***United States ex rel. Polanksy* v. *Executive Health Resources, Inc.*, No. 21-1052**

Today, the Supreme Court held, in an 8-1 decision, that the United States can move to dismiss a claim brought by a private party under the False Claims Act (FCA), even when the United States initially declined to intervene and take over the case.

Background: The FCA imposes civil liability for submitting false claims for payment from the government. The statute allows a private plaintiff (called a relator) to bring a lawsuit on behalf of the United States. A relator begins such a *qui tam* suit by filing a complaint under seal and sending the complaint to the government. The government has 60 days to decide whether to intervene and conduct the litigation itself; otherwise, the relator conducts the litigation in the government's place. But the statute allows the government to intervene and become a party to the action after the initial 60-day period if the government can show good cause.

In this case, the relator alleged that Executive Health Resources, Inc. helped hospitals overbill Medicare. The government initially declined to intervene, but years later sought to dismiss the case, over the relator's objection. The district court dismissed the case, and the Third Circuit affirmed. The court of appeals held that the government could intervene and seek dismissal even though it had chosen not to take over the lawsuit in the initial 60-day period. Although the government had not formally moved to intervene in the district court, the Third Circuit construed its motion to dismiss as a motion to intervene. The court further held that the government had provided adequate reasons for seeking to dismiss the lawsuit.

Issue: (1) Whether the government can seek to dismiss a *qui tam* suit under the False Claims Act over the relator's objection after initially declining to intervene in the lawsuit; and (2) what standard should a court apply in deciding whether to grant the government's motion to dismiss.

Court's Holding: In an opinion authored by Justice Kagan, the Court held that the government may intervene to seek dismissal in a *qui tam* lawsuit under the FCA when it initially declined to intervene and take over the litigation. The Court explained that even when a relator conducts a *qui tam* lawsuit, the United States is still the real party in interest and retains continuing rights in the lawsuit—including the right to intervene at any time if it shows good cause. It held that when the government does intervene, it becomes a party to the case with the right to seek dismissal, and that the ordinary standard for voluntary dismissal applies in that situation. (The Court rejected the government's argument that it can voluntarily dismiss an FCA case *without* intervening.)

The general standard governing a plaintiff's request for dismissal, set forth in Federal Rule of Civil Procedure 41(a)(2), provides that the action may be dismissed "on terms that the court considers proper." In the FCA context, the Court stated, "the Government's views are entitled to substantial deference." Therefore, "[i]f the Government offers a reasonable argument for why the burdens of continued litigation outweigh its benefits, the court should grant the motion. And that is so even if the relator presents a credible assessment to the contrary."

Justice Kavanaugh authored a brief concurrence, in which Justice Barrett joined, stating that the Court in a future case should consider the "'substantial arguments'" that FCA *qui tam* actions brought by relators may be unconstitutional because Article II of the Constitution gives only the Executive Branch the power to represent the government's interests in litigation.

Justice Thomas dissented, arguing that the FCA does not give the government the power to take over a relator's action and seek dismissal if the government initially declines to conduct the litigation itself. Justice Thomas also suggested that *qui tam* lawsuits may violate Article II.

Read the opinion here.