

No. 25-13647 / 25-14016

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IN THE  
**United States Court of Appeals for the  
Eleventh Circuit**

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JOHN DOE ET AL,

*PETITIONERS*

v.

U.S. SECURITIES AND EXCHANGE COMMISSION,

*RESPONDENT.*

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ON PETITION FOR REVIEW OF A FINAL ORDER OF  
THE U.S. SECURITIES AND EXCHANGE COMMISSION

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BRIEF OF AMICI CURIAE THE NATIONAL WHISTLEBLOWER  
CENTER, SHERRON WATKINS, DR. AARON WESTRICK, AND  
ERIKA CHEUNG, IN SUPPORT OF PETITIONERS

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*John Doe v. Securities and Exchange Commission*

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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE  
DISCLOSURE STATEMENT**

In accordance with 11<sup>th</sup> Cir. R. 26.1-1 and Fed. R. App. P. 26.1, the following persons and entities have an interest in the outcome of this case:

- National Whistleblower Center (“NWC”), *Amicus Curiae*
- Sherron Watkins, *Amicus Curiae*
- Dr. Aaron Westrick, *Amicus Curiae*
- Erika Cheung, *Amicus Curiae*
- Kohn, Kohn, & Colapinto, LLP, Counsel for *Amici Curiae*
  - Kohn, Stephen

*Amicus curiae* the National Whistleblower Center is a nonpartisan, nonprofit corporation organized under section 501(c)(3) of the Internal Revenue Code. No publicly held corporation has any form of ownership interest in NWC, which has no parent corporations and does not issue stock.

I am unaware of any other person or entity that has an interest in the outcome of this appeal, other than those listed in the prior briefs filed in this case.

In accordance with 11<sup>th</sup> Cir. R. 29-2 and 26.1-1, a web-based Certificate of Interested Persons and Corporate Disclosure Statement (CIP) has been submitted.

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Respectfully submitted,

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**STATEMENT OF THE IDENTITY OF THE AMICI CURIAE, INTEREST  
IN THE MATTER, AND SOURCE OF AUTHORITY TO FILE**

A. National Whistleblower Center

The National Whistleblower Center (“NWC”) is a nonprofit, non-partisan, tax-exempt, charitable organization dedicated to the protection of whistleblowers.<sup>1</sup> Founded in 1988, the NWC is keenly aware of the issues facing employees who report fraud or violations of law. *See* [www.whistleblowers.org](http://www.whistleblowers.org).

As part of its core mission, the NWC files *amici* briefs to help courts understand complex issues raised in whistleblower cases. Since 1990, the NWC has participated as *amicus curiae* before the U.S. Supreme Court, Courts of Appeal, and administrative agencies in numerous cases that directly impact the rights of whistleblowers, including cases under the False Claims, Dodd-Frank, and Sarbanes-Oxley Acts. *See* <https://www.whistleblowers.org/amicus-curiae-briefs/>.

The NWC and its *pro bono* counsel were the most active participants in the three SEC rulemaking proceedings concerning the Dodd-Frank whistleblower law. *See* Securities Whistleblower Incentives and Protections, 76 Fed. Reg. 113 (June 13, 2011) (Final Rule) (comments cited 44 times); Whistleblower Program Rules, 85 Fed. Reg. 215 (Nov. 5, 2020) (Final Rule) (comments cited 25 times); Whistleblower

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<sup>1</sup> Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *amici* state that no one except counsel for *amici* has authored this brief in whole or in part, or contributed money toward the preparation of this brief.

Program Rules, 87 Fed. Reg. 170 (Sept. 2, 2022) (Final Rule) (comments cited 16 times).

NWC counsel is regularly consulted by Congress when drafting whistleblower legislation, including by the Senate Banking Committee during the drafting of Dodd-Frank and the House Financial Services Committee during the drafting of a substantially identical whistleblower law covering money laundering under the Bank Secrecy Act. *See* H. Rep. 117-423 (2022), at 3, 4.

The NWC has long been concerned with preserving the rights of whistleblowers who report to the news media under Dodd-Frank. For example, during the 2010 SEC rulemaking proceedings, the NWC advocated for protecting the rights of whistleblowers who report to the news media:

Under the First Amendment, the whistleblower has a constitutional right to communicate matters of public concern to Congress or the press. The Commission cannot establish rules that require an employee to give up his or her First Amendment rights in order to qualify for participation in a whistleblower program.

Letter from National Whistleblower Center to Mary L. Schapiro, SEC Chairman (Dec. 17, 2010), <https://www.whistleblowers.org/wp-content/uploads/2019/01/12.17.2010secformalcomment.pdf>, at 13, cited by the SEC in *Securities Whistleblower Incentives and Protections*, 76 Fed. Reg. 34300 (July 6, 2011) (Final Rule), at 34334. The proposed regulation, which concerned SEC-

mandated nondisclosure agreements, was modified, in part, to accommodate the NWC's concerns. *Id.*

In 2022, noting that the SEC lacked specific regulations establishing procedures for media-first whistleblowers, the NWC filed a formal petition for rulemaking with the Commission.<sup>2</sup> This petition is still pending.

The issue raised in this appeal is of exceptional interest to the NWC and its clients, as numerous whistleblower laws may be impacted by the precedent, including the Commodity Exchange Act (7 U.S.C. § 26(a)(4)), Anti-Money Laundering Act (31 U.S.C. § 5323(a)(3)), and Motor Vehicle Safety Whistleblower Act (49 U.S.C. § 30172(a)(3)). Each of these laws contains a definition of “original information” substantively identical to that in Dodd-Frank and in the SEC’s implementing regulations.

Moreover, the NWC (and its *pro bono* counsel) are actively assisting and representing media whistleblowers who have submitted claims under Dodd-Frank and may be impacted by the decision in this matter.

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<sup>2</sup> See, National Whistleblower Center, *Petition for Issuance, Amendment or Repeal of Commission Rules Related to Whistleblower Submission of Original Information to the News Media* (Feb. 7, 2022), <https://www.sec.gov/files/rules/petitions/2022/petn4-783.pdf>; U.S. Securities and Exchange Commission, *Comments on Petition for Issuance, Amendment or Repeal of Commission Rules Related to Whistleblower Submission of Original Information to the News Media* (last visited Feb. 23, 2026), <https://www.sec.gov/comments/4-783/4-783.htm>.

## B. Whistleblowers

Sherron Watkins was the Vice President of the publicly traded company Enron Corp. In 2001, Watkins discovered a massive accounting fraud scheme in which Enron was misleading its shareholders and Board of Directors and hiding billions of dollars in potential liabilities. Watkins blew the whistle on Enron's fraud and was named Time Magazine's Person of the Year in 2002, along with two other whistleblowers. She has been an advocate for whistleblowers, including through participation in the Dodd-Frank rulemaking process, ever since. As with the two other whistleblower-*amici*, the governmental investigation of Enron began after newspapers broke the story.<sup>3</sup> Watkins' discussions with numerous whistleblowers, personal experience blowing the whistle, and public advocacy over the past two decades has made her aware of the media's ability to protect investors and serve the public interest.<sup>4</sup> Under the SEC precedent in the case at bar, Watkins, who is well-regarded as one of the most important corporate whistleblowers in history, could

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<sup>3</sup> See, e.g., Alex Berenson, *S.E.C. Opens Investigation into Enron*, The New York Times (Nov. 1, 2001), <https://www.nytimes.com/2001/11/01/business/sec-opens-investigation-into-enron.html>.

<sup>4</sup> See Sherron S. Watkins, Former VP, Enron, *Comment Letter on Petition for Issuance, Amendment or Repeal of Commission Rules Related to Whistleblower Submission of Original Information to the News Media* (Apr. 5, 2022), <https://www.sec.gov/comments/4-783/4783-20123629-279722.pdf>.

have been denied an award had Dodd-Frank existed when she courageously stepped forward.

Dr. Aaron Westrick is a former police officer, professor at Lake Superior State University, and member of the National Whistleblower Center’s Leadership Counsel. While working for the largest body armor company in the United States, Dr. Westrick blew the whistle on defective bulletproof vests being sold nationwide to police officers and military personnel. Dr. Westrick’s insider information was given to the media prior to his filing a *qui tam* lawsuit under the False Claims Act, resulting in Congressional and governmental investigations. Thereafter, Dr. Westrick successfully filed a *qui tam* lawsuit, triggering additional investigations and ultimately leading to substantial recoveries and the transfer of over \$22 million to pay for new, non-defective vests for law enforcement officers.<sup>5</sup> His role in protecting police officers was highly praised by the principal author of the 1986 False Claims Act, and the significance of his case was acknowledged by the Attorney General of the United States.<sup>6</sup> Had the SEC’s “led to” precedent been applicable to

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<sup>5</sup> See U.S. Department of Justice, Press Release, *Japanese Fiber Manufacturer to Pay \$66 Million for Alleged False Claims Related to Defective Bullet Proof Vests* (Mar. 15, 2018), <https://www.justice.gov/archives/opa/pr/japanese-fiber-manufacturer-pay-66-million-alleged-false-claims-related-defective-bullet>.

<sup>6</sup> See, Senator Charles Grassley, Press Release (July 30, 2018), <https://www.grassley.senate.gov/news/news-releases/grassley-whistleblowers-deserve-our-profound-gratitude> (“When you don’t listen to whistleblowers like Dr. Westrick—*that’s* when the regrets come. Because of Dr. Westrick’s remarkable

his case, the taxpayers (who ultimately recovered over \$100 million in the various Zylon lawsuits) and thousands of law enforcement officers may never have benefited from his disclosures.

Erika Cheung is a former employee of Theranos, Inc., the Silicon Valley startup that claimed to have revolutionized blood testing. Ms. Cheung, along with other former employees, was a key whistleblower in reporting Theranos's fraudulent business practices to the media and, ultimately, to health regulators and law enforcement. Ms. Cheung's whistleblowing subsequently led to the shutdown of Theranos's clinical laboratory, which prevented the company from providing false medical results to thousands of patients.<sup>7</sup> Despite a whistleblower first going to state authorities, regulatory action against Theranos did not occur until the *Wall Street Journal* publicized the whistleblowers' allegations against the company.<sup>8</sup> Since blowing the whistle on Theranos, Ms. Cheung has advocated for whistleblowers and ethical scientific practices, founding and acting as Executive Director of Ethics in

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courage, the product was pulled from the market and no doubt countless lives were saved . . . because of his case, the government recovered more than \$67 million in lost funds and damages. Because of whistleblowers like Dr. Westrick, the *False Claims Act* is the most effective tool we have to fight government fraud."); U.S. Department of Justice, Press Release (Mar. 15, 2018), *supra*.

<sup>7</sup>

<sup>8</sup> See, e.g., Emily Primeaux, *Whistleblower helped dismantle biotech juggernaut Theranos in his 'zero-strategy' defense*, *Fraud Magazine* (Sept./Oct. 2019), <https://www.acfe.com/fraud-magazine/all-issues/issue/article?s=2019-septoct-tyler-shultz-theranos-whistleblower-cover>.

Entrepreneurship and serving as an advisor to The Signals Network, an organization which supports media whistleblowers. Ms. Cheung joins as an *amicus* based on her direct experience of the importance of whistleblowers being able to report misconduct to the media and thereafter alert authorities to significant violations.

C. Source of Authority to File

Pursuant to FRAP 29(a)(2), *Amicus* certifies that all parties have consented to the filing of this amicus brief.

## **STATEMENT OF THE ISSUE**

Whether the United States Securities and Exchange Commission (“SEC”)’s denial of a whistleblower award based on the “led to” requirement was arbitrary, capricious and contrary to law in violation of the Dodd-Frank Act and the SEC’s own rules implementing Dodd-Frank in 17 C.F.R. § 240.21F-4(b)(1) and (c)(1).

## **SUMMARY OF THE ARGUMENT**

The Dodd-Frank Act’s (“Dodd-Frank”) whistleblower provision enables whistleblowers who are the “original source” of information in the news media<sup>9</sup> to fully qualify for an award, even if the SEC initiates its investigation based on the news media rather than the whistleblower’s Form TCR (“TCR”). As a matter of law and Commission regulations, a “media-first whistleblower”<sup>10</sup> is fully eligible for an award if their disclosures were made to the Commission indirectly through the news media, as long as the media-first whistleblower was the “original source” of the “original information” disclosed. 17 C.F.R. § 240.21F-4 (b)(1), (c)(1).

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<sup>9</sup> The term “news media” refers to “forms of communication, including the internet, newspapers, magazines, television, etc., that collect and give information about current events, considered as a group.” *News Media*, Cambridge Dictionary, <https://dictionary.cambridge.org/us/dictionary/english/news-media> (last visited Feb. 18, 2026).

<sup>10</sup> As used in this brief, the term “media-first whistleblowers” means whistleblowers who initially raise concerns to the news media, and whose concerns are originally communicated to the SEC through these media reports, and not directly from the whistleblowers themselves.

The SEC cited to 17 C.F.R. § 240.21F-4(c)(1) in denying the whistleblowers' claim in this case. However, in order to understand the meaning of the term "original information" as used in this regulation, this Court must trace the origin of that term as it was first developed by Congress in the False Claims Act, incorporated into the Internal Revenue Service's ("IRS") whistleblower law, and eventually found its way into Dodd-Frank.

When Congress passed Dodd-Frank in 2010, it adopted the concept of "original information" as used in the False Claims Act ("FCA") *qui tam* provisions and IRS's whistleblower law. The legislative history of Dodd-Frank confirms that Dodd-Frank was modeled on the IRS law. But even more persuasive than the Senate Reports' of the origin of Dodd-Frank's whistleblower law is the nearly identical nature of how Congress used the concepts of "original information" and "original source" in the False Claims, IRS, and Dodd-Frank statutes to ensure that whistleblowers who initially make disclosures outside an award statute's mandatory reporting structure can qualify for an award. In all three statutes, a whistleblower who is the source of the "original information" to the news media that triggers an investigation is award-eligible.

Under the False Claims Act, a qualified *qui tam* whistleblower must file a formal *qui tam* lawsuit in federal court in order to qualify for an award. Similarly, an IRS whistleblower must file a Form 211, and a Dodd-Frank whistleblower must

file a TCR. But under the “original information” procedures, a whistleblower can still qualify if they disclose the information to Congress, other government agencies, or the news media before filing the mandatory lawsuit or form. 31 U.S.C. § 3730(e)(4)(a); 26 U.S.C. § 7623(b)(2); 15 U.S.C. § 78u-6(a)(3). The SEC’s decision to deny media-first whistleblowers an award under the “led to” requirement contravenes a long line of judicial, administrative, and Congressional precedent that unequivocally rejected the reasoning the SEC applied in this case.

Finally, through policy statements and the Commission’s own Enforcement Manual, the SEC has acknowledged both the critical role of news media tips in its enforcement efforts and the efficacy of whistleblower award payments in incentivizing disclosures of fraud.<sup>11</sup> The denial of the Whistleblowers’ award application undermines the Commission’s established regulatory policies and priorities.

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<sup>11</sup> See, e.g., SEC, *Policy Statement of the Securities and Exchange Commission Concerning Subpoenas to Members of the News Media* (April 12, 2006), <https://www.sec.gov/news/press/2006/2006-55.htm>; SEC Division of Enforcement, *Enforcement Manual* (February 24, 2026), <https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>, at 2-9; Whistleblower Program Rules, 87 Fed. Reg. 170 (Sept. 2, 2022) (Final Rule), at 54146.

## ARGUMENT

### **I. THE SEC’S DENIAL OF A MEDIA-FIRST WHISTLEBLOWER IS CONTRARY TO LAW, COMMISSION REGULATIONS, AND CLEAR CONGRESSIONAL INTENT TO PROTECT WHISTLEBLOWERS WHO DISCLOSE TO THE NEWS MEDIA**

The Dodd-Frank Act permits whistleblowers to provide their allegations of corporate fraud directly to the news media, prior to any contact with the U.S. Securities and Exchange Commission. Under the regulatory and statutory definition of “original information,” if the SEC commences an investigation based on information learned from the news media, and the whistleblower was the “original source” of the media disclosure, the whistleblower is eligible for an award. 15 U.S.C. § 78u-6(a)(3); 17 C.F.R. § 240.21F-4(b)(1), (b)(5), and (c)(1).

These two conclusions of law are drawn from the definition of “original information” in Dodd-Frank as incorporated into Commission rules, including 17 C.F.R. § 240.21F-4(c)(1).

The Commission’s reasoning for denying an award to the whistleblowers in this case mirrors an old interpretive rule covering award qualifications under the 1943 version of the False Claims Act that was explicitly targeted for reform when Congress amended the FCA in 1986. That rule, known as the “jurisdictional bar,” was heavily criticized and, as it concerned media disclosures, was explicitly repealed as part of the 1986 amendments to the FCA. The Commission’s logic in this case contravenes decades of Congressional lawmaking and ignores the plain meaning of

“original information” and its modifying term “original source” as used in Dodd-Frank and its implementing regulations.

Understanding the background to the “original source” and “original information” definitions in Dodd-Frank and SEC regulations is essential to understanding why the Commission’s erroneous use of the “led to” phrase in this case was arbitrary, capricious and contrary to law. 5 U.S.C. § 706(2)(a).

A. The Jurisdictional Bar

Prior to the adoption of Dodd-Frank, the False Claims Act was the primary *qui tam* or whistleblower award law in the United States. It was (and remains) the basis for Congress’s adoption of similar mandatory award laws, such as the IRS and SEC-administered programs. *See* Dean Zerbe, *A Legislative History of the Modern Tax Whistleblower Program*, 169 Tax Notes Federal 561 (2020), at 565; S. Rep. 111-176 (2010), at 111.

In 1943, the False Claims Act was amended to create a jurisdictional bar that whistleblowers had to overcome to qualify for an award. This rule prohibited whistleblowers (known under the FCA as “relators”) from qualifying for an award “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.” False Claims Act, Pub. L. No. 78-213, 57 Stat. 608 (1943). *See also* S. Rep. 99-345 (1986), at 12.

This jurisdictional bar operated in a similar manner to the reasoning embraced by the SEC in this case. The bar disqualified any whistleblower from receiving an award if their information was known to the government prior to the whistleblowers bringing a *qui tam* award lawsuit, even if the whistleblower was the original source of the information. For example, a 1960 decision from the U.S. Court of Appeals for the 3rd Circuit explained the operation of the jurisdictional bar:

The district court found that the essential information upon which the suit was predicated was in the possession of the United States prior to the filing of the suit. Such information was given to the government by the informer who now brings this claim. The court construed Section 232(C) as *depriving it of jurisdiction* of any *qui tam* action based on information already in the hands of the United States *regardless of the source of that information.*”

*United States v. Aster*, 275 F.2d 281 (3rd Cir. 1960), at 282 (emphasis added).

The jurisdictional bar prohibited FCA *qui tam* award lawsuits by whistleblowers if the government had prior knowledge of the whistleblower’s information, even if the whistleblower was the source of a news article that landed of the desk of a Justice Department lawyer. Regardless of whether the original source whistleblower testified to Congress, disclosed the material to the news media, or handed their information to the government on a silver platter just one day before filing their *qui tam* action seeking a monetary award, the jurisdictional bar required courts to dismiss these cases and deny any award to the whistleblower, who had often sacrificed greatly to call attention to the wrongdoing. The denial of claims was

jurisdictional, and without exception: “Knowledge by the Government prior to suit bars the action *even if the plaintiff is the source of that knowledge.*” *U.S. ex rel. Weinberger v. State of Florida*, 615 F.2d 1370 (5<sup>th</sup> Cir. 1980), at 1371 (emphasis added).

The jurisdictional bar’s absurd results were highlighted in the case of *U.S. ex rel. State of Wisconsin v. Dean*, 729 F.2d 1100 (7<sup>th</sup> Cir. 1984), a decision issued shortly before the FCA amendments were introduced in the Senate. In that case, it was conceded that the State of Wisconsin was the “source” of the “essential information” underlying the *qui tam* action, and that the “State was required to provide such information to the federal government as part of its participation in the Medicare reimbursement program.” *Dean*, 729 F.2d, at 1103. A lower court held that denying the State the right to file the *qui tam* “would frustrate the purpose of Congress in protecting the United States against false claims.” *Id.* Despite these facts, the 7<sup>th</sup> Circuit reversed and upheld a strict application of the jurisdictional bar, affirming the prior holdings of various courts that even if a whistleblower was the original source of the evidence documenting fraud, the bar would apply if the whistleblower’s information first came into the government’s possession from any third party, even if the whistleblower was the original source to that third party. *Id.* at 1106.

The SEC’s decision in this case resurrects the jurisdictional bar in the context of media disclosures. It is undisputed that the SEC began its investigation based on reports in the media for which Doe was the original source. *Order Determining Whistleblower Award*, Whistleblower Award Proceeding File No. 2025-55 (Sept. 29, 2025), available at <https://www.sec.gov/files/rules/other/2025/34-104136.pdf> (“Final Order”), at 5. Nonetheless, the SEC’s denial order argues that because it was the reports published online that prompted the investigations, Doe cannot satisfy the “led to” prong of the award eligibility requirements. *Id.* at 4. This decision mirrors the jurisdictional bar’s logic. Because the SEC acted on the information in its possession when initiating the investigation, the whistleblower’s claim was dismissed, “*even [though] the plaintiff [was] the source of that knowledge.*” *Weinberger*, 615 F.2d, at 1371.

B. The Jurisdictional Bar is Repealed and Media-First Whistleblowers are Protected

In 1985, Senator Charles Grassley proposed reforms to the False Claims Act, noting that amendments to the original FCA had “watered down its effect,” resulting in contract fraud that is “once again rampant.” S. 1562, *A Bill to Amend the False Claims Act, and Title 18 of the United States Code Regarding Penalties for False Claims, and for Other Purposes*, Hearing before Sen. Subcomm. on Administrative Practice and Procedure, 99 Cong. i-114 (Sept. 17, 1985), at 2. Senator Grassley explained:

The original False Claims Act is rooted in the realization that we cannot guard against Government fraud without the aid of private citizen informers. The Act allows citizens knowing of fraud to bring a suit on behalf of the government with the incentive of receiving a reward if successful. Unfortunately, when Congress amended the law in 1943 the act's incentive and utility for private citizens was removed.

*Id.*

In a 1986 House hearing on the bill, Congressman Fortney H. Stark noted the same intent, stating: “This bill takes the 1863 false claim and *qui tam* idea and tries to restore it to life through amendments that override a number of judicial decisions that have made the ancient *qui tam* concept toothless.” H. Rep. 99-48 (1986), at 291.

The authoritative Senate Report on the False Claims Act amendments further explained:

Since the act was last amended in 1943, several restrictive court interpretations of the act have emerged which tend to thwart the effectiveness of the statute. The Committee's amendments contained in S. 1562 are aimed at correcting restrictive interpretations of the act's... *qui tam* jurisdiction... in order to make the False Claims Act a more effective weapon against Government fraud.

S. Rep. 99-345 (1986), at 4.

The 1986 Senate Report goes on to cite specifically to the need for Congress to “rectify the unfortunate result of the *Wisconsin v. Dean* decision” as an impetus for the amendments. *Id.* at 13. Towards this goal, a key reform included in the 1986 amendments was the addition of an exception to the jurisdictional bar in circumstances where the original information in the government's possession came

from sources such as Congress, or, as relevant to this case, from the media. If the information in the government's possession came from the media, and the whistleblower was the "original source" to the media, the jurisdictional bar would not apply and the original information provided by the whistleblower to the media could be used as the factual foundation for a *qui tam* lawsuit. *Id.* at 29.

Ultimately, the amendments were passed in October 1986 and repealed the jurisdictional bar in the circumstances presented in this case. Specifically, the jurisdictional bar was repealed if the government learned of the whistleblower's original information from Congress, other government entities, or the media, so long as the whistleblower was the "original source" to these entities. 31 U.S.C. § 3730(e)(4)(a).

C. The Creation of the "Original Source" Exception and its Coverage of Media-First Whistleblowers

To counter the destructive nature of the jurisdictional bar and conform the FCA to the practical realities of how whistleblowers initially disclose their concerns, Congress created the "original source" exception to the bar. On one hand, this exception was designed to prevent parasitical lawsuits where persons who were not the original whistleblowers would try to capitalize on other person's information. S. Rep. 99-345 (1986), at 9. But on the other hand, the exception would ensure that the real whistleblowers – those who had original information demonstrating frauds – would be able to utilize the FCA even if the United States learned of their original

information from various third-party disclosures, including disclosures reported in the media. *Id.*

The types of disclosures that could overcome the “jurisdictional bar” were made explicit in the 1986 amendments. The bill as passed states:

No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or *from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.*

False Claims Amendments Act of 1986, Pub. L. 99-562 (Oct. 27, 1986); 31 U.S.C. § 3730(e)(4)(a) (1986 ed.) (emphasis added).

By the nature of the original source exception, the False Claims Act permits a relator to overcome the public disclosure bar if the government learned about their allegations from the media. Under this carveout, individuals who lacked firsthand knowledge of frauds would still be subject to the jurisdictional bar. But if an individual was the original source of published information that the government relied on, they could still qualify for an award, and the jurisdictional bar could be overcome. Whistleblowers who made disclosures to Congress, various administrative agencies, *or to the media* were all the beneficiaries of Congress’s new original source rule.

Implemented in this way, the FCA has been massively successful at combatting fraud against the government. Deputy Attorney General Todd Blanche’s comment that “the False Claims Act remains one of the government’s most powerful weapons against fraud” is backed up by hard evidence: following the 1986 amendments, whistleblowers have been responsible for over 70% of FCA recoveries, helping the taxpayers recover over \$60 billion from fraudsters.<sup>12</sup>

#### D. IRS Whistleblower Program Amendments

On the heels of the FCA’s stunning success in incentivizing whistleblowers to report frauds, in 2006 Congress passed amendments to the Tax Relief and Health Care Act that required the IRS to similarly pay rewards to whistleblowers who expose major tax violations. Tax Relief and Health Care Act of 2006, Pub. L. 109–432 § 406(d) (2006). Senator Grassley and other tax law experts recognized that these amendments intentionally modeled the new IRS whistleblower program after the FCA. Sen. Committee on Finance Press Release, *Grassley Praises Senate Passage of IRS Whistleblower Help, Civil Rights Tax Reform, Charitable Giving Reform, Ban on Deduction of Government Fines, “Son of Boss” Item* (May 12, 2004) (“This provision models an IRS rewards program on the False Claims Act.”)

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<sup>12</sup> U.S. Department of Justice, Press Release, *False Claims Act Settlements and Judgments Exceed \$6.8B in Fiscal Year 2025* (Jan. 16, 2026), <https://www.justice.gov/opa/media/1424121/dl>.

The statute governing the IRS whistleblower program rejected most of the remnants of the discredited jurisdictional bar and adopted an even broader media-first original source exception than that created in the FCA. While the FCA requires whistleblowers to file a formal lawsuit in federal court, the IRS model – which has subsequently been adopted under other whistleblower award laws, including Dodd-Frank – permits award claims to be initiated simply by filing an administrative claim, known as a Form 211. Internal Revenue Manual 25.2.2.1.4.

Under the IRS whistleblower law, the IRS must pay a whistleblower a mandatory award of between 15% and 30% of collected proceeds if the IRS conducts a successful enforcement action based on the whistleblower’s original information and the whistleblower complies with the IRS’s administrative requirements. 26 U.S.C. § 7623(b)(1).

If the IRS learned of the whistleblower’s information from “a judicial or administrative hearing, from a governmental report, hearing, audit, or investigation, or from the news media,” the IRS must generally reduce an award (to 10% or less of collected proceeds) and can completely deny an award. 26 U.S.C. § 7623(b)(2)(A). However – and this is the provision critical to this case – a whistleblower’s award *may not be reduced* “if the information resulting in the initiation of the action described in paragraph (1) was *originally* provided by the individual described in paragraph (1).” 26 U.S.C. § 7623(b)(2)(B) (emphasis added). Media-first

whistleblowers are within the class of persons covered under § 7623(b)(2). Not surprisingly, the language in § 7623(b)(2) is materially identical to the terminology used in both the False Claims Act and Dodd-Frank.

Thus, if a whistleblower makes a disclosure to the news media before formally reporting to the IRS, they remain fully award-eligible if the IRS's investigation is sparked by the media disclosure rather than a direct disclosure to the IRS. In this manner, Congress directly incorporated the FCA's original source exception into the IRS law. The IRS law explicitly states that whistleblowers who first disclose to the news media qualify for the exception. 26 U.S.C. § 7623(b)(2)(A).

This original source exception is clearly spelled out in the IRS's regulations implementing the whistleblower law:

Under IRC 7623(b)(2), if an action is based principally on specific allegations resulting from judicial or administrative hearings, from governmental reports, hearings, audits, investigations, or from the news media, an award of a lesser amount, subject to the discretion of the Whistleblower Office, may be provided. Such an award may not exceed 10 percent of the proceeds collected as a result of any action. *IRC 7623(b)(2) does not apply if the whistleblower was the original source of the information that led to the specific allegations.*

Internal Revenue Manual 25.2.2.6.4(4) (emphasis added).

Thus, both the IRS whistleblower law and the IRS's corresponding regulations expressly allow whistleblowers to report information derived from a number of third-party sources, including the news media. If the whistleblower was the original source of the news reports on which enforcement is based, the

whistleblower's award eligibility will not be impacted, nor will their award be reduced.

Since these 2006 amendments were passed, whistleblowers have been responsible for the IRS's collection of \$6.6 billion in sanctions.<sup>13</sup>

#### E. The Dodd-Frank Act

Dodd-Frank's whistleblower program was based on the IRS whistleblower award law. The 2010 Senate Report could not have been more explicit: "The program is modeled after a successful IRS Whistleblower Program enacted into law in 2006." S. Rep. 111-176 (2010), at 111.

Congress was also clear that, as in the IRS law, awards *must* be paid whenever a sanction is based on the statutorily defined term of "original information." As in the IRS law, this term covers original sources to the news media. The Senate Report explained that a whistleblower's submission of "original information," as defined by Congress, was at the heart of the new program:

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<sup>13</sup> IRS Whistleblower Office, *Fiscal Year 2024 Annual Report* (May 2025), <https://www.irs.gov/pub/irs-pdf/p5241.pdf>. The overall impact of that law is, however, far greater than reported in the IRS's annual reports. Those reports only cover direct tax recoveries, while the actual amount of recoveries is in the tens of billions of dollars. See, e.g., Dennis J. Ventry Jr, *Not Just Whistling Dixie: The Case for Tax Whistleblowers in the States*, 59 Villanova L. Rev. 425 (Aug. 2015), at 425-27. Ventry explains that the single case he examined resulted a fine of \$780 million (including \$200 million for securities violations) but also triggered \$5.5 billion in other recoveries. Also, because the IRS has an 11-year backlog in adjudicating whistleblower cases, there are 11 years of sanctions collected in whistleblower cases that have not been officially credited in the IRS annual reports.

Recognizing that whistleblowers often face the difficult choice between telling the truth and the risk of committing “career suicide”, the program provides for *amply rewarding whistleblower(s), with between 10% and 30% of any monetary sanctions that are collected based on the “original information”* offered by the whistleblower. The program is modeled after a successful IRS Whistleblower Program enacted into law in 2006.

S. Rep. 111-176 (2010), at 111 (emphasis added).

Building off the predecessor program, Dodd-Frank clearly establishes media-first whistleblowers as eligible for awards if the media whistleblower was the “original source” of the “original information” that became “known to the Commission” and triggered the investigation or significantly contributed to an ongoing investigation. This language directly mirrors the structure of the FCA amendments and the IRS law.

Under Dodd-Frank, whistleblowers who “voluntarily provided original information to the Commission that led to the successful enforcement of the covered judicial or administrative action” are owed an award. 15 U.S.C. § 78u-6(b)(1). The binding definitional section of the Act defines original information as follows:

The term “original information” means information that—

(A) is derived from the independent knowledge or analysis of a whistleblower;

(B) is not known to the Commission from any other source, *unless the whistleblower is the original source of the information*; and

(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report,

hearing, audit, or investigation, or from the news media, *unless the whistleblower is a source of the information.*

15 U.S.C. § 78u-6(a)(3) (emphasis added).

There is no ambiguity to this language. If the SEC finds incriminating information through a whistleblower’s disclosure to the news media (or another external source covered in the definition of “original information”), that information still qualifies the whistleblower for an award so long as the whistleblower is the original source of the externally identified information. That is the plain meaning of this definitional provision. Specifically, Congress understood that the Commission would obtain “original information” from third parties, and thereafter defined third-party disclosures that would be covered under the award provision, if the whistleblower was the original source.

This definition of “original information” was *directly* incorporated into the Commission’s definition of “led to.” 17 C.F.R. § 240.21F-4(c)(1). Failure to use the statutory definition of “original information” in understanding the application of the “led to” requirement would be arbitrary, capricious, and contrary to law. 5 U.S.C. § 706(2)(a).

To reinforce the binding nature of Congress’s use of the term “original information” in the context of qualifying media-first whistleblowers for an award, the Supreme Court’s recent decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) put an end to this Court’s ability to defer to the Commission’s

interpretation of the law. Courts now cannot simply defer to the “reasonable” interpretation of a law. Instead, courts must exercise independent judgment in determining whether agency action contradicts the plain meaning of a governing statute. *Loper*, 603 U.S., at 394. To hold that a whistleblower who falls within the original source exception of the statutory definition of “original information” set forth in 15 U.S.C. § 78u-6(a)(3) fails “led to” under 17 C.F.R. § 240.21F-4(c)(1) is unquestionably contrary to law.

The Commission’s interpretation of the “led to” requirement renders the statutory definition of “original information” *entirely meaningless* as it relates to media-first whistleblowers by making it *impossible* for a media-first whistleblower to qualify for an award via the “original source” exception. Rules of statutory interpretation prohibit such a finding. “It is [] canonical that courts must read a statute to give effect to all provisions and avoid rendering any part inoperative or superfluous, void or insignificant.” *United States CFTC v. Hunter Wise Commodities, LLC*, 749 F.3d 967 (11th Cir. 2014), at 977, quoting *Corley v. United States*, 556 U.S. 303, 129 S. Ct. 1558 (2009), at 304.

By reading “led to” to entirely negate the original source exception, this interpretation also violates the requirements that courts must “fit, if possible, all parts [of a statute] into a harmonious whole.” *Black Warrior Riverkeeper, Inc. v. Black*

*Warrior Minerals*, 734 F.3d 1297 (11th Cir. 2013), at 1302, quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000), at 133.

In denying a whistleblower award because the Commission located the whistleblowers' publicly available reports before the whistleblowers filed their TCRs, the SEC attempts to resurrect the jurisdictional bar which Congress first eliminated in 1986. *Final Order*, at 5. The Commission's use of the "led to" requirement resurrects the same flawed analysis that was used in *Wisconsin v. Dean*. Congress rejected that analysis in 1986 and has repeatedly rejected it since, finding it antithetical to the common-sense understanding of how whistleblowers organically report "original information" through numerous third parties, all of which are protected under the statutory definition.

The jurisdictional bar, in all its potential forms, has been rejected by Congress, across multiple agencies and statutes, for forty years. Dodd-Frank was written to avoid this exact logic. There is no justifiable reason for this logic to govern award determinations now.

## **II. THE SEC'S INTERPRETATION OF THE ORIGINAL SOURCE EXCEPTION CONTRADICTS THE COMMISSION'S OWN REGULATIONS**

The SEC violated its own regulations on the treatment of "original information" in applying the "led to" requirement in this case.

Apart from referring to whistleblowers as “you” rather than “the whistleblower,” the SEC’s regulations include Dodd-Frank’s definition of original information verbatim, also explicitly including the news media in the original source exception. 17 C.F.R. § 240.21F-4(b)(1).

Later in the discussion of original information, the regulation states:

The Commission will consider you to be an original source of *the same information* that we obtain from another source *if* the information satisfies the definition of original information and *the other source obtained the information from you or your representative*.

17 C.F.R. § 240.21F-4(b)(5) (emphasis added).

Thereafter, the term “original information” is directly incorporated into the regulation defining “led to”:

(c) The Commission will consider that you provided *original information* that led to the successful enforcement of a judicial or administrative action in any of the following circumstances:

(1) You gave the Commission *original information* that was sufficiently specific, credible, and timely to cause the staff to commence an examination, open an investigation, reopen an investigation that the Commission had closed, or to inquire concerning different conduct as part of a current examination or investigation, and the Commission brought a successful judicial or administrative action based in whole or in part on conduct that was the *subject of your original information*.

17 C.F.R. § 240.21F-4(c)(1) (emphasis added).

This is exactly the situation at issue in this case. The whistleblowers’ published reports unambiguously “led to” the SEC’s successful enforcement action.

*Final Order*, at 5. And the reports meet the definition of “original information.” *Id.*

at 6. The fact that the SEC originally learned of the reports through the news media cannot, as a matter of law, disqualify the whistleblowers from an award.

These whistleblowers were qualified for an award under the “original source” provision contained in the mandatory definition of “original information.” 15 U.S.C. § 78u-6(a)(3). That provision equally qualifies whistleblowers as the source of the original information provided to the Commission, whether their initial reports were to the Justice Department, Congress or the news media. *Id.* Disclosures to these entities have been treated equally by Congress since 1986 under all the statutory provisions intended to limit the scope of the jurisdictional bar. *Id.*, 31 U.S.C. § 3730(e)(4)(a), 26 U.S.C. § 7623(b)(1).

Covering media-first whistleblowers is the only interpretation of “original source” consistent with (and mandated by) the law, the only interpretation consistent with the IRS law (which was the basis for Dodd-Frank), and the only interpretation that follows Congress’s categorical imperative that a “jurisdictional bar,” regardless of what it is called, ought never be used to disqualify a whistleblower. 17 CFR § 240.21F-4(c)(1) must be interpreted consistently with Congress’s unquestionable intent to ensure that whistleblowers who are the original source of information originally provided to the media are fully eligible for an award.

### III. THE SEC'S DENIAL OF A MEDIA-FIRST WHISTLEBLOWER UNDERMINES ITS OWN INVESTIGATORY POLICIES

#### A. The SEC Has Recognized the News Media's Importance to Commission Enforcement Efforts

The SEC's refusal to comply with the plain meaning of 15 U.S.C. § 78u-6(a)(3) not only contradicts the Commission's own regulations (including 17 C.F.R. § 240.21F-4(c)(1) itself) but also directly undermines SEC regulatory policies which have been in place since well before Dodd-Frank was passed.

The SEC itself has long recognized the crucial role played by the news media in unearthing misconduct in the financial sector. The agency's 2006 policy statement on the news media states:

Effective journalism complements the Commission's efforts to ensure that investors receive the full and fair disclosure that the law requires, and that they deserve. Diligent reporting is an essential means of bringing securities law violations to light and ultimately helps to deter illegal conduct.

SEC, *Policy Statement of the Securities and Exchange Commission Concerning Subpoenas to Members of the News Media* (April 12, 2006), <https://www.sec.gov/news/press/2006/2006-55.htm>. This language was codified by the SEC in 17 C.F.R. § 202.10.

As the SEC has itself noted, whistleblower disclosures to the media serve the public interest by informing consumers of fraud long before a full government investigation can be completed. Grace Schepis, *Don't Forget to Tip the Tipster: How the SEC's Failure to Financially Reward Media-First Whistleblowers Defies*

*Domestic and International Anti-Corruption Objectives*, 77 *Administrative L. Rev.* 469 (Spring 2025), at 491.

The SEC's own Enforcement Manual specifically encourages investigators to search through newspaper articles to find additional sources of useful information for uncovering and stopping violations of the law. SEC Division of Enforcement, *Enforcement Manual* (Feb. 24, 2026) at 2-9, <https://www.sec.gov/divisions/enforce/enforcementmanual.pdf>. This direction to enforcement staff is unquestionably a recognition of the importance of media-first whistleblowers in protecting investors. Yet under the SEC's logic in this case, this direction can be used to disqualify whistleblowers simply because enforcement staff did their job and located news articles faster than a whistleblower could file a TCR and send it to the appropriate authorities.

Empirically, the value of tips from the news media in uncovering fraud is difficult to overstate. A 2022 audit of the U.S.'s anti-bribery efforts by the Organization for Economic Co-operation and Development found that one in five successful prosecutions under the Foreign Corrupt Practices Act (FCPA) for foreign bribery resulted from media reports, double the number that resulted from organizations' self-reports.<sup>14</sup>

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<sup>14</sup> Organization for Economic Co-operation and Development, *Implementing the OECD Anti-Bribery Convention Phase 4 Two-Year Follow-Up Report: United States*,

Similarly, a 2007 study on the detection of corporate fraud in the U.S. found that 15.5% of corporate fraud is detected by the media, compared to 14.1% detected by industry regulators, government agencies, and self-regulatory organizations combined. Alexander Dyck, Adair Morse, and Luigi Zingales, *Who Blows the Whistle on Corporate Fraud?* 65 *The Journal of Finance* 2213 (Nov. 9, 2010), <https://doi.org/10.1111/j.1540-6261.2010.01614.x>.

The importance of covering media-first whistleblowers under Dodd-Frank is also attested to by the whistleblowers who are participating as *amici* in this case.

The role of the news media in promoting transparency and shedding light on corrupt activity, particularly in the corporate sphere, has been affirmed by numerous Courts. *See, e.g., Grosjean v. American Press Co.*, 297 U.S. 233, 250 (1936) (“The newspapers, magazines, and other journals of the country, it is safe to say, have shed and continue to shed, more light on the public and business affairs of the nation than any other instrumentality of publicity”); *Richmond Newspapers v. Virginia*, 448 U.S. 555, 569 (1980) (“Without publicity, all other checks [on institutional power] are insufficient: in comparison of publicity, all other checks are of small account.”); *Cooper v. Dillon*, 403 F.3d 1208 (11th Cir. 2005), 1214 (freedom of the press is

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[https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/10/implementing-the-oecd-anti-bribery-convention-phase-4-follow-up-report-united-states\\_bbccd968/d994f92a-en.pdf](https://www.oecd.org/content/dam/oecd/en/publications/reports/2022/10/implementing-the-oecd-anti-bribery-convention-phase-4-follow-up-report-united-states_bbccd968/d994f92a-en.pdf), at 10.

“understood to be essential to the maintenance of our democratic polity, which depends upon an informed citizenry to hold government officials accountable for error and abuse and to seek redress and change by lawful means.”)

With whistleblowers hesitant to report their allegations to the news media in fear of being ineligible for an SEC reward – or even worse, deciding not to come forward at all – the government loses effective informants on corporate misconduct, journalists lose credible sources, and the public is denied knowledge of widespread fraud that may impact them directly. To exclude whistleblowers who go to the news media from the SEC’s enforcement scheme would work directly against the program’s regulatory structure and contradict the admitted reliance of the Commission on news media reports by working against the very existence of those reports. Schepis, *supra*, at 477. The SEC’s interpretation of Dodd-Frank’s award eligibility provisions cuts its own anti-fraud pursuits off at the knees.

B. The SEC Has Recognized Whistleblower Award Payments as a Cost-Effective Method of Incentivizing Disclosures

*Amici* anticipate that the SEC will argue there is little need to pay whistleblowers who initially report to the news media, as those whistleblowers are sufficiently incentivized by their commitment to the public interest to step forward without the inducement of a government award. This argument, if employed, runs counter to the evidence and to the Commission’s own regulations.

The SEC considered the role of award payments in achieving Dodd-Frank's goals during two Commission rulemaking proceedings. *See* Whistleblower Program Rules, 83 Fed. Reg. 140 (July 20, 2018) (Proposed Rules); The Commission's Whistleblower Program Rules, 87 Fed. Reg. 34 (February 18, 2022) (Proposed Rules).

In its 2022 Notice of Proposed Rulemaking, the Commission directly addressed the issue of whether *paying* awards serves the public interest by incentivizing others to step forward. Based on the Commission's 12-year history of processing cases under Dodd-Frank, its conclusion was unequivocal: the paying of awards incentivizes potential whistleblowers to come forward.

[I]t has been the Commission's experience that large awards in particular generate public interest and in so doing increases the instances of whistleblowers coming forward to report securities-law violations. In this way, *large awards directly serve the purpose of the whistleblower program (and by extension the interests of the investing public) by incentivizing whistleblowers to report violations to the Commission.*

The Commission's Whistleblower Program Rules, 87 Fed. Reg., at 9290 (emphasis added).

This conclusion was formally approved by the Commission when it issued its Final Rule:

For the reasons set forth in the proposing release and supported by the comments received on this proposal, this amendment will help strengthen the whistleblower program by encouraging high-quality tips

from insiders and others who have original information relating to potential securities law violations.

Whistleblower Program Rules, 87 Fed. Reg. 170 (Sept. 2, 2022) (Final Rule), at 54146.

The SEC also presented the results of an economic cost-benefit analysis of the rule, finding that award payments were a cost-effective policy due to their ability to incentivize whistleblower disclosures:

Whistleblower programs, including the SEC's whistleblower program, have been studied by economists who report findings consistent with award programs being effective at contributing to the discovery of violations. In addition, a recent publication reports that, among other benefits, “[w]histleblower involvement [in the enforcement process] is associated with higher monetary penalties for targeted firms and employees.” Further, published research articles and current working papers report that the SEC's whistleblower program deters aggressive (*i.e.*, potentially misleading) financial reporting and insider trading. We have received comments that support the conclusion that the SEC's whistleblower program is valuable and effective.

*Id.* at 54147 (internal citations omitted).

Finally, *all* public comments received by the Commission supported the proposed rule, and the Commission affirmatively cited to many of these comments in support of its finding that the paying of awards is a powerful incentive for whistleblowers to come forward.<sup>15</sup> This evidence, and the SEC's explicit affirmation

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<sup>15</sup> *See, e.g.*, cited comments from Cornell Securities Law Clinic (Apr. 11, 2022) (lowering awards “would only instill more hesitation for people that are considering coming forward”); Better Markets (Apr. 11, 2022) (“awards serve the purpose of the whistleblower program by drawing public attention and thereby incentivizing

of it, demonstrate that award payments (and not just potential award availability) are a critical method by which Dodd-Frank incentivizes whistleblower disclosures. To hold that whistleblowers who initially disclose to the media do not need to be paid an award undermines the goals of Dodd-Frank, Congress’s decision to eliminate the “jurisdictional bar” in the context of media disclosures, and the SEC’s factual findings and stated intent in promulgating its 2022 rule.

### **CONCLUSION**

For the reasons set forth above, *amici* respectfully ask this Court to overturn the Commission’s administrative judgment.

Respectfully submitted,  
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Dated: February 27, 2026

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whistleblowers to come forward”); Cohen, Milstein, Sellers & Toll PLLC (Apr. 8, 2022) (“awards increase the awareness of, and incentives to participate in, the SEC’s whistleblower program”). *Id.* at 54146 (footnote 57).

**CERTIFICATE OF COMPLIANCE**

Pursuant to 11<sup>th</sup> Cir. R. 28-1(1), and Fed. R. App. P. 29(a)(4)(g) and 32(g)(1) I hereby certify that this brief complies with the type-volume limitation because it contains 6,322 words, excluding the parts exempted by Fed. R. App. P. 32(f) and 11<sup>th</sup> Cir. R. 32-4. I further certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typeface style requirements of Fed. R. App. P. 32(a)(6) because the brief was prepared in 14-point Times New Roman font using Microsoft Word.

*/s/ Stephen Kohn*  
Stephen M. Kohn  
*Attorney for Amicus Curiae*

Dated: February 27, 2026

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 27th day of February 2026, I have caused the foregoing to be served upon all counsel of record by filing the said document on the Court's CM/ECF system.

*/s/ Stephen Kohn*  
Stephen M. Kohn  
*Attorney for Amicus Curiae*