

IN THE SUPREME COURT OF THE UNITED STATES

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No. 21-1326

UNITED STATES, EX REL. TRACY SCHUTTE, ET AL.,  
PETITIONERS

v.

SUPERVALU INC., ET AL.

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No. 22-111

UNITED STATES, EX REL. THOMAS PROCTOR,  
PETITIONER

v.

SAFEWAY, INC.

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ON WRITS OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

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MOTION OF THE UNITED STATES FOR LEAVE TO  
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE,  
ENLARGEMENT OF ARGUMENT, AND DIVIDED ARGUMENT

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Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in these cases, that the time for oral argument be enlarged to 70 minutes, and that the time be allotted as follows: 20 minutes for petitioners, 15 minutes for the United States, and 35 minutes for respondents. Petitioners and respondents consent to this motion.

These cases present an important question concerning the scienter requirements of the False Claims Act (FCA), 31 U.S.C. 3729 et seq. Specifically, the parties dispute whether a person who submitted a claim or statement that falsely asserted compliance with applicable legal requirements, and who subjectively believed or had strong reason to believe that the claim or statement was false, can establish that he did not act “knowingly” within the meaning of the FCA, see 31 U.S.C. 3729(b)(1)(A), by showing that the claim or statement was consistent with an incorrect but objectively reasonable interpretation of those legal requirements.

The United States has a substantial interest in the resolution of that question. The FCA is the primary tool by which the federal government combats fraud in federal contracts and programs, and the particular fraud alleged in these cases concerns millions of dollars in overbilling to federal healthcare programs including Medicaid and Medicare Part D. At the Court’s invitation, the Solicitor General filed an amicus brief on behalf of the United States at the petition stage in No. 21-1326. After this Court granted certiorari, the government filed an amicus brief supporting petitioners on the merits in both cases.

The United States has participated in oral argument as amicus curiae in prior cases involving interpretation of the FCA. E.g., Cochise Consultancy, Inc. v. United States ex rel. Hunt, 139 S. Ct. 1507 (2019); State Farm Fire & Casualty Co. v. United States ex rel. Rigsby, 580 U.S. 39 (2016); Universal Health Services, Inc.

v. United States ex rel. Escobar, 579 U.S. 176 (2016); Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter, 575 U.S. 650 (2015). In light of the substantial federal interest in the question presented, the United States' participation at oral argument could materially assist the Court in its consideration of these cases.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record

MARCH 2023