

21-1052 UNITED STATES, EX REL. POLANSKY V. EXECUTIVE HEALTH RESOURCES, INC.

DECISION BELOW: 17 F.4th 376

LOWER COURT CASE NUMBER: 19-3810

QUESTION PRESENTED:

This case presents a clear, recognized, and intractable conflict regarding an important statutory question under the False Claims Act (FCA), 31 U.S.C. 3729-3733.

When a relator files a *qui tam* action, the FCA puts the government to an initial choice: it "shall" either "(A) proceed with the action, in which case the action shall be conducted by the Government; or (B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action." 31 U.S.C. 3730(b)(4). The FCA then specifies the "Rights of the Parties to the Qui Tam Action[]" based on the government's initial choice.

This case involves the government's dismissal authority under 31 U.S.C. 3730(c)(2)(A). The courts are sharply divided over whether, and when, the government can invoke this authority and dismiss a relator's FCA case after initially "declin[ing] to take over the action." The Seventh Circuit below held that the government could dismiss the case if it first intervenes and then satisfies Fed. R. Civ. P. 41(a)'s general standard. Other circuits expressly disagree on every single part of that determination.

The question presented is: Whether the government has authority to dismiss an FCA suit after initially declining to proceed with the action, and what standard applies if the government has that authority.

CERT. GRANTED 6/21/2022