

Supreme Court Holds That County and State Reports, Not Only Federal Ones, Trigger The Public Disclosure Bar of the Federal False Claims Act

by **Stuart Gerson**

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Suits in the name of the United States under the Federal False Claims Act (“FCA”) brought by private individuals known as *qui tam* relators are among the most common forms of whistleblower action in the federal system. The Supreme Court today rendered its much-anticipated decision in *Graham County Soil and Water Conservation District et al. v. United States ex rel. Wilson*, No. 08-304. 2010, imposing a significant limitation on the ability of these relators to satisfy an important jurisdictional bar.

The FCA authorizes both the Attorney General and private *qui tam* relators to bring actions against persons who make or facilitate fraudulent claims for payment from the United States. However, in the absence of the government, a relator will be barred from proceeding on his own if the action is based upon the public disclosure of allegations or transactions in, *inter alia*, “a congressional, administrative, or Government Accounting Office [(GAO)] report, hearing, audit, or investigation.” 31 U. S. C. §3730(e)(4)(A). The *Graham County* case involved federal contracts and funding for the repair of flood damage. The relator, Wilson, a local government employee, alerted both federal and county and state officials to irregularities in performance. Both the county and the state issued reports making findings about these potential irregularities and Wilson thereupon filed a *qui tam* action against the county conservation districts administering the contracts. The District Court dismissed for lack of jurisdiction because the allegations publicly disclosed in the county and state reports constituted “administrative” reports under the FCA’s public disclosure bar. The Fourth Circuit reversed, holding that only federal administrative reports may trigger the public disclosure bar.

Writing for a seven-Justice majority, Justice Stevens ruled that the reference to “administrative” reports in section 3730(e)(4)(A), encompasses disclosures made to state and local sources as well as federal sources. This resolves a split in the Circuits and makes it clear that the jurisdictional bar of the FCA—intended to weed out parasitic

lawsuits, that is, suits that track what the authorities already know about—is not limited to matters that had been disclosed to the federal government but includes public disclosures made to local, county and state authorities.

This is significant generally, but also specifically to those who administer public contracts or grants at the state level (for example, as a county department or local authority, or as a contractor to such authorities). It is also of particular relevance to health care providers whose activities may receive federal financing (for example, under the Medicaid program and who are subject to parallel state regulation and investigations).

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