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# Supreme Court OKs Leeway for DOJ in Dismissing Whistleblower Cases

By Nina Youngstrom

For the second time in June, the Supreme Court has staked out a new position on the False Claims Act (FCA)—only this time it's less favorable to whistleblowers than a June 1 ruling, a lawyer said. In an 8-1 decision, the Supreme Court ruled June 16 that the Department of Justice (DOJ) is free to dismiss a whistleblower lawsuit if it has intervened at any stage of the game and articulates a proper basis for dismissal.[1]

"It's a bit of a blow" to whistleblowers, said attorney Ellen Persons, with Polsinelli in Atlanta, who is a former federal prosecutor.

The case centered on a whistleblower's allegations that a company was helping hospitals bill Medicare for inpatient admissions that should have been outpatient services. After investigating, DOJ dismissed the case and triggered the whistleblower's appeals. The federal district court and U.S. Court of Appeals for the Third Circuit upheld DOJ's decision, which was endorsed by the Supremes.

"We hold that the Government may seek dismissal of an FCA action over a relator's objection so long as it intervened sometime in the litigation, whether at the outset or afterward. We also hold that in handling such a motion, district courts should apply the rule generally governing voluntary dismissal of suits: Federal Rule of Civil Procedure 41(a)," Justice Elena Kagan wrote in *United States ex rel. Polansky v. Executive Health Resources.*