Supreme Court of New Jersey
Docket No. 090285

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| STATE OF NEW JERSEY, *ex rel.*, EDELWEISS FUND, LLC,<br><br>*Plaintiff-Appellant*,<br><br>v.<br><br>JPMORGAN CHASE & CO., JPMORGAN CHASE BANK, N.A., J.P. MORGAN SECURITIES LLC, f/k/a JPMORGAN SECURITIES, INC., CITIGROUP INC., CITIGROUP GLOBAL MARKETS INC., CITIBANK, N.A., CITIGROUP FINANCIAL PRODUCTS INC.,<br><br>*(For Continuation of Caption, See Inside Cover)* | CIVIL ACTION<br><br>ON CERTIFICATION FROM AN ORDER OF THE SUPERIOR COURT, APPELLATE DIVISION, DISPOSITIVE OF THE ACTION, PURSUANT TO R. 2:2-5(a)<br><br>DOCKET NO. A-1340-23<br><br>Sat Below:<br>HON. GRETA GOODEN BROWN, P.J., PART D<br>HON. MORRIS G. SMITH |

# BRIEF OF AMICUS CURIAE ANTI-FRAUD COALITION

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*Defendants-Respondents.*

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## PRELIMINARY STATEMENT

*Amicus* The Anti-Fraud Coalition ("TAF Coalition") submits this brief in support of Plaintiff-Appellant Edelweiss Fund, LLC and reversal. TAF Coalition's brief addresses the meaning of "the news media" as used in the federal False Claim Act, ("FCA"), 31 U.S.C. § 3729, *et seq*., on which the New Jersey False Claims Act ("NJFCA"), N.J. Stat. Ann. § 2A:32C-1, *et seq*. is modeled.

TAF Coalition is a non-profit public interest organization dedicated to combating fraud against the Government and protecting public resources through public-private partnerships. TAF Coalition is committed to preserving effective anti-fraud legislation at the federal and state levels. It has worked to educate the public and legal community about the *qui tam* provisions of the FCA and state counterparts, and has provided testimony about the FCA to Congress and state legislatures. It regularly participates in litigation as *amicus curiae*. TAF Coalition is supported by *qui tam* relators and their counsel, by membership dues and fees, and by private donations.[1] TAF Coalition is the 501(c)(3) arm of Taxpayers Against Fraud, which was founded in 1986.

## ARGUMENT

This case involves a question of first impression for this Court—whether certain sources of information available to members of the public qualify as "the

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus* or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

news media" and trigger the public disclosure bar of the NJFCA, N.J.S.A. § 2A:32C-9, which is modeled on the analogous provision of the federal FCA, 31 U.S.C. § 3730(e)(4).[2] This brief makes three points central to the resolution of that question. First, although colloquially referred to as the "public disclosure bar," not all public disclosures, let alone all potentially available public information, implicate the bar. Only those made through specified channels do. If the channel through which the information was potentially disclosed is not one the legislature identified as relevant, the bar is not implicated. Second, in construing the meaning of the channel at issue here—"the news media"—the courts should follow well-established principles of statutory construction. Sources that collect and compile data are not "the news media" under the ordinary understanding of that phrase, notwithstanding technological developments since 1986 when Congress first incorporated that phrase into the FCA. Finally, whether a relator is an insider is irrelevant to the question of whether the public disclosure bar is implicated. The FCA is not limited to insiders. Many non-insiders have brought valuable information to the government's attention.

## I. THE FCA'S PLAIN TEXT MAKES CLEAR THAT NOT ALL PUBLICLY AVAILABLE INFORMATION IMPLICATES THE "PUBLIC DISCLOSURE" BAR

As relevant here, the FCA's public disclosure bar can be triggered when:

> substantially the same allegations or transactions as alleged in the action . . . were publicly disclosed—
>
> (i) *in* a Federal criminal, civil, or administrative hearing in which the government or its agent is a party,
>
> (ii) *in* a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation, or
>
> (iii) *from* the news media....

[2] Should this Court conclude that the Attorney General may preclude use of the bar in this case, there is no need to reach this question.

31 U.S.C. § 3730(e)(4)(A) (emphasis added). The NJFCA follows the same structure, but refers to state government and disclosures "by" the news media instead of "from" the news media. *See* N.J. Stat. Ann. § 2A:32C-9(c).[3]

The United States Supreme Court has made clear that "[b]y its plain terms, the [FCA's] public disclosure bar applies to some methods of public disclosure and not to others." *Schindler Elevator Corp. v. United States ex rel. Kirk*, 563 U.S. 401, 414 (2011). If none of the statutorily designated channels are involved, the public disclosure bar does not apply regardless of whether the information is publicly *available*.[4] Congress could have written a law barring any case based on publicly available information, but it did not.

The FCA's legislative history sheds some light on why Congress adopted the approach it did. In 1986, Congress sought to reinvigorate the FCA after a long period of dormancy. The prior version of the FCA had, since 1943, incorporated a "government knowledge bar," which precluded *qui tam* suits "whenever it shall be made to appear that such suit was based upon evidence or information in the possession of the United States, or any agency, officer or employee thereof, at the time such suit was brought." Act of Dec. 23, 1943, ch. 377, § 1, 57 Stat. 608, 609. As Congress later recognized, the government knowledge bar so "significantly limited the number of FCA cases that were filed" that "[b]y the 1980s, the FCA was no longer a viable tool for combating fraud against the Government." S. Rep. No. 110-507, at 3 (2008); *see also Graham*

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[3] The phrase "the news media" remained unchanged when Congress amended the FCA in 2010 and New Jersey amended the NJFCA in 2023. Respondents acknowledge that term in the NJFCA has the same meaning as in the FCA. Joint Brief on Behalf of Defendants-Respondents ("*Respondents' Brief*)," at 41.

[4] The Appellant maintains there are disputes of fact as to whether information was "publicly disclosed." Brief of Plaintiff-Appellant Edelweiss Fund, LLC ("*Appellant's Brief*"), at 29.

*Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 559 U.S. 280, 294 (2010) ("In the years that followed the 1943 amendment, the volume and efficacy of *qui tam* litigation dwindled.").

In 1986, after extensive study and hearings, Congress determined that the "growing pervasiveness of fraud necessitate[d] modernization" of the FCA. S. Rep. No. 99-345, at 2 (1986). Congress was particularly concerned that "restrictive court interpretations of the act have emerged which tend to thwart the effectiveness of the statute" by resulting in dismissal of meritorious cases. *Id.* at 4. Congress replaced the government knowledge bar with the public disclosure bar. This new provision was triggered only when allegations or transactions were publicly disclosed through specified channels, but even if the bar were implicated, the case could still be pursued if the relator were an "original source" of the information underlying the complaint. False Claims Amendments Act of 1986, Pub. L. No. 99-562, § 3, 100 Stat. 3153, 3157. The 1986 provision sought "to strike *a balance* between encouraging private persons to root out fraud and stifling parasitic lawsuits." *Schindler*, 563 U.S. at 413 (citation omitted).

Unfortunately, courts again misapplied the FCA and dismissed meritorious cases. In response, in 2010 Congress amended the provision, Pub. L. No. 111-148, 124 Stat. 119 (2010), and "overhauled" and "radically changed" the statute to "lower the bar for relators." *United States ex rel. Moore & Co. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 298-99 (3rd Cir. 2016). Among other things, the 2010 amendments narrowed the triggers for the bar and broadened the definition of original source. For example, the channel that referenced allegations of fraud publicly disclosed in a criminal, civil, or administrative hearing, now expressly applies only if the federal Government is a party to the hearing. 31 U.S.C. § 3730(e)(4)(A)(i). And instead of requiring an original source to have "direct and independent knowledge" of the fraud, which some courts had construed as

firsthand factual knowledge, the current definition merely requires the relator to have "independent" knowledge that "materially adds" to the public disclosures. *Id.*, § 3730(e)(4)(B).

In enacting the 1986 and 2010 FCA amendments, Congress did not preclude members of the public from investigating fraud and bringing it to the government's attention through a *qui tam* lawsuit even if the government could theoretically discover the fraud on its own. Under the balance Congress struck, the threshold question is not whether members of the public can access information, but whether a relevant channel is implicated.

## II. THE ORDINARY MEANING OF "THE NEWS MEDIA" DOES NOT ENCOMPASS ALL PUBLICLY ACCESSIBLE INFORMATION

In contending that the sources at issue in this case—EMMA, Bloomberg Finance, and MSRB Short—implicate the public disclosure bar, Respondents argue for an extraordinarily broad interpretation of the phrase "the news media" that encompasses essentially any website or other information publicly available on the Internet. This Court should reject that view because it ignores the ordinary meaning of the words the legislature chose, the structure of the public disclosure bar, and the legislative policy choices. The sources at issue are not "the news media" under the ordinary understanding of that phrase.[5]

The FCA does not define the phrase "the news media" and so that phrase takes its ordinary meaning unless there is some especially clear or compelling reason for it not to. "'Statutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that

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[5] As Appellant explains, the record supports that these sources compile data, do not employ editorial judgment, do not function like traditional news media, and are not referred to as "the news media" in any other context. *Appellant's Brief*, at 34-40. The Court could also conclude that there are sufficient disputed facts about these sources to have precluded summary judgment and reverse on that basis.

language accurately expresses the legislative purpose.'" *Schindler*, 563 U.S. at 407 (citation omitted) (construing the word "report" in the public disclosure bar according to its "ordinary meaning"); *see also Kellogg Brown & Root Servs., Inc. v. United States ex rel. Carter*, 575 U.S. 650, 662 (2015) (interpreting the undefined word "pending" in the FCA "in accordance with its ordinary meaning").

In ordinary parlance, the phrase "the news media" does not refer to all publicly available information. Rather, it generally refers to a category of professionals and institutions engaged in journalism. This includes print news, broadcast news, and Internet news. The phrase focuses as much on the type of content ("news," *i.e.*, important current events) as it does on the type of speaker (the professional "media," as opposed to individuals or businesses that might incidentally discuss current events, but not as their focus). For example, everyone would agree that the *New York Times* newspaper—whether in print or online—is "the news media" in ordinary parlance. But nobody would describe the website of Target, a department store, as "the news media," even if it sometimes addresses current events like the release of a new Taylor Swift album. *See also United States ex rel. Integra Med Analytics LLC v. Providence Health and Services*, No. CV 17-1694 PSG (SSx), 2019 WL 3282619 *11 (C.D. Cal. July 16, 2019), *rev'd and remanded on other grounds*, 854 F.App'x 840 (9th Cir. 2021) (no one would use the term in everyday speech to refer to the Dodgers' website with ticket prices or a doctor's website with available appointments).

Importantly, Congress did not identify this channel as "news" or "media," but rather as "*the news media*"—which strongly suggests Congress intended the phrase to refer to a specific type of outlet. When Congress enacted the public disclosure bar in the pre-Internet days of 1986, "the news media" surely did not sweep in all information potentially available to the public including information contained in public libraries, such as scientific studies and sources of data, or

anything found in publicly available corporate marketing materials. If Congress meant to include those public sources it could easily have said "other forms of publicly available information," but did not. Nor did Congress expand the category in 2010 when it amended the FCA, after the Internet was widely used.[6]

The changes in technology since 1986 do not deprive the phrase "the news media" of meaning. In common parlance, "the news media" is still used to refer to professional news distribution channels, not to all potentially publicly available information on the Internet. While various Internet communication channels might contain "news" (*i.e.*, a law firm website blog post about a recent FCA case) and different communication channels might involve "media" (*i.e.* "social media"), that does not make those sources "the news media." In ordinary parlance, a law firm website would not be described as "the news media," nor would the social media site "LinkedIn," which is a source of job postings and resumes, as well as commentary by any member of the public with a LinkedIn account.

Although the phrase "the news media" does not appear in standard dictionaries,[7] Wikipedia, a crowd sourced depository of information that is

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[6] Almost all of the cases cited as the "majority view" on the meaning of "the news media" *Respondents' Brief*, at 35, n.27, post-dated Congress's 2010 amendment, shedding no light on Congress's views. Respondents' effort to read congressional intent into *New Jersey's* 2023 amendment, *id.* at 41, is even more attenuated. Congress did not opine on the amendment. Rather, in the Deficit Reduction Act of 2005, Congress included a provision to encourage states to adopt laws that were "at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described [in the FCA]." Pub. L. No. 109-171, § 6031, 120 Stat. 4, 72-73 (2006). Mirroring the federal FCA was one way states could ensure compliance, but that says nothing about Congress's understanding of "the news media."

[7] Although several courts have looked to dictionary definitions of the individual words "news" and "media' to ascertain the meaning of the phrase "the news media," they have come to different conclusions. *Compare United States ex rel.*

available on the Internet, describes "the news media" as "forms of mass media that focus on delivering news to the general public. These include "news agencies, newspapers, news magazines, news channels." Wikipedia does not describe itself as "the news media," and in common parlance would not be described that way even though it is a public website that many people use as a resource, much like they would have consulted a hard copy encyclopedia, which also would not have been considered "the news media." *See* https://en.wikipedia.org/wiki/Encyclopedia_Britannica (referring to "the online peer-produced encyclopedia Wikipedia").[8] Consistent with the common understanding of the phrase, when President Trump criticizes "the news media," no one thinks he is referring to websites that report data, websites that advertise company products, or social media platforms, all of which are public sources of "information" on the Internet. *See, e.g.*, Trump Sharpens Attacks on a Favoite Foe: The News Media, available at https://nytimes.com/2025/07/21/us/politics/trump-news-media.html. Rather, it is widely understood that he is referring to professional organizations that collect and report news, such as the New York Times, NBC, CNN, or MSNBC.

The phrase "the news media" is used in other legislative contexts where it is understood to refer to particular professionals and organizations engaged in the practice of gathering and disseminating news and not to every source of

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*Louderback v. Sunovian Pharms., Inc.,* 703 F. Supp. 3d 961, 975 (D. Minn. 2023) (definitions suggest phrase has specific meaning) *with Rosenberg* v. JP Morgan, Chase & Co., 487 Mass. 403, 415 (2021) (definitions suggest phrase has broad meaning).

[8] *But see United States ex rel. Brown v. Walt Disney World Co.*, No. 6:06-cv-1943-Orl-22KRS, 2008 WL 2561975, at *4 (M.D. Fla. June 24, 2008) (concluding that Wikipedia is a "news media outlet" because an online source of information).

information that can be accessed on the Internet. In the same year as the 1986 amendments to the FCA, Congress used the phrase "the news media" in other enactments suggestive of a common understanding of that phrase. For example, an amendment to FOIA limited the fees an agency could charge when a FOIA request was not for commercial use but was made by certain educational institutions "*or a representative of the news media*." Pub.L.No. 99-570, Title I, §§ 1802, 1803, Oct. 27, 1986, 100 Stat. 3207-48, 3207-49 (emphasis added), codified at 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also* Pub.L.No. 99-83, § 551, 99 Stat. 190, 224 (Aug. 8, 1985), codified at 49 U.S.C. § 44907(d)(A)(iii) (requiring Secretary of Transportation to notify "the news media" of foreign airports determined to be unsafe).[9]

The task of interpreting statutory terms in the face of technological change is not new. This Court grappled with similar questions in addressing whether New Jersey's journalist shield law applies to new forms of expression. In *Too Much Media, LLC v. Hale*, 206 N.J. 209 (2011), this Court considered whether the shield

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[9] FOIA now incorporates a functional definition of the phrase "the news media" that, while recognizing changes in the way news is delivered, would not encompass the sources at issue in this case. 5 U.S.C. § 552(a)(4)(A)(ii) ("the term 'a representative of the news media' means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. … Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services) such alternative media shall be considered to be news media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity….").

law applied to a particular blogger. While unlike the FCA, New Jersey's shield law defines "news media,"[10] it does not specifically address certain forms of information. Applying a functional test of whether the blogger's posts were similar to traditional news media, the Court found that the blogger was not entitled to the Act's protection.

The Chamber *amici* suggest that the data available on EMMA is the type of financial information that appears in newspapers, and therefore EMMA *is* "the news media." Brief of *Amici Curiae* the Chamber of Commerce of the United States of America and American Bankers Association in Support of Defendants-Respondents ("*Chamber Brief*"), at 12. But while much information that appears in newspapers is now available online, it does not follow that any source that produces that information comports with the ordinary meaning of "the news media." For example, newspapers used to include classified advertisements. Many people now post such advertisements on Facebook Marketplace or eBay. But neither of those sources would be described in ordinary parlance as "the news media." Rather, they are shopping websites. *United States ex rel. Customs Fraud Investigations, LLC v. Victaulic Co.*, No. 13-2983, 2014 WL 4375638 (E.D. Pa. Sept. 4, 2014) (holding that eBay, an online marketplace, is not the news media). Nor is it relevant that the same information might implicate the bar if it appeared in a newspaper but might not implicate it if it appeared in a website that was not a news outlet. The structure of the bar contemplates that information disclosed through one channel may implicate the bar even if it would not implicate the bar if disclosed through a different means. *Schindler*, 563 U.S. at 408.

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[10] N.J.S.A. § 2A-84A-21 (defining "news media" as "newspapers, magazines, press associations, news agencies, wire services, radio, television or other similar printed photograph mechanical or electronic means of disseminating news to the general public.").

Although Respondents argue that the United States Supreme Court instructed in *Schindler* that the term "news media" has "'broad sweep,'" *Respondents' Brief,* at 10, that reference is taken out of context. The question before the Court in *Schindler* was whether a government agency response to a FOIA request was a government "report." In deciding what was included in the ordinary meaning of the term "report," the Court said that the inclusion of the news media channel in the public disclosure bar provision showed that the *bar* had "broad[] scope." *Id.* at 408. That is, the news media channel shows that the public disclosure bar covers a lot of ground, but the Court neither decided nor suggested that the term "the news media," which was not at issue, extends to all "news" and any "media." *Louderback v.*, 703 F. Supp. 3d at 971 (noting that observation "does not answer whether the news media category includes information on publicly available websites").[11]

Although Respondents assert that the majority of cases have held that websites that disseminate information constitute "the news media," *Respondents' Brief*, at 2-3, 36, the landscape is more complex. *See, e.g.*, *Louderback,* 703 F. Supp. 3d at 973-74 (describing broad and narrow approaches). Many of the opinions do not undertake an independent analysis of the meaning of "the news media," instead citing to decisions of other courts (that often contained sparse analysis) with little additional explanation.

The Massachusetts opinion on which Respondents rely does not analyze the ordinary meaning of the phrase "the news media," but rather looked to the dictionary definition of the separate words "news" and "media" and the legislative history of the Massachusetts FCA. It concluded that because EMMA consists of

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[11] Respondents also take out of context *Schindler's* reference to "underinclusiveness," *Respondents' Brief*, at 39, as that reference concerned whether a source could fall into more than one category, 563 U.S. at 408.

"publicly accessible financial data" and is a way in which people "obtain financial news" it falls within the meaning of "the news media." *Rosenberg*, 487 Mass. at 417-18. A California court came to the opposite conclusion. *State of California ex rel. Edelweiss v JPMorgan Chase*, 90 Cal.App.5th 1119 (2023) (holding EMMA is not the news media). The Massachusetts court, which did not have the factual record present in this case, assumed that the term encompassed information that is publicly disseminated. With the advent of the Internet, that definition would sweep broadly to include nearly all public information, which is not what Congress said when it identified specific channels of disclosure.

One federal district court carefully reviewed the ordinary meaning of the term "the news media" as used in the FCA and developed a largely functional test, similar to the one this Court adopted in applying New Jersey's shield law. That test includes an evaluation of: (1) whether editorial skills are employed to turn raw materials into a distinct work that is distributed to an audience; (2) the extent to which the information typically conveyed by a source would be considered newsworthy; (3) a source's intent to disseminate information widely; (4) whether the source functions like traditional outlets known as "the news media," including the extent to which the conveyance of newsworthy information is the primary purpose or merely ancillary to some other purpose; and (5) whether the source could reasonably be described as "news media" as the term is used in everyday speech. *Integra Med Analytics LLC*, 2019 WL 3282619, at *11. Respondents dismiss this case as an unpublished "outlier," applying unique California law, *Respondents' Brief*, at 44, but several courts, including courts outside of California, have found its analysis persuasive.[12]

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[12] *See, e.g., City of San Diego v. Invitation Homes, Inc.*, No. 22-cv-260-L-MDD 2023 WL 35217, *3 (S.D. Cal. Jan. 3, 2023) (rental listing sites like Zillow were not the news media); *United States v. Valley Campus Pharmacy, Inc.*, No. 2:16-

The sources at issue here – that make data available to the public under specified conditions – are not "the news media" under the ordinary understanding of that phrase or by applying a functional test to assess whether they are similar to "the news media" as the legislature would have understood the phrase it chose. Information that would not have been considered "the news media" before the Internet does not became "the news media" because some members of the public may be able to access it from a computer.[13]

## III. THE FCA CONTEMPLATES ACTIONS BY OUTSIDER RELATORS AND SUCH ACTIONS ARE VERY VALUABLE

Chamber *amici* argue that this Court should affirm because in their view "professional relators" without "inside knowledge" are not appropriate *qui tam* relators under the FCA, *Chamber Brief*, at 3, 6-7, but they cite no statutory basis for that argument and there is none. The FCA authorizes any "person" to bring a case and contains no requirement that a relator be an "insider" (*e.g.*, have worked for or with the defendant), 31 U.S.C. § 3730(b). Moreover, relators who are not "insiders" have been instrumental in returning millions to the federal Treasury. This is consistent with the FCA's broad remedial purpose and Congress's efforts to enlist the citizenry in fighting fraud. S. Rep. No. 99-345, at 8.

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cv-04777-MCS-PLA, 2021 WL 4816648, *8 (C.D. Cal. June 23, 2021) (company website was not the news media); *United States ex rel. Kuriyan v. Molina Healthcare of New Mexico, Inc.*, No. 16-cv-1148-JB-KK, 2024 WL 4002950, *24 (D.N.M. Aug. 30, 2024) (report available on state website is not from "the news media"); *Louderback*, 703 F. Supp. 3d at 974 (company website was not "the news media.").

[13] *See, e.g., United States ex rel. Rosner v. WB/Stellar IP Owner, L.L.C.*, 739 F. Supp. 2d 396, 405, n.81 (S.D.N.Y. 2010) (observing in dicta that database on the NYC Department of Finance website is not the news media); *United States ex rel. Burke v. St. Jude Med., Inc.*, No. CV 16-3611-SAG, 2021 WL 6135202 (D. Md. Dec. 29, 2021) (company's device database is not the news media).

Unable to identify anything in the text of the FCA that limits it to "insiders," the Chamber *amici* stress their view of the purpose of the public disclosure provision, but that history is "opaque" and there is "no 'evident legislative purpose'" to guide the meaning of the precise words Congress used in describing the channels included in the public disclosure bar. *Graham*, 597 U.S. at 298-99; *Schindler,* 563 U.S. 412-13. There is no evidence Congress sought to exclude non-insider relators by extending the bar to all publicly available information.

There are countless examples of "non-insiders" who successfully pursued FCA cases on behalf of the Government. For example, in *United States ex rel. Shea v. Verizon Communications, Inc.*, 844 F. Supp. 2d 78, 80 (D.D.C. 2012), the relator was a telecommunications consultant who sued wireless carriers for overcharging the Government. The Government recovered $93.5 million, and the court recognized the relator's critical contributions. Indeed, "the Government had no recognition, prior to the filing of [the] lawsuit," it was being overcharged. *Id.* at 83.

As another example, a data-miner and a cardiac nurse together identified a widespread scheme to install medically unnecessary implantable cardioverter defibrillators—an expensive and potentially dangerous medical device. The relators' investigation and lawsuit led to 70 settlements involving 457 hospitals, and recoveries exceeding $250 million. *See* U.S. Dep't of Justice, *Nearly 500 Hospitals Pay United States More Than $250 Million to Resolve False Claims Act Allegations Related to Implantation of Cardiac Devices* (Oct. 30, 2015), https://www.justice.gov/opa/pr/nearly-500-hospitals-pay-united-states-more-250-million-resolve-false-claims-act-allegations. In another case, the relator was a businessman who, through independent investigation, determined that the defendant was supplying faulty lab tests to the Government, and filed a *qui tam* action. The case settled for $302 million. *See* Phillips & Cohen, *Businessman*

*Exposed Problems with Quest Subsidiary's Blood Test Kits; Led to $302 Million Settlement* (Apr. 15, 2009), https://www.phillipsandcohen.com/businessman-exposed-problems-questsubsidiarys-blood-test-kits-led-302-million-settlement. There are countless other examples. *See, e.g.*, https://www.phillipsandcohen.com/citymd-settles-false-claims-act/ (insured patient brought successful case against clinic that was charging federal government's uninsured program for COVID tests given to insured patients); *see also* https://sanfordheisler.com/case/whistleblower-qui-tam/invitation-homes/ (non-insider successfully resolved *qui tam* action under California FCA against corporate landlord for failure to obtain permits to avoid fees and tax increases). These non-insiders brought valuable information to the government's attention that the government would not necessarily have put together on its own.

## CONCLUSION

For the foregoing reasons, the Court should reverse.

Dated: December 4, 2025

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