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State of North Carolina

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March 23, 2010

VIA E-MAIL and U.S. MAIL

William K. Suter, Clerk  
Supreme Court of the United States  
One 1<sup>st</sup> Street, NE  
Washington, DC 20543

Re: *Graham County SWCD, et al. v. United States ex rel. Wilson*,  
U.S. Supreme Court, No. 08-304

Dear General Suter,

The present case, which was argued on November 30, 2009, involves the construction of the public disclosure bar of the False Claims Act, 31 U.S.C. § 3730(e)(4)(A). The question presented in the petition for certiorari is whether the public disclosure bar includes state administrative audits and reports or is limited to federal sources. Earlier today, the President signed The Patient Protection and Affordable Care Act, H.R. 3590. Relevant pages of this legislation are attached. This legislation amends the language of 31 U.S.C. § 3730(e)(4)(A). As amended by Section 10104(j)(2) of H.R. 3590, the public disclosure bar now reads:

(4)(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim 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,

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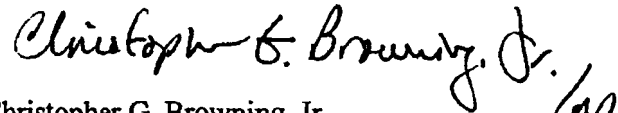
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unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either (1) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section.

The statute signed into law today does not purport to make the amendment to the public disclosure bar retroactive. Respondents therefore do not believe that this amendment impacts the outcome of the action before the Court. *See Hughes Aircraft Co. v. United States ex rel. Schumer*, 520 U.S. 939 (1997); *Landgraf v. USI Film Products*, 511 U.S. 244 (1994). Nevertheless, we wanted to bring this development to the Court's attention. I would appreciate you circulating my letter to the Justices.

Very truly yours,



Christopher G. Browning, Jr.  
North Carolina Solicitor General

CGBjr/dhm

Attachment

cc: Solicitor General Elena Kagan  
All Counsel of Record

***In the Senate of the United States,***

*December 24, 2009.*

*Resolved,* That the bill from the House of Representatives (H.R. 3590) entitled “An Act to amend the Internal Revenue Code of 1986 to modify the first-time homebuyers credit in the case of members of the Armed Forces and certain other Federal employees, and for other purposes.”, do pass with the following

**AMENDMENTS:**

Strike all after the enacting clause and insert the following:

1 *appropriate committees of Congress a report concerning the*  
2 *results of the study conducted under subsection (a).”.*

3 **SEC. 10104. AMENDMENTS TO SUBTITLE D.**

4 *(a) Section 1301(a) of this Act is amended by striking*  
5 *paragraph (2) and inserting the following:*

6 *“(2) INCLUSION OF CO-OP PLANS AND MULTI-*  
7 *STATE QUALIFIED HEALTH PLANS.—Any reference in*  
8 *this title to a qualified health plan shall be deemed*  
9 *to include a qualified health plan offered through the*  
10 *CO-OP program under section 1322, and a multi-*  
11 *State plan under section 1334, unless specifically pro-*  
12 *vided for otherwise.*

13 *“(3) TREATMENT OF QUALIFIED DIRECT PRI-*  
14 *MARY CARE MEDICAL HOME PLANS.—The Secretary of*  
15 *Health and Human Services shall permit a qualified*  
16 *health plan to provide coverage through a qualified*  
17 *direct primary care medical home plan that meets*  
18 *criteria established by the Secretary, so long as the*  
19 *qualified health plan meets all requirements that are*  
20 *otherwise applicable and the services covered by the*  
21 *medical home plan are coordinated with the entity of-*  
22 *fering the qualified health plan.*

23 *“(4) VARIATION BASED ON RATING AREA.—A*  
24 *qualified health plan, including a multi-State quali-*  
25 *fied health plan, may as appropriate vary premiums*

1            *nity outreach, and cultural competency*  
2            *trainings.”.*

3            *(h) Section 1311(i)(2)(B) of this Act is amended by*  
4            *striking “small business development centers” and inserting*  
5            *“resource partners of the Small Business Administration”.*

6            *(i) Section 1312 of this Act is amended—*

7                    *(1) in subsection (a)(1), by inserting “and for*  
8                    *which such individual is eligible” before the period;*

9                    *(2) in subsection (e)—*

10                            *(A) in paragraph (1), by inserting “and*  
11                            *employers” after “enroll individuals”; and*

12                            *(B) by striking the flush sentence at the end;*

13                    *and*

14                            *(3) in subsection (f)(1)(A)(ii), by striking the*  
15                    *parenthetical.*

16            *(j)(1) Subparagraph (B) of section 1313(a)(6) of this*  
17            *Act is hereby deemed null, void, and of no effect.*

18            *(2) Section 3730(e) of title 31, United States Code, is*  
19            *amended by striking paragraph (4) and inserting the fol-*  
20            *lowing:*

21                            *“(4)(A) The court shall dismiss an action or*  
22                            *claim under this section, unless opposed by the Gov-*  
23                            *ernment, if substantially the same allegations or*  
24                            *transactions as alleged in the action or claim were*  
25                            *publicly disclosed—*

1           “(i) in a Federal criminal, civil, or admin-  
2           istrative hearing in which the Government or its  
3           agent is a party;

4           “(ii) in a congressional, Government Ac-  
5           countability Office, or other Federal report, hear-  
6           ing, audit, or investigation; or

7           “(iii) from the news media,  
8           unless the action is brought by the Attorney General  
9           or the person bringing the action is an original  
10          source of the information.

11          “(B) For purposes of this paragraph, “original  
12          source” means an individual who either (i) prior to  
13          a public disclosure under subsection (e)(4)(a), has vol-  
14          untarily disclosed to the Government the information  
15          on which allegations or transactions in a claim are  
16          based, or (2) who has knowledge that is independent  
17          of and materially adds to the publicly disclosed alle-  
18          gations or transactions, and who has voluntarily pro-  
19          vided the information to the Government before filing  
20          an action under this section.”.

21          (k) Section 1313(b) of this Act is amended—

22                 (1) in paragraph (3), by striking “and” at the  
23                 end;

24                 (2) by redesignating paragraph (4) as para-  
25                 graph (5); and