No. 23-1127

IN THE

Supreme Court of the United States

WISCONSIN BELL, INC.,

Petitioner,

v.

UNITED STATES OF AMERICA EX REL. TODD HEATH,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTION PRESENTED

Whether reimbursement requests submitted to the E-rate program are "claims" under the False Claims Act.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

TABLE OF AUTHORITIES
(*continued*)

Page(s)

Regulations

Other Authorities

TABLE OF AUTHORITIES
(*continued*)

Page(s)

INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as amicus curiae in important False Claims Act cases. *See, e.g.*, *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419 (2023); *Universal Health Servs., Inc. v. United States ex rel. Escobar*, 579 U.S. 176 (2016).

WLF's Legal Studies Division also regularly publishes papers on FCA issues. *See, e.g.*, Stephen A. Wood, Res Judicata *in* Qui Tam *Litigation: Why Government Should Be Bound by Judgments in Non-Intervened Cases*, WLF WORKING PAPER (Apr. 22, 2021); Douglas W. Baruch et al., *In False Claims Act Cases, Government Must Provide Full Discovery Regarding Materiality*, WLF LEGAL OPINION LETTER (Dec. 6, 2018).

INTRODUCTION

The FCA has taken on a life of its own in recent years. Enacted during the Civil War, the statute began as an important, but limited, tool against government procurement fraudsters and wartime opportunists. Today, the opportunists are often not the targets of the statute, but rather its putative enforcers: enterprising relators have weaponized the FCA into a vehicle for debilitating lawsuits over just

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission. WLF timely notified all parties of its intent to file this brief.

about anything that arguably touches—even remotely—the federal fisc.

Companies operating in the shadow of the FCA's "essentially punitive" treble-damages regime face a constant threat of suffering "open-ended liability" without fair notice of the legal requirements they are claimed to have violated. *Escobar*, 579 U.S. at 182, 192. The Court has therefore warned that, in the FCA context, respect for basic due process demands "strict enforcement" of the FCA's "rigorous" requirements. *Id.* at 192. Whatever else such "strict enforcement" may entail, in a case like this one where punitive liability hinges on violation of a regulatory standard, it must, at a bare minimum, require that defendants know with certainty what the regulation requires before imposing punitive civil and criminal penalties. *Cf.* 18 U.S.C. § 287 (providing for criminal penalties for FCA violations).

Here, the relevant federal agency refused to issue guidance about the scope of its regulatory requirement for telecommunications providers to offer services to eligible entities at the lowest corresponding price. Wisconsin Bell therefore took all reasonable steps to ensure compliance with the regulatory requirement. And time and again, the government explicitly and implicitly backed Wisconsin Bell's process and its interpretation of the regulation.

But an opportunistic relator who tried to get Federal Communications Commission officials imprisoned for agreeing with Wisconsin Bell sued for its allegedly violating the regulatory requirement and thus the FCA. His arguments conflicted with the

FCA's plain text, which shows that Wisconsin Bell did not submit any "claims" to the United States. Still, the Seventh Circuit agreed with the relator and split from the Fifth Circuit's decision on the identical legal issue.

STATEMENT

I. STATUTORY FRAMEWORK

For the past 28 years, the Schools and Libraries Universal Service Support (E-rate) program has provided eligible schools, libraries, and consortia with discounted telecommunications services. During the relevant timeframe, the program was funded entirely by telecommunications providers through the Universal Service Fund. The Universal Service Administrative Company—a private organization—administers the Fund. This includes managing the application process, disbursing funds, and ensuring regulatory compliance.

The Fund disburses funds in two ways. First, recipients may pay a provider's bill and then seek reimbursement from USAC. Second, recipients may pay a provider the discounted rate and then have the provider seek reimbursement from USAC.

Congress forces telecommunications carriers, to "provide [eligible] services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties" when requested to do so. 47 U.S.C. § 254(h)(1)(B). This means they must charge "the lowest price that a service provider charges to non-residential customers who are

similarly situated to a particular school, library, or library consortium for similar services." 47 C.F.R. §§ 54.500, 54.511(b). There are, however, no black-and-white rules when deciding whether customers and eligible recipients are similarly situated. In fact, the FCC has repeatedly declined requests to expand on that regulatory requirement.

II. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Todd Heath learned about the E-rate program while running two companies that assisted schools with their telecommunications billing. He began accusing providers, including Wisconsin Bell, of not complying with the price requirement. Over the past fifteen years, he has filed hundreds of "frivolous" complaints against Wisconsin Bell and other providers. *Cf.* Letter from Lynn L. Dorr, Sec'y, Pub. Serv. Comm'n of Wisc., to Allan J. Kehl, Cnty. Exec., Kenosha Cnty., (Feb. 20, 2003) (describing Heath's interpretation of the lowest corresponding price provision as "frivolous").

Having convinced no government that it was being overcharged by Wisconsin Bell and other companies, Heath began accusing the government of fraud. He even claimed that FCC officials "should be indicted for crimes against the American people[and] stripped of their position and all future benefits." The Tele. Co., Reply Comment Letter on Modernizing the E-Rate (Oct. 17. 2013), https://perma.cc/P94C-MVPH. Besides trying to get FCC officials thrown in jail, Heath sued Wisconsin Bell and others under the FCA. The District Court granted Wisconsin Bell summary

judgment, finding that no genuine issue of material fact existed about falsity or scienter.

The Seventh Circuit reversed. It found genuine issues of material fact on both falsity and scienter. It also declined to affirm on the alternative basis that Heath failed to prove materiality. The Seventh Circuit reasoned that E-rate reimbursement requests submitted to USAC are "claims" for FCA purposes. This holding openly split with the Fifth Circuit's decision in *United States ex rel. Shupe v. Cisco Sys., Inc.*, 759 F.3d 379 (5th Cir. 2014) (per curiam). Wisconsin Bell now asks the Court to resolve that circuit split.

SUMMARY OF ARGUMENT

I.A. The Seventh Circuit's decision will affect programs beyond those administered by USAC. For example, the telephone service that helps hearing-impaired and speech-impaired people is structured in a similar way. Under the Seventh Circuit's decision, claims for reimbursement by service providers could lead to FCA liability, which will decrease the supply of companies willing to offer that crucial service.

B. Besides E-rate, USAC administers three other programs that are now covered by the FCA in the Seventh Circuit. Companies that provide telecommunication services for rural residents, rural health care providers, and low-income consumers would all be open to FCA liability. This will cause problems for service providers and could lead to higher costs for the programs as businesses increase their bids because of the potential for FCA liability.

C. Under the Seventh Circuit's reasoning, Fannie Mae and Freddie Mac are perhaps agents of the United States for FCA purposes. This means that innocent homebuyers and lenders could face FCA liability for one mistake in a mortgage application. This likewise will raise mortgage costs for all Americans.

II. The FCA has been on the books for over 160 years. That whole time, it has covered only fraudulent activity that costs the government money. Here, Wisconsin Bell's alleged fraud did not cost the federal fisc a penny. Yet the Seventh Circuit said that does not matter and that Wisconsin Bell could face treble damages and criminal liability. That holding departs from the FCA's history.

ARGUMENT

I. THIS CASE HAS REPERCUSSIONS FAR BEYOND THE E-RATE PROGRAM.

Heath argues (at 2) that the question presented is "of little importance beyond the dispute here." This argument fails for two reasons. First, the test for whether the United States "provides" funds has wide-ranging implications for many ongoing federal programs. Second, who is an agent of the United States for FCA purposes implicates programs that are key to our economy. Thus, the question presented is of great importance beyond this dispute and the Court should grant the petition.

A. The Telecommunications Relay Service Fund Has A Similar Structure.

Many older Americans remember seeing some payphones that had special keyboards attached. These were not used to tweet or text a friend. Rather, they were integral to ensuring that all Americans could use those public phones. The Americans with Disabilities Act requires that "hearing-impaired and speech-impaired persons in the United States" be able to communicate using telecommunications devices "to the extent possible and in the most efficient manner." 47 U.S.C. § 225(b)(1). To accomplish this goal, Congress mandated creation of telecommunications relay services—"telephone transmission services that provide the ability for" hearing-impaired and speech-impaired individuals "to engage in communication by wire or radio with one or more individuals, in a manner that is functionally equivalent to the ability of a hearing individual who does not have a speech disability to communicate using voice communication services by wire or radio." *Id.* § 225(a)(3).

Hearing-impaired individuals can dial a number and have the relay service call the recipient. The recipient talks normally, then the relay service sends a transcript to the caller of what the recipient says. The caller can then speak with the recipient hearing the caller. A similar process is used for speech-impaired individuals, only with the roles reversed.

Users need not pay to use the relay service. Rather, "[r]elay providers recover their costs from a fund, called the 'TRS Fund,' to which all interstate

telecommunications providers contribute." *Lyttle v. AT&T Corp.*, 2012 WL 6738242, *2 (W.D. Pa. Nov. 15, 2012) (citing 47 U.S.C. § 225(d)(3)(B); 47 C.F.R. § 64.604(c)(5)(iii)), *adopted*, 2012 WL 6738149 (W.D. Pa. Dec. 28, 2012). That fund is administered by Rolka Loube Saltzer Associates, a private company. This structure is much like the E-rate program. The only differences are that Rolka Loube Saltzer Associates—not USAC—controls the money and that there is always a direct payment to the providers.

"[P]roviders submit monthly requests for reimbursement for the total number of minutes of each type of TRS service that they provided in the prior month," certifying that "minutes submitted to the Fund administrator for compensation were handled in compliance with section 225 of the Communications Act and the [FCC's] rules and orders." *Lyttle*, 2012 WL 6738242 at *2 (cleaned up). This process is like the E-rate program. The only difference is that rather than certifying the lowest corresponding price, the provider is certifying compliance with a different regulatory requirement.

Given this statutory framework, the *Lyttle* court held that when "money [i]s put into a fund and taken out of it by private parties," that the United States does not "provide" that money for FCA purposes. 2012 WL 6738242 at *21. The court reached this holding despite the United States's "requir[ing] that such money be paid" and the program being "included in the federal budget." *Id.* Still, the *Lyttle* court applied incorrect reasoning like the Seventh Circuit's here and held that Rolka Loube Saltzer Associates is an agent of the United States because it "collect[s] and disburse[s] TRS funds on behalf of the

FCC, pursuant to federal law and act[s] on the FCC's behalf and subject to its control." *Id.* at *18.

There is no meaningful daylight between the TRS Fund's administration and the E-rate program. So under the Seventh Circuit's rule, any provider that mistakenly certifies to Rolka Loube Saltzer Associates that it is complying with FCC regulations on relay services can face FCA liability for claims submitted before and after 2009. That means both treble civil damages and criminal liability.

B. USAC Administers More Than The E-Rate Program.

Besides the E-rate program, USAC administers three other funds. Under the Seventh Circuit's reasoning, requests for reimbursement for all three programs are "claims" for FCA purposes. This greatly expands the potential for FCA liability far beyond what Congress intended.

1. Congress decided that "[c]onsumers in all regions of the Nation, including * * * those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications." 47 U.S.C. § 254(b)(3). This means that they must be able to obtain "services[] that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas." *Id.*

To comply with this directive, the FCC established the High Cost Fund, which "provided

direct financial support to telecommunications providers in areas where local rates would otherwise be unaffordable for some consumers." Daniel A. Lyons, *Narrowing the Digital Divide: A Better Broadband Universal Service Program*, 52 U.C. Davis L. Rev. 803, 819 (2018) (cleaned up). The High Cost Fund eventually transitioned to a program that distributes money through at least sixteen different funds.

The funding for the High Cost Program comes from the same pool of money used for E-rate. In other words, the High Cost Program is funded by telecommunications providers through the Universal Service Fund. And like E-rate, USAC administers all the funds under the High Cost Program.

The largest High Cost Program fund is the Connect America Fund Broadband Loop Support program. This fund allows telecommunications providers to recover any difference between costs associated with providing voice and broadband services and receipts for providing those services.

Unlike the E-rate program, there is no option for consumers to pay the full cost of the broadband services that they receive and then request reimbursement from USAC. Instead, providers receive the funds after providing the necessary services and filing with USAC the necessary paperwork. In other words, telecommunications providers give money to USAC—a private entity—and then a subset of those providers receive money from USAC. At no time does the money pass through the treasury.

The paperwork requirements to receive this funding are onerous. Every year, providers must file about a dozen forms with USAC. Each of these forms is complex. For example, providers must provide latitude and longitude coordinates for locations that have received broadband services supported by the program and a random sampling of speed measurements, including latency. There is, however, no federal regulation that tells carriers how to do this random sampling. So a provider could conduct a stratified random sample, and someone like Heath could sue, arguing that it was not a true "random sample."

If a court were to adopt the relator's argument, it could mean that the telecommunications provider could face treble damages for all reimbursements it received from USAC. The provider could also face criminal penalties for its actions, despite not one dime of federal money being at issue. The money just flowed from a large group of telecommunications providers to a subset of that group. In other words, despite no harm to the government by the provider's actions, treble damages and criminal penalties could result.

2. Besides making telecommunications services available in rural areas, Congress also directed that services be made available to "low-income consumers." 47 U.S.C. § 254(b)(3). To comply with this directive, the FCC established the Lifeline Program, which provides direct financial support to telecommunications providers who give discounted services to low-income individuals.

The funding for the Lifeline Program comes from the same pool of money used for E-rate. In other words, the Lifeline Program is funded by telecommunications providers through the Universal Service Fund. And like E-rate, USAC administers the Lifeline Program.

As with E-rate and the High Cost Program, there are a vast array of regulatory requirements for participating providers. For example, they "must obtain a third-party biennial audit of their compliance with the" program's rules. 47 C.F.R. § 54.420(a). Providers also "must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services." *Id.* § 54.410(a).

Almost every Lifeline provider errs and seeks reimbursement for at least one individual who is ineligible for Lifeline services. Under the Seventh Circuit's rule, these providers face treble damages and criminal penalties for every violation of the Lifeline regulations.

3. Finally, Congress directed that telecommunications providers must "provide telecommunications services which are necessary for the provision of health care services * * * to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State." 47 U.S.C. § 254(h)(1)(A). Providers of that service are "entitled to have an amount equal to the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates

for similar services provided to other customers in comparable rural areas in that State treated as a service obligation." *Id.*

Rural health care providers solicit bids for services and then award the bids based on FCC-mandated criteria. *See* 47 C.F.R. § 54.622. The rural health care provider pays the prevailing urban rate for the state. Service providers can then recover the difference between the prevailing rural rate and the prevailing urban rate from the Rural Health Care Fund. *See id.* § 54.606(a).

The funding for the Rural Health Care Fund comes from the same pool of money used for E-rate. In other words, the Rural Health Care Fund is funded by telecommunications providers through the Universal Service Fund. And like E-rate, USAC administers the two programs under the Rural Health Care Fund. Service providers invoice USAC for the difference calculated under Section 54.606(a).

As with the E-rate program, a mistake in submitting an invoice could lead to FCA liability under the Seventh Circuit's decision. That includes both treble civil damages and criminal penalties.

C. Other Government-Adjacent Organizations Meet The Seventh Circuit's Test For Agent Of The United States.

The Seventh Circuit's decision stretches far beyond government programs like Lifeline or the telephone relay service. Under its definition of

"agent," any claim submitted to Fannie Mae or Freddie Mac is covered by the FCA.

"Fannie Mae and Freddie Mac are two of the Nation's leading sources of mortgage financing. When the housing crisis hit in 2008, the companies suffered significant losses, and many feared that their troubling financial condition would imperil the national economy." *Collins v. Yellen*, 141 S. Ct. 1761, 1770 (2021). To assuage these concerns, Congress "created the Federal Housing Finance Agency (FHFA), an independent agency tasked with regulating the companies and, if necessary, stepping in as their conservator or receiver." *Id.* (cleaned up). FHFA "is tasked with supervising nearly every aspect of the companies' management and operations. For example, the Agency must approve any new products that the companies would like to offer. It may reject acquisitions and certain transfers of interests the companies seek to execute." *Id.* at 1771 (citations omitted).

In the Seventh Circuit's view USAC can be an agent of the United States even if it lacks "final power to" "make policy, interpret unclear provisions of the statute or rules, [] interpret the intent of Congress," "or to alter the federal government's legal obligations." Pet. App. 25a (cleaned up). Rather, all that matters is that "[a]ll of the USAC's actions are subject to the ultimate control of the principal, the FCC, acting as a part of the United States government." *Id.*

Again, FHFA "is tasked with supervising nearly every aspect of the companies' management and operations." *Collins*, 141 S. Ct. at 1771. This is far

more control than the FCC has over USAC. No provision of federal law allows the FCC to step in and serve as conservator or receiver for USAC if financial difficulty looms. So too for Rolka Loube Saltzer Associates and the telephone relay service. FHFA's ability to serve as receiver or controller is the ultimate type of control. So under the Seventh Circuit's reasoning, Fannie Mae and Freddie Mac are agents of the United States for FCA purposes.

This unavoidable consequence of the Seventh Circuit's decision directly conflicts with the Ninth Circuit's decision in *United States ex rel. Adams v. Aurora Loan Servs., Inc.*, 813 F.3d 1259, 1260 (9th Cir. 2016). *Adams* was also a qui tam action by relators trying to recover treble damages for claims that were never presented to the United States or one of its agents. The relators sued under the FCA, arguing that lenders told Fannie Mae and Freddie Mac that certain properties were free and clear of homeowner association liens and charges when they were not. The district court dismissed the complaint and the Ninth Circuit affirmed.

The Ninth Circuit explained that "Fannie Mae and Freddie Mac are private companies, albeit companies sponsored or chartered by the federal government." *Adams*, 813 F.3d at 1260. Thus, they are not "agents" of the United States for FCA purposes. *See id.*

The United States's amicus brief in *Adams* is also helpful. It said that because Fannie Mae and Freddie Mac "are not part of the federal government, * * * claims made upon [them] do not fall within the first definition of 'claim' set out in the amended FCA,

which requires a request or demand be 'presented to an officer, employee, or agent of the United States.'" Br. of the United States as Amicus Curiae Supporting Neither Party at 14, *Adams*, 813 F.3d 1259 (No. 14-15031).

If this Court denies the petition, mortgage companies and borrowers could face FCA liability in the Seventh Circuit. Under the decision below, Fannie Mae and Freddie Mac are perhaps agents of the United States for FCA purposes. This Court should not allow that to happen. Rather, it should grant the petition and hold that private corporations like Fannie Mae, Freddie Mac, and USAC are not agents of the United States for FCA purposes.

II. THE FCA'S HISTORY SHOWS THAT IT COVERS ONLY CLAIMS WHERE THE GOVERNMENT CAN LOSE MONEY.

During the Civil War, government contractors were becoming "proverbially and notoriously rich." 1 Fred A. Shannon, *The Organization and Administration of the Union Army, 1861-1865*, 54-56 (1965). The frauds they committed were brazen. For example, one huckster sold blind, useless mules to the military for $119 each—about $2,950 in today's currency. *False Claims Act Amendments: Hearings before the Subcomm. on Admin. L. and Governmental Rels. of the H. Comm. on the Judiciary*, 99th Cong. 1 (1986) (statement of Rep. Dan Glickman). "The manufacturers of Colt's revolvers had been receiving $25 for a revolver that would ordinarily sell in the open market for $14.50." *United States ex rel. Newsham v. Lockheed Missiles & Space Co.*, 722 F. Supp. 607, 609 n.2 (N.D. Cal. 1989).

So at President Lincoln's urging, Congress enacted the FCA to help catch government procurement fraudsters and wartime opportunists. *See* False Claims Act, ch. 67, 12 Stat. 696 (1863). As the bill's sponsor explained, it was based on "the old-fashioned idea of holding out a temptation, and setting a rogue to catch a rogue." Cong. Globe, 37th Cong., 3d Sess. 955-56 (1863) (statement of Sen. Howard). In other words, the entire purpose of the FCA was to motivate people to blow the whistle on fraud costing the government money. The purpose was not to give a windfall for those who might catch private fraud.

For the next eight decades, the FCA remained a useful tool in the government's ongoing battle against fraudsters. But when World War II arrived, a different type of fraudster became a menace to society—parasitic plaintiffs. These "'[p]arasitic' suits were often brought based solely on public or quasi public information obtained from criminal indictments. After a criminal indictment came out, there was a rush to the Courthouse to file a civil suit and recover the qui tam bounty." *Newsham*, 722 F. Supp. at 609 n.3. So in 1943, Congress amended the FCA to ban suits based on information that the government already had in its possession. *See* Act of Dec. 23, 1943, Pub. L. No. 78-213, 57 Stat. 608, 609.

The amended version of the FCA then served our nation well for another four decades. Fraudsters were kept in check, and parasitic plaintiffs were prevented from receiving a windfall for suing based on publicly available information. But in the 1980s Congress held detailed hearings on the FCA to determine whether it was still accomplishing its

stated goals. Those hearings led to the statute's overhaul in 1986, the result of which remains the FCA's core today.

The 1986 amendments' purpose was "to enhance the Government's ability to recover losses sustained as a result of fraud against the Government." S. Rep. 99-345, 1, *reprinted in*, 1986 U.S.C.C.A.N. 5266, 5266. Although it was "difficult to estimate the exact magnitude of fraud in Federal programs and procurement," the spike in fraud cases against "some of the largest Government contractors" in the early 1980s led Congress to believe "that the problem [wa]s severe." *Id.* at 1-2, 1986 U.S.C.C.A.N. at 5266. For example, "[i]n 1984, the Department of Defense conducted 2,311 fraud investigations, up 30 percent from 1982. Similarly, the Department of Health and Human Services ha[d] nearly tripled the number of entitlement program fraud cases referred for prosecution over the [prior] 3 years." *Id.* at 2, 1986 U.S.C.C.A.N. at 5267.

Of course, fraud was not just limited to those agencies. "The Department of Justice [] estimated fraud [w]as draining 1 to 10 percent of the entire Federal budget. Given the spending level in 1985 of nearly $1 trillion, fraud against the Government could [have been costing] taxpayers anywhere from $10 to $100 billion annually." S. Rep. 99-345 at 3, 1986 U.S.C.C.A.N. at 5268 (footnote omitted). Congress concluded that the reason fraud was so pervasive among government contractors was that "there [were] serious roadblocks to obtaining information as well as weaknesses in both investigative and litigative tools." *Id.* at 4, 1986 U.S.C.C.A.N. at 5269.

Congress's solution to the problem was to increase deterrence through better investigative and litigation tools. One of those tools was to increase the penalties for FCA violations from double damages to treble damages. This 50% increase in the potential penalty for fraudulent behavior, Congress thought, would help deter fraud among contractors.

The entire discussion in 1986 was about how Congress could root out fraud against the government. It was the $10 to $100 billion annually that was being diverted from the federal fisc that led Congress to enact substantial FCA amendments in 1986. Nothing in the text of those amendments or the legislative history even hints at allowing recovery for frauds against private corporations for which the government is not liable.

The Seventh Circuit's decision here, however, allows for FCA suits against companies and individuals for alleged fraud against a private corporation. Even if every allegation in Heath's complaint is true, the government did not lose a single penny because of the alleged fraud. Rather, a private company may have lost some money when it made E-rate reimbursements.

Another part of the FCA's structure also suggests that it is not meant to cover claims for which the government loses nothing. The government may intervene in an FCA suit and fully control the litigation. *See* 31 U.S.C. § 3730(b)(4)(A). This includes dismissing the suit over the relator's objection. *See id.* § 3730(c)(2)(A); *Polansky*, 599 U.S. at 438. The reason that the Government can intervene and litigate a suit is because the FCA's purpose is to recover money that

the government lost due to fraud. This is a continuation from the 1863 legislation, which made it the "duty" of DOJ to go after fraudsters to "recover[]" the "damages" done to the United States. False Claims Act, § 5, 12 Stat. at 698.

In sum, the entire purpose of the FCA, from the time it was enacted in 1863 until now, is to detect and deter fraud that cost the United States money. It is not meant as a way for profiteers like Heath to file parasitic suits. Congress, in fact, has disapproved of suing contractors just to recover money for relators. Yet that is exactly what the Seventh Circuit's decision here permits. This Court should not allow the FCA to be used as a tool for parasites to get rich.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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