A unanimous Supreme Court ruled on Tuesday that violations of the False Claims Act’s seal provision do not require automatic dismissal of suits brought under the Act.

As we reported in back in June, the Supreme Court had agreed to resolve a split among the circuits regarding what standard governs the decision to dismiss a relator’s claim for violation of the FCA’s seal provision, 31 U.S.C. § 3730(b)(2). The relators, insurance adjustors employed by State Farm, had sued State Farm a decade ago alleging that the insurance giant fraudulently misclassified claims related to flood policies in order to get them paid by the federal government in the aftermath of Hurricane Katrina. Although the complaint had been filed under seal, the relators’ attorney had on multiple occasions leaked evidence about the case to various news
outlets.

On State Farm’s motion to dismiss, the district court ruled that the seal violations did not warrant dismissal because there was no evidence they “had led to a public disclosure in the news media that this action had been filed” or had impeded the government’s investigation. The district court further found that the relators had not acted in bad faith because there was no evidence they had authorized their attorney’s improper disclosures. The relators went on to win at trial, and on appeal, a three-judge panel of the Fifth Circuit affirmed the district court’s finding that the seal violations did not merit dismissal.

On December 6, 2016, the Supreme Court, in an opinion delivered by Justice Kennedy, held that violations of the FCA’s seal provision “do not necessarily requires a relator’s complaint to be dismissed.” Acknowledging that the statute creates a mandatory rule that the relator must follow, the Court nonetheless found that because the statute says nothing about a remedy, “the sanction for breach is not loss of all later powers to act.” This result is supported, Justice Kennedy wrote, by the structure of the FCA itself, which contains a number of provisions that do require, in express terms, the dismissal of a relator’s action. Had Congress intended to require dismissal for a violation of the seal requirement, it would have said so. For example, the Court noted, the applicable version of the public disclosure bar requires dismissal when the underlying information has already been made available to the public, “‘unless’” the plaintiff is the Attorney General or an original source. In short, there is no textual indication in the statute suggesting that the relator’s ability to bring suit depends on adherence to the seal requirement. Moreover, because the meaning of the FCA’s text and structure are “plain and unambiguous,” the Court declined to look to the Act’s legislative history in order to read into it a mandatory dismissal requirement.

The Court further held that its conclusion is consistent with the general purpose of the seal provision, which was intended primarily to protect the government’s interests. Because a “rigid interpretation of the seal provision” would prejudice the government by depriving it of needed assistance from private parties, that cannot be what Congress intended in enacting the seal requirement.

Finally, the Court noted that remedial tools short of dismissal, including monetary penalties or attorney discipline, remain available to punish and deter seal violations even when dismissal is not appropriate. Because State Farm did not seek lesser sanctions, the question of whether such lesser sanctions would have been appropriate had not been preserved.

As we noted in our previous post, the Supreme Court’s decision in this case, while important, is not likely to have a great impact on FCA litigants given the relative rarity of seal violations. Although the rejection of a mandatory dismissal rule means FCA defendants now have one less arrow in their quiver when it comes to getting suits dismissed early on, the Court’s opinion expressly reserves to district courts the discretion to dismiss suits based on seal violations, noting that the factors articulated by the Ninth Circuit in United States ex rel. Lujan v. Hughes Aircraft Co., including harm to the government, the nature of the violation, and the presence or absence of bad faith or willfulness, still “appear to be appropriate” in making that determination.