

IN THE SUPREME COURT OF THE UNITED STATES

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No. 21-1052

UNITED STATES OF AMERICA, EX REL.  
JESSE POLANSKY, M.D., M.P.H., PETITIONER

v.

EXECUTIVE HEALTH RESOURCES, INC., ET AL.

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ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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MOTION OF THE UNITED STATES FOR DIVIDED ARGUMENT

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Pursuant to Rule 28.4 of this Court, the Solicitor General, on behalf of the United States, respectfully moves to divide the oral argument for respondents in this case. The United States requests the following division of argument time: 30 minutes for petitioner, 15 minutes for respondent the United States, and 15 minutes for respondent Executive Health Resources, Inc. (EHR). Counsel for EHR has agreed to that allocation.

The False Claims Act (FCA or Act), 31 U.S.C. 3729 et seq., permits a private party (known as a relator) to bring suit "in the name of the Government" against persons who have violated the Act,

31 U.S.C. 3730(b)(1), through a mechanism commonly known as a qui tam action. When a qui tam suit is filed, the relator's complaint remains under seal for an initial 60-day period, which the court may extend for good cause. 31 U.S.C. 3730(b)(2) and (3). During the seal period, the government may elect to intervene and proceed with the action or notify the court that it declines to do so. 31 U.S.C. 3730(b)(2) and (4).

The FCA provides that "[t]he Government may dismiss the action notwithstanding the objections of the [relator] if the [relator] has been notified by the Government of the filing of the motion and the court has provided the [relator] with an opportunity for a hearing on the motion." 31 U.S.C. 3730(c)(2)(A). The FCA also provides that, if the government does not intervene during the seal period, "the court, without limiting the status and rights of the [relator], may nevertheless permit the Government to intervene at a later date upon a showing of good cause." 31 U.S.C. 3730(c)(3).

After petitioner filed his qui tam action against EHR, the United States declined to intervene during the seal period, but later moved to dismiss the suit under Section 3730(c)(2)(A). The district court granted the motion, Pet. App. 39a-57a, and the court of appeals affirmed, id. at 1a-30a. The court of appeals concluded that the government must formally intervene in a qui tam action in order to dismiss the suit. Id. at 8a-19a. But the court of appeals "construe[d] the Government's motion to dismiss as including a motion to intervene" and concluded that the district

court had “necessarily found” the requisite “good cause” for intervention under Section 3730(c)(3). Id. at 28a. The court of appeals further held that the district court had not abused its discretion in granting the government’s motion to dismiss under Section 3730(c)(2)(A). Id. at 28a-30a.

Dividing the argument time for respondents between the United States and EHR would be of material assistance to this Court. The United States has a substantial interest in this case because it involves a motion to dismiss filed by the government, and because the questions presented concern the proper interpretation of FCA provisions that authorize the government to dismiss and to intervene after the seal period expires. EHR also has a substantial interest in this case because it involves the dismissal of FCA claims brought by petitioner against EHR. The United States accordingly requests that the Court grant the motion for divided argument.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

OCTOBER 2022