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CIVIL FALSE CLAIMS ACT: Supreme Court Agrees to Hear the Question of Whether Administrative Reports Issued by State and Local Governments Qualify as “Public Disclosures”

Today, the Supreme Court agreed to resolve a key definitional issue under the public disclosure bar in *Graham County Soil & Water Conservation District v. United States ex rel. Wilson*, No. 08-304 ("*Graham County II*"). The issue raised in Petitioner/Defendant Graham County's petition for certiorari is whether an audit and investigation performed by a state or its political subdivision could be considered an "administrative report" that qualifies as a "public disclosure" within the meaning of Section 3730(e)(4)(A). The Supreme Court had previously requested the Solicitor General's view on the petition (See [FraudMail Alert No. 08-12-08](#)), and the Solicitor had recently filed a brief supporting certiorari in the case.

This question comes to the Court from a case arising in the Fourth Circuit, *United States ex rel. Wilson v. Graham County Soil & Water Conservation District*, 528 F.3d 292 (4th Cir. 2008). The Fourth Circuit decision in *Graham County II*, like the Third Circuit in *United States ex rel. Dunleavy v. County of Delaware*, 123 F.3d 734 (3d Cir. 1997), created a *per se* rule against public disclosures made in state reports, audits, or investigations--regardless of any other factors, including the scope, nature, subject, or circulation of the state report. This *per se* rule undermines the purpose of the public disclosure bar by allowing parasitic suits based on public information to go forward without assessing the relator's qualifications as an original source. The mere fact that the public disclosure comes in a state, as opposed to a federal, agency report should not be the basis to allow such a parasitic suit to proceed. See Br. of the Washington Legal Foundation and the Allied Educational Foundation as *Amici Curiae* in Support of Petitioners, *Graham County II* (filed Oct. 8, 2008), available at <http://www.wlf.org/upload/101008grahamBrief.pdf>. (The reader should note that the author submitted this *amicus* brief on the behalf of WLF and AEF).

This case presents the first time that the Supreme Court will rule on the definition of "public disclosure," one of two key elements in a major jurisdictional defense in *qui tam* actions that has sharply split the lower courts and is badly in need of clarification. In March 2007, the Supreme Court issued its decision in *Rockwell International et al. v. United States*, 549 U.S. 457 (2007), where the Court provided significant guidance on the "original source" aspect of the defense.

Together, *Rockwell* and *Graham County* should provide significant clarification regarding this defense, and they will go a long way toward standardizing the lower court decisions on this issue.

The petitioners opinion brief is due in early August, so the case will be ready for argument and decision early next term.

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