No. 25-1126

IN THE
Supreme Court of the United States

ELI LILLY AND COMPANY,
Petitioner,
v.
UNITED STATES, ET AL., EX REL., RONALD STRECK
Respondent.

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

BRIEF FOR REGENERON PHARMACEUTICALS, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

Regeneron Pharmaceuticals, Inc. invents, develops, and commercializes life-transforming medicines for people with serious diseases. As a leading biotechnology company, Regeneron is subject to extensive regulation, including regulation governing the way its products are paid for by Medicare and Medicaid. Regeneron has a strong interest in receiving clear guidance from regulators about what the governing regulatory standards mean. Regeneron also has a strong interest in obtaining clarity from the courts about the circumstances under which a reasonable interpretation of a regulatory requirement, adopted in good faith, can nevertheless lead to potential False Claims Act (FCA) liability. Regeneron is currently involved in two pending FCA cases in the District of Massachusetts. *See United States ex rel. Nunnelly* v. *Regeneron Pharmaceuticals, Inc.*, No. 1:20-cv-11401 (D. Mass.); *United States* v. *Regeneron Pharmaceuticals, Inc.*, No. 1:20-cv-11217 (D. Mass.).

INTRODUCTION

At oral argument in *United States ex rel. Schutte* v. *SuperValu Inc.*, 598 U.S. 739 (2023), Justice Kavanaugh posed a hypothetical: Suppose you are required to comply with an ambiguous statute or regulation, and "you have three different interpretations possible," "and one's clearly safe, one's a little more aggressive, and the third's really aggressive, but you

[1] No counsel for a party authored this brief in whole or in part. No party, counsel for a party, or any person other than amicus and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received timely notice of Regeneron's intent to file this brief pursuant to this Court's Rule 37.2.

still think it's reasonable, and you go with that third one." Tr. 17:15-20. Years later, you are sued for violating the FCA, and a court concludes that you got it wrong and should have picked the "clearly safe" interpretation. *See id.* at 17:20-22. Is that an FCA violation?

The answer to that question is no—and this Court should grant certiorari to make that clear. In *Super-Valu*, this Court "assume[d] without deciding" that the False Claims Act "incorporates some version of" the common-law rule that "misrepresentations of law are not actionable" in a claim for fraud. 598 U.S. at 756. By leaving that question open, this Court has allowed multiple circuit courts—most recently the Seventh Circuit in the decision below and the Fourth Circuit in *United States ex rel. Sheldon* v. *Allergan Sales, LLC*, 170 F.4th 227 (4th Cir. 2026)—to require defendants to face FCA liability based on what a court later concludes is the wrong interpretation of an ambiguous statute or regulation. *See* Pet. App. 38; *Sheldon*, 170 F.4th at 244-245.

Other circuits disagree. As the First Circuit has put it, "statements as to conclusions about which reasonable minds may differ cannot be false." *United States ex rel. Jones* v. *Brigham & Women's Hosp.*, 678 F.3d 72, 87 (1st Cir. 2012) (citation omitted). And as the Ninth Circuit has explained, where the "evidence shows only a disputed legal issue," "that is not enough to support a reasonable inference that the [claim] was *false* within the meaning of the False Claims Act." *Hagood* v. *Sonoma Cnty. Water Agency*, 81 F.3d 1465, 1477 (9th Cir. 1996).

This Court's intervention is urgently needed to resolve this entrenched circuit split. The FCA

incorporates the common-law definition of fraud. *Universal Health Servs., Inc.* v. *United States ex rel. Escobar*, 579 U.S. 176, 187 (2016). At common law, "fraud" has a "well-settled meaning," *id.* (internal quotation marks omitted), and it *does not* include a mistake of law. *See* 37 C.J.S. Fraud § 96 (2026 update); *Safety Casualty Co.* v. *McGee*, 127 S.W.2d 176, 236 (Tex. 1939). When a defendant picks among available interpretations of an ambiguous statute or regulation, and a court later determines that a different interpretation is preferred, the defendant has not committed fraud. At most, the defendant has committed a mistake of law, which is not punishable as fraud—and should not subject a defendant to liability under the FCA.

The statute at issue in this case is plainly ambiguous; the Third Circuit and the Seventh Circuit expressly disagree as to its meaning. *See United States ex rel. Streck* v. *Allergan, Inc.*, 746 F. App'x 101, 103 (3d Cir. 2018); Pet. App. 29 (explicitly "diverg[ing]" from the Third Circuit). Petitioner therefore faces no FCA liability in the Third Circuit, while it is subject to FCA liability in the Seventh—including automatic treble damages *plus* statutory penalties and interest, totaling almost $200 million—for guessing wrong on a disputed question of law where there was inadequate guidance from the regulating agency. Pet. 14. Whether a defendant is subject to the extensive punishments imposed by the FCA should not depend on the jurisdiction in which the defendant is sued.

This Court should grant certiorari and clarify that the FCA is a statute that punishes common-law fraud, not a device for punishing defendants for wrongly interpreting an ambiguous statute or regulation.

ARGUMENT

I. THE COURT'S REVIEW IS NECESSARY TO RESOLVE A CIRCUIT SPLIT OVER WHETHER A MISTAKE OF LAW IS PUNISHABLE UNDER THE FCA.

For decades, courts have been divided as to whether a defendant violates the FCA by adopting an interpretation of an ambiguous law that the defendant believes is reasonable, but a court later determines is wrong. In *SuperValu*, this Court addressed whether the FCA's scienter requirement is subjective or objective. This Court settled that debate, clarifying that the FCA's scienter element focuses on a defendant's subjective state of mind.

This Court's decision in *SuperValu*, however, did not decide whether a defendant's honest choice among available interpretations of an ambiguous statute or regulation could nevertheless violate the FCA—and thus be punished as fraud. That question has divided the circuit courts, leading to divergent applications of the FCA, and different punishments in different jurisdictions. This Court should once more step in to resolve this widespread uncertainty.

A. "[T]he FCA is largely a fraud statute." *SuperValu*, 598 U.S. at 750. It "imposes liability on anyone who 'knowingly' submits a 'false' claim to the Government." *Id.* at 742 (quoting 31 U.S.C. § 3729(a)). Accordingly, a claim's "falsity" and a "defendant's knowledge of the claim's falsity" are both "essential elements of an FCA violation." *Id.* at 747. To establish "knowledge," the FCA sets forth three possible "mental states": "actual knowledge, deliberate ignorance, [and] recklessness." *Id.* at 749-750; *see* 31 U.S.C. § 3729(b)(1)(A)(i)-(iii).

In some cases, there may be only one possible interpretation of a statute or regulation. But for regulated entities subject to the FCA, statutory and regulatory ambiguity is commonplace. *See Streck*, 746 F. App'x at 107-108 (discussing statutory definition of "average manufacturer's price," which is "susceptible to multiple interpretations" and thus "is ambiguous"). Defendants must frequently choose among different potential interpretations of the law, any one of which may be accepted (or rejected) by a future court.

The Medicare and Medicaid statutes and regulations, often at issue in FCA litigation, "are among the most completely impenetrable texts within human experience." *Abraham Lincoln Mem'l Hosp.* v. *Sebelius*, 698 F.3d 536, 541 (7th Cir. 2012) (citation omitted). They are so confusing, and the federal government provides so little guidance, that the Centers for Medicare and Medicaid Services has instructed regulated entities to make "reasonable interpretations" and "assumptions" as to how the law applies. 81 Fed. Reg. 5170, 5174 (Feb. 1, 2016); *see* Pet. 9.

How to apply the FCA when a statute or regulation is ambiguous has led to confusion—and divergent decisions—among the circuit courts. At first, the lower courts split over whether the FCA's scienter inquiry focuses on the objective reasonableness of a defendant's legal interpretation or instead its subjective beliefs. Prior to *SuperValu*, several courts had held that a defendant's actual knowledge of its legal noncompliance satisfies the scienter requirement.[2] *See*,

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[2] *But see Olhausen* v. *Arriva Med., LLC*, No. 21-10366, 2022 WL 1203023, at *2 (11th Cir. Apr. 22, 2022) (per curiam) (applying *Safeco Ins. Co. of Am.* v. *Burr*, 551 U.S. 47 (2007), and holding

e.g., *United States ex rel. Prather* v. *Brookdale Senior Living Cmtys., Inc.*, 892 F.3d 822, 838 & n.11 (6th Cir. 2018), *cert. denied*, 139 S. Ct. 1323 (2019); *United States ex rel. Oliver* v. *Parsons Co.*, 195 F.3d 457, 462-465 (9th Cir. 1999); *United States* v. *Chen*, 402 F. App'x 185, 188 (9th Cir. 2010); *United States ex rel. Phalp* v. *Lincare Holdings, Inc.*, 857 F.3d 1148, 1155 (11th Cir. 2017); *United States ex rel. Walker* v. *R&F Properties of Lake Cnty., Inc.*, 433 F.3d 1349, 1356-58 (11th Cir. 2005).

Other circuits, by contrast, had ruled that if a defendant's interpretation of an ambiguous provision was reasonable, it may preclude a finding of scienter and render subjective intent irrelevant. *See*, *e.g.*, *United States ex rel. Purcell* v. *MWI Corp.*, 807 F.3d 281, 288-291 (D.C. Cir. 2015), *cert. denied*, 137 S. Ct. 625 (2017); *United States ex rel. Donegan* v. *Anesthesia Assocs. of Kan. City, PC*, 833 F.3d 874, 879-880 (8th Cir. 2016); *Olson* v. *Fairview Health Servs. of Minn.*, 831 F.3d 1063, 1072 (8th Cir. 2016); *United States ex rel. Ketroser* v. *Mayo Found.*, 729 F.3d 825, 832 (8th Cir. 2013); *United States ex rel. Hixson* v. *Health Mgmt. Sys., Inc.*, 613 F.3d 1186, 1190-91 (8th Cir. 2010).

The Seventh Circuit went even further, determining that subjective intent is never relevant and that the scienter inquiry is purely objective. *See United States ex rel. Schutte* v. *SuperValu Inc.*, 9 F.4th 455,

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that "an objectively reasonable interpretation of the rules" foreclosed a showing of scienter), *cert. granted, judgment vacated*, 143 S. Ct. 2686 (2023); *United States ex rel. McGrath* v. *Microsemi Corp.*, 690 F. App'x 551, 552 (9th Cir. 2017) (applying *Safeco* and holding that a "reasonable," "good faith interpretation" could foreclose "scienter as a matter of law").

464-470 (7th Cir. 2021), *vacated and remanded*, 598 U.S. 739. And the Fourth Circuit endorsed the Seventh Circuit's reasoning, but the panel decision was vacated—and the district court's decision affirmed—by an equally divided en banc court. *See United States ex rel. Sheldon* v. *Allergan Sales, LLC*, 24 F.4th 340, 347-351 (2022), *vacated on reh'g*, 49 F.4th 873 (4th Cir. 2022) (en banc) (per curiam).

This Court granted certiorari and reversed the Seventh Circuit's decision in *SuperValu*. Relying "on the FCA's statutory text and its common-law roots," the Court held that "[t]he FCA's scienter element refers to [a defendant's] knowledge and subjective beliefs—not to what an objectively reasonable person may have known or believed"—such that "facial ambiguity alone is not sufficient to preclude a finding that [a defendant] knew [its] claims were false." *SuperValu*, 598 U.S. at 749. Even if a regulatory provision is "somewhat ambiguous, that ambiguity does not preclude [a defendant] from having learned [the provision's] correct meaning—or, at least, becoming aware of a substantial likelihood of the [provision's] correct meaning." *Id.* at 753.

SuperValu clarified that scienter depends on a defendant's subjective beliefs, but it did not resolve the confusion among the circuit courts over how to apply the FCA in the face of statutory or regulatory ambiguity. To the contrary, *SuperValu* has created *more* confusion among the lower courts, because this Court's decision has led courts to depart from their longstanding understanding of the FCA as a statute intended to punish fraud, rather than to punish disagreements over ambiguous statutes or regulations. Based on a misreading of the *SuperValu* decision, those courts

have found FCA liability whenever a defendant's interpretation of a statute or regulation diverges from a court's interpretation years later—even if the defendant's interpretation was one of multiple possible interpretations.

B. Prior to *SuperValu*, the circuits disagreed as to whether the FCA's falsity requirement is met where an FCA defendant interprets an ambiguous statute or regulation differently from the court.

In a seminal opinion, the Fourth Circuit ruled that "[t]o satisfy this first element of an FCA claim, the statement or conduct alleged must represent an objective falsehood. * * * Likewise, 'imprecise statements or differences in interpretation growing out of a disputed legal question are similarly not false under the FCA.' " *United States ex rel. Wilson* v. *Kellogg Brown & Root, Inc.*, 525 F.3d 370, 376-377 (4th Cir. 2008) (citation omitted). The D.C. Circuit likewise held that "[w]hile a faulty estimate or opinion can qualify as a false statement where the speaker knows facts 'which would preclude such an opinion,' the [relevant] 'facts' * * * are those that the speaking party could reasonably classify as true or false[.] Here there is only legal argumentation and possibility," precluding FCA liability. *United States ex rel. Siewick* v. *Jamieson Sci. & Eng'g, Inc.*, 214 F.3d 1372, 1378 (D.C. Cir. 2000) (citation omitted).

The Seventh Circuit concurred, stating that "imprecise statements or differences in interpretation growing out of a disputed legal question are similarly not false under the FCA." *United States ex rel. Lamers* v. *City of Green Bay*, 168 F.3d 1013, 1018 (7th Cir. 1999). The Ninth Circuit agreed, concluding that "[e]ven viewing [the] evidence in the most favorable

light, that evidence shows only a disputed legal issue; that is not enough to support a reasonable inference that the [claim] was *false* within the meaning of the False Claims Act." *Hagood*, 81 F.3d at 1477. The First Circuit has reached a similar conclusion. *See Brigham & Women's Hosp.*, 678 F.3d at 87 (holding that "statements as to conclusions about which reasonable minds may differ cannot be false." (citation omitted)).

Prior to this Court's decision in *SuperValu*, some decisions reached the opposite conclusion, deeming the ambiguity of a statute or regulation as relevant only to scienter, not falsity. *See*, *e.g.*, *Walker*, 433 F.3d at 1356-57 ("any ambiguity" in a regulation does not "necessarily foreclose[], as a matter of law, the falsity of claims"); *Oliver*, 195 F.3d at 462-463 (reversing finding "that the 'falsity' element under the Act was not met because Parsons demonstrated that it made a reasonable interpretation of an ambiguous accounting standard" because "it is Parsons' compliance with these regulations, as interpreted by this court, that determines whether its accounting practices resulted in the submission of a 'false claim' ").

Following this Court's decision in *SuperValu*, at least two circuits now hold that a defendant's reasonable interpretation of an ambiguous statute or regulation can nevertheless be "false." In the decision below, the Seventh Circuit stated that "[*SuperValu*'s] reasoning implies that the Supreme Court sees falsity as a black-and-white, objective issue." Pet. App. 36. In the Seventh Circuit's view, a defendant's interpretation of an ambiguous statute or regulation is false—and thus fraudulent—if the court disagrees with that interpretation, even if the defendant was picking among

multiple possible interpretations of the statute, and even if the defendant thought its interpretation was reasonable. This decision marks a stark departure from the common-law understanding of fraud.

In a recent decision, the Fourth Circuit has likewise held that "[u]nlike for purposes of the scienter analysis, ambiguity in a statute is not a defense to the falsity of the claim. Rather, falsity is an objective inquiry. Even reasonable interpretations of a regulation can be false as a matter of law for purposes of the FCA." *Sheldon*, 170 F.4th at 245 (citations omitted). The Fourth Circuit thus remanded for the district court to consider falsity without regard to regulatory ambiguity. *See id.*

This highlights the significance of this issue. The Fourth Circuit felt constrained by this Court's decision in *SuperValu* even though the Fourth Circuit in the same case had previously and appropriately criticized the government because it had "failed to clarify" the meaning of its regulation and "thereby maintained strategic ambiguity" as to how companies should apply the regulation. *Sheldon*, 24 F.4th at 354.

The Fourth and Seventh Circuit's decisions following *SuperValu* sharply depart from prior circuit decisions emphasizing that the FCA is a fraud statute, and that a legal disagreement over the meaning of an ambiguous statute or regulation is not fraud. Whether a defendant's interpretation of an ambiguous statute is "false," and thus potentially subject to treble damages, thus depends on the jurisdiction in which the lawsuit is filed.

C. As the petition explains, this Court's *SuperValu* decision has led to deep division among the circuits over whether the FCA's scienter requirement is

met *even when* a defendant believed its interpretation of an ambiguous statute or regulation was reasonable, if the court concludes that the defendant's interpretation was *unreasonable*. Pet. 28-29.

The Fourth Circuit has read *SuperValu* as "adopting the subjective scienter standard for FCA claims rather than the objective standard that this court had previously applied." *Sheldon*, 170 F.4th at 240-241. Accordingly, a defendant "may have acted with reckless disregard under the FCA scienter requirement" "*[i]f* [it] was aware"—that is, "*subjectively aware*"—"of a substantial risk that" the Government interpreted a particular provision one way, yet it continued acting "pursuant to its own interpretation." *Id.* at 243 (emphases added). In other words, in at least the Fourth Circuit, recklessness focuses on what a defendant actually knew and believed, not the objective reasonableness of its legal interpretation.[3]

In the decision below, by contrast, the Seventh Circuit held that a defendant's "objectively unreasonable interpretation of the relevant law is highly probative circumstantial evidence of a culpable state of

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[3] *See also*, *e.g.*, *Evans* v. *S. Cal. Intergovernmental Training & Dev. Ctr.*, No. 22-16715, 2024 WL 1988827, at *2 (9th Cir. May 6, 2024) (noncompliance with contractual requirement "does not demonstrate that SDRTC knew actual-cost invoicing was required by the federal government because the inquiry here is focused on what SDRTC *subjectively* thought and believed"); *United States ex rel. Edalati* v. *Sabharwal*, No. 2:17-cv-02395, 2023 WL 5334621, at *12 (D. Kan. Aug. 18, 2023) (denying summary judgment in a case involving "a relatively unambiguous regulation * * * and a defendant who contends he subjectively believed the claims were proper" and rejecting plaintiffs' argument "that 'reckless disregard' under the FCA should be interpreted using only an objective standard").

mind." Pet. App. 38 (emphasis added); *see also* Pet. App. 39 (whether "the regulations were 'ambiguous' or Lilly's interpretation of the guidance was 'reasonable' " could be relevant to jury's verdict as to scienter). "The jury was entitled to consider the unreasonableness of that view in finding scienter," the court held, along with other evidence permitting the "infer[ence] that Lilly either was aware of, or disregarded, an unjustifiable risk of skirting the law and chose to obfuscate rather than conduct a reasonable inquiry," *i.e.*, that Lilly had acted with recklessness or deliberate ignorance. Pet. App. 39.

As these cases demonstrate, the Court's decision in *SuperValu* has engendered significant uncertainty among the circuit courts over how to apply the FCA's falsity and scienter elements to legal ambiguity. In light of the circuit splits deepened by this Court's *SuperValu* decision, the Court should grant certiorari to clarify when and how the ambiguity of a statute or regulation is relevant to the FCA analysis.

II. THIS COURT SHOULD GRANT CERTIORARI AND CLARIFY THAT A MISTAKE OF LAW IS NOT FRAUD.

Amicus agrees with Petitioner that this Court should grant certiorari to address the second question presented and decide "[w]hether a legal interpretation can be deemed so 'objectively unreasonable' as to constitute 'highly probative' evidence of scienter under the False Claims Act when it was widely held throughout the industry, no government actor rejected it, and four federal judges expressly found it reasonable." Pet. i-ii. In reaching that question, Amicus respectfully submits that this Court should refocus the federal courts on the fundamental purpose of

the FCA—which is to punish fraud, rather than disagreements over the interpretation of ambiguous laws.

A. The FCA Is A Fraud Statute—And It Is Not Fraud To Misinterpret The Law.

1. The FCA is a fraud statute. It "was first enacted in 1863 to 'stop the massive frauds perpetrated by large contractors during the Civil War.' " *SuperValu*, 598 U.S. at 750 (brackets omitted) (quoting *Escobar*, 579 U.S. at 181). When Congress enacted the FCA, it imposed liability on "any person who * * * knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1)(A). As this Court explained in *Escobar*, by using the word "fraudulent," Congress "incorporate[d] the common-law meaning of fraud." 579 U.S. at 187.

The term "fraud" has a "well-settled meaning at common law." *Id*. (internal quotation marks omitted). It covers "express falsehoods" as well as "certain misrepresentations by omission." *Id*. "[H]alf-truths" that omit "critical qualifying information" can violate the FCA. *Id.* at 188. What does not qualify as fraud, however, is a mistake of law. "The general rule is that a misrepresentation as to a matter of law will not constitute a remediable fraud." 37 C.J.S. Fraud § 96 (2026 update); *see also Safety Casualty Co.*, 127 S.W.2d at 236 ("The general rule, often repeated, is that fraud cannot be predicated upon misrepresentations as to matters of law.").

When a statute or regulation is ambiguous, and it has not been authoritatively interpreted, the meaning of the statute or regulation is "not susceptible of actual knowledge." *Harris* v. *Delco Prods., Inc.*, 25 N.E.2d 740, 742 (Mass. 1940); *see also* W. Page Keeton

et al., Prosser and Keeton on the Law of Torts § 109 (5th ed. 1984). Any representation as to the meaning of such a law is therefore "only one of opinion." Restatement (Second) of Torts § 545 (1977).

A statement of legal opinion can support fraud liability "if the maker of the representation purports to have special knowledge of the law that the recipient does not have." Restatement (Second) of Torts § 545 cmt. d. But that exception does not apply where—as here—the other party is a government agency that has been charged with applying the law and has refused to give regulated parties any guidance. *See* Pet. 9.

2. " 'Fraud' and a mistake of law are not cut from the same cloth"—as both Congress and the courts have repeatedly recognized. *Hall Street Assocs., L.L.C.* v. *Mattel, Inc.*, 552 U.S. 576, 586 (2008). Under the Federal Arbitration Act, an arbitral award may be vacated on the ground of "fraud," but it may not be vacated for ordinary "legal error." *Id*. at 585-586. The Federal Arbitration Act accordingly permits judicial review "for specific instances of outrageous conduct," but not "for just any legal error," carefully distinguishing between fraud and mistake of law. *Id*. at 586.

The same is true of provisions of the tax code, which state that "[n]o penalty shall be imposed" where there was "reasonable cause" for a taxpayer's underpayment and "the taxpayer acted in good faith." 26 U.S.C. § 6664(c)(1). Where a taxpayer's underpayment was due to fraud, however, there is no leniency—and the taxpayer is subject to a 75% penalty. *Id*. § 6663(a). The felony statute for willful evasion of tax liability observes the same distinction, declining to penalize a

good-faith misinterpretation of the tax code. *See Cheek* v. *United States*, 498 U.S. 192, 202 (1991).

The Tariff Act of 1930 likewise establishes different penalties for customs violations. If an importer commits fraud when importing merchandise, the importer must forfeit up to the entire value of a fraudulently imported good. *See* 19 U.S.C. § 1592(c)(1). In contrast, where an importer misclassifies his merchandise based on a misunderstanding of customs law, a less severe penalty applies. *See id.* § 1592(c)(2)-(3); *United States* v. *Rago Tires, LLC*, 804 F. Supp. 3d 1357, 1362-64 (CIT 2025).

Fraud and mistake of law are also treated separately in breach of contract actions. A mistake of law on the part of one party is not enough to invalidate a contract. *See* 1 Henry Campbell Black, A Treatise on the Recission of Contracts and Cancellation of Written Instruments § 71 (2d ed. 1916) ("Fraud is not to be predicated upon a representation of [a] matter of law."). A contract obtained by fraud, however, is a "special circumstance[]" that "would necessarily require relief" from contractual obligations. *William Cramp & Sons Ship & Engine Bldg. Co.* v. *United States*, 239 U.S. 221, 233 (1915). Thus, if one party to a contract "takes advantage of his superior knowledge [of the law] and of the other's ignorance, and so misrepresents and misstates the law as to induce him to enter into an inequitable bargain, or to part with rights or property which he might have retained, it is considered such fraud as to justify a court of equity in giving relief." Black, A Treatise on the Recission of Contracts, § 71.

As these examples show, the common-law understanding of fraud, as implemented into law by

Congress in numerous contexts, recognizes that a disagreement over the interpretation of an ambiguous law is not fraud. The FCA incorporates the common-law meaning of fraud, which means that such disagreements should not be punishable under the FCA.

B. This Court's Review Is Urgently Needed To Explain That The Role Of Courts In An FCA Suit Is To Police Fraud, Not To Determine The Best Interpretation Of An Ambiguous Law.

The key flaw in the decision below is the lens through which the Seventh Circuit conducted its FCA analysis. The court's task in an FCA case is not to determine the "best" interpretation of an ambiguous statute or regulation—and then punish any defendant who adopts a different interpretation. It is instead to determine whether the case involves fraud—which requires more than a dispute between the government and the defendant (or between the relator and the defendant) over the best interpretation of an ambiguous law.

This case is Justice Kavanaugh's hypothetical from *SuperValu*. There are at least two possible interpretations of the relevant Medicaid statute—the interpretation adopted by Petitioner and the Third Circuit, and the interpretation adopted by the Seventh Circuit. *See supra* pp. 1-2. The federal government provided no guidance on this issue, and Petitioner was accordingly forced to pick one interpretation of the statute and implement it. *See* Pet. 8-9. Yet the Seventh Circuit nevertheless held that FCA liability was appropriate, because the court disagreed with the Petitioner's interpretation—even though that

interpretation had been adopted by two other federal courts (the district court and the Third Circuit).

This Court should step in and correct the Seventh Circuit's analysis. In this circumstance, the Seventh Circuit should not have concluded that Petitioner's interpretation was "false" under the FCA. As the First Circuit has held, "statements as to conclusions about which reasonable minds may differ cannot be false." *Brigham & Women's Hosp.*, 678 F.3d at 87 (citation omitted). Reasonable minds can—and indeed have—differed as to the legal interpretation at the heart of this case, which means that the FCA's falsity requirement has not been met.

But even if the Seventh Circuit was correct to find that Petitioner's interpretation was false, it was still wrong to find scienter. An FCA defendant's scienter is not based on what the court thinks is the correct legal interpretation; it is instead based on whether the defendant believed it was picking among permissible interpretations. If an FCA defendant adopts an "aggressive" interpretation of the law that the defendant nevertheless believes is reasonable, *SuperValu*, Tr. 17:15-20, then the FCA's scienter requirement has not been met. The court's task under the FCA is not to determine the "right" interpretation of the statute, but instead to determine if the plaintiff has alleged and proven fraud.

As the petition and this brief detail, there is extensive confusion among the circuit courts over the FCA's falsity and scienter requirements, with serious consequences for regulated entities subject to the FCA's severe penalties. This Court should grant certiorari to clarify the meaning of *SuperValu* and hold that the

FCA punishes common-law fraud—not mere disputes over ambiguous statutes and regulations.

CONCLUSION

For the foregoing reasons and those in the petition, the petition should be granted.

Respectfully submitted,

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