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Government Investigations & White Collar Alert

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Supreme Court embraces expansive definition of "claims" under False Claims Act

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The Supreme Court unanimously ruled that False Claims Act liability may attach to funds provided and administered, in substantial part, by private entities.

What's the impact?

- Companies that participate in programs where the federal government provides even de minimis funding should understand that they are subject to investigations and enforcement actions under the False Claims Act.
- The broad definition of "claim" embraced by the Supreme Court may support the Trump administration's attempts to reshape what the government considers "material" to the receipt of government funding.
- Two justices signaled renewed interest in hearing a constitutional challenge to the False Claims Act's *qui tam* provisions, which empower private citizens to bring claims on behalf of the federal government.

On February 21, 2025, the United States Supreme Court ruled unanimously in *Wisconsin Bell, Inc.* v. *United States Ex rel. Heath* that telecommunications companies participating in the federal E-

Rate program, which is run by the Federal Communications Commission (FCC) and supports school and library wireless connectivity, could be sued for excess payouts under the federal False Claims Act because E-Rate funds are provided, in part, through the US Treasury.

The E-Rate program

The "E-Rate" (short for Education-Rate) program, established under the Telecommunications Act of 1996, subsidizes internet and other telecom services for schools and libraries across the United States. To finance the subsidies, Congress required private telecommunications companies to pay into a funding pool (the Fund) administered by another private company, the Universal Service Administrative Company (the USAC).

The USAC collects and distributes the resulting funds to beneficiaries in accordance with regulations promulgated by the FCC. Those regulations impose upon carriers a rule called the "lowest corresponding price" rule, which prohibits carriers from charging schools and libraries more than what they would charge a "similarly situated" non-residential customer. Once an appropriate charge is set, a school can obtain its subsidy by paying the carrier a discounted price and requiring the carrier to seek the remainder from the Fund, or by paying the carrier's full freight and then applying for reimbursement from the Fund.

Under the False Claims Act, private individuals may sue on the federal government's behalf when they believe that the government is being defrauded.[1] Such individuals are known as "relators" and if the lawsuit is successful, the relator may recover a portion of the damages. This statutory scheme is designed to incentivize private individuals to act as whistleblowers and come forward when they believe that fraud is occurring against the federal government.

SCOTUS tackles E-Rate FCA question: What is a "claim?"

Todd Heath, an auditor for telecommunications services, sued Wisconsin Bell, a subsidiary of AT&T, for allegedly defrauding the E-rate program from 2002–2015 by charging rates far above what would be permitted under the lowest corresponding price rule. Heath argued that this led to reimbursement requests for amounts higher than the E-Rate program should have paid. Wisconsin Bell filed a motion to dismiss on the theory that the request for reimbursement was not a "claim" within the meaning of the False Claims Act because (1) the money being handled, in its view, was all from private carriers who contributed to the Fund and (2) the money was handled by the USAC, which is a private company, not a governmental entity. The district court denied the motion to dismiss, and the Seventh Circuit affirmed that decision.

The Supreme Court, in a unanimous opinion written by Justice Elena Kagan, affirmed those rulings. The Court stated that the question presented by this case is whether an E-Rate

[1] See *United States ex rel. Polansky v. Executive Health Resources, Inc.*, 599 U.S. 419, 424–26 (2023).

reimbursement request is a claim that can give rise to False Claims Act liability. The Court said the reimbursement request qualifies as a "claim" because the money in the Fund is, at least in part, provided by the government. Moreover, the reimbursement request requires the government to "provide . . . the money" requested by the telecom company pursuant to the E-rate program.[2] The Court held that because the reimbursement request under the E-rate program is a "claim," it can be a false claim that gives rise to a False Claims Act suit.

The Court rested its decision on the fact that the US Treasury had put approximately $100 million dollars into the Fund during the relevant period. The Court found that the money had come from two public sources: the collection of delinquent contributions by carriers, and Justice Department enforcement activities. Because it was the government, through the US Treasury, that "provided [a] portion of the money" disbursed from the Fund to subsidize E-Rate program participants, a reimbursement request could be considered a claim pursuant to the False Claims Act.

It was irrelevant that the money the Treasury Department provided did not come from the collection of taxes. "[T]he basic mechanism [for government funding] remains the same: the government collects money and then furnishes it for some use. And so it was here in the years relevant to Heath's FCA suit." The Court affirmed the rulings of the district court and the Seventh Circuit denying Wisconsin Bell's motion to dismiss, and so now the lawsuit by Heath will move forward in the district court.

Justice Thomas wrote a concurring opinion that was joined by Justice Kavanaugh and in part by Justice Alito. Justice Thomas had no objection to the majority's reasoning on the question presented but noted two questions that may be raised in future cases. First, whether the government "provides" money that it requires private carriers to contribute to the E-Rate program. Second, whether the E-Rate program's administrator is an agent of the United States. The concurrence may be a signal by Justice Thomas that he thinks there may be other issues with the government's theory in this case, but those questions were not presented. Justice Thomas has been the most vocal member of the Court in expressing skepticism about the *qui tam* provisions that allow relators to bring claims on behalf of the government, stating in his dissent in *Polansky*, "[t]here is good reason to suspect that Article II does not permit private relators to represent the United States' interests in FCA suits."[3]

Justice Kavanaugh wrote a one paragraph concurrence, joined by Justice Thomas. In his concurrence, he stated that the *qui tam* provisions of the False Claims Act "raise substantial constitutional questions under Article II." Justice Kavanaugh previously raised this concern in his *Polansky* concurrence, which was joined by Justice Barrett. Kavanaugh's *Polansky* concurrence expressed support for the arguments Justice Thomas referenced in his dissent that "the *qui tam* device is inconsistent with Article II and that private relators may not represent the interests

[2] 31 U.S.C. § 3729(b)(2)(A)(ii)(I).

[3] 599 U.S. at 451 (Thomas, J., dissenting).

of the United States in litigation."[4] This indicates that Justices Thomas, Kavanaugh, and Barrett would entertain a constitutional challenge to the False Claims Act's *qui tam* provisions.

Meanwhile, Attorney General Pam Bondi assured Senator Chuck Grassley during her January 15, 2025 confirmation hearing that she would defend the constitutionality of the entire False Claims Act. And in remarks last week, Deputy Assistant Attorney General Michael Granston called the False Claims Act a "permanent fixture" of the government's efforts to combat fraud and abuse.

Prioritize compliance to reduce False Claims Act risk

It is too early to say what the long-term effects of this decision may be, given the particularized nature of the E-rate program and the concurrences in this case that raise other questions about the False Claims Act. However, companies should be aware that financial connections with government programs, even those that may seem tenuous or immaterial, can implicate the False Claims Act. Companies should also be aware that False Claims Act liability can arise from conduct that occurred many years in the past, as it did in this case.

Companies need to have effective compliance programs to detect, prevent, and mitigate fraudulent conduct. The False Claims Act Team at Nixon Peabody will continue to monitor the ramifications of this decision and are available to advise companies as needed on these matters.

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[4] *Id.* at 442 (Kavanaugh, J., concurring).