is not ‘material’ to the government’s decision to pay a claim, the plaintiffs’ bar should not be permitted to transform a minor breach of contract into a fraud claim.”

—Richard Samp, WLF Chief Counsel

WASHINGTON, DC—Washington Legal Foundation filed an *amicus* brief yesterday supporting the Appellee’s petition for rehearing or rehearing *en banc* by the Ninth Circuit Court of Appeals in *U.S. ex rel. Campie v. Gilead Sciences, Inc.* WLF argues that the appeals court’s initial decision conflicts with Supreme Court precedent and facilitates the filing of unwarranted fraud claims against government contractors.

This case arises under the False Claims Act (FCA), a federal law that imposes liability on those who have defrauded government programs. The FCA also allows private individuals, like Jeffrey and Sherilyn Campie, to declare themselves “relators” and sue on behalf of the United States to recover funds paid to allegedly fraudulent contractors. WLF’s involvement in this case stems from deep concern that excessive FCA liability has created abusive litigation against businesses, harming employees, consumers, and the free enterprise system.

One of the key issues here is whether the allegedly false claim was material to the government’s decision to pay the claim. WLF argues in its brief that the United States Supreme Court decision in *Universal Health Services, Inc. v. United States ex rel. Escobar* establishes a materiality test that is not met in this case. According to *Escobar*, FCA liability does not arise unless the relator demonstrates that the alleged misrepresentation *likely* induced the government to pay the claim. When, as here, the government continues to pay a contractor even after investigating the relators’ claims that the contractor violated regulatory requirements, the violation cannot be deemed material, WLF asserts.

WLF also argues that the appeals court’s initial decision should be reversed because it sharply conflicts with the decisions of other appeals courts that have faithfully adhered to *Escobar*. WLF urges that reversal is required to prevent a broad range of industries that conduct business with the government from being exposed to liability under the FCA for inconsequential violations of federal regulatory requirements.

Celebrating its 40th 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.