No. 23-1127

In the Supreme Court of the United States

WISCONSIN BELL, INC., PETITIONER

v.

UNITED STATES, EX REL. TODD HEATH

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether a request for funds under the Federal Communications Commission's E-Rate program is a "claim" within the meaning of the False Claims Act, 31 U.S.C. 3729 *et seq.*

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INTEREST OF THE UNITED STATES

This case presents the question whether a request for funds under the E-Rate program is a "claim" under the False Claims Act, 31 U.S.C. 3729 *et seq.* The United States has a substantial interest in the proper interpretation of that statute, which is the primary mechanism through which the government recoups losses suffered because of fraud. The United States also has a substantial interest in the effective operation of the E-Rate program, which serves important federal objectives and is overseen by the Federal Communications Commission.

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix. App., *infra*, 1a-8a.

STATEMENT

A. Background

1. The core mission of the Federal Communications Commission (FCC or Commission) includes promoting universal service—that is, ensuring that "all the people of the United States" have access to telecommunications services "at reasonable charges." 47 U.S.C. 151. To that end, the Telecommunications Act of 1996 (Telecommunications Act), Pub. L. No. 104-104, 110 Stat. 56, directs the Commission to establish a set of universal service programs, which are financed by the Universal Service Fund (USF or Fund). See 47 U.S.C. 254.

The statute requires certain telecommunications carriers to contribute to the Fund in accordance with the FCC's rules. See 47 U.S.C. 254(d). Each carrier must contribute a percentage of its revenues every quarter. See 47 C.F.R. 54.709(a). The Commission fixes the percentage based on the carriers' projected revenues and the Fund's projected expenses. See *ibid.* In order to collect those funds, the Commission, the Department of the Treasury, and the Department of Justice pursue carriers that fail to pay their contributions. See J.A. 38.

The Fund in turn pays for multiple programs, including the schools and libraries universal service support program. See 47 U.S.C. 254(b)(6). That program, which is more commonly known as the E-Rate (or Education-Rate) program, subsidizes internet access and other services for schools and libraries. See 47 C.F.R. 54.500 *et seq.* A school or library that seeks funds under the program must first solicit competitive bids from telecommunications carriers. See 47 C.F.R. 54.503. A carrier's bid and ultimate charge must not exceed the "lowest price" that the carrier charges to "similarly situ-

ated" "non-residential customers." 47 C.F.R. 54.500; see 47 C.F.R. 54.511(b). A school or library may either (1) pay the full price to the carrier up front and itself seek reimbursement from the Fund or (2) pay a discounted price to the carrier, in which case the carrier will seek reimbursement. See 47 C.F.R. 54.505, 54.514.

2. In 1997, the Commission directed that the Universal Service Administrative Company (USAC or Company) be created to help the FCC administer the Fund. See *In re Changes to the Board of Directors of the National Exchange Carrier Ass'n*, 12 FCC Rcd 18,400, 18,418-18,419 (1997). USAC is a private, not-for-profit corporation chartered in Delaware. See J.A. 34.

USAC is subject to the Commission's oversight and control. See J.A. 22. Its sole stockholder, an association of carriers, must "act in compliance with the [FCC's] Rules and Orders when exercising its stockholder duties and powers." Amended and Restated By-Laws of Universal Service Administrative Company, Art. I, ¶ 1 (rev. Jan. 26, 2024). FCC rules identify the groups represented on the Company's Board of Directors (*e.g.*, consumers, carriers, schools, and libraries), and the FCC Chair selects directors after reviewing nominations from those groups. See 47 C.F.R. 54.703(c). The FCC must also approve the Company's budget. See 47 C.F.R. 54.715(c).

The FCC has "appointed" the Company as the Fund's "Administrator." 47 C.F.R. 54.701(a). The Administrator provides financial projections that the Commission uses in computing the quarterly universal service contributions. See 47 C.F.R. 54.709. The Administrator also sends out bills and collects contributions. See 47 C.F.R. 54.702(b). Finally, the Administrator dis-

burses money to program beneficiaries in accordance with FCC rules. See *ibid.*

While the Administrator performs ministerial tasks on the FCC's behalf, it exercises no independent regulatory power. The Administrator "may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress." 47 C.F.R. 54.702(c). Any party aggrieved by its decisions may request de novo review by the Commission. See 47 C.F.R. 54.719-54.725.

B. Proceedings Below

1. This case arises under the False Claims Act, 31 U.S.C. 3729 *et seq.* (FCA or Act). The FCA was enacted during the Civil War in order to protect federal funds and property from fraud. See *United States ex rel. Polansky* v. *Executive Health Resources, Inc.*, 599 U.S. 419, 424 (2023). As relevant here, the Act imposes civil liability—treble damages and civil penalties—upon anyone who knowingly presents, or knowingly makes a false statement material to, a "false or fraudulent claim." 31 U.S.C. 3729(a)(1)(A). Civil suits may be brought not only by the government, but also by private persons suing in the government's name. See 31 U.S.C. 3730(a) and (b). Such private plaintiffs are known as relators, and their suits are known as qui tam actions. See *Polansky*, 599 U.S. at 424. The government and relator share any monetary recovery in a qui tam action. See 31 U.S.C. 3730(d).

Respondent Todd Heath filed this qui tam suit against petitioner Wisconsin Bell in the U.S. District Court for the Eastern District of Wisconsin. See Pet. App. 51a. He alleged that petitioner had provided services under the E-Rate program, yet had breached the requirement to charge schools and libraries no more

than the lowest price that it charged similarly situated customers. See *id.* at 53a. Respondent further alleged that petitioner had submitted reimbursement requests that falsely certified petitioner's compliance with that requirement. See *ibid.*

Petitioner moved to dismiss the suit on the ground that reimbursement requests submitted to the Administrator under the E-Rate program are not "claims" subject to the Act. See J.A. 46. Congress defined the term "claim" in 1986 and amended the definition in 2009. See False Claims Amendments Act of 1986, Pub. L. No. 99-562, § 2, 100 Stat. 3154; Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, § 4(a), 123 Stat. 1622-1623. Because this case involves both pre- and post-2009 conduct, both the pre-2009 and current definitions are pertinent here. See Pet. App. 22a. Under both, the term "claim" includes a request for money or property if the federal government "provides" "any portion of the money or property" and if the request satisfies certain additional requirements. 31 U.S.C. 3729(b)(2)(A)(ii)(I); see 31 U.S.C. 3729(c) (2006). The current definition, though not the pre-2009 version, also specifically encompasses payment requests presented to an "agent of the United States," without imposing any further requirement as to the source of the funds. 31 U.S.C. 3729(b)(2)(A)(i).

The district court denied the motion to dismiss. J.A. 44-52. The court determined that petitioner's reimbursement requests were "claim[s]" under both the current and pre-2009 definitions of that term because the United States provides the money that is disbursed by the Fund. See J.A. 45-50. The court also held, in the alternative, that the requests were "claims" under the current definition because the entity to which they are

presented, the Administrator, is an "agent" of the United States. See J.A. 50.

The district court later granted summary judgment to petitioner on other grounds that are not at issue here. See Pet. App. 51a-60a.

2. The Seventh Circuit reversed the district court's grant of summary judgment and remanded. See Pet. App. 1a-31a. As relevant here, petitioner asked the court of appeals to affirm the district court's judgment on the alternative ground that petitioner's E-Rate reimbursement requests were not "claims" subject to the FCA. See *id.* at 19a. The court rejected that alternative argument. See *id.* at 19a-31a.

The court of appeals held that petitioner's reimbursement requests were "claim[s]" under both the current and pre-2009 definitions because the government provides the money disbursed by the Fund. See Pet. App. 22a-23a, 25a-31a. Highlighting the "high degree of government involvement" in the E-Rate program, the court held that the government provides all the money disbursed by the Fund. *Id.* at 27a; see *id.* at 25a-31a. And noting that the Treasury deposits some money directly into the Fund, the court held that, at a minimum, the government provides a portion of the money disbursed by the Fund. See *id.* at 22a-23a.

The court of appeals also held that the post-2009 reimbursement requests additionally qualify as "claim[s]" under the current definition because the Administrator is an "agent of the United States." See Pet. App. 24a-25a. The court explained that the Administrator's relationship with the FCC possesses the traditional elements of an agency relationship: Both entities had manifested their assent that the Administrator would act on

the Commission's behalf and subject to the Commission's control. See *ibid.*

SUMMARY OF ARGUMENT

The FCA defines the term "claim" in sweeping terms. For two independent reasons, E-Rate reimbursement requests fall comfortably within that definition.

A. Under clause (ii) of the FCA definition, a request for money is a "claim" if the government "provides" "any portion" of the money and the request meets additional criteria that are not in dispute here. 31 U.S.C. 3729(b)(2)(A)(ii)(I). Here, the government "provides" *all* the money in the Fund, including all the money in the E-Rate program, by making the money available to the Administrator. The government requires telecommunications carriers to contribute the money, and the government decides how the collected funds should be allocated. In substance, E-Rate funds work like other subsidies provided by the government.

It makes no difference that the government acquires E-Rate program funds through universal service contributions from private payers. The government often raises revenue from private sources, including through taxes, fees, and penalties. The government "provides" money when it spends or transfers funds so acquired, even though the money originated in private hands. And while most of the money contributed by carriers goes directly to the Administrator rather than passing through any government account, the government "provides" that money by creating the E-Rate program and by specifying who must contribute and in what amounts.

At a minimum, the government "provides" a "portion" of the money that the Administrator uses to pay E-Rate reimbursements. 31 U.S.C. 3729(b)(2)(A)(ii)(I). During the years in which petitioner submitted the pay-

ment requests at issue here, the Commission, the Department of the Treasury, and the Department of Justice collected more than $100 million in contributions, interest, and penalties from delinquent carriers; held the money in Treasury accounts; and then deposited the money in the Fund. On any plausible interpretation, the government "provided" that money.

Petitioner argues that the money in the Fund belongs to the Company rather than the government. But the Act applies "whether or not the United States has title to the money" that a claimant requests. 31 U.S.C. 3729(b)(2)(A). And in any event, money held in the Fund does belong to the government. Congress has appropriated money from the Fund; the President accounts for it in his annual budget; and the Commission accounts for it in its financial statements. Even USAC, which petitioner regards as the Fund's rightful owner, has acknowledged that the money in the Fund belongs to the government.

B. Under clause (i) of the FCA definition, a request for money is a "claim" if it is presented to an "agent of the United States." 31 U.S.C. 3729(b)(2)(A)(i). An agency relationship arises if two entities manifest assent that one will act on the other's behalf and subject to its right of control. The FCC and USAC manifested such assent when the Commission appointed the Company to be the Fund's Administrator and the Company accepted the appointment. The Administrator acts on the Commission's behalf by billing contributors and disbursing funds. As the Administrator has acknowledged, the FCC also retains the right to control the Administrator's performance of those duties. The Administrator is therefore an agent of the United States.

Petitioner argues that the Administrator lacks power to make decisions that bind the government. But the power to bind the principal is not an essential attribute of an agent. Petitioner also argues that the FCC lacks power to control the Administrator's actions. That argument both overstates the degree of control that an agency relationship requires and understates the degree of control that the Commission exercises over the Administrator.

C. Petitioner briefly argues that adopting its reading of the term "claim" would avoid constitutional concerns with qui tam actions. But the constitutional-avoidance canon is a tool for resolving statutory ambiguity, and the plain terms of the FCA's "claim" definition encompass requests for E-Rate reimbursement. In any event, because the scope of the FCA term "claim" has no logical bearing on whether the Act's qui tam provisions are constitutional, adopting petitioner's reading of that term would impede the *government's* ability to combat fraud against the E-Rate program without actually avoiding any constitutional issue.

ARGUMENT

E-RATE REIMBURSEMENT REQUESTS ARE "CLAIMS" WITHIN THE MEANING OF THE FCA

The FCA imposes civil liability upon a person who knowingly presents, or knowingly makes a false statement material to, a "false or fraudulent claim." 31 U.S.C. 3729(a)(1)(A) and (B). Since 2009, the Act has defined "claim" as follows:

> [A]ny request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

> (i) is presented to an officer, employee, or agent of the United States; or
>
> (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—
>
> (I) provides or has provided any portion of the money or property requested or demanded; or
>
> (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded[.]

31 U.S.C. 3729(b)(2)(A).

That definition sweeps broadly. It begins with the expansive word "any." And it uses the word "or" 19 times, identifying multiple alternative ways in which a request can qualify as a claim. Cf. *Encino Motorcars, LLC* v. *Navarro*, 584 U.S. 79, 88 (2018) ("[T]he entire exemption bespeaks breadth. It begins with the word 'any.' And it uses the disjunctive word 'or' three times.") (citation omitted).

The definition's broad text reflects the FCA's broad purpose. "Congress was concerned about pervasive fraud in 'all Government programs.'" *Cook County* v. *United States ex rel. Chandler*, 538 U.S. 119, 133 (2003) (citation omitted). In particular, Congress declined to limit the Act's scope based on "the particular form, or function, of the government instrumentality upon which [the] claims were made," *Rainwater* v. *United States*, 356 U.S. 590, 592 (1958), or "the bookkeeping devices used for [the funds'] distribution," *United States ex rel. Marcus* v. *Hess*, 317 U.S. 537, 544 (1943).

The definition's history underscores its breadth. Congress first defined the term "claim" in 1986, as part of wide-ranging FCA amendments enacted "to strengthen the Government's hand in fighting false claims." *Chandler*, 538 U.S. at 133-134. And Congress expanded the definition in 2009 because it believed that the Act's "effectiveness" had been "undermined by court decisions limiting the scope of the law." S. Rep. No. 10, 111th Cong., 1st Sess. 10 (2009) (2009 Senate Report).

For two independent reasons, the definition of "claim" encompasses E-Rate reimbursement requests. First, the government "provides" the requested money, or at least a "portion" of the requested money. Second, the entity to which the requests are presented, the Administrator, is an "agent of the United States."

A. Under Clause (ii) Of The Statutory Definition, E-Rate Reimbursement Requests Are "Claims" Because The Government "Provides" The Requested Money

Under clause (ii) of the FCA's definition, a request for money is a "claim" if (1) the request "is made to a contractor, grantee, or other recipient"; (2) the money "is to be spent or used on the Government's behalf or to advance a Government program or interest"; and (3) the government "provides or has provided any portion of the money * * * requested or demanded." 31 U.S.C. 3729(b)(2)(A)(ii)(I). Petitioner does not dispute that the first two of those requirements are satisfied here. The only disputed question under this clause of the FCA definition is whether the government "provides" "any portion of the money." *Ibid.* It does.*

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* The pre-2009 definition of "claim" similarly includes a request "made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property

1. The government provides E-Rate money because the government compels the collection, specifies the amounts, and controls the distribution of universal service contributions

a. Because the Act does not define the term "provides," a court should interpret that term in accordance with its ordinary meaning. See *Encino Motorcars*, 584 U.S. at 85. In ordinary usage, "[t]o 'provide' means to supply, furnish, or make available." *Little Sisters of the Poor Saints Peter & Paul Home* v. *Pennsylvania*, 591 U.S. 657, 676 (2020); see *The American Heritage Dictionary* 1411 (4th ed. 2000); 12 *The Oxford English Dictionary* 713 (2d ed. 1989); Pet. Br. 19.

The government supplies, furnishes, or makes available all the money that is deposited in the Fund, including all the money that is used to pay E-Rate reimbursements. A federal statute requires telecommunications carriers to contribute to the Fund, see 47 U.S.C. 254(d), and the FCC sets the amount of the required contributions by fixing the percentage of quarterly revenues that carriers must pay, see 47 C.F.R. 54.709(a). Delinquent contributors incur penalties and face enforcement efforts by the Commission, the Department of the Treasury, and the Department of Justice. See 31 U.S.C. 3711, 3716, 3717; 47 C.F.R. 54.713.

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which is requested." 31 U.S.C. 3729(c) (2006). Petitioner makes no separate argument under that definition, instead accepting that, if the government "provides" E-Rate funds within the meaning of the current statute, it also "provides" them within the meaning of the pre-2009 statute. See Pet. Br. 17-33. This brief accordingly focuses on the current definition. Cf. *Universal Health Services, Inc.* v. *United States*, 579 U.S. 176, 185 n.1 (2016) ("Universal Health does not argue, and we thus do not consider, whether pre-2009 conduct should be treated differently.").

The government not only raises the money that is deposited in the Fund, but also decides how to spend it. Congress has identified the broad purposes for which the Fund may be used, including ensuring that "schools" and "libraries" have "access to advanced telecommunications services." 47 U.S.C. 254(b)(6). The Commission has filled in the details by establishing the E-Rate program and other universal service programs. See 47 C.F.R. 54.1 *et seq.* The Commission's rules on the E-Rate program specify who may participate, how much money a participant may receive, what a participant must do to get the money, and what a participant may use the money for. See 47 C.F.R. 54.500 *et seq.* Thus, as in other federal spending programs, the government raises the funds used to support the E-Rate program (by requiring telecommunications carriers to pay universal service contributions) and decides how to spend those funds (on subsidies to schools and libraries).

This Court's decision in *United States* v. *American Library Ass'n*, 539 U.S. 194 (2003), reinforces that understanding. There, libraries challenged a federal statutory provision that required them, as a condition of receiving E-Rate funds, to install software that blocks pornographic images from computers. See *id.* at 198-199 (plurality opinion). A plurality of the Court described E-Rate funds as "federal funds," determined that Congress had exercised its "Spending Power" in granting the funds, and reviewed the challenged statutory provision under the doctrinal framework that governs "condition[s] on the receipt of federal assistance." *Id.* at 203 & n.2, 210. Other Justices applied the same framework. See *id.* at 215 (Breyer, J., concurring in the judgment) ("conditions for" the receipt of certain Government subsidies"); *id.* at 225 (Stevens, J., dissenting)

("conditions [on] the receipt of Government funding"); *id.* at 234 (Souter, J., dissenting) ("the Government's funding conditions"). The Court's analysis reinforces the conclusion that the government "provides" E-Rate funds, just as it provides other federal subsidies.

b. Petitioner argues (Br. 28) that the government does not "provide" the money that is used for E-Rate reimbursements because the E-Rate program is "financed by private contributions" from carriers. In ordinary usage, however, a person who makes something available "provides" it, no matter how he obtained it in the first place. A university that awards a scholarship "provides" the student with money, regardless of whether it funds the scholarship through endowment earnings, government grants, alumni donations, sports revenues, or tuition payments from other students.

That interpretation is especially apt in the context of a statutory provision that is triggered when *the government* provides money. The government routinely raises revenue from private sources—most notably, through taxation. Yet petitioner does not dispute that the government "provides" money when it spends tax dollars.

Petitioner emphasizes (Br. 28-29) that Congress has classified payments to the Fund as "contributions" rather than as taxes. 47 U.S.C. 254(b)(4). But governments have long raised revenue from private parties through means other than taxation. Blackstone explained that "the King's revenue" included not only "taxes," but also "fees," "fines," "forfeitures," "escheats," "rents and profits" of public lands, and "post-office" revenues. 1 William Blackstone, *Commentaries on the Laws of England* 271, 276, 279, 292, 298, 311, 321 (1765). The government "provides" money when it spends such non-tax revenue, even though it originally obtained the

money from private sources. The government likewise "provides" money when it requires carriers to pay universal service contributions.

Petitioner notes (Br. 30) that, "[w]hen the Post Office delivers a birthday card with a $20 bill inside, no one would doubt that grandma—not the government—provides the cash." True enough, but only because it was the grandmother who decided to send the money. Carriers, by contrast, cannot choose whether to pay universal service contributions. The government requires them to pay, specifies the amounts they owe, pursues them if they fail to pay, and decides how to spend the money they pay. The government therefore "provides" the money that is disbursed in programs funded by the contributions.

Petitioner also argues that reading the FCA term "provides" so broadly would render superfluous the statute's separate references to money the government "has provided" and money it "will reimburse." Br. 24-25 (citations omitted). That is incorrect. The quoted language shows that the Act applies regardless of whether the government makes money available as it is paid out by the intermediary ("provides"), before it is paid out ("has provided"), or after it is paid out ("will reimburse"). Perhaps Congress could have conveyed the same meaning by using the word "provides" alone, but using all three tenses removes any doubt. Congress added the language in 2009 in response to a 2004 court decision emphasizing that the definitional provision then in effect used "the present-tense 'provides'" but not "the past-tense 'has provided.'" *United States ex rel. Totten* v. *Bombardier Corp.*, 380 F.3d 488, 493 (D.C. Cir. 2004), cert. denied, 544 U.S. 1032 (2005); see 2009 Senate Report 10.

c. Petitioner also appears to attach significance (Br. 14, 19, 22) to the fact that, unlike taxes and many other monetary assessments, most of the money contributed by private carriers under the E-Rate program goes directly from the carriers to the Administrator without passing through any government account. That arrangement reflects the fact that E-Rate contributions are required to be used for specified purposes and are not treated as part of general revenues. That feature of the program does not alter the conclusion that the government "provides" the E-Rate funds that are received and disbursed by the Administrator.

A person who wished to donate goods to a school, for example, could naturally be said to "provide" those goods by ordering them from the manufacturer and specifying that they should be sent directly to the school. Neither the economic substance of the transaction, nor the donor's status as a "provider" of the goods, would depend on whether the donor obtained temporary possession of the goods along the way. The same analysis applies here. Indeed, this approach is especially appropriate under the FCA, given the Act's longstanding focus on economic substance rather than bookkeeping form. See p. 10, *supra*.

2. The government provides at least a "portion" of E-Rate money because federal agencies deposit money in the Fund

For the reasons stated above, the government is properly viewed as "providing" *all* of the money that is deposited in the Fund and disbursed to participants in the E-Rate program. The Court need not reach that conclusion, however, to hold that a request for E-Rate funds is a "claim" within the meaning of the FCA. A request for payment is a "claim" under clause (ii) of the

statutory definition if the government provides "*any portion* of the money or property requested." 31 U.S.C. 3729(b)(2)(A)(ii)(I) (emphasis added). "So long as '*any portion*' of the claim is or will be funded by U.S. money," "the full claim satisfies the definition of claim." *United States ex rel. DRC, Inc.* v. *Custer Battles, LLC*, 562 F.3d 295, 303 (4th Cir. 2009).

During the years relevant to this case, 2003 to 2015, the U.S. Treasury deposited more than $100 million directly in the Fund. See Pet. App. 23a. The Commission and the Treasury Department collected approximately half that money in contributions, interest, and penalties from delinquent contributors. See J.A. 38. The Justice Department collected the other half through restitution payments and settlements in criminal and civil cases. See *ibid.* The Commission, the Treasury Department, and the Justice Department held those sums in Treasury accounts before depositing them in the Fund. See J.A. 41-43. On any plausible reading of the word "provide," the government "provided" at least a "portion" of the money used to pay E-Rate reimbursements.

Petitioner argues (Br. 31) that the government did not "provide" even the sums described above because the government "merely collected and held that money for the benefit of the Administrative Company." But the government's obligation to transmit the collected funds to the Administrator simply reflects the legal requirement that E-Rate contributions be used for specified purposes. It does not alter the government's status as the "provider" of money it collects and transmits.

3. The FCA can apply to requests for money that the government does not own, and the government in any event owns the money in the Universal Service Fund

Petitioner contends (Br. 30, 32) that a request for payment can qualify as an FCA "claim" only if the request seeks "the government's own money" or if the fraud poses a "risk of financial loss to the government." Petitioner argues (Br. 33) that E-Rate reimbursement requests fail that test because the Fund's "rightful owner" is not the government, but "the Administrative Company." Each step of that argument is incorrect.

a. The determination whether the government "provides" particular funds does not logically depend on whether the government owns the money that is requested or will suffer a financial loss if the funds are misused. A person can "provide" something he does not own, as when a waiter provides a diner with utensils owned by the restaurant. Consistent with that understanding, the FCA's definition of "claim" states that the definition applies "whether or not the United States has title to the money or property." 31 U.S.C. 3729(b)(2)(A). That language, added as part of the 2009 amendments, appears at the beginning of the definition of "claim" and controls the entire definition, including clause (ii), which applies specifically to requests for funds "provided" by the government. That language forecloses any argument that clause (ii) applies only when the government owns the requested funds or stands to lose its own money.

The FCA's history confirms that understanding. Before the 2009 amendments, a district court had held that the Act did not apply to a fraudulent request for "Iraqi funds administered by the U.S. Government" "during the reconstruction of Iraq." 2009 Senate Report 12.

The court stated that the fraudulent request "was not a demand for payment from U.S. government money that caused financial loss to the federal fisc." *United States ex rel. DRC, Inc.* v. *Custer Battles, LLC*, 376 F. Supp. 2d 617, 646 (E.D. Va. 2005), rev'd in part, 562 F.3d 295 (4th Cir. 2009). Lawmakers believed that "this result [wa]s inconsistent with the spirit and intent" of the FCA, and they amended the Act to ensure that it would apply "without regard to whether the United States holds title to the funds." 2009 Senate Report 12-13. Petitioner's reading would revive the limitation that Congress rejected. Compare *DRC*, 376 F. Supp. at 646 ("financial loss to the federal fisc"), with Pet. Br. 43 ("expose the public fisc to any risk of financial loss").

Petitioner cites (Br. 25) this Court's statement that the FCA protects "the funds and property of the Government." *Rainwater*, 356 U.S. at 592. But the Court made that statement in 1958, more than a quarter century before Congress added the definition of "claim" in 1986 and more than half a century before Congress amended the definition in 2009. The Court's shorthand description of a prior version of the FCA sheds little light on the scope of the Act's coverage today.

Petitioner also argues (Br. 13) that the Act's purpose is "to protect the public fisc." But arguments concerning a statute's purposes cannot overcome the statute's text, and the text here makes plain that a request for payment can constitute a "claim" under the FCA "whether or not the United States has title" to the requested funds. 31 U.S.C. 3729(b)(2)(A). While the Act's *primary* purpose is to protect the public fisc, the Act also seeks to protect the "integrity" of government programs. S. Rep. No. 345, 99th Cong., 2d Sess. 3 (1986) (1986 Senate Report). "Even in the cases where there

is no dollar loss," fraud in such programs "erodes public confidence." *Ibid.* And even when the affected funds are "not U.S. Government funds," fraud can "harm the * * * objectives of the Government." 2009 Senate Report 12-13.

For example, Congress may provide lump-sum grants to States on the condition that the money will be used for specified purposes or to assist specified classes of beneficiaries. If false claims made to state officials cause those funds to be diverted from their intended uses, the achievement of Congress's objectives will be thwarted, even if the amount of the federal outlay is unchanged. Indeed, the definition of "claim" set forth in the 1986 FCA amendments was intended to clarify that fraud against federal grantees is actionable under the Act "whether the grant obligation is open-ended or fixed," and to repudiate a then-recent judicial decision holding that such fraud is actionable only if it causes the federal government to pay out greater sums than it otherwise would have. 1986 Senate Report 15; see *id.* at 22; *United States* v. *Azzarelli Construction Co.*, 647 F.2d 757, 761 (7th Cir. 1981) (distinguishing for this purpose between "fixed sum" and "open-ended" federal grant programs). Here, if the Administrator is induced by fraud to make E-Rate payments to entities that do not satisfy the governing legal requirements, the integrity of the E-Rate program will be compromised even if the total amount expended from the public fisc is unaffected.

Contrary to petitioner's contention (Br. 3), a court need not infer a "public fisc" element in order to prevent the FCA from becoming "an all-purpose fraud statute." The Act already includes textual limits that guard against that risk. A request qualifies as a "claim" under clause (ii) of the definition only "if the money or prop-

erty is to be spent or used on the Government's behalf or to advance a Government program or interest." 31 U.S.C. 3729(b)(2)(A)(ii)(I). The FCA therefore would not apply if, for example, a U.S. Marshal collects a judgment for a plaintiff and someone then submits a fraudulent request to that plaintiff. Contra Chamber of Commerce Amicus Br. 21. In that scenario, the Marshal does not expect or intend that the plaintiff will spend the money to further any federal objective; the plaintiff is free to spend it for her own purposes.

b. In any event, the government owns the money in the Fund, and the government suffers financial loss when E-Rate program participants deplete the Fund through fraud.

Congress has treated the money in the Fund as the government's. It has appropriated money "from the Universal Service Fund" to pay for federal oversight of the Fund. Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, Div. D, Tit. V, 121 Stat. 1998. And the Government Accountability Office, a legislative-branch agency, has determined that the Fund is a "permanent indefinite appropriation (*i.e.*, funding appropriated or authorized by law to be collected and available for specified purposes without further congressional action)." GAO, *Telecommunications: Greater Involvement Needed by FCC in the Management and Oversight of the E-Rate Program*, GAO-05-151, at 14 (Feb. 2005).

The Executive shares Congress's understanding. The President reports the Fund's balance and projected expenses in his yearly budget, and the FCC accounts for universal service contributions in its financial statements. See J.A. 17. The Commission also seeks to recoup money that has been wrongly disbursed from the Fund. See, *e.g.*, *In re Changes to the Board of Directors*

of the National Exchange Carrier Ass'n, 15 FCC Rcd 22,975, 22,981-22,982 (2000).

Even USAC, which petitioner describes (Br. 30) as the Fund's "rightful private owner," agrees that money within the Fund belongs to the government. It has stated, in a memorandum of understanding with the Commission, that "[t]he monies of the USF are federal funds." *Memorandum of Understanding Between the Federal Communications Commission and the Universal Service Administrative Company* 1 (Dec. 19, 2018) (MOU).

c. Petitioner suggests (Br. 9 & n.6) that the FCA does not protect the Fund because the government held the Fund's assets in a bank account rather than in the Treasury during the period relevant to this case. That is incorrect.

A federal statute prohibits using bank accounts to hold "public money," 31 U.S.C. 3302(a)—a term that has a technical meaning when used in federal fiscal laws, see Letter from Robert G. Damus, Gen. Counsel, OMB, to Christopher Wright, Gen. Counsel, FCC 2-3 (Apr. 28, 2000) (2000 OMB Letter). In 2000, the Office of Management and Budget (OMB) concluded that USF money is not "public money" under that law. See *ibid.* USF money was therefore held in a bank account under the name "Universal Service Administrative Company as Agent of the FCC for Administration of the FCC's Universal Service Fund." GAO, *Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program*, GAO-17-538, at 24 (May 2017) (2017 GAO Report). In 2018, however, OMB reconsidered its earlier decision and determined that USF money *is* "public money." See Letter from Mark R. Paoletta, Gen. Counsel, OMB, to Thomas M. Johnson,

Gen. Counsel, FCC (Apr. 18, 2018). The Commission moved the money to a Treasury account. See Letter from Ajit V. Pai, Chair, FCC, to Rep. Gwen Moore 1-2 (July 23, 2018).

The outcome here does not turn on whether the money used to pay E-Rate reimbursements satisfies the technical meaning of "public money" for purposes of federal fiscal laws. The Act's definition of "claim" does not use the term "public money." See 31 U.S.C. 3729(b)(2)(A). Nor does the outcome turn on whether E-Rate reimbursements are paid from Treasury accounts or from bank accounts. Rather, because the government "provides" the money that is held in the Fund, and that money "is to be spent or used" by the Administrator "to advance a Government program," a request for E-Rate reimbursement is a "claim" within the plain meaning of clause (ii) of the FCA definition. 31 U.S.C. 3729(b)(2)(A)(ii).

B. Under Clause (i) Of The FCA Definition, E-Rate Reimbursement Requests Are "Claims" Because They Are Presented To An "Agent Of The United States"

Under clause (i) of the FCA's definition, a request for payment independently qualifies as a "claim" if it "is presented to an officer, employee, or agent of the United States." 31 U.S.C. 3729(b)(2)(A)(i). Clause (i) encompasses an E-Rate reimbursement request because the entity to which the request is presented, the Administrator, is an "agent of the United States." *Ibid.*

1. The Administrator is an "agent of the United States"

Because Congress drew the term "agent" from the common law of agency, a court should look to that body of law to determine the term's meaning. See *Burlington Industries, Inc.* v. *Ellerth*, 524 U.S. 742, 754-755

(1998). At common law, an agency relationship arises if the principal and agent manifest "assent" that "the agent shall act on the principal's behalf and subject to the principal's control." Restatement (Third) of Agency § 1.01 (2006) (Third Restatement); see *General Building Contractors Ass'n* v. *Pennsylvania*, 458 U.S. 375, 392 (1982).

The Administrator's relationship with the FCC fits that definition. Both entities have manifested assent: The FCC has "appointed" the Company as the Fund's "Administrator," 47 C.F.R. 54.701(a), and the Company has accepted that appointment, see J.A. 34. The Administrator acts on the Commission's behalf: It is "responsible for billing contributors, collecting contributions to the [Fund], and disbursing universal support funds." 47 C.F.R. 54.702(b). And the FCC has the right to control the Administrator's performance of its duties: The Administrator acts under "the Commission's rules and oversight" and must comply with "orders, written directives, and other instructions promulgated by the Commission or its bureaus and offices." MOU 1. The Administrator is therefore an "agent of the United States" within the meaning of 31 U.S.C. 3729(b)(2)(A)(i).

The FCC and the Administrator have acknowledged their agency relationship. Before the Commission transferred the Fund to an account in the Treasury, the Administrator held it in a bank account "as Agent of the FCC." 2017 GAO Report 24. In 2018, both entities recognized that the Administrator acts "as the Commission's agent." MOU 2. And in this case, officials from both entities filed declarations explaining that the Administrator acts "on behalf of" the FCC and subject to its "rules and oversight." J.A. 35, 40.

2. Petitioner misinterprets agency law in arguing that an agent must have the power to make discretionary decisions that bind the principal

Petitioner argues (Br. 35-40, 43-44) that the Administrator does not act on the FCC's behalf, and so is not an agent, because it lacks the power to bind the Commission. That argument rests on a misconception of agency law.

a. Petitioner's argument contains a kernel of truth: An agent, "to one degree or another," "acts on behalf of another person with power to affect the legal rights and duties of the other person." Third Restatement § 1.01 cmt. c. But the Administrator does act on the Commission's behalf, and its acts do affect the Commission's legal rights and duties. When the Administrator sends universal service bills to private carriers, for example, the carriers owe a legally enforceable debt to the United States. See 47 C.F.R. 54.713. The Commission "can later collect on these debts only because the [Administrator] previously altered the financial relationship between the United States and the debtor." Pet. App. 25a.

The Administrator's disbursement of money from the Fund likewise affects the United States' legal rights. Before the Administrator makes an E-Rate payment, the money belongs to the United States. See pp. 21-22, *supra*. But after the Administrator disburses the money in accordance with the FCC's rules, the money becomes the recipient's own property.

b. Petitioner contends (Br. 35) that an agency relationship requires more: the agent must have the power to make discretionary decisions that "bind the government." But that requirement has no basis in the common law of agency. For example, a "translator" is an agent even though he lacks "discretionary authority to

determine whether to commit the principal to the terms of a proposed transaction or to initiate or vary terms." Third Restatement § 1.01 cmt. h. And "[a]gents who lack the authority to bind their principals to contracts nevertheless often have authority to negotiate or to transmit or receive information on their behalf." *Id.* § 1.01 cmt. c.

Petitioner contends (Br. 36) that "[t]his Court has insisted on the power to bind when identifying agents of the United States," but the cited decisions do not support that proposition. Three of the cited cases concerned whether particular entities were exempt from state taxes under the intergovernmental-immunity doctrine. See *United States* v. *New Mexico*, 455 U.S. 720, 722-723 (1982); *Department of Employment* v. *United States*, 385 U.S. 355, 356 (1966); *Alabama* v. *King & Boozer*, 314 U.S. 1, 6-7 (1941). Those decisions have little relevance here because "a finding of constitutional tax immunity requires something more than the invocation of traditional agency notions." *New Mexico*, 455 U.S. at 736. In the other two cases, the Court determined that the government was *not* bound by its agents' unauthorized actions. See *Heckler* v. *Community Health Services of Crawford County, Inc.*, 467 U.S. 51, 63 & n.17 (1984); *Federal Crop Insurance Corp.* v. *Merrill*, 332 U.S. 380, 383-384 (1947). Far from supporting petitioners' position, those decisions confirm that agents need not have the power to make binding decisions on behalf of their principals.

Petitioner argues (Br. 37) that, because the Act uses the phrase "officer, employee, or agent," 31 U.S.C. 3729(b)(2)(A)(i), the neighboring-words canon justifies reading a power-to-bind requirement into the word "agent." But many federal employees lack the power

to bind the government. Cf. *OPM* v. *Richmond*, 496 U.S. 414, 416, 428 (1990) (holding that "agents of the Executive"—in that case, a "federal employee"—cannot "obligate the Treasury for the payment of funds" by making "unauthorized oral or written statements to citizens"). Some employees, such as congressional pages, perform purely ministerial tasks. Other employees, such as law clerks, make recommendations but lack the authority to make binding decisions. In any event, the neighboring-words canon serves to resolve ambiguities, not to create them. See *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 227 (2008). No ambiguity exists here; the word "agent" has a well-known legal meaning, and that meaning does not include a power-to-bind requirement.

Petitioner is also wrong to argue (Br. 38) that, without a power-to-bind requirement, the federal "agent[s]" referenced in clause (i) of the FCA's "claim" definition would be indistinguishable from the "contractor[s], grantee[s], or other recipient[s]" referenced in clause (ii). 31 U.S.C. 3729(b)(2)(A). An agent must act on behalf of the principal and subject to the principal's power of control, but a contractor, grantee, or other recipient need not do so. A court need not invent a power-to-bind requirement in order to keep those categories distinct.

3. Petitioner overstates the degree of control that a principal must have over an agent and understates the FCC's control over the Administrator

After arguing that the Administrator has too little power to be an agent, petitioner argues (Br. 45-46) that the Administrator has too much because it acts outside the Commission's control. That, too, is incorrect.

a. "An essential element of agency is the principal's right to control the agent's actions." *Hollingsworth* v.

Perry, 570 U.S. 693, 713 (2013) (citation omitted). The principal need not have the right to control "the full range of the agent's activities." Third Restatement § 1.01 cmt. c. Sufficient control instead exists if (1) "the principal initially states what the agent shall and shall not do, in specific or general terms," and (2) the principal retains "the right to give interim instructions or directions to the agent once their relationship is established." *Id.* § 1.01 cmt. f(1).

Here, the Commission "initially state[d] what the agent shall and shall not do" in the FCC rules that define the Administrator's role. Third Restatement § 1.01 cmt. f(1); see 47 C.F.R. 54.701-54.717. The rules state that "[t]he Administrator shall be responsible for billing contributors, collecting contributions to the [Fund], and disbursing universal service support funds." 47 C.F.R. 54.702(b). The rules require the Administrator to "create and maintain a website"; keep "books of account"; and file "annual" reports itemizing administrative expenses. 47 C.F.R. 54.702(e)-(g). They also prohibit the Administrator from "mak[ing] policy" or "advocat[ing] positions before the Commission" on matters unrelated to administration. 47 C.F.R. 54.702(c) and (d).

The FCC similarly retains "the right to give interim instructions or directions to the agent." Third Restatement § 1.01 cmt. f(1). For example:

- The Commission may amend the rules defining the Administrator's role. See, *e.g.*, 69 Fed. Reg. 5718, 5719 (Feb. 6, 2004) (amendment requiring the Administrator to follow specified accounting practices).
- The Commission may issue orders to the Administrator. See, *e.g.*, *Changes to the Board of Directors*, 15 FCC Rcd at 22,981-22,982 (order directing the Administrator to recoup erroneous disbursements).

- FCC staff may send written directives with which the Administrator must comply. See, *e.g.*, Letter from Steven VanRoekel, Managing Dir., FCC, to Scott Barash, Acting CEO, USAC 1-2 (Dec. 21, 2010) (letter directing the Administrator to "improve the E-rate program" by drafting a "procedures manual to clarify the existing invoice process").
- FCC staff may provide instructions during their "regular oversight meetings" with the Administrator. Letter from Mark Stephens, Managing Dir., & Kris A. Monteith, Chief, Wireline Competition Bureau, to Radha Sekar, CEO, USAC 1 (Mar. 9, 2021).
- If the Commission's rules "are unclear, or do not address a particular situation," the Administrator must "seek guidance from the Commission." 47 C.F.R. 54.702(c).

Because the FCC initially told the Administrator what to do and retained the right to provide additional instructions thereafter, it possesses sufficient control over the acts of its agent.

b. Petitioner argues (Br. 3) that the Administrator is not an agent because the Commission does not exercise "day-to-day control" over its operations. But agency requires only a "right to control," not actual exercise of control. *Hollingsworth*, 570 U.S. at 713 (citation omitted). "A principal's failure to exercise the right of control does not eliminate it." Third Restatement § 1.01 cmt. c.

Nor is it necessary for the principal to control the agent's activities "on a day-to-day basis." Pet. Br. 42. "A principal's right to control the agent is a constant across relationships of agency, but the content or specific meaning of the right varies. Thus, a person may be

an agent although the principal lacks the right to control the full range of the agent's activities." Third Restatement § 1.01 cmt. c.

Petitioner also asserts (Br. 45) that the FCC lacks the right to "review reimbursement grants or seize funds in the Company's possession." Even if that were true, the other tools discussed above would provide the Commission with enough control over USAC's acts to create a principal-agent relationship. Treating those tools of control as insufficient would defeat the primary purpose and benefit of delegating authority to an agent in the first place: assigning the performance of routine tasks to another entity.

Petitioner in any event understates the scope of the FCC's authority. The FCC can control reimbursement grants by, for example, amending its rules on reimbursements, sending letters instructing the Administrator how to process reimbursement requests, or ordering the Administrator to recoup erroneous reimbursements. See pp. 28-29, *supra*. And the Commission can control the money in the Fund because, as discussed above, that money belongs to the government. See pp. 21-22, *supra*.

Contrary to petitioner's suggestion (Br. 46-49), acknowledging the FCC's right of control would not mean that the Company's creation violated the Government Corporation Control Act, ch. 557, 59 Stat. 597 (31 U.S.C. 9101-9110). That law states that "[a]n agency may establish or acquire a corporation *to act as an agency* only by or under a law of the United States specifically authorizing the action." 31 U.S.C. 9102 (emphasis added). Although the terms sound alike, the administrative-law term "agency" does not mean the same thing as the common-law term "agent." See, *e.g.*, *Applicability of*

the Government Corporation Control Act to "Gain Sharing Benefit" Agreement, 24 Op. O.L.C. 212, 218-219 (2000) (discussing factors relevant to determining whether a corporation acts "as an agency"). The Company, though not an "agency," is an "agent of the United States." 31 U.S.C. 3729(b)(2)(A)(i). That conclusion provides an independent basis for holding that a request for money presented to the Administrator is an FCA "claim."

C. Petitioner's Constitutional Arguments Have No Bearing On The Proper Resolution Of The Statutory Question Presented Here

1. Petitioner argues (Br. 24-25) that allowing a qui tam action in these circumstances would violate Articles II and III, and that this Court should interpret the FCA to avoid those concerns. But constitutional avoidance "comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction." *Jennings* v. *Rodriguez*, 583 U.S. 281, 296 (2018) (citation omitted). Because E-Rate reimbursement requests are "claims" on any plausible reading of the FCA's definition of that term, the avoidance canon has no role to play here.

Constitutional avoidance also loses force when the interpretive issue is "tangential to the constitutional questions at stake." *United States ex rel. Polansky* v. *Executive Health Resources, Inc.*, 599 U.S. 419, 452 n.3 (2023) (Thomas, J., dissenting). The choice between the competing interpretations of the term "claim" has no logical bearing on whether the FCA's qui tam provisions are constitutional. And if this Court holds that requests for E-Rate funds are not FCA "claims," its decision will mean that fraudulent efforts to obtain such funds do not violate the Act, and thus will equally pre-

clude FCA suits brought by the government. See 31 U.S.C. 3730(a). It would make little sense to limit the government's enforcement authority in that manner simply to reduce the overall number of qui tam suits.

Regardless, petitioner's constitutional objections lack merit. In *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U.S. 765 (2000), the Court held that qui tam suits under the Act comply with Article III. The Court explained that qui tam actions originated in England in the 13th century, that they were prevalent in the American colonies, and that the First Congress adopted "a considerable number of informer statutes." *Id.* at 776; see *id.* at 774-776. The Court found that history to be "well nigh conclusive" on the meaning of Article III. *Id.* at 777. The history is equally conclusive on the meaning of Article II. See *Seila Law LLC* v. *CFPB*, 591 U.S. 197, 214 (2020) (explaining that the First Congress's actions provide "contemporaneous and weighty evidence of the Constitution's meaning") (citation omitted).

Petitioner is wrong to argue (Br. 26) that the historical justification for qui tam suits "unravels when the government has never been exposed to any risk of financial loss." The First Congress authorized private informers to sue even for violations that did not pose a risk of financial loss to the government. See, *e.g.*, Act of Mar. 1, 1790, ch. 2, § 3, 1 Stat. 102 (failure to file census returns); Act of July 22, 1790, ch. 33, § 3, 1 Stat. 137-138 (unlawful trading with Indian tribes); Act of July 20, 1790, ch. 29, § 4, 1 Stat. 133 (harboring runaway seamen).

2. As petitioner notes (Br. 49), the en banc Fifth Circuit recently held that the nondelegation doctrine forbids the combination of (1) Congress's conferral of authority on the FCC to collect universal service contri-

butions and (2) the Commission's delegation of tasks to the Administrator. See *Consumers' Research* v. *FCC*, 109 F.4th 743, 756 (2024), petition for cert. pending (filed Sept. 30, 2024). Petitioner does not argue, however, that the nondelegation issue affects the proper resolution of this case. A person accused of defrauding a government program may not defend himself by arguing that the program violated the Constitution. See *Bryson* v. *United States*, 396 U.S. 64, 68-72 (1969); *Dennis* v. *United States*, 384 U.S. 855, 864-867 (1966); *United States* v. *Kapp*, 302 U.S. 214, 217-218 (1937). "Our legal system provides methods for challenging" government action, but fraud "is not one of them." *Bryson*, 396 U.S. at 72.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 31 U.S.C. 3729 provides:

False claims

(a) LIABILITY FOR CERTAIN ACTS.—

(1) IN GENERAL.—Subject to paragraph (2), any person who—

(A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(C) conspires to commit a violation of subparagraph (A), (B), (D), (E), (F), or (G);

(D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property;

(E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or

(G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104-410[1]), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) REDUCED DAMAGES.—If the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person

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[1] So in original. Probably should be "101-410".

did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) COSTS OF CIVIL ACTIONS.—A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) DEFINITIONS.—For purposes of this section—

(1) the terms "knowing" and "knowingly"—

(A) mean that a person, with respect to information—

(i) has actual knowledge of the information;

(ii) acts in deliberate ignorance of the truth or falsity of the information; or

(iii) acts in reckless disregard of the truth or falsity of the information; and

(B) require no proof of specific intent to defraud;

(2) the term "claim"—

(A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that—

(i) is presented to an officer, employee, or agent of the United States; or

(ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government—

(I) provides or has provided any portion of the money or property requested or demanded; or

(II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and

(B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual's use of the money or property;

(3) the term "obligation" means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

2. 31 U.S.C. 3729 (2006) provides:

False claims

(a) LIABILITY FOR CERTAIN ACTS.—Any person who—

(1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;

(3) conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;

(4) has possession, custody, or control of property or money used, or to be used, by the Government and, intending to defraud the Government or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without com-

pletely knowing that the information on the receipt is true;

(6) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or

(7) knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government,

is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, plus 3 times the amount of damages which the Government sustains because of the act of that person, except that if the court finds that—

(A) the person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(B) such person fully cooperated with any Government investigation of such violation; and

(C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) KNOWING AND KNOWINGLY DEFINED.—For purposes of this section, the terms "knowing" and "knowingly" mean that a person, with respect to information—

(1) has actual knowledge of the information:

(2) acts in deliberate ignorance of the truth or falsity of the information; or

(3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) CLAIM DEFINED.—For purposes of this section, "claim" includes any request or demand, whether under a contract or otherwise, for money or property which is made to a contractor, grantee, or other recipient if the United States Government provides any portion of the money or property which is requested or demanded, or if the Government will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(d) EXEMPTION FROM DISCLOSURE.—Any information furnished pursuant to subparagraphs (A) through (C) of subsection (a) shall be exempt from disclosure under section 552 of title 5.

(e) EXCLUSION.—This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.