No. 18-315

IN THE
Supreme Court of the United States

COCHISE CONSULTANCY, INC. AND
THE PARSONS CORPORATION,
Petitioners,
v.

UNITED STATES OF AMERICA *EX REL.*
BILLY JOE HUNT,
Respondent.

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

BRIEF OF INDIANA AND 19 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether a relator in a False Claims Act *qui tam* action may rely on the statute of limitations in 31 U.S.C. § 3731(b)(2) in a suit in which the United States has declined to intervene and, if so, whether the relator constitutes an "official of the United States" for purposes of 3731(b)(2).

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INTEREST OF THE *AMICI* STATES

The States of Indiana, Alaska, Arkansas, California, Connecticut, Delaware, Florida, Hawaii, Iowa, Louisiana, Michigan, Minnesota, New Jersey, North Carolina, Oklahoma, Pennsylvania, Utah, Virginia, Washington, and Wisconsin respectfully submit this brief as *amici curiae* in support of the respondent.

The *Amici* States have a strong fiscal interest in ensuring the False Claims Act (FCA) provides adequate time to investigate, prepare, and file FCA claims. When the federal government uses the FCA to recover money defrauded from Medicaid, a State receives a share in direct proportion to the State's share of Medicaid costs—or, if the State has passed a false claims act that complies with federal standards, this proportion plus ten percentage points. *See* 42 U.S.C. § 1396h. States, therefore, have a significant stake in FCA cases, which often involve considerable sums: In 2018 the federal government recovered $2.8 billion in FCA settlements and judgments, the vast majority of which involved Medicare and Medicaid programs. *See* Department of Justice, *Justice Department Recovers Over $2.8 Billion from False Claims Act Cases in Fiscal Year 2018* (Dec. 21, 2018), https://www.justice.gov/opa/pr/justice-department-recovers-over-28-billion-false-claims-act-cases-fiscal-year-2018.

The *Amici* States also have an interest in the proper interpretation of the FCA because the Court's decision likely will influence how lower courts interpret States' own false claims acts. Partially because of

§ 1396h's incentive to adopt state-level FCA analogues, at least 30 States and the District of Columbia have adopted laws similar to the FCA. *See* Appendix. Many FCA Medicaid cases raise parallel claims under both federal and state false claims acts, and the Court's decision here likely will influence how the federal courts hearing these cases interpret similar state laws.

The interpretation petitioners urge the Court to adopt would frequently force many States to expend scarce resources to litigate false-claims cases themselves and would limit opportunities for States to discover, deter, and remedy fraud in their Medicaid programs. The *Amici* States therefore submit this brief in support of respondent and in opposition to petitioners' non-textual—and paradoxical—interpretation of the FCA.

SUMMARY OF THE ARGUMENT

The False Claims Act (FCA) imposes strict sanctions for knowingly submitting false claims for payment to the federal government. And like dozens of analogous state laws, *see* Appendix, the FCA authorizes enforcement both by the government itself, 31 U.S.C. § 3730(a), and by private persons (known as relators) who sue "in the name of" the United States, *id.* § 3730(b). A relator initiates a suit by filing a complaint under seal and serving the complaint on the United States, which then decides whether to intervene. *Id.* § 3730(b)(2).

This case turns on the interpretation of the 1986 amendments to 31 U.S.C. § 3731(b), what was then the FCA's sole statute-of-limitations provision: 3731(b) requires that "[a] civil action under section 3730" be brought within the latter of 6 years after the relevant FCA violation, *id.* § 3731(b)(1), or 3 years after the facts underlying the violation "are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances" if the action is brought within 10 years after the violation, *id.* § 3731(b)(2).[1]

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[1] Before Congress added 3731(b)(2)'s three-years-after-discovery limitations period in 1986, 3731(b)'s six-years-after-violation limitations period was the FCA's only statute of limitations. *See* Pub.L. 99-562. In 2010, in response to *Graham County Soil & Water Conservation District v. U.S. ex rel. Wilson*, 545 U.S. 409 (2005), which held that 3731(b) does not apply to retaliation

Under 3731(b)'s plain meaning, an FCA action is timely if it is brought within the latter of six years after the FCA violation or three years after "the official of the United States charged with responsibility to act in the circumstances"—that is, a federal government official—knew or reasonably should have known the facts underlying the action. The government's and relators' actions are authorized by subsections 3730(a) and 3730(b), respectively, and they are therefore "civil action[s] under section 3730" to which both of 3731(b)'s limitations periods apply. Each of 3731(b)'s limitations periods—3731(b)(1)'s six-years-after-violation period and 3731(b)(2)'s three-years-after-discovery period—apply to actions brought by the government *and* actions brought by relators.

Petitioners contend, however, that *Graham County Soil & Water Conservation District v. U.S. ex rel. Wilson*, 545 U.S. 409 (2005), which held that 3731(b) does not apply to FCA retaliation actions, requires the Court to interpret 3731(b) to "avoid[] counterintuitive results." Pet'r Br. 17. *Graham* requires ignoring 3731(b)(2)'s plain meaning here, so the argument goes, because applying 3731(b)(2)'s limitations period to a relator's action when the government does not intervene is "absurd[]," *U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 726 (10th Cir. 2006); Pet'r Br. 29, and "bizarre," *U.S. ex*

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claims brought under 31 U.S.C. § 3730(h), Congress added a second statute-of-limitations provision that explicitly applies only to retaliation claims. *See* 31 U.S.C. § 3730(h)(3); Pub. L. 111-203, Title X, § 1079A(c).

rel. Sanders v. N. Am. Bus Indus., Inc., 546 F.3d 288, 293 (4th Cir. 2008).

In particular, petitioners claim that 3731(b)(2)'s plain meaning would burden government agencies with discovery requests and would hinder government efforts to quickly detect and punish fraud. Pet'r Br. 28–35. Yet, while industry groups have filed amicus briefs in support of petitioners, no governmental entity has appeared on petitioners' behalf to echo these concerns. For good reason: The policy concerns that worry petitioners are exaggerated and misplaced. *See infra,* Part I.B.

Petitioners offer two ways of reinterpreting 3731(b), but both are non-textual and internally contradictory. The Court should reject their attempt to amend the FCA by judicial fiat. Section 3731(b) adopts a perfectly sensible policy. It should be enforced as written.

I. Petitioners first argue that 3731(b)(2)'s limitations period does not apply to an action brought by a relator under 3730(b) if the government does not later intervene—though they concede that 3731(b)(1)'s limitations period *does* apply to such an action even when the government does not intervene. Pet'r Br. 20 n.3. Petitioners argue, in other words, that an action brought by a relator under 3730(b) sometimes *is* "[a] civil action under section 3730" and sometimes *is not*, depending on whether the government later intervenes and depending on whether the relator is seeking to use the limitations period in 3731(b)(1) or the

limitations period in 3731(b)(2). Petitioners' failure to give the phrase "[a] civil action under section 3730" a consistent meaning—much less a meaning reconcilable with the statutory text—dooms this theory. Neither petitioners' unsubstantiated policy concerns nor *Graham* justifies discarding the FCA's text.

II. Petitioners' backup theory fares no better. They argue in the alternative that 3731(b)(2)'s phrase "official of the United States charged with responsibility to act in the circumstances" should be interpreted to refer to the relator—but only when the government does *not* intervene (petitioners acknowledge that when the government *does* intervene the phrase refers only to the government). Petitioners' alternative theory, like their first, thus contradicts itself: It gives the same statutory phrase entirely different meanings depending upon a case's circumstances. Congress could have adopted petitioners' rule, but it did not do so. The Court should not do so either.

ARGUMENT

I. The FCA's Statute of Limitations, 31 U.S.C. § 3731(b), Applies to All Actions Under §§ 3730(a) and (b)

A. An action brought by a relator under § 3730(b) plainly is a "civil action under section 3730"

1. "The preeminent canon of statutory interpretation requires [the Court] to 'presume that the legislature says in a statute what it means and means in a

statute what it says there.'" *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (internal brackets omitted) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–254 (1992)). For that reason, "[s]tatutory interpretation, as [the Court] always say[s], begins with the text." *Ross v. Blake*, 136 S. Ct. 1850, 1856 (2016). And the statutory text "is also where the inquiry should end . . . where, as here, the statute's language is plain," for in that circumstance "'the sole function of the courts is to enforce [the statute] according to its terms.'" *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 241 (1989) (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917)).

Section 3731(b)'s language is indeed plain: Its first six words—"[a] civil action under section 3730"—are the *only* words identifying to which actions it applies. 31 U.S.C. § 3731(b). The provision's remaining portions, 3731(b)(1) and (b)(2), merely set out two alternative limitations periods. An action to which 3731(b) applies may be brought within either of these limitations periods, "whichever occurs last." *Id.* And because an action brought by a relator under 3730(b) obviously is "[a] civil action under section 3730," both of these limitations periods apply to relators' FCA actions. *Id.*

If Congress wished to narrow the scope of the FCA's statute of limitations it knew how to do so. *See Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1617 (2018); *Jama v. Immigration & Customs Enf't*, 543 U.S. 335, 341 (2005). Other provisions of the FCA specifically refer to actions in which the government intervenes.

Subsections 3730(g) and 3731(c) specifically refer to intervened cases: Fees and expenses are awarded to the prevailing defendant "[i]n civil actions brought under this section *by the United States*," 31 U.S.C. § 3730(g) (emphasis added), and the government may file its own complaint or may amend the relator's complaint "[i]f the Government elects to intervene and proceed with an *action brought under 3730(b)*," *id.* § 3731(c) (emphasis added). Elsewhere, the FCA specifically distinguishes between actions brought by the government and actions brought by relators. *See id.* § 3733(a)(1) (providing that the government may serve a civil investigative demand "before commencing a civil proceeding *under section 3730(a)* or other false claims law, or making an election *under section 3730(b)*") (emphasis added).

Because there is no suggestion anywhere in the FCA that "[a] civil action under section 3730" means anything other than precisely what it says, the Court's inquiry should end there.

Petitioners, however, ask the Court to insert a qualifying clause to "[a] civil action under section 3730" so that it means "a civil action under section 3730 *where the government is a party*." *See* Pet'r Br 19–20 ("[T]o refer only to suits filed by the United States or in which the United States has intervened . . . Congress used the . . . language—'[a] civil action under section 3730'"); *id.* at 39 ("When the phrase "[a] civil action under Section 3730" is read in context . . . it becomes apparent that Section 3731(b)(2) . . . is "limited to § 3730(a) actions brought by the United

States and § 3730(b) actions in which the United States intervenes as a party." (internal quotation marks and citation omitted); *id.* at 10–11 (similar).[2] The Court should refuse petitioners' invitation to amend 3731(b). "[O]ur constitutional structure does not permit this Court to 'rewrite the statute that Congress has enacted.'" *Puerto Rico v. Franklin California Tax-Free Trust*, 136 S. Ct. 1938, 1949 (2016) (quoting *Dodd v. United States*, 545 U.S. 353, 359 (2005)).

2. Beyond its lack of any connection to the statutory text, the chief difficulty with petitioners' theory is its internal incoherence. Petitioners suggest that the phrase "[a] civil action under section 3730" refers only to actions in which the government is a party, but everyone—including petitioners—agrees that, when it comes to 3731(b)(1)'s six-years-after-violation limitations period, "[a] civil action under section 3730" encompasses *all* actions brought under 3730(a) and (b), regardless whether the government eventually intervenes. *See* Pet. 20 n.3; *Graham County Soil & Water Conservation Dist. v. U.S. ex rel. Wilson*, 545

[2] Petitioners also note that 3731(b)(2) "refers only to an 'official of the United States,'" but they do not appear to claim that this reference *itself* means that 3731(b)(2)'s limitations period applies only to actions where the government is a party. Pet'r Br. 10 (quoting 31 U.S.C. § 3731(b)(2)). Indeed, 3731(b)(2)'s reference to an "official of the United States" identifies *whose knowledge* begins the limitations period and does not identify *to which actions* the limitations period applies. The only language in 3731(b) identifying to which actions the limitations periods in 3731(b)(1) and (b)(2) apply is "[a] civil action under section 3730," and it is therefore *this* language that requires parsing here.

U.S. 409, 416 (2005) ("Section 3731(b)(1), by contrast, naturally applies to well-pleaded §§ 3730(a) and (b) actions."); *U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 726 (10th Cir. 2006); *U.S. ex rel. Sanders v. N. Am. Bus Indus., Inc.*, 546 F.3d 288, 293 (4th Cir. 2008). Under petitioners' theory, in other words, the phrase "civil action under section 3730" simultaneously has two different meanings: With respect to 3731(b)(1)'s limitations period, it has one meaning—any action brought under 3730(a) or (b). But with respect to 3731(b)(2)'s limitations period it has an entirely different meaning—any action brought under section 3730(a) or (b) *where the government is a party*.

Petitioners cannot have it both ways. The Court generally construes similar language appearing in *different* places "the same way each time it appears." *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994). It has "even stronger cause to construe *a single formulation* . . . the same way each time it is called into play." *Id.* (emphasis added); *see also Clark v. Martinez*, 543 U.S. 371, 378 (2005) ("To give these same words a different meaning . . . would be to invent a statute rather than interpret one. . . . [A single phrase] cannot . . . be interpreted to do both [things] at the same time."); *Stokeling v. United States*, 139 S. Ct. 544, 560 (2019) (Sotomayor, J., dissenting) (rejecting the idea that the same phrase "in a single clause . . . might mean two different things for two different crimes. . . . [T]hat is not how we have said that statutory interpretation works."). The Court should refuse, as it has many times before, "to adopt a construction

that would attribute different meanings to the same phrase in the same sentence, depending on which object it is modifying." *Reno v. Bossier Parish Sch. Bd.*, 528 U.S. 320, 329 (2000) (citing *Bankamerica Corp. v. United States*, 462 U.S. 122, 129 (1983)).

Petitioners' theory turns the phrase "[a] civil action under section 3730" into Schrödinger's cat, simultaneously giving it two mutually exclusive meanings. Such a paradox may be acceptable in quantum physics, but it has no place in statutory interpretation.

3. Petitioners seek to support this paradoxical interpretation by invoking a handful of interpretive canons, but none actually provide the support petitioners seek.

Petitioners first rely upon the traditional presumption that "identical words used in different parts of the same act are intended to have the same meaning," Pet'r Br. 20 (quoting *Pereira v. Sessions*, 138 S. Ct. 2105, 2115 (2018)), but petitioners' application of this rule is mistaken. They assert that subsection 3731(d)—which provides that "*[i]n any action brought under section 3730*, the United States shall be required to prove all essential elements . . . by a preponderance of the evidence," 31 U.S.C. § 3731(d) (emphasis added)—applies only to suits in which the United States is a party, and they contend that the similar language in 3731(b) should be interpreted similarly.

But this argument's initial premise—that 3731(d) applies only to cases in which the government is a

party—is mistaken. That provision is most reasonably read to apply to *all* actions brought under 3730(a) and (b): It is much more consistent with 3731(d)'s text to read "the United States" to refer to the government *and* the relator—who, after all, acts "in the name of the United States," 31 U.S.C. § 3730(b)—than it is to read "*any* action brought under section 3730," *id.* § 3731(d) (emphasis added), to mean *only* those actions brought by the government or in which the government intervenes. *See U.S. ex rel. Absher v. Momence Meadows Nursing Ctr., Inc.*, 764 F.3d 699, 714 (7th Cir. 2014) (applying 3731(d) to a relator's suits even though the government did not intervene); *U.S. ex rel. Harrison v. Westinghouse Savannah River Co.*, 352 F.3d 908, 923 (4th Cir. 2003) (same); *U.S. ex rel. Feldman v. van Gorp*, No. 03 CIV. 8135 (WHP), 2010 WL 2911606, at *4 (S.D.N.Y. Dec. 9, 2010) (same). Petitioners' reading of 3731(d) implies that a *different* standard of proof would apply to a relator's suit when the government does not intervene, a counterintuitive conclusion no court has reached.

Petitioners justify their interpretation of 3731(d) solely on the basis of dicta from *Graham*, where the Court suggested that the phrase "any action brought under section 3730" in 3731(d)—then 3731(c)—"refer[s] only to §§ 3730(a) and (b) actions." 545 U.S. at 418. But that suggestion arose in a case involving an entirely different provision and was made in reliance on concessions made by the relator and the United States. *Id.* ("As Wilson and the United States concede, the context of [3731(d)] implies that the phrase 'any action brought under section 3730' is limited to . . .

§ 3730 actions in which the United States necessarily participates."). And the only reason the Court gave for reading 3731(d) that way was that any other interpretation would require "the United States . . . to prove all essential elements of the cause of action . . . regardless of whether it participated in the action." *Id.* (internal quotation marks omitted). This ignores, however, that "the United States" in 3731(d) can reasonably be read to refer to the government *and* the relator, such that relators must, like the federal government itself, prove their claims by a preponderance of the evidence.[3]

Furthermore, petitioners' argument fails even accepting their interpretation of 3731(d). It is sensible to interpret similar language similarly only when the provisions allegedly similar to the text at issue have a consistent meaning. Here they do not. Other provisions of the FCA use the "action under section 3730 language" to refer to *all* actions brought under

[3] That *3731(d)'s* term "the United States" encompasses any entity bringing suit in the name of the United States does not imply that *3731(b)(2)'s* phrase "the official of the United States charged with responsibility to act in the circumstances" refers to both the federal government and relators. Section 3731(d) simply refers to "the United States" generally, while 3731(b)(2) refers to the specific "official of the United States charged with responsibility to act in the circumstances." In addition, "the United States" can consistently be interpreted to mean "party representing the interests of the United States." But "the official of the United States charged with responsibility to act in the circumstances" cannot consistently be interpreted to refer to relators: Not even petitioners claim that a relator's knowledge triggers 3731(b)(2)'s limitations period in actions where the government *does* intervene. *See infra,* Part II.

3730(a) and (b), including actions to which the government is not a party. *See* 31 U.S.C. § 3731(a) (authorizing a "subpoena requiring the attendance of a witness at a trial or hearing conducted under section 3730"); *id.* § 3732(a) (conferring jurisdiction on district courts over "[a]ny action under section 3730"); *id.* § 3732(b) (conferring jurisdiction on district courts over state law claims related to "the same transaction or occurrence as an action brought under section 3730").

Indeed, petitioners acknowledge that, when it comes to 3731(b)(1)'s six-years-after-violation limitations period, "[a] civil action under section 3730" *in 3731(b) itself* refers to *all* actions brought under 3730(a) and (b). Pet. 20 n.3. Petitioners fail to give a consistent meaning to 3731(b), much less a consistent meaning to all of the other references to a "civil action under section 3730" in the FCA. Their invocation of the similar-language rule founders on this inconsistency.

Petitioners next look to the presumption against superfluities, but their reliance on this rule is equally unfounded. They observe that under the plain-meaning interpretation of 3731(b), an FCA plaintiff would use 3731(b)(1)'s limitations period only "when the government learn[s] about the fraud within the first three years of its occurrence," and they assert that the government will so rarely discover frauds this quickly that this interpretation makes 3731(b)(1) practically superfluous. Pet'r Br. 27–28. But petitioners simply *assume* that the government will take more than

three years to discover frauds. Neither they nor their supporting amici have adduced any evidence to support this proposition. *See* Pet'r Br. 28; Chamber of Commerce Br. 11–12.

Moreover, even granting petitioners' assumption, the presumption against superfluities does not apply to an interpretation that makes two statutory provisions each "applicable in some situations": It is sufficient that one provision does "not subsume the [other]," and that each "provision[] retain[s] significant independent meaning." *Quality King Distrib., Inc. v. L'anza Research Intern., Inc.*, 523 U.S. 135, 149 (1998). Statutory language, in other words, "is not rendered superfluous merely because in some contexts that language may not be pertinent." *United States v. Turkette*, 452 U.S. 576, 583 n.5 (1981). Even if relators often rely on 3731(b)(2)'s three-years-after-discovery limitations period, they will sometimes use 3731(b)(1)'s six-years-after-violation limitations period (i.e., when the government discovers the fraud within three years of the violation). That is enough to render the presumption against superfluities inapplicable here.

Petitioners' third textual argument—that Congress largely copied the "known by the official of the United States charged with responsibility to act in the circumstances" language in 3731(b)(2) from 28 U.S.C. § 2416(c), which tolls the generally applicable limitations periods for most civil claims brought by the federal government, Pet'r Br. 20–21—is irrelevant. As the Eleventh Circuit explained below, "[t]he duplicate

language in § 2416 is not what specifies that [it] . . . applies only when the United States is a party." Pet. App. 27a–28a. Rather, 2416(c) provides that its tolling provision applies only to the statutes of limitations listed in 28 U.S.C. § 2415. And *that* provision requires the United States to be a party for its statutes of limitations to apply. *See id.* § 2415(a), (b). Because "[t]here is no similar language in any FCA provision expressly restricting § 3731(b)(2)'s limitations period to actions where the United States is a party," "borrowing the description of the trigger for the limitations period from § 2416" does not evince congressional intent to require the United States to "be a party for the limitations period in § 3731(b)(2) to apply." Pet. App. 28a.

4. Finally, left with a theory that cannot be squared with text, logic, or the traditional rules of statutory interpretation, petitioners claim that *Graham* announced an "interpretive approach to Section 3731(b)(2)" that incorporates "due regard for avoiding counterintuitive results." Pet'r Br. 17. Like the Fourth and Tenth Circuits, they argue that, under this approach, policy considerations require disregarding 3731(b)'s literal text. *See* Pet'r Br. 26–35 (arguing that the "counterintuitive results" of reading 3731(b) literally "call into question whether Section 3731(b)(2) should be given the literalistic interpretation adopted by the Eleventh Circuit"); *U.S. ex rel. Sanders v. N. Am. Bus Indus., Inc.*, 546 F.3d 288, 293–95 (4th Cir. 2008) (rejecting literal reading of 3731(b) because "[i]t would be problematic" and would "gener-

ate[] numerous practical difficulties"); *U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 726 (10th Cir. 2006) (concluding that a literal reading of 3731(b) "would run afoul of the absurdity doctrine").

The Court should reject petitioners' invitation to engage in judicial policymaking-by-interpretation. If anything, *Graham* weighs in favor of *ignoring* the policy arguments petitioners advance. *Graham* addressed whether 3731(b) applied to retaliation actions under 3730(h), and, like this case, the answer turned on the interpretation of "[a] civil action under section 3730." *See Graham*, 545 U.S. at 415–16. But the similarities between the two cases end there.

Critically, *Graham* held that it was "*ambiguous* whether a § 3730(h) retaliation action is 'a civil action under section 3730.'" *Id.* at 515 (emphasis added); *see also id.* at 416 ("[It is] ambiguous about whether 'action under section 3730' means all actions under § 3730, or only §§ 3730(a) and (b) actions."). The ambiguity was evident because *both* proposed interpretations required adding new language to the statute: The relator's interpretation proposed reading the statute "as if it said 'the [suspected or actual] violation of section 3729,'" and the defendant's interpretation proposed reading it "as if it said 'civil action under section 3730[(a) or (b)].'" *Id.* at 417 (brackets in original).

Here, however, only petitioners' theory requires the Court to interpolate additional text into the statute. Petitioners ask the Court to read 3731(b) as if it

said that a "civil action under section 3730 [where the government is a party] may not be brought . . . ." Pet'r Br. 10–11, 19–20, 39. And even with this interpolation petitioners' interpretation of the statutory phrase is internally contradictory, for they—unlike the defendants in *Graham*—contend that 3731(b)(1) applies to a different set of actions than 3731(b)(2). *See* Pet'r Br. 20 n.3; *Graham*, 545 U.S. at 415 (holding that *neither* of the limitations periods in 3731(b)(1) and (b)(2) apply to retaliation actions because "[t]he only arguably applicable express statute of limitations is the 6–year limit set forth in § 3731(b)(1)"); *U.S. ex rel. Wilson v. Graham Cty. Soil & Water Conservation Dist.*, 367 F.3d 245, 248 n.1 (4th Cir. 2004), *rev'd and remanded*, 545 U.S. 409 (2005) (limiting analysis to 3731(b)(1) because "neither party advance[d] . . . [3731(b)(2)] as controlling").

On the other hand, the alternative, literal reading of 3731(b) is both coherent and enforceable: Any action brought under 3730(a) or (b) is timely if it is brought within the latter of six years after the FCA violation or—if it is brought within ten years after the violation—three years after the relevant federal official knew or should have known the relevant facts. Petitioners acknowledge that this rule applies to relators' suits when the government intervenes, and it does not suddenly become impossible to apply this rule to relators' suits if the government does *not* intervene. They concede as much, for they allege that the literal reading of 3731(b) merely would produce "counterintuitive results." Pet'r Br. 35.

But while "counterintuitive results" may be considered to *resolve* statutory ambiguity, they do not *create* statutory ambiguity themselves. Indeed, *Graham* makes this point directly. After establishing the statutory ambiguity by reference to the two necessary interpolations, the Court noted that applying 3731(b)(1)'s limitations period to retaliation claims would be inconsistent with "the default rule that Congress generally drafts statutes of limitations to begin when the cause of action accrues," 545 U.S. at 418, and would "allow[] a retaliation action to be time barred before it ever accrues," *id.* at 421. Interpreting 3731(b) not to apply to retaliation actions "avoids these counterintuitive results." *Id.* The Court cautioned, however, that it "is not the proper analysis" to invert this order of operations and find ambiguity on the ground that "it is so unlikely that a legislature would actually intend to start the statute of limitations running before the cause of action accrues." *Id.* at 419 n.2 (citation and internal quotation marks omitted). Rather, 3731(b)(1) was "ambiguous because its text, literally read, admits of two plausible interpretations." *Id.* The Court "appl[ied] the rule that Congress generally drafts statutes of limitations to begin when the cause of action accrues to resolve that ambiguity, *not to create it in the first instance*." *Id.* (emphasis added).

B. In the *Amici* States' view, § 3731(b)'s plain meaning reflects a sensible policy choice that advances the fundamental goals of the False Claims Act and its state analogues

1. Because the meager textual arguments petitioners marshal in support of their paradoxical interpretation of 3731(b) fail to introduce any ambiguity to the provision, its meaning remains plain. And as the Court has "reiterate[d]" many times, "'when a statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms.'" *Sebelius v. Cloer*, 569 U.S. 369, 381 (2013) (internal brackets omitted) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)). The Court's analysis therefore can properly stop here.

But even if the Court were to accept petitioners' invitation to consider 3731(b)'s practical consequences, the fact remains that there is nothing unreasonable about declining to vary the statute of limitations for relators' actions depending on whether the government eventually intervenes. It certainly "is not such an absurd [policy] as to require departure from the words of the Act." *Cloer*, 569 U.S. at 381.

Perhaps the clearest indication that "Congress knew exactly what it was doing," *Stewart v. Abend*, 495 U.S. 207, 245 n.7 (1990) (Stevens, J., dissenting), is that multiple States have adopted—with language

even more explicit than the federal FCA—precisely the rule that petitioners claim is "absurd," Pet'r Br. 29. Texas's Medicaid Fraud Prevention Act, for example, originally had no specific statute of limitations, which raised the question whether the State's residual four-years-from-accrual limitations period applied to relators' actions or whether a relator's action was a "right of action of this state" to which the residual statute of limitations did not apply. *U.S. ex rel. Foster v. Bristol-Myers Squibb Co.*, 587 F. Supp. 2d 805, 817 (E.D. Tex. 2008) (citing Tex. Civ. Prac. & Rem. Code §§ 16.051, .061). At least one federal district court held that Texas's residual statute of limitations did apply to relators' actions, *see id.* at 818, and five years later Texas amended its Medicaid Fraud Prevention Act to create the rule petitioners disparage—namely, to provide that, where "the state declines to take over the action," "the person bringing the action" may recover "for a period beginning when the unlawful act occurred until up to three years from the date the state knows or reasonably should have known facts material to the unlawful act." Acts of 2013, 83d Leg., ch. 572 (S.B. 746) (codified at Tex. Hum. Res. Code § 36.104(b)).

Not only has Texas consciously chosen to permit relators in non-intervened suits to bring actions within three years of the government's knowledge, but several other States also have similar provisions that set out the same two limitations periods and that specifically apply both periods to actions brought by the government *and* actions brought by relators. *See*

Appendix (Alaska, Colorado, Connecticut, Massachusetts, Montana, and Virginia). Of the remaining States with false claims acts, most use language mirroring the federal FCA, one applies the State's general four-year statute of limitations, one provides a ten-years-after-violation limitations period, and one provides that actions can be brought at any time. *See generally id.* Notably, *no State* has a statute of limitations that explicitly adopts the rule reflected in petitioners' tortured interpretation of the federal FCA. It is petitioners' proposed rule—not the FCA's plain meaning—that is absurd.

There are good reasons why Congress adopted 3731(b)'s language rather than the amendment petitioners propose. As petitioners and their supporting *amici* acknowledge, the extensive time it takes to prepare FCA suits makes it reasonable to give the government three years to bring suit after discovering a false claim. *See, e.g.,* Pet'r Br. 35–37 (discussing concerns that motivated the addition of 3731(b)(2), including the worry that the government would not have enough time to detect and bring suits against false claimants); Chamber of Commerce Br. 9–10 (same). And once Congress made this choice, concerns of administration made it reasonable to apply 3731(b)(2)'s three-years-after-discovery limitations period to *all* non-retaliation FCA actions, whether or not the government is a party.

For example, applying 3731(b)(2)'s limitations period to all FCA actions allows the government to consider whether to intervene without worrying that not

intervening will result in dismissal of an action on statute-of-limitations grounds. There are many reasons the government may decline to intervene in a relator's action that have nothing to do with its merits, such as a lack of resources or different enforcement priorities. *See* Memorandum from Michael D. Granston, Director, Commercial Litigation Branch, Fraud Section, *Factors for Evaluating Dismissal Pursuant to 31 U.S.C. § 3730(c)(2)(A)*, at 1 (Jan. 10, 2018), https://tinyurl.com/ycdd7tzr ("[A] decision not to intervene in a particular case may be based on factors other than merit, particularly in light of the government's limited resources."), *cited in* Coalition for Government Procurement Br. 9; *see also* David Freeman Engstrom, *Public Regulation of Private Enforcement: Empirical Analysis of DOJ Oversight of* Qui Tam *Litigation Under the False Claims Act*, 107 Nw. U. L. Rev. 1689, 1749–50 (2013) ("Simply put, forces other than case merit contribute to DOJ intervention decisions."). And under 3731(b)'s plain meaning, the government can weigh these considerations secure in the knowledge that if it declines to intervene the relator will be permitted to vindicate the government's interests standing in the same position the government would have been in if it had intervened.

Petitioners' theory, meanwhile, frequently would put the government to the difficult choice of either expending scarce resources to intervene in a relator's suit—and thereby make 3731(b)(2)'s limitations period applicable—or force the relator's suit to be dismissed as untimely. Because the government currently intervenes in a small minority of cases, this

could force the government to prosecute significantly more FCA actions itself. *See* Coalition for Government Procurement Br. 9 ("The Government elects to intervene in relators' FCA suits only about 20 percent of the time."). And forcing the government to do so defeats the very purpose of the amendments that added 3731(b)(2) to the FCA, which was "to encourage more private enforcement suits." S. Rep. No. 345, 99th Cong., 2d Sess. 23–24 (1986). In sum, petitioners' interpretation of 3731(b) "would only force the government to unnecessarily intervene in *qui tam* cases and thereby frustrate the efficacy of the *qui tam* framework," for "there is 'little purpose' to *qui tam* framework if government is forced to pursue all meritorious claims." *United States v. Health Possibilities, P.S.C.*, 207 F.3d 335, 343 n.6 (6th Cir. 2000) (quoting *United States ex rel. Berge v. Board of Trustees of the Univ. of Ala.*, 104 F.3d 1453, 1458 (4th Cir.1997)).

In addition to creating a uniform rule for all non-retaliation FCA actions, 3731(b)'s plain meaning also ensures that relators know, at the time they file their complaints, the statute of limitations that will apply to their action. An FCA action, like all other actions "created by federal law," is commenced for statute-of-limitations purposes by "filing a complaint." *Henderson v. United States*, 517 U.S. 654, 657 n.2 (1996); *see also* Fed. R. Civ. P. 3 ("A civil action is commenced by filing a complaint with the court."); *In re Pharm. Indus. Average Wholesale Price Litig.*, 498 F. Supp. 2d 389, 396 (D. Mass. 2007) (collecting authorities). For this reason, it is essential that a relator know, at the

moment his complaint is filed, which limitations period applies to his action; otherwise, he will not know the applicable deadline for filing the complaint. Under 3731(b)'s plain meaning, the relator will know: He will need to file the complaint either within six years of the FCA violation or within three years from when the government knew or should have known the relevant facts—but in no event more than ten years after the violation.

Under petitioners' theory, however, a relator will not know whether 3731(b)(2)'s limitations period applies until after the government has decided to intervene—which of course occurs after the relator has filed his complaint. In fact, the relator will not know definitively even when the government makes its initial intervention decision, because the government may initially decline to intervene but may "nevertheless . . . intervene at a later date upon a showing of good cause." 31 U.S.C. § 3730(c)(3). Legal proceedings and settlement negotiations could continue for years without any of the interested parties knowing something as fundamental as the applicable statute of limitations. *See, e.g., United States ex rel. Robinson v. Indiana Univ. Health Inc.*, 2016 WL 10567964, at *14 (S.D. Ind. Mar. 30, 2016) (declining to determine the applicable limitations period because the government had "reserved the right to intervene when its investigation is complete"). When it enacted 3731(b) Congress prudently chose to prevent this outcome.

2. Even if the Court were to look past the interpretive irrelevance of petitioners' policy concerns—and

look past petitioners' failure to address the rationales supporting a uniform statute of limitations—the policy arguments petitioners raise remain unsubstantial and unsupported.

Petitioners first note that lower courts have not identified other statutes of limitations that turn on the knowledge of someone who is not "an *actual* party to the case," Pet'r Br. 26, but the absence of doctrinal parallels is unremarkable. The Court has observed that the FCA is one of only four extant *qui tam* statutes. *Vermont Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 768 n.1 (2000). And the government's status as a "non-party" in *qui tam* suits is unique. Unlike most non-parties, the government is "a 'real party in interest' in an FCA action" and has a "right to a share of any resulting damages." *U.S. ex rel. Eisenstein v. City of New York*, 556 U.S. 928, 934 (2009). And unlike any other non-party, the United States has a considerable degree of authority to act in FCA cases even when it has not intervened: It may later intervene at any time upon a showing of good cause, 31 U.S.C. § 3730(c)(3), may seek a stay of discovery, *id.* § 3730(c)(4), may unilaterally reject a settlement, *id.* § 3730(b)(1); *U.S. ex rel. Michaels v. Agape Senior Cmty., Inc.*, 848 F.3d 330, 339 (4th Cir. 2017), and may dismiss or settle the case, *id.* § 3730(c)(2)(A)–(B); *U.S. ex rel. Schweizer v. Oce N.V.*, 677 F.3d 1228, 1233 (D.C. Cir. 2012). Given the government's central role in FCA actions, even where it is not formally a party, it is unsurprising that Congress chose to make the government's knowledge trigger one of the FCA's limitations periods.

Indeed, as noted above, it is *petitioners'* theory that inverts traditional rules. Under petitioners' interpretation of 3731(b), an action brought by a relator may or may not be a "civil action under section 3730"—and thus may or may not be timely—depending on what the government does *after* the complaint is already filed. This inverts the ordinary rule that the timeliness of a complaint is determined the day it is filed, *see Henderson*, 517 U.S. at 657 n.2, and instead makes the timeliness turn on a decision a (then) non-party makes some time after the complaint is filed.

Petitioners and their supporting *amici* also claim that the plain-meaning interpretation of 3731(b) will give relators an incentive to delay filing their complaints, but this claim is based on nothing more than speculation. Neither the briefing before this Court nor the decisions with which the Eleventh Circuit departed contained evidence that this is the case. And there are strong reasons to doubt that it is: A relator who delays bringing an action to incur additional damages risks receiving no damages at all, for the action will be barred if the government or another private party files suit first, 31 U.S.C. § 3730(b)(5), (e)(3), or if the underlying facts are publicly disclosed while the would-be relator waits, *id.* § 3730(e)(4). In addition, relators, like other plaintiffs, typically seek to obtain recovery sooner rather than later; especially in light of the frequently lengthy time between initiation and termination of FCA cases, *see* Washington Legal Foundation Br. 9–10, it is unlikely that relators will intentionally seek to delay the moment when they will finally receive a reward for their efforts.

Finally, petitioners suggest that the plain-meaning interpretation of 3731(b) will impose intrusive discovery on the government, but this ignores two important facts. First, because the government invariably holds important information related to the merits of the case, it almost always will be involved in discovery regardless of the statute-of-limitations rule. As one of petitioners' supporting *amici* points out, "the fact-intensive nature of FCA claims ordinarily requires extensive discovery from the relevant agencies." DRI Amicus Br. 13 (citing David S. Torborg, *The Dark Side of the Boom: The Peculiar Dilemma of Government Spoliation in Modern False Claims Act Litigation*, 26 J. L. & Health 181, 184, 187–90 (2013)); *see also id.* at 16; Granston, *supra*, at 1. Because the government will be subject to discovery in any event, it makes little sense to depart from 3731(b)'s plain meaning in order to avoid imposing a discovery burden on the government.

Second, if the government thinks the potential recovery from a relator's FCA action is not worth the costs of discovery, it can move to stay discovery, 31 U.S.C. § 3730(c)(4), or dismiss or settle the case entirely, *id.* § 3730(c)(2)(A)–(B). The United States recognizes these trade-offs and has already instituted internal policies instructing government attorneys to consider using these statutory tools "when the government's expected costs are likely to exceed any expected gain." Granston, *supra*, at 6–7 (noting that examples of costs include "responding to discovery requests"). And state governments are equally capable of weighing these considerations. *See, e.g.,* Order on

Mot. to Dismiss, *U.S. and Indiana ex rel. Misch v. Mem'l Hosp. of South Bend, Inc.*, Case No. 3:16-cv-587 (N.D. Ind.) (granting State of Indiana's motion to dismiss pursuant to Indiana Code § 5-11-5.7-5(b), which authorizes the Indiana Attorney General to move to dismiss Indiana false claims act claims asserted on behalf of the State).

Even if petitioners' policy considerations were relevant, there is no reason to think that abiding by 3731(b)'s plain meaning will either delay the government's recovery from FCA violations or impose significant discovery costs. Virtually all the policy concerns to which petitioners point involve governmental interests. Yet no governmental entity has joined petitioners' effort to rewrite 3731(b). The Court should not do so either.

II. Section 3731(b)(2)'s Limitations Period Begins When an *Actual* Government Official Knows or Reasonably Should Know the Relevant Facts

If the Court rejects petitioners' convoluted interpretation of "[a] civil action under section 3730," petitioners offer an equally convoluted reading of 3731(b)(2)'s "the official of the United States charged with responsibility to act in the circumstances." Petitioners attempt to justify their interpretation of 3731(b)(2) with the same unsupported policy concerns they used to rationalize their reading of 3730(b). *Compare* Pet'r Br. 42–46 *with supra*, Part I.B. And like their first theory, petitioners' alternative theory is

neither consistent with the FCA's text nor even with itself. It too should be rejected.

1. Section 3731(b)(2)'s three-year limitations period begins when "facts material to the right of action are known or reasonably should have been known by *the official of the United States charged with responsibility to act in the circumstances*." 31 U.S.C. § 3731(b)(2) (emphasis added). This language plainly does not refer to relators. The phrase "official of the United States" appears in well over a hundred sections of the United States Code, and petitioners do not identify a single other occasion where this language encompasses individuals who are not employees of the federal government. *See, e.g.,* 5 U.S.C. § 5502(b); 10 U.S.C. § 948h; 16 U.S.C. § 5708(c); 22 U.S.C. § 3507(d)(3); 45 U.S.C. § 724(b). Section 3731(b)(2) should be construed "the same way." *Ratzlaf v. United States*, 510 U.S. 135, 143 (1994).

After all, an individual does not become an "official of the United States" by filing a *qui tam* complaint in federal court. At the very least, becoming an "official of the United States" requires swearing to support the Constitution—a requirement that obviously does not apply to relators. *See* U.S. Const. art. VI, cl. 3 ("[A]ll executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution."); *Trump v. Hawaii*, 138 S. Ct. 2392, 2424 (2018) (noting that "all officials take [an oath] to adhere to the Constitution"). Because they do not take the oath of office, relators are not "deputize[d]" to act with the authority

of the United States. *U.S. ex rel. Hyatt v. Northrop Corp.*, 91 F.3d 1211, 1218 n.8 (9th Cir. 1996). Relators file suit of their own accord and often pursue their own "parochial interests." *United States v. Health Possibilities, P.S.C.*, 207 F.3d 335, 340 (6th Cir. 2000); *id.* at 341 (observing that relators sometimes seek to "avoid the FCA's recovery division requirements by allocating settlement monies to the[ir] personal claims"). For this very reason, the FCA prohibits relators from settling FCA claims without the written consent of the Attorney General. *See* 31 U.S.C. § 3730(b)(1); *U.S. ex rel. Michaels v. Agape Senior Cmty., Inc.*, 848 F.3d 330, 339 (4th Cir. 2017); *Hoyte v. Am. Nat. Red Cross*, 518 F.3d 61, 64 n.2 (D.C. Cir. 2008); *Health Possibilities*, 207 F.3d at 339; *Searcy v. Philips Electronics of N. Am. Corp.*, 117 F.3d 154, 159 (5th Cir.1997). *But see Killingsworth v. Northrop Corp.*, 25 F.3d 715, 722 (9th Cir.1994).

The sole textual evidence petitioners offer in support of their theory is their suggestion that relators "are the officials 'charged with responsibility to act' on behalf of the United States where the government itself has declined to intervene." Pet'r Br. 41. But 3731(b)(2) does not refer to just any individual "charged with responsibility to act"—it refers to "the official of the United States," and petitioners give no reason to believe that a relator is such an official.

2. Moreover, if Congress had intended to make the three-year limitations period run from the beginning of the relator's knowledge, it could have done so in a much more direct way. It might simply have

added a clause at the end of 3731(b)(2) so that the three-year limitations period began "when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances [or, in actions where the government does not intervene, by the relator]."

Congress did not do so, however, and neither has any State. The only State that comes close to adopting petitioners' rule is Maryland, which begins its three-year limitations period from the date the relevant facts are known or reasonably should have been known by "the relator, the State's Inspector General, or the Director of the State's Medicaid Fraud Control Unit." Md. Code Ann., Health-Gen. § 2-609(a); *see also* Md. Code Ann., Gen. Prov. § 8-108(a) (similar). But even Maryland's rule applies to *all* civil actions, and in any event Maryland effectively prohibits non-intervened suits: If the government does not intervene, the relator's action is dismissed. *See id.* § 2-604(a)(7); *see also* Md. Code Ann., Gen. Prov. § 8-104(a)(7) (same).

3. In addition to contradicting the statutory text, petitioners' interpretation of "official of the United States" is just as paradoxical as their interpretation of "[a] civil action under section 3730." They argue that when the government brings its own action, or when it intervenes in a relator's action, "the official of the United States" in 3731(b)(2) refers only to government officers or employees. Pet'r Br. 40. But when the government does not intervene in a relator's suit, petitioners maintain, this phrase's meaning changes so

that it refers to the relator. *Id.* Again, giving text such contingent meaning is not the way statutory interpretation is supposed to work. "To give these same words a different meaning . . . would be to invent a statute rather than interpret one." *Clark v. Martinez*, 543 U.S. 371, 378 (2005).

***

Reduced to its essentials, petitioners' argument is that one non-textual turn deserves another: Because the Court permitted policy concerns to override 3731(b)'s literal meaning in *Graham*, so petitioners argue, the Court might as well do so again. But this misrepresents *Graham* and ignores the policy rationales that justify 3731(b)'s plain meaning. *Graham* found genuine textual ambiguity because both potential interpretations required inserting additional words into the statute. But that is not the case here, because 3731(b)'s plain meaning is perfectly sensible and administrable as it is. Section 3731(b) sensibly treats FCA actions brought by relators the same way as those brought by the government, and it prudently avoids altering the statute-of-limitations rules when the government chooses not to intervene. The Court does "not rewrite . . . statute[s] simply to accommodate . . . policy concern[s]." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 531 (2019). There is no reason for it to start now.

CONCLUSION

For these reasons, the judgment of the Eleventh Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX

Appendix
State False Claim Act / Fraud Prevention Act
Statutes of Limitations

Alaska: Alaska Stat. 09.10.075	
Description of Scope	**Description of Official**
"an action under AS 09.58.010--09.58.060"	"by the attorney general or the Department of Health and Social Services"
California: Cal. Gov't Code § 12654	
Description of Scope	**Description of Official**
"A civil action under Section 12652"	"the Attorney General or prosecuting authority with jurisdiction to act under this article"
Colorado: Colo. Rev. Stat. § 25.5-4-307	
Description of Scope	**Description of Official**
"A civil action under section 25.5-4-306(1) or (2)"	"the official of the state charged with responsibility to act in the circumstances"
Connecticut: Conn. Gen. Stat. § 4-285	
Description of Scope	**Description of Official**
"A civil action under sections 4-276 to 4-280, inclusive"	"the official of the state charged with responsibility to act in the circumstances"

Delaware: Del. Code tit. 6, § 1209	
Description of Scope	**Description of Official**
"A civil action under this chapter"	"the official of the Government charged with responsibility to act in the circumstances"
District of Columbia: D.C. Code § 2-381.05	
Description of Scope	**Description of Official**
"A civil action brought pursuant to § 2-381.02"	"the official of the District charged with the responsibility to act in the circumstances"
Florida: Fla. Stat. § 68.089asa	
Description of Scope	**Description of Official**
"A civil action under this act"	"the department" (defined as "Department of Legal Affairs")
Georgia: Ga. Code § 23-3-123	
Description of Scope	**Description of Official**
"all civil actions under this article"	"the state or local government official charged with the responsibility to act under the circumstances"
Hawaii: Haw. Rev. Stat. § 661-24	
Description of Scope	**Description of Official**
"An action for false claims to the State pursuant to this part"	"after the false claim is discovered or by exercise of reasonable diligence should have been discovered"

Illinois: 740 Ill. Comp. Stat. 175/5	
Description of Scope	**Description of Official**
"A civil action under Section 4"	"the official of the State charged with responsibility to act in the circumstances"
Indiana: Ind. Code § 5-11-5.5-9	
Description of Scope	**Description of Official**
"A civil action under section 4 of this chapter"	"a state officer or employee who is responsible for addressing the false claim"
Iowa: Iowa Code Ann. § 685.4	
Description of Scope	**Description of Official**
"A civil action under this chapter"	"the official of the state charged with responsibility to act in the circumstances"
Louisiana: La. Stat. § 46:439.1	
Description of Scope	**Description of Official**
"No qui tam action"	"the official of the state of Louisiana charged with responsibility to act in the circumstances"

Maryland: Md. Code, Health-Gen. § 2-609	
Description of Scope	**Description of Official**
"A civil action filed under this subtitle"	"known by the relator, the State's Inspector General, or the Director of the State's Medicaid Fraud Control Unit or reasonably should have been known"
Massachusetts: Mass. Gen. Laws ch. 12, § 5K	
Description of Scope	**Description of Official**
"A civil action pursuant to sections 5B to 5O, inclusive, for a violation of section 5B"	"the official within the office of the attorney general charged with responsibility to act in the circumstances"
Michigan: Mich. Comp. Laws § 400.614	
Description of Scope	**Description of Official**
"a civil action under section 10a"	"the official of the State of Michigan charged with responsibility to act in the circumstances"
Minnesota: Minn. Stat. § 15C.11	
Description of Scope	**Description of Official**
"An action under this chapter"	"the prosecuting attorney"
Montana: Mont. Code § 17-8-404	
Description of Scope	**Description of Official**
"A complaint or civil action filed under 17-8-405 or 17-8-406"	"the official of the government entity charged with responsibility to act in the circumstances"

Nevada: Nev. Rev. Stat. § 357.170	
Description of Scope	**Description of Official**
"An action pursuant to this chapter"	"the Attorney General or a designee of the Attorney General pursuant to NRS 357.070" (district or city attorneys may accept designation)
New Hampshire: N.H. Rev. Stat. § 167:61-b	
Description of Scope	**Description of Official**
"An action for false claims under RSA 167:61-c"	"the official within the office of the attorney general charged with responsibility to act in the circumstances"
New Mexico: N.M. Stat. § 27-14-13	
Description of Scope	**Description of Official**
"A civil action"	N/A (general 4-year statute of limitations applies)
New York: N.Y. State Fin. Law § 192	
Description of Scope	**Description of Official**
"A civil action under this article"	N/A ("ten years after the date on which the violation of this article is committed")
North Carolina: N.C. Gen. Stat. § 1-615	
Description of Scope	**Description of Official**
"A civil action under G.S. 1-608"	"the official of the State of North Carolina charged with responsibility to act in the circumstances"

New Jersey: N.J. Stat. § 2A:32C-11	
Description of Scope	**Description of Official**
"A civil action under this act"	"the state official charged with the responsibility to act in the circumstances"
Oklahoma: Okla. Stat. tit. 63, § 5053.6	
Description of Scope	**Description of Official**
"A civil action under Section 5053.2 of this title"	"the official of the State of Oklahoma charged with responsibility to act in the circumstances"
Rhode Island: 9 R.I. Gen. Laws § 9-1.1-5	
Description of Scope	**Description of Official**
"A civil action under § 9-1.1-4"	"the official of the state charged with responsibility to act in the circumstances"
Tennessee: Tenn. Code § 71-5-184	
Description of Scope	**Description of Official**
"A civil action under § 71-5-183"	"the official of the state charged with responsibility to act in the circumstances"
Texas: Tex. Hum. Res. Code § 36.104	
Description of Scope	**Description of Official**
"[T]he person bringing the action may proceed without the state's participation. A person proceeding under this subsection"	"the state knows or reasonably should have known facts material to the unlawful act"

Virginia: Va. Code § 8.01-216.9	
Description of Scope	**Description of Official**
"A civil action under § 8.01-216.4 or 8.01-216.5"	"the official of the Commonwealth charged with responsibility to act in the circumstances"
Vermont: Vt. Stat. tit. 32, § 639	
Description of Scope	**Description of Official**
"A civil action under section 632"	"the official within the Attorney General's office with responsibility to act in the circumstances"
Washington: Wash. Rev. Code § 74.66.100	
Description of Scope	**Description of Official**
"A civil action under RCW 74.66.040 or 74.66.050"	N/A ("any time")