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NOTES


INTRODUCTION

The Civil False Claims Act1 was originally enacted during the Civil War when fraud, price gouging, and deliveries of defective weapons plagued the Union Army.2 Under the False Claims Act ("Act" or "False Claims Act"), a private citizen, acting on behalf of the United States, can bring suit against someone who has allegedly defrauded the government, earning a portion of the recovery if the suit is successful.3 Throughout its 130 year history, the False Claims Act has been viewed by some commentators as an opportunity for the recovery of lost revenue, the weapon of vigilant taxpayers who file suit attempting to recoup losses for their defrauded government, a deterrent against unlawful activity, and a means of supplementing the federal treasury.4 Others have seen the False Claims Act as a vehicle for opportunistic plaintiffs, whose suits both actually reduce the amount of federal recovery from unscrupulous contractors and interfere with the federal government's efforts to

3. 31 U.S.C. § 3730(b), (d).
4. Since . . . amendments [were] enacted in 1986 which revived the act, the [False Claims Act] has brought $588 million back into the Treasury. The Government now recovers more money through these whistle-blower lawsuits than through suits initiated by the Justice Department. Not surprisingly, Defense contractors hate the whistle-blower law. . . . These same companies have paid out more than a half-billion dollars in penalties and settlements for fraud in just the past 3 fiscal years — a quarter of which comes from whistleblower lawsuits alone.


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curtail fraud.\(^5\)

These two conflicting views are reflected in a current split among the United States courts of appeals over the proper interpretation of one component of the Act's jurisdictional requirements: the "original source" provision in section 3730(e)(4), which covers subject matter jurisdiction of private plaintiff suits under the Act.\(^6\)

This section of the Act is implicated where a private plaintiff's suit, brought on behalf of the government, is based upon allegations and transactions that have been publicly disclosed.\(^7\) The private plaintiff is barred from maintaining such a suit unless she can show that she is an original source as defined in the statute, i.e., has direct and independent knowledge of the information that forms the basis for her suit.\(^8\) Some courts of appeals have construed the statute broadly to allow plaintiffs to bring an action whenever they can show some direct and independent knowledge of the information that has been publicly disclosed.\(^9\) Other courts of appeals have con-

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\(^{5}\) "You can't have private citizens running around as bounty hunters after corporations . . . . Turning that power over to any Tom, Dick or Harry is a very unfair way to proceed. That's no way to run the government." . . . [I]t destroys business relationships and further diminishes [the Pentagon's] diluted authority.


\(^{6}\) § 3730(e)(4)(A), (B). The original source provision of § 3730(e)(4) bars a private plaintiff from bringing suit under the Act where information that forms the basis of the suit is in the public domain, unless the plaintiff is an original source of the information. *Id.* See *infra* notes 66-71 and accompanying text for a full definition of the original source provision; see also part II, *infra*, for a discussion of the split in the courts of appeals.

\(^{7}\) § 3730(e)(4)(A).

\(^{8}\) § 3730(e)(4)(B).

\(^{9}\) *See Cooper ex rel.* United States v. Blue Cross and Blue Shield, Inc., 19 F.3d 562, 567 (11th Cir. 1994) (plaintiff allowed to bring suit where, despite public disclosure of information in suit, plaintiff had direct knowledge obtained independently); United States *ex rel.* Siller v. Becton Dickinson & Co., 21 F.3d 1339, 1347-49 (4th Cir.), *cert. denied*, 115 S. Ct. 316 (1994) (plaintiff allowed to maintain suit despite public disclosure if knowledge of transactions and allegations is direct and independent); United States *ex rel.* Springfield Terminal Ry. v. Quinn, 14 F.3d 645, 651-53 (D.C. Cir. 1994) (information gleaned from discovery in prior suit insufficient to indicate fraud; plaintiff's additional knowledge of defendant's activities and subsequent interviews gave it direct and independent information); United States *ex rel.* Precision Co. v. Koch Indus., Inc., 971 F.2d 548, 553 (10th Cir. 1992), *cert. denied*, 113 S. Ct. 1364 (1993) (plaintiff allowed to maintain suit only where knowledge is direct and independent); United States *ex rel.* Stinson v. Prudential Ins. Co., 944 F.2d 1149, 1160 (3d Cir. 1991) ("original source")
strued the provision narrowly to prohibit such suits by plaintiffs, fearing that plaintiffs whose information is not wholly original are seeking only to capitalize on information that has already been publicly disclosed. These courts have required a private plaintiff to be a “whistle-blower,” the individual responsible for any public disclosure, in order to maintain her suit. Although the split among the United States courts of appeals reflects divergent policy goals, the key to understanding these two different approaches lies in the method of statutory construction used in interpreting this critical provision: the interpretation of the plain language of the Act and the weight and meaning to be accorded to the Act’s extensive and complex legislative history as evidence of congressional intent and purpose.

This Note addresses the jurisdictional requirements expressed in section 3730(e)(4) of the Act, specifically the “original source” provisions that bar a private plaintiff from maintaining a suit under the Act where information that forms the basis of her suit has been publicly disclosed. Part I presents the historical background and legislative history of this oft-amended Act, including a review of the language of section 3730(e)(4). Part II traces the development of two branches of thought in the federal courts concerning the application of the jurisdictional bar to suits under the Act. Part III reviews principles of statutory construction and the legislative history of the Act to conclude that the criteria for subject matter jurisdiction in the statute are sufficient to protect against parasitic suits under the False Claims Act without requiring that the plaintiff in such suits be the individual responsible for any public disclosure.


10. See Wang ex rel. United States v. FMC Corp., 975 F.2d 1412, 1418 (9th Cir. 1992) (jurisdiction under False Claims Act is only appropriate for those who have been instrumental in the public disclosure of allegations of fraud); United States ex rel. Dick v. Long Island Lighting Co., 912 F.2d 13, 16 (2d Cir. 1990) (plaintiff must have directly or indirectly been a source to the entity that publicly disclosed the allegations); United States ex rel. Fine v. MK Ferguson Co., 861 F. Supp. 1544 (D.N.M. 1994) (adopting reasoning of Second and Ninth Circuits). See infra part II.A for a discussion of the “whistle-blower” requirement imposed by these circuits on the “original source” provision of § 3730(e)(4).

I. Background

A. Legislative History

1. The False Claims Act of 1863

The False Claims Act was originally enacted in 1863 in response to congressional outrage over fraud committed by unscrupulous contractors against the War Department during the Civil War. The Act, known at the time as the “Lincoln Law,” provided civil and criminal penalties for individuals convicted of knowingly submitting false claims to the government. Concerned that the federal government would be unable to uncover all instances of fraud, Congress established a cause of action for private individuals with knowledge of fraudulent acts. This cause of action, known as a qui tam suit, authorized private plaintiffs to bring suit on behalf of the government to recover a penalty under a statute which provides that part of the penalty is awarded to the party bringing the suit and the remainder of the penalty is awarded to the government. The term “qui tam” comes from the Latin phrase, “qui tam pro domino rege quam pro se ipso in hac parte sequitur,” which translates as “who brings the action for the king as well as for himself.” Erickson ex rel. United States v. American Inst. of Biological Sciences, 716 F. Supp. 908, 909 n.1 (E.D. Va. 1989) (quoting W. Blackstone, Commentaries on the Law of England 160 (1768)).
of the United States to recover money acquired through “false claims” which had been submitted to the government.\(^\text{19}\) As an incentive, the private plaintiffs, called “relators,”\(^\text{20}\) were offered the chance to recover half of the damages and forfeitures collected, plus costs, if the litigation proved successful.\(^\text{21}\)

2. The 1943 Amendments: Congressional Reaction to \textit{United States ex rel. Marcus v. Hess}\(^\text{22}\)

In the years following its enactment, the Act was seldom utilized. During the 1930s and 1940s, however, increased government spending brought new opportunities for unscrupulous contractors to collect fraudulent profits.\(^\text{23}\) The original provisions of the Act did not restrict the ability of private plaintiffs to bring a \textit{qui tam} suit even where the suits were based on publicly disclosed information.\(^\text{24}\) As a result, a series of “parasitic” civil suits were brought by opportunistic plaintiffs, in which the allegations in the \textit{qui tam} suit were actually derived from previously issued criminal indictments by the government.\(^\text{25}\) In the most famous of these cases, \textit{United States ex rel. Marcus v. Hess},\(^\text{26}\) electrical contractors, who were employed to work on Public Works Administration projects near Pittsburgh, were indicted for defrauding the government, pled \textit{nolo contendere}, and were fined $54,000.\(^\text{27}\) Subsequent to that criminal action, a \textit{qui tam} plaintiff brought a civil action under the Act

\footnotesize{wise lack standing to bring the suit, to sue on behalf of the Government. Boese, supra note 2, at 1-4.  
21. Id. Although used originally to combat fraud in the defense industry, the False Claims Act has recently been useful in prosecuting health care fraud. See David J. Ryan, \textit{The False Claims Act: An Old Weapon with New Firepower Is Aimed at Health Care Fraud}, 4 \textit{Ann. of Health Law} 127 (1995).  
23. Boese, supra note 2, at 1-10.  
24. Id. The relevant portion of the Act at the time of the decision in Hess read as follows: “Such suit may be brought and carried on by any person, as well as for himself as for the United States . . . .” Act of March 2, 1863, Ch. 67, § 4, 12 Stat. 698 (1863) (codified as amended 31 U.S.C. § 232 (1943) and recodified as amended 31 U.S.C. §§ 3729-3731 (1986)) (punishment of fraud upon the federal government).  
27. Id. at 539, 545.
against the contractors that resulted in a judgment of $315,000.\textsuperscript{28} Despite arguments by the government that the suit should not be allowed, the United States Supreme Court in \textit{Hess} held that the False Claims Act did not bar a \textit{qui tam} suit where the complainant might have obtained his information from a previous indictment.\textsuperscript{29} Significantly, the Court refused to read restrictions into the plain language of the statute and instead offered to Congress the opportunity to provide "specifically for the amount of new information which the informer must produce to be entitled to reward."\textsuperscript{30}

Reaction to the Court's decision in \textit{Hess} was swift. In the next session of Congress, Attorney General Francis Biddle requested that Congress repeal the entire \textit{qui tam} provision.\textsuperscript{31} The House of Representatives followed his direction.\textsuperscript{32} The Senate, however, was reluctant to eliminate the provision altogether, citing fears of governmental delay and inadequate enforcement if the \textit{qui tam} provision were totally repealed.\textsuperscript{33} The final amendment reflected a compromise between the two camps:\textsuperscript{34} the Act, after the 1943 amendments, retained the \textit{qui tam} provision, but barred relators from bringing actions that were "based on evidence or information the government had when the action was brought."\textsuperscript{35}

This restriction on actions by \textit{qui tam} plaintiffs had effects which had not been anticipated by the legislature.\textsuperscript{36} As a result of

\begin{itemize}
\item \textsuperscript{28} \textit{Id.} at 539-40.
\item \textsuperscript{29} \textit{Id.} at 545.
\item \textsuperscript{30} \textit{Id.} at 546 & n.9.
\item \textsuperscript{32} \textit{Id.}
\item \textsuperscript{33} \textit{Id.}
\item \textsuperscript{34} An exception present in the original Senate version of the bill, which would have allowed a \textit{qui tam} plaintiff to bring an action if the information on which the suit was based was "original" with such person, was dropped in conference from the final version. S. \textit{REp. No. 345}, 99th Cong., 2d Sess. 12, \textit{reprinted in} 1986 U.S.C.C.A.N. 5266, 5277.
\item \textsuperscript{35} 31 U.S.C. § 3730(b)(4) (1982) (superseded). After the 1943 amendments, the language of this section read as follows: "'(4) Unless the Government proceeds with the action, the court shall dismiss an action brought by the person on discovering the action is based on evidence or information the Government had when the action was brought.' \textit{Id.}
\item \textsuperscript{36} The language of the floor debate reveals that Congress assumed many \textit{qui tam} actions could still be maintained after the passage of the 1943 Amendments. Senator Van Nuys, Chairman of the Senate Judiciary Committee, stated his belief that "the proposal 'protects the honest informer as nearly we can do it by statute (and) . . . would not prevent an honest informer from coming in.'" S. \textit{REp. No. 345}, 99th Cong., 2d Sess. 12 (1986) (quoting 89 \textit{CONG. REc.} 7609 (1943)), \textit{reprinted in} 1986 U.S.C.C.A.N. 5266, 5277 (alterations in the original). Representative Kefauver commented, "[If] the average,
the passage of the 1943 amendments, a *qui tam* plaintiff who was jurisdictionally barred from bringing a suit not only lost the opportunity to recover a portion of the award, but also was precluded from objecting to settlements or dismissals of the suit and from challenging any lack of diligence on the part of the investigating governmental agency. Further, the jurisdictional bar was held by the courts to preclude a suit by a *qui tam* plaintiff even where the plaintiff had originally furnished the information to the government before filing suit, as well as suits by plaintiffs who independently acquired information of fraud that the government also happened to possess.

3. The 1986 Amendments: Congressional Reaction to *United States ex rel. Wisconsin v. Dean* 39

As in 1943, 40 congressional action was once again spurred by a judicial decision that seemed to contradict the original purposes of the Act. 41 In *Dean*, the United States Court of Appeals for the Seventh Circuit held that the jurisdictional restrictions in the Act barred a *qui tam* action brought by the State of Wisconsin in a civil suit charging Medicaid fraud. 42 Under the applicable federal Medicare statute, the state had been required to disclose its investigation

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37. Id.

38. See, e.g., United States *ex rel.* Wisconsin v. Dean, 729 F.2d 1100 (7th Cir. 1984) (jurisdiction denied even where state disclosure of investigation to federal agency was required by statute). See infra notes 40-46 and accompanying text. See also United States v. Aster, 275 F.2d 281 (3d Cir.), cert. denied, 364 U.S. 894 (1960) (jurisdiction denied where information upon which *qui tam* suit was based was in the possession of the federal government prior to the filing of a suit by the individual who provided such information to the government); United States *ex rel.* McCans v. Armour & Co., 146 F. Supp. 546, 550 (D.D.C. 1956), aff'd, 254 F.2d 90 (D.C. Cir.), cert. denied, 358 U.S. 834 (1958) (government auditor barred from bringing false claims suit where notice to supervisors of fraudulent activity put information into possession of the government before suit was filed).

39. 729 F.2d 1100 (7th Cir. 1984).


41. “Once again, the passage of time revealed that Congress, in its attempt to evade Scylla, had steered precipitously close to Charybdis.” United States *ex rel.* Springfield Terminal Ry. Co. v. Quinn, 14 F.3d 645, 650 (D.C. Cir. 1994) (reciting thorough legislative history of the Act).

42. *Dean*, 729 F.2d at 1100.
of Medicaid fraud to the Department of Health and Human Services.\textsuperscript{43} The court in \textit{Dean} held that this disclosure operated to preclude the state from acting as a \textit{qui tam} plaintiff in a false claims suit, because, following the state's required disclosure, the federal government "had the information when the action was brought," thus triggering the jurisdictional bar in section 3730(b)(4).\textsuperscript{44} The court suggested that "[i]f the State of Wisconsin desires a special exemption to the False Claims Act because of its requirement to report Medicaid fraud to the federal government, then it should ask Congress to provide the exemption."\textsuperscript{45}

Immediately following the court's ruling in \textit{Dean}, the National Association of Attorneys General adopted a resolution urging Congress to "rectify the unfortunate result" of that decision, arguing that the court's holding unnecessarily inhibited the "detection and prosecution of fraud on the Government."\textsuperscript{46}

In response to both the outcry over the holding in \textit{Dean} and a concern over the growing pervasiveness of fraud against the government, Congress moved in 1986 to amend the Act once again.\textsuperscript{47} The Report of the Senate Judiciary Committee on the 1986 Amendments stated that the purpose of the proposed legislation was to "provide the Government's law enforcers with more effective tools" and to "encourage any individual knowing of Government fraud to bring that information forward."\textsuperscript{48} As the means to accomplish the second of these goals, the Senate bill increased incentives for private plaintiffs to bring actions on behalf of the government, including increased awards and revision of the jurisdictional provisions that had inhibited \textit{qui tam} actions since 1943.\textsuperscript{49}

\begin{footnotes}
\footnote{43. Id. at 1103.}
\footnote{44. Id. at 1102.}
\footnote{45. Id. at 1106.}
\footnote{47. Id. at 2-3, 13, \textit{reprinted in} 1986 U.S.C.C.A.N. 5266, 5266-67, 5278.}
\footnote{48. Id. at 2, \textit{reprinted in} 1986 U.S.C.C.A.N. 5266, 5266-67.}
Specifically addressing the problem faced by the State of Wisconsin in \textit{Dean}, the final version of the bill provided that actions based upon "public disclosure of allegations" are allowed if the person who brings the action is the "original source of the information."\footnote{31 U.S.C. § 3730(e)(4)(A) (1988).} The statute went on to define "original source" as "an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information."\footnote{§ 3730(e)(4)(B). The full text of the relevant portion of the statute is as follows: (4)(A) 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. (B) For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information. § 3730(e)(4)(A), (B).} The "original source" language was intended by the sponsors of the legislation to preclude the parasitic actions of the \textit{Hess} era.\footnote{See United States \textit{ex rel.} Marcus v. Hess, 317 U.S. 537 (1943). "This amendment seeks to assure that a \textit{qui tam} action based solely on public disclosures cannot be brought by an individual with no direct and independent knowledge of the information or who had not been the original source to the entity that disclosed the allegations." (statement by Sen. Grassley, sponsor, 1986 Amendments, 132 Cong. Rec. S11244 (daily ed. Aug. 11, 1986). See also supra notes 23-30 and accompanying text for a discussion of parasitic actions.} Thus, Congress attempted to create more opportunities for private plaintiffs to bring \textit{qui tam} suits under the Act, while simultaneously maintaining a jurisdictional bar against the opportunistic "parasitical actions" that had characterized such suits before the 1943 amendments.\footnote{Purcell, \textit{supra} note 5, at 942-43, 948.}

opportunism" to rest, the 1986 amendments to the Act served only to create additional controversy.\textsuperscript{55} Lacking clear legislative history,\textsuperscript{56} the federal courts have developed a variety of individual standards for determining whether a particular \textit{qui tam} plaintiff has crossed the line from "honest" to "parasitic" informer.\textsuperscript{57} The courts have wrestled with precise definitions for three key terms in the jurisdictional bar of section 3730(e)(4): the concepts of "based upon," "public disclosure," and "original source."\textsuperscript{58} Section 3730(e)(4)(A) provided that "[n]o court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions . . . unless the action is brought by the Attorney General or the person bringing the action is an \textit{original source} of the information."\textsuperscript{59} "Original source" was defined in sec-

\textsuperscript{55} See, part II, \textit{infra}, for a discussion of the split in the federal circuits. See also Kolis, \textit{supra} note 5, at 419-26 for a thorough discussion of the language of the entire 1986 amendments.

\textsuperscript{56} United States \textit{ex rel.} Stinson v. Prudential Ins. Co., 944 F.2d 1149, 1154 (3d Cir. 1991). "The . . . 1986 amendments underwent substantial revisions during [their] legislative path. This provides ample opportunity to search the legislative history and find some support somewhere for almost any construction of the many ambiguous terms in the final version." \textit{Id.}

\textsuperscript{57} H.R. \textit{Rep.} No. 837, 102d Cong., 2d Sess. 4-5, 7-8. See also part II, \textit{infra}.


\textsuperscript{59} \textit{Id.} (emphasis added). Although this Note deals with the "original source" provision in the jurisdictional bar of § 3730(e)(4), the manner in which a series of allegations can be said to be "based upon previously disclosed" information relates tangentially to the question of "original source" and thus bears some brief discussion. For a thorough and detailed analysis of "based upon previously disclosed" and the case law surrounding the jurisdictional bar of § 3730(e)(4), see Robert Salcido, \textit{Screening Out Unworthy Whistleblower Actions: An Historical Analysis of the Public Disclosure Jurisdictional Bar to Qui Tam Actions Under the False Claims Act}, 24 PUB. CONT. L.J. 237 (1995).

The question of whether the series of allegations is "publicly disclosed" is a threshold question. United States \textit{ex rel.} Precision Co. v. Koch Indus., Inc., 971 F.2d 548, 552 (10th Cir. 1992), \textit{cert. denied}, 113 S. Ct. 1364 (1993). See also \textit{Boese}, \textit{supra} note 2, at 4-26. If the information upon which the false claims action is based has not been publicly disclosed, the court questioning the applicability of the jurisdictional bar in § 3730(e)(4) need never reach the question of whether the allegations are based upon the disclosed information. \textit{Precision}, 971 F.2d at 552-53; Wang \textit{ex rel.} United States v. FMC Corp., 975 F.2d 1412, 1416 (9th Cir. 1992) ("Where there has been no 'public disclosure' within the meaning of section 3730(e)(4)(A), there is no need for a \textit{qui tam} plaintiff to show that he is the 'original source' of the information.") (citing, \textit{e.g.}, United States \textit{ex rel.} Hagood v. Sonoma County Water Agency, 929 F.2d 1416, 1419-20 (9th Cir. 1991)). Further, because the "based upon publicly disclosed" information is designed to be a "quick trigger" test, the \textit{qui tam} plaintiff does not have to demonstrate that it fulfills the qualifications for an "original source" unless the information upon which the false claims suit is founded has been held to be based upon publicly disclosed information. \textit{Precision}, 971 F.2d at 552-53. Some circuits, however, have used the "based upon publicly disclosed" standard as a more exacting threshold test, limiting the application of
tion 3730 (e)(4)(B) as "an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action . . . which is based on the information." Thus, under the statute, a *qui tam* plaintiff could bring a suit under the False Claims Act which was "based upon" "publicly disclosed" information as long as the plaintiff was an "original source" of that information. To qualify as an "original source" under the Act, however, a relator must first have "direct and in-

the "original source" standard where some of the information upon which the false claims suit is based is in the public domain. See, e.g., United States *ex rel.* Springfield Terminal Ry. Co. *v.* Quinn, 14 F.3d 645 (D.C. Cir. 1994). See also infra notes 144-159 and accompanying text for a discussion of the District of Columbia Circuit's detailed analysis of the "based upon/publicly disclosed" test in *Quinn.*

60. § 3730(e)(4)(B).

61. § 3730(e)(4). In defining the term "publicly disclosed," Congress specified particular circumstances in which the threshold test might apply. § 3730(e)(4)(A). The language of the statute precludes actions 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." *Id.* This provision has been interpreted by the courts to include any information that has been disclosed through civil litigation which is on file with the clerk's office. United States *ex rel.* Siller *v.* Becton Dickinson & Co., 21 F.3d 1339, 1350 (4th Cir.), *cert. denied,* 115 S. Ct. 316 (1994) (citing United States *ex rel.* Springfield Terminal Ry. Co. *v.* Quinn, 14 F.3d 645, 651 (D.C. Cir. 1994); United States *ex rel.* Kreindler & Kreindler *v.* United Technologies Corp., 985 F.2d 1148, 1158 (2d Cir.), *cert. denied,* 113 S. Ct. 2962 (1993); United States *ex rel.* Precision Co. *v.* Koch Indus., Inc., 971 F.2d 548, 554 n.5 (10th Cir. 1992), *cert. denied,* 113 S. Ct. 1364 (1993); United States *ex rel.* Stinson *v.* Prudential Ins. Co., 944 F.2d 1149, 1154-56 (3d Cir. 1991).

62. § 3730(e)(4)(B). Even if the information has been publicly disclosed, the *qui tam* plaintiff nonetheless need not show herself to be an "original source" unless the information upon which her suit is founded is "based upon" that publicly disclosed information. *Precision,* 971 F.2d at 552.

Some courts of appeals have held that *qui tam* actions are "based upon" a public disclosure whenever the factual basis for the action has been disclosed into the public domain. See United States *ex rel.* Rabushka *v.* Crane Co., 40 F.3d 1509, 1527 (8th Cir. 1994), *cert. denied,* 115 S. Ct. 2579 (1995) (Magill, J., dissenting) ("'based upon' . . . has been broadly interpreted by other courts of appeals to mean 'based in any part upon'"); United States *ex rel.* Springfield Terminal Ry. Co. *v.* Quinn, 14 F.3d 645, 652-55 (D.C. Cir. 1994) (intent of Congress was to prohibit *qui tam* actions if the allegations or transactions "were in the public domain"); *Precision,* 971 F.2d at 552 ("based upon" means "supported by"); United States *ex rel.* Doe *v.* John Doe Corp., 960 F.2d 318, 324 (2d Cir. 1992) (*qui tam* plaintiff's action is "based upon" a publicly disclosed allegation where the relator's allegations are "the same . . . regardless of where the relator obtained his information"). But see United States *ex rel.* Siller *v.* Becton Dickinson & Co., 21 F.3d 1339, 1350 (4th Cir.), *cert. denied,* 115 S. Ct. 316 (1994) (the proper interpretation of "to base upon" is "to use as a basis for" (citation omitted); plain language of statute indicates close relationship is required before relator can be considered to have based *qui tam* action on previously disclosed allegations).
dependent" knowledge of the information upon which the allegations in the *qui tam* suit are based.\(^{63}\) Second, the relator must have voluntarily provided the information to the government before filing the *qui tam* action.\(^{64}\)

Defendants in false claims suits soon found ambiguity in this section, which provided support for motions to dismiss in a wide range of circumstances.\(^{65}\) The courts' broad definition of the first part of the jurisdictional analysis, whether the allegations had been "publicly disclosed" and whether the *qui tam* action was "based upon" that disclosure, served with increasing frequency to focus the jurisdictional decision on the second part of the test, whether the *qui tam* plaintiff was an "original source."\(^{66}\) This critical provision has been variously interpreted by the federal courts, leading one commentator to term it "the most litigated — and confused — issue under the *qui tam* provisions."\(^{67}\) Some courts of appeals have imposed an additional criterion to the statutory requirements of "direct and independent" and require a *qui tam* plaintiff to be the source of the public disclosure, the "whistleblower," in order to maintain jurisdiction under section 3730(e)(4).\(^{68}\) Other courts of appeals have relied on the "plain language" of the statute, holding that a *qui tam* plaintiff is only barred under section 3730(e)(4) where she did not have direct and independent knowledge of the allegations that formed the basis for her complaint.\(^{69}\) The confusion surrounding this aspect of the jurisdictional bar has allowed some *qui tam* suits to go forward where the plaintiff was not clearly the original source of the information\(^{70}\) and has barred other suits where the *qui tam* plaintiff was the sole source for inside information about fraud perpetuated on the federal government.\(^{71}\)

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63. § 3730(e)(4)(B).
64. Id.
65. See infra part II.
66. BOESE, supra note 2, at 4-27 to 4-34. "As the definition of 'public disclosure' is broadened by the courts, this 'original source' question will become one of the most critical segments of the *qui tam* provisions." Id. at 4-34. But see United States ex rel. Springfield Terminal Ry. Co. v. Quinn, 14 F.3d 645 (D.C. Cir. 1994) (detailed analysis of "based upon/publicly disclosed" threshold test).
67. BOESE, supra note 2, at 4-35.
70. See, e.g., id.
5. The Proposed 1992 and 1993 Amendments

The sponsors of the 1986 amendments were not unaware of the controversy that had been created by the language in section 3730(e)(4). Consequently, in 1992, Congress attempted to resolve the varying interpretations of the jurisdictional bar in section 3730(e)(4) by trying to pass yet another series of amendments to the False Claims Act. In August 1992, the House passed House Bill 4563 and sent it to the Senate accompanied by the Report of the House Committee on the Judiciary. In its report, the committee took note of several federal appellate court decisions and concluded that "clarifications... are necessary in light of a number of incorrect interpretations of the parasitic suit ban in the current Act." According to the committee report, the 1992 amendment was specifically drafted to insure that the jurisdictional bar applied only where "all of the material facts and allegations" were drawn from the sources enumerated in the statute. Further, the amendment was intended to set the record straight concerning the "original source" language of the Act: "If the case is based in whole or in part on sources other than those described in section 3730(e)(4), it

72. See Purcell, supra note 5, at 967-76 for a detailed discussion of the 1992 amendments while they were still under consideration by Congress.
74. H.R. 4563, 102d Cong., 2d Sess. (1992). The relevant text of the proposed amendment provided:

(4)(A) No court shall have jurisdiction over an action brought under subsection (b) in which all of the material facts and allegations are obtained from a news media report or reports, or a disclosure to the general public of a document or documents —

(i) created by the Federal Government;
(ii) filed in a lawsuit to which the Federal Government is a party; or
(iii) relating to an open and active investigation by the Federal Government; unless the person bringing the action is an original source of such facts and allegations.

(B) For purposes of this paragraph, an individual is an "original source" of material facts and allegations if such individual has knowledge, independent from the sources listed in subparagraph (A), of such facts and allegations and has voluntarily provided them to the Government. The person bringing the action shall also be considered an original source of any material facts or allegations developed as a result of information provided to the Government by that person.

Id. (emphasis added).
76. Id. at 13 (emphasis added). "H.R. 4563 specifically targets an overly restrictive reading of the jurisdictional bar so as to encourage private parties to expose fraud otherwise unknown to the government." Purcell, supra note 5, at 973 (citing H.R. Rep. No. 837, 102d Cong., 2d Sess. 13 (1992)).
may be brought by any person with access to information, from whatever source, that will support a cause of action filed under the Act. 77

The committee report specifically cited the United States Court of Appeals for the Second Circuit's decision in United States ex rel. Dick v. Long Island Lighting Co. ("LILCO"), which required a qui tam plaintiff to have "directly or indirectly been a source to the entity that publicly disclosed the allegations on which a suit is based," 78 and pointedly rejected the Second Circuit's interpretation. 79 Instead, the committee report noted that the phrase "material facts and allegations" was purposefully repeated in the section of House Bill 4563 that dealt with subject matter jurisdiction. 80 The use of "material facts and allegations" in House Bill 4563, in place of the phrases "allegations or transactions" and "information" in the 1986 Amendments, was intended to eliminate any textual difference that had been erroneously inferred by the courts of appeals. 81

The House Committee had high hopes for House Bill 4563. 82 The amendments in section 3 alone were expected to increase incentives for private plaintiffs and remove jurisdictional barriers, resulting in larger recoveries for the government under the False Claims Act. 83 The committee's hopes were dashed when the bill languished and died in the Senate Committee on the Judiciary. 84

In 1993, Congress again attempted to pass amendments to the

78. Id. (quoting United States ex rel. Dick v. Long Island Lighting Co., 912 F.2d 13, 16 (2d Cir. 1990)). See infra notes 100-104 and accompanying text for a discussion of LILCO.
80. Id.
81. Id.
82. Id.
83. Id.
84. 138 CONG. REC. S12570 (daily ed. Aug. 12, 1992). The only Senate action concerning the False Claims Act in the 102d Congress was Senate Bill 2785, introduced in May of 1992 by Senator Thurmond, which had the sole purpose of barring any qui tam action based on information obtained in the course or scope of government employment. S. 2785, 102d Cong., 2d Sess. (1992). The fates of House Bill 4563 and Senate Bill 2785 are subject to speculation, although a possible clue to Congress' inaction could be found in the fact that H.R. 4563, in addition to clarifying § 3730(e)(4), also amended § 3730(b)(4) to allow government employees to bring qui tam suits under carefully controlled circumstances. This change placed the House bill in direct opposition to the technical amendment offered in Senate Bill 2785, which proscribed such suits. H.R. 4563, 102d Cong., 2d Sess. (1992); S. 2785, 102d Cong., 2d Sess. (1992). Alternatively, the bill may have fallen prey to substantial lobbying efforts on the part of defense contractors who have consistently resisted congressional efforts to liberalize the
A new bill, Senate Bill 841, was introduced by Senator Charles Grassley on April 29, 1993. This bill proposed a series of amendments which would have completely stricken the jurisdictional bar in section 3730(e)(4) and would have instead added new language to section 3730(b). Under the proposed amendment, the government could have moved to dismiss a relator from a suit filed under the False Claims Act if "all the necessary and specific material allegations contained in such action were derived from an open and active fraud investigation by the Government." Senate Bill 841 was referred to the Senate Judiciary Committee for consideration.

Three months later, Representative Howard Berman introduced House Bill 2915 in the House. This version of the bill also would have stricken section 3730(e)(4) and added language to section 3730(b)(6). In addition to the language proposed in Senate Bill 841 for section 3730(b)(A)(i), the House version would have allowed the government to move to dismiss a *qui tam* plaintiff where there was an ongoing governmental investigation which had been initiated before the relator had filed her complaint. Under the amendments proposed by the House, such a dismissal would be appropriate if the relator had learned of the facts underlying her *qui tam* provision, fearing an increase in the number of False Claims suits. See John Mintz, *Contractors Target Whistle-Blowers*, WASH. POST, May 5, 1994 at B11.


85. S. 841, 103d Cong., 1st Sess. § 3730(b)(6)(A)(i) (1993) (emphasis added). The new jurisdictional bar proposed by the Senate would also, with certain exceptions, have precluded governmental employees from bringing suit. *Id.* at § 3730(b)(6)(A)(ii)(I)-(III). The relevant language of Senate Bill 841 read:

Section 3730(b) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:

(6)(A) No later than 60 days after the date of service under paragraph (2), the Government may move to dismiss from the action the *qui tam* relator if -

(i) all the necessary and specific material allegations contained in such action were derived from an open and active fraud investigation by the Government; or

(ii) the person bringing the action learned of the information that underlies the alleged violation of section 3729 that is the basis of the action in the course of the person's employment by the United States ....

Section 3730 of title 31, United States Code, is further amended ... (3) in subsection (e) by striking out paragraph (4).

*Id.*


88. 139 CONg. REc. H6377 (daily ed. Aug. 6, 1993).
gations from the news media or a congressional hearing or report.89

Subsequently, the House and Senate Committees held joint hearings on the proposed legislation.90 In his introductory statement to these hearings, Senator Grassley, noting that Senate Bill 841 was designed to clarify the provisions regarding parasitical lawsuits under the False Claims Act, stated that the jurisdictional bar, as written in section 3730(e)(4), had been intended only to exclude those suits where the government knew of the allegations of fraud and was already prosecuting the case.91 Representative Berman noted in these same hearings that House Bill 2915 was essentially similar to Senate Bill 841 and that Congress' original purpose in the 1986 Amendments was "to create a very narrow exception so as to bar qui tam suits only in those instances that could legitimately be considered parasitic and where, as a consequence, there would be scant, if any, public interest in rewarding the qui tam [sic] plaintiff."92

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89. H.R. 2915, 103d Cong., 1st Sess. § 3730(b)(6)(A)(i)(I), (II), (1993). The relevant language of House Bill 2915 is as follows:
Section 3730(b) of title 31, United States Code, is amended by adding at the end thereof the following new paragraph:
(6)(A) No later than 60 days after the date of service under paragraph (2), the Government may move to dismiss from the action the person bringing the action if -
(i) such person first learned all the necessary and specific facts underlying the material allegations contained in the action from -
(I) a fraud investigation that the executive branch of the Government is actively pursuing, or
(II) a news media report or a congressional hearing or report, if the executive branch of the Government, before such person filed the complaint in the action, commenced a fraud investigation of such allegations on the basis of such facts, and if the executive branch is actively pursuing such investigation; or
(ii) such person learned of the information that underlies the alleged violation of section 3729 that is the basis of the action in the course of the person's employment by the United States . . .
Section 3730 of title 31, United States Code, is amended . . . (3) in subsection (e) by striking out paragraph (4).
Id.
91. 1993 Hearing, supra note 90, at 3.
92. Id. at 6 (statement of Rep. Howard Berman, sponsor of House Bill 2915).
The bottom line is that if the executive branch of the government is not actively pursuing the fraud alleged in the qui tam complaint, whatever its derivation, an invaluable purpose is served when the resources of the qui tam plaintiff and counsel are applied to the pursuit of alleged wrongdoing.
The statements of both Representative Berman and Senator Grassley, co-sponsors of the 1986 Amendments, in the 1993 Hearings indicate that the intention of the "original source" provision in the 1986 Amendments was only to preclude suits based on ongoing governmental investigations such as those in Hess.\textsuperscript{93} According to Representative Berman and Senator Grassley, the 1986 Amendments were not intended to require that the original source, in addition to having direct and independent knowledge, be the original source to the disclosing entity. Thus, the "whistle-blower" requirement, imposed by the Second Circuit in \textit{United States ex rel. Dick v. Long Island Lighting Co.} and by the Ninth Circuit in \textit{Wang ex rel. United States v. FMC Corp.}, did not reflect the original intent of Congress.\textsuperscript{94} Despite the committee's clear desire to resolve this controversy, the 103d Congress adjourned without taking any legislative action on Senate Bill 841 or House Bill 2915.\textsuperscript{95}

II. \textbf{THE CIRCUIT SPLIT IN "ORIGINAL SOURCE"}

In the decisions handed down since the passage of the 1986 Amendments to the Act, the federal courts of appeals have been split in their interpretation of the "original source" provision of section 3730(e)(4). Their varied interpretations have revolved around whether a court has subject matter jurisdiction over a \textit{qui tam} suit where the information upon which the plaintiff's suit is based has been publicly disclosed. Under section 3730(e)(4), a plaintiff in such circumstances may maintain her suit if she qualifies as an "original source."\textsuperscript{96} The federal courts of appeals have split as to what requirements a \textit{qui tam} plaintiff must satisfy in order to be considered an "original source."

A. \textit{Original Source: Direct and Independent "Plus"}

Two circuits, the United States Courts of Appeals for the Sec-
ond and Ninth Circuits, have attempted to resolve the ambiguity present in section 3730(e)(4) by adding an additional requirement, a "plus," to the statutory standard of "direct and independent." These two circuits require that the original source must be a "whistle-blower": in addition to having direct and independent knowledge of the previously disclosed information, these circuits hold that the *qui tam* plaintiff must also have been the source of that information to the entity that released the information. For example, under the rationale of the Second and Ninth Circuits, if Jones is aware that fraud was committed against the government by the ABC Company, and a newspaper article has reported of fraud committed against the government by ABC, Jones cannot maintain a *qui tam* suit against ABC unless she has both direct and independent knowledge of the fraud, apart from the information disclosed in the newspaper report. Additionally, she must be the individual who originally told the newspaper about the fraud. Accordingly, the standard employed in the Second and Ninth Circuits is direct and independent knowledge, "plus" the added requirement that the *qui tam* plaintiff be the actual whistleblower.

Each of the two circuits that use "direct and independent plus" as the standard for determining whether a relator qualifies as an original source arrived at its conclusion by way of a slightly different path. In *United States ex rel. Dick v. Long Island Lighting Company* ("LILCO"), the United States Court of Appeals for the Second Circuit held that a *qui tam* plaintiff whose complaint was based upon publicly disclosed information must have "directly or indirectly been a source to the entity that publicly disclosed the allegations." The court of appeals in *LILCO* held that the *qui tam* plaintiffs had based their suit on information disclosed in a prior RICO lawsuit against LILCO by the County of Suffolk, and that they had not been the source of the information upon which Suffolk had based its allegations. According to the Second Circuit, the lan-

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97. See *infra* note 112 for a discussion of the "direct and independent" standard.
98. See *infra* notes 100-109 and accompanying text.
99. *Id.*
100. See *infra* notes 101-110 and accompanying text for a discussion of United States *ex rel. Dick v. Long Island Lighting Co.*, 912 F.2d 13 (2d Cir. 1990) and *Wang ex rel. United States v. FMC Corp.*, 975 F.2d 1412 (9th Cir. 1992).
101. *LILCO*, 912 F.2d at 16 (emphasis added). The plaintiffs in *LILCO* were mid-level managers at a nuclear power station who filed suit against a lighting company, charging that it had lied about the construction status of the power station to obtain higher rates and thereby defrauded the United States, which was the ratepayer. *Id.* at 14.
guage and legislative history of the 1986 Amendments required that
"a qui tam suit be based on information not then publicly disclosed,
unless disclosed, directly or indirectly, by the person bringing the
suit."\(^{102}\) The court believed that this additional requirement would
courage potential plaintiffs to report information before it was
publicly disclosed and would end what the court termed a "conspir­
cacy of silence" that fostered fraud against the government.\(^{103}\) The
LILCO court based its conclusion on what it termed a "close tex­
tual analysis combined with a review of the legislative history."\(^{104}\)

Subsequently, the United States Court of Appeals for the
Ninth Circuit ruled on the "original source" provision in section
3730(e)(4) in a decision that concurred with the Second Circuit's

\(^{102}\) Id. at 17-18 (emphasis added).
\(^{103}\) Id. at 18.
\(^{104}\) Id. at 17. The relevant text of § 3730(e)(4) reads as follows:

(4)(A) 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 med­
ia, unless the action is brought by the Attorney General or the person
bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who
has direct and independent knowledge of the information on which the allega­
tions are based and has voluntarily provided the information to the Govern­
ment before filing an action under this section which is based on the
information.

§ 3730(e)(4) (emphasis added). The LILCO court focused on Congress' use of the
word "information" in sections 3730(e)(4)(A) and (e)(4)(B) and concluded that the
same word actually had different meanings in each section. The court found that "in­
formation" was intended to mean "the information that was publicly disclosed" in sec­
tion (e)(4)(A) and "that which supplies the basis for the qui tam action itself" in
(e)(4)(B), "a slightly more expansive definition." LILCO, 912 F.2d at 16-17. "Such a
slight difference in meaning assumes importance because it permits the interpreta­tion
that § (4)(B) does not contain the exclusive requirements in order for one to be an
'original source' and that an additional requirement is to be found in § (4)(A)." Id. at
17. See Robert L. Vogel, Eligibility Requirements for Relators Under Qui Tam Provi­

This construction of the jurisdictional bar was also followed in 1993 by the Second
Circuit in United States ex rel. Kreindler & Kreindler v. United Technologies Corp., 985
F.2d 1148, 1158 (2d Cir.), cert. denied, 113 S. Ct. 2962 (1993), although the court in
Kreindler never specifically addressed the additional requirement of "original source to
the disclosing entity." Id. at 1158-59. The court in Kreindler held that the plaintiff did
not have direct and independent knowledge of the allegations in the complaint and
therefore was not qualified as an original source. Id. at 1159. See also United States ex
soning of Kreindler).

See also infra notes 213-227 and accompanying text for a discussion of the Fourth
Circuit's dismissal of this line of reasoning in United States ex rel. Siller v. Becton Dickin­
holding in *LILCO*.105 The *qui tam* plaintiff in *Wang ex rel. United States v. FMC Corp.* was an engineer who had direct and independent knowledge of alleged fraud committed by his employer in a defense contract, fraud that had been previously publicly disclosed and upon which Wang had based his complaint.106 However, the court in *Wang* found that, because the plaintiff had not been the individual who had publicly disclosed the allegations, the court lacked subject matter jurisdiction under section 3730(e)(4).107 Agreeing with the Second Circuit's holding in *LILCO*, the *Wang* court reviewed both textual arguments and legislative history.108 The court concluded that the purpose of the amendments to the Act was to encourage private individuals with knowledge of fraud against the government to come forward and that *qui tam* jurisdiction was therefore only appropriate for those who had been instrumental in the public disclosure of the allegations upon which the suits were based.109 Although Wang's knowledge was not parasitic in nature, his suit was barred because he was not the "whistle-
blander."110

B. Original Source: Direct and Independent as the Standard

A second group of courts of appeals have held that a qui tam plaintiff qualifies as an "original source" if she simply has direct and independent knowledge of the information that was publicly disclosed.111 Although the reasoning of these courts of appeals is not always consistent and the definitions of "direct and independent" sometimes vary,112 a majority of these courts have found the statute's requirement of direct and independent knowledge to be sufficient, and, when ruling after the Second and Ninth Circuit's imposition of a "whistle-blower" requirement, have expressly rejected their line of reasoning.113

In one of the first cases to wrestle with the interpretation of the "original source" provision of section 3730(e)(4), the United States Court of Appeals for the Seventh Circuit applied the direct and independent standard. The court found that the trial court had lacked subject matter jurisdiction because the information upon which the relator's claim was based had been publicly disclosed,114

110. Wang, 975 F.2d at 1420. "While Wang was silent, some other conscientious . . . person bravely brought the . . . problems to the attention of the media and the Army. If there is to be a bounty for disclosing those troubles, it should go to one who in fact helped to bring them to light." Id. The Wang court, however, did note that all those who either directly or indirectly disclosed an allegation might qualify as its original source. Id. at 1419. See United States ex rel. Fine v. Univ. of Cal., 821 F. Supp. 1356, 1360 (N.D. Cal. 1993), rev'd, remanded sub nom. United States ex rel. Fine v. Chevron, 39 F.3d 97 (9th Cir. 1994), reh'g en banc granted, 60 F.3d 525 (1995) (plaintiff who helped report allegations of fraud to government before public disclosure "directly or indirectly" disclosed such allegations). See also United States ex rel. Fine v. M-K Ferguson Co., 861 F. Supp. 1544 (D.N.M. 1994) (agreeing with the reasoning of the Second and Ninth Circuits).

111. See United States ex rel. Barth v. Ridgedale Electric, Inc., 44 F.3d 699 (8th Cir. 1995) (declining to rule on the question of whether the relator must also prove he was a source of the information to the entity that publicly disclosed the pertinent information as required by the Second and Ninth Circuits).

112. According to the United States Court of Appeals for the Third Circuit, a qui tam plaintiff has direct knowledge of fraud when the information is obtained without benefit of any intermediate source, "marked by an absence of intervening agency." United States ex rel. Stinson v. Prudential Ins. Co., 944 F.2d 1149, 1160 (3d Cir. 1991). The United States Court of Appeals for the Seventh Circuit has held that independent knowledge is acquired when the relator does not learn of the information through public disclosure or through the government. Houck ex rel. United States v. Folding Carton Admin. Comm., 881 F.2d 494, 505 (7th Cir. 1989), cert. denied, 494 U.S. 1026, and cert. denied, 494 U.S. 1027 (1990).

113. See supra notes 101-110 and accompanying text.

114. See supra notes 59-62 for a discussion of the "based upon/publicly disclosed" threshold test.
and that there was no evidence that the *qui tam* plaintiff would have learned about the information without that public disclosure.\(^\text{115}\)

In *Houck ex rel. United States v. Folding Carton Administrative Committee*, the plaintiff worked with individuals who were claimants to a settlement agreement and assisted them in filing claims to recover money from the settlement fund.\(^\text{116}\) In dismissing the plaintiff's claim, the *Houck* court interpreted the 1986 Amendments to the Act as barring an action by a *qui tam* plaintiff which had been based solely on publicly disclosed transactions.\(^\text{117}\) Although the court found that Houck had "direct knowledge" through his assistance to the settlement fund claimants, the court determined that Houck would not have learned of the claims to the settlement fund without public disclosure and therefore did not have the "direct and independent" knowledge required of an "original source."\(^\text{118}\) Thus, the court relied on its interpretation of the phrase "direct and independent" in the statute to determine whether it lacked subject matter jurisdiction for plaintiff's suit.\(^\text{119}\)

*United States ex rel. Stinson v. Provident Life & Accident Insurance Co.*,\(^\text{120}\) decided shortly after *Houck*, was the first in a line of cases brought under the False Claims Act by a law firm that, through its representation of Mr. Leonard, a victim of an automobile accident, had become aware of alleged Medicare fraud by several insurance companies.\(^\text{121}\) The Stinson firm concluded from its research in the Leonard litigation that Provident's claim processing practices violated federal law by allowing Medicare to pay as primary insurer for the benefit claims of working seniors.\(^\text{122}\) Subse-

\(^{115}\) *Houck*, 881 F.2d at 505.

\(^{116}\) Id. at 503.

\(^{117}\) Id. at 504.

\(^{118}\) Id. at 505 (quoting § 3730(e)(4)(B)).

\(^{119}\) Id.

\(^{120}\) 721 F. Supp. 1247 (S.D. Fla. 1989).


\(^{122}\) *Provident*, 721 F. Supp. at 1248. Stinson alleged that Provident had de-
quently, the Stinson law firm filed a *qui tam* action against Provident under the Act. Provident moved to dismiss for lack of subject matter jurisdiction under section 3730(e)(4).

Declining to rule on the "publicly disclosed" test, the United States District Court for the Southern District of Florida moved directly to the determination of whether the Stinson firm had "direct and independent" knowledge of Provident's alleged fraudulent practices. The court held that the information obtained by the Stinson firm could be characterized as "direct" because Stinson was not a "disinterested outsider" who had "simply stumble[d] across an interesting court file." Stinson's information was also "independent," according to the court, because it had obtained information to support its *qui tam* action from sources other than the Leonard litigation. Accordingly, the court found that Stinson qualified as an "original source" under sections 3730(e)(4)(A) and (B).

The Leonard litigation, however, led the Stinson firm to file additional *qui tam* suits. Through its investigation of Provident's allegedly fraudulent claims practices, Stinson had obtained two internal Provident memoranda that indicated that other insurance companies, including the Prudential Life Insurance Company, had followed the same allegedly fraudulent processing practices utilized by Provident. The Stinson law firm subsequently pursued this cause of action against these other insurance companies, filing claims under the Act which were based on this information ob-

frauded the government "by shifting . . . responsibility for payment of insurance claims to Medicare and the private sector despite Provident's knowledge and understanding of its obligations under section 116(a) of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA")." *Id.*

123. *Id.*
124. *Id.*
127. *Id.* at 1258 (citing United States *ex rel.* Houck v. Folding Carton Admin. Comm., 881 F.2d 494, 505 (7th Cir.), *cert. denied*, 494 U.S. 1026, *and cert. denied*, 494 U.S. 1027 (1990)).
128. *Id.* at 1257.
129. *Id.*
tained during the *Leonard* lawsuit against Provident.132

Subsequent to the decision of the district court for the Southern District of Florida, however, one of these subsequent false claims suits filed by the Stinson firm was held to be barred by section 3730(e)(4). In *United States ex rel. Stinson v. Prudential Insurance Co.*, the United States Court of Appeals for the Third Circuit held that, in this instance, Stinson was *not* an “original source” because its suit against Prudential was based exclusively on information contained in the Provident memoranda, which had been “previously disclosed” in the Leonard litigation.133 The court asserted that “‘direct’ is marked by absence of an intervening agency, instrumentality, or influence.”134 Since Stinson’s information about Prudential’s claims processing had come via Provident memoranda produced through discovery instead of through a direct investigation of Prudential’s processing methods, the court found that the law firm’s information was not “direct” under section 3730(e)(4).135 In dismissing the action for lack of subject matter jurisdiction, however, the Third Circuit noted that, although the “paradigmatic ‘original source’ is a whistle-blowing insider . . . [o]ther relators may also qualify if their information results from their own investigations.”136 While recognizing Congress’ desire to encourage actions by legitimate “whistle-blowers,” the court in *Prudential* did not find it necessary to impose an extra-textual requirement in order to dismiss the *qui tam* plaintiff’s action under section 3730(e)(4).137

The United States Court of Appeals for the Tenth Circuit followed *Provident* in *United States ex rel. Precision Co. v. Koch Industries, Inc.*138 In *Precision*, the plaintiff, a corporation, had filed suit under the Act alleging that the defendant had understated the quantity of crude oil and natural gas produced from federal and Indian land, thereby defrauding the federal government of mineral royalties.139 The defendants challenged the court’s subject matter

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132. *Id.* at 1150.
133. *Id.* at 1152. See *supra* notes 120-129 and accompanying text for a discussion of the Leonard litigation.
134. *Prudential*, 944 F.2d at 1160 (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 640 (1976)).
135. *Id.* at 1160-61.
136. *Id.* at 1161. Significantly, the dissent, in an opinion that retraced much of the same legislative history used by the majority to support its opinion, concluded that suits such as the one filed against Prudential by Stinson were *not* intended to be barred by the 1986 amendments. *Id.* at 1171 (Scirica, J., dissenting)
137. *Id.* at 1661.
139. *Id.* at 550.
jurisdiction, claiming that Precision's complaint was partially based on information that had been publicly disclosed in "numerous news releases." 140

The court in Precision held that suits filed by the corporation's president, together with congressional hearings and press releases, constituted public disclosure for the purposes of section 3730(e)(4)(A). 141 Further, as the corporate qui tam plaintiff had not come into existence until after the disclosure took place, it could not qualify as an original source, even though its employees had subsequently collected additional information used in the suit. 142 Therefore, the court held, Precision's suit was barred by section 3730(e)(4). 143

In deciding the question of whether Precision had been an "original source," the Tenth Circuit noted that the "[t]wo jurisdictional requirements [of § 3730(e)(4)(B)] ... are plain, unambiguous and require no further scrutiny." 144

In 1994, the United States Court of Appeals for the D.C. Circuit faced the jurisdictional bar in section 3730(e)(4). 145 The plaintiff in United States ex rel. Springfield Terminal Railway v. Quinn ("Quinn") was a railway company that brought suit under the False Claims Act against an arbitrator appointed to resolve a labor dispute between the railway and its union. 146 Initially, the company's attention had been drawn to fraudulent billing by the arbitrator through its inspection of documents which were produced by civil discovery in a prior suit. 147 The company subsequently conducted additional investigation which revealed extensive fraudulent billing of the government by the arbitrator. 148

140. Id. at 551, 554. Interpreting a key provision of § 3730(e)(4)(A), the court held that the phrase "based upon" can be interpreted to mean "supported by." Id. at 552. Significantly, the court, while professing respect for the plain meaning of the statute, offered no attribution for this definition. Id.

141. Id. at 553.
142. Id. at 553-54.
143. Id. at 554.
144. Id. at 553. In this opinion, decided after the Second Circuit's imposition of an additional "whistle-blower" requirement in United States ex rel. Dick v. Long Island Lighting Co., 912 F.2d 13 (2d Cir. 1990), the court specifically declined to read any additional requirement into the "original source" language of the statute. Id.


146. Id. at 647.
147. Id. at 647-48.
148. Id. The arbitrator had indicated on his bills to the federal government that he had worked on certain days when, according to the company, he had not been working on the railway company's dispute on those days. Id. at 648.
The lower court in *Quinn* had reasoned that the company's claim was "based upon" material unearthed during discovery in the previous litigation and thus was "publicly disclosed." Since the information was obtained through an intermediary, the district court had held that the information was not "direct and independent," and therefore the plaintiff was not an "original source" under section 3730(e)(4). The D.C. Circuit disagreed, however, and provided a detailed theoretical analysis of the "based upon publicly disclosed" test in section 3730(e)(4)(A), the threshold test for "original source," to determine if the materials that formed the basis of the company's suit were "in the public eye" and therefore at risk of "parasitism." The court of appeals interpreted the 1986 amendments as having created a standard under which the "original source" inquiry only need be reached if there is sufficient information in the public domain to expose either the fraudulent transaction or the allegation of fraud.

Extending its analysis to its determination of "original source," the *Quinn* court held that, since the relator is not required to possess direct and independent knowledge of all of the vital components to a fraudulent transaction, the relator need only have knowledge of either the fraudulent transaction or the allegation of fraud in order to qualify as an original source. Because the information gleaned from discovery in the suit to set aside the union settlement was not sufficient, in and of itself, to indicate fraud, the company's additional knowledge of the arbitration proceedings and its subsequent investigation gave it sufficient direct and independent information to allow it to be considered an "original source"

149. Id. at 652.
150. Id. at 648-49.
151. Id. at 653-54. The court developed a formula in which X + Y = Z, where Z represented the allegation of fraud and X and Y represented its essential elements. Id. at 654. "In order to disclose the fraudulent transaction publicly, the combination of X and Y must be revealed, from which readers . . . may infer Z, i.e., the conclusion that fraud has been committed." Id.
152. Id. at 651. In the language of the D.C. Circuit's formula, when X by itself is in the public domain, there is insufficient information to bar the *qui tam* suit. However, if X and Y are publicly disclosed, or if Z is disclosed, there is little need for a *qui tam* action. Id. at 654. The court acknowledged that "[w]hen . . . some information relied upon by the *qui tam* plaintiff is undeniably in the public domain, the task of ensuring that *qui tam* suits are limited to those in which the relator has contributed significant independent information can prove tricky." Id. at 653.
153. Id. at 657. "[D]irect and independent knowledge of information on which the allegations are based' refers to direct and independent knowledge of any essential element of the underlying fraud . . . ." Id. at 657.
within the meaning of section 3730(e)(4)(B).\textsuperscript{154}

The court in \textit{Quinn} based its understanding of the jurisdictional bar on what it determined to be the purpose of the frequently amended Act: “Seeking the golden mean between adequate incentives for whistle-blowing insiders with genuinely valuable information and discouragement of opportunistic plaintiffs who have no significant information to contribute of their own.”\textsuperscript{155} The court concluded that “[t]he goal of avoiding suits that merely drain the public fisc\textsuperscript{156} is amply advanced by a construction of § 3730(e)(4)(A) that bars suit only when specific allegations of fraud or the vital ingredients to a fraudulent transaction exist in the public eye.”\textsuperscript{157} Although clearly concerned with blocking parasitic suits, the \textit{Quinn} court did not impose the \textit{LILCO} or \textit{Wang} requirement that the \textit{qui tam} plaintiff be a “whistle-blower” in order to qualify as an “original source.”\textsuperscript{158} By shifting the focus of its inquiry to the “based upon/publicly disclosed” test of section 3730(e)(4)(A), the court in \textit{Quinn} found it “unnecessary” to decide whether the relator must additionally have been responsible for the public disclosure of the fraud upon which his suit was based.\textsuperscript{159}

Two months later, the United States Court of Appeals for the Fourth Circuit firmly rejected the requirement, imposed by the courts in \textit{LILCO} and \textit{Wang}, that the relator be the source of the publicly disclosed information to the disclosing entity (“direct and independent plus”).\textsuperscript{160} The \textit{qui tam} plaintiff in \textit{United States ex rel.}
Siller v. Becton Dickinson & Co. was employed by a distributor of health care products.161 In a previous state court lawsuit, the distributor had claimed its distributorship agreement had been canceled because the manufacturer of the health care products feared disclosure of its practice of overcharging the government.162 After the suit concerning the distributorship agreement was settled, the *qui tam* plaintiff filed a suit against the manufacturer under the Act, asserting that he originally learned of the manufacturer's fraudulent practices through independent investigation undertaken during his employment and not as a result of the previous litigation.163

In dismissing the plaintiff's suit for lack of subject matter jurisdiction, the district court had adopted the standard set forth by the Second Circuit in *LILCO*. The district court found that the distributor was the entity that had publicly disclosed the allegations and that, since Siller was not the source of those allegations, he was not the "original source," even though he might have had "direct and independent knowledge" of the information.164 The court of appeals reversed the district court and rejected the logic of the Second Circuit on this issue, holding that the requirement that a relator must also be a source to the disclosing entity was "not merely unpersuasive, but implausible."165

The *Siller* court also discussed the Ninth Circuit's accord in *Wang ex reL. United States v. FMC Corp.*166 The court in *Siller* concluded that the Ninth Circuit in *Wang* actually had rejected the *LILCO* court's statutory analysis, while purporting to adopt its interpretation of "original source."167 The *Siller* court further con-

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161. *Id.* at 1340-41.
162. *Id.* at 1341.
163. *Id.* at 1351. See also *United States ex rel. Dick v. Long Island Lighting Co.*, 912 F.2d 13 (2d Cir. 1990) and *supra* notes 101-104 and accompanying text. The *Siller* court held that "any information disclosed through civil litigation and on file with the clerk's office should be considered a public disclosure of allegations in a civil hearing for purposes of section 3730(c)(4)(A)." *Siller*, 21 F.3d at 1350. As such, the information in the SSI complaint was publicly disclosed. *Id.* at 1351. See also *supra* notes 59-62 for a discussion of the "based upon/publicly disclosed" standard.

164. *Id.* at 1351. See also *United States ex rel. Dick v. Long Island Lighting Co.*, 912 F.2d 13 (2d Cir. 1990) and *supra* notes 101-104 and accompanying text. The *Siller* court held that "any information disclosed through civil litigation and on file with the clerk's office should be considered a public disclosure of allegations in a civil hearing for purposes of section 3730(c)(4)(A)." *Siller*, 21 F.3d at 1350. As such, the information in the SSI complaint was publicly disclosed. *Id.* at 1351. See also *supra* notes 59-62 for a discussion of the "based upon/publicly disclosed" standard.

165. *Siller*, 21 F.3d at 1351 (citing *LILCO*, 912 F.2d at 16-17). See *supra* notes 100-104 and accompanying text for a discussion of the Second Circuit's holding in *LILCO*. See also *infra* notes 213-227 for a complete discussion of the Fourth Circuit's analysis of the *LILCO* decision. See also Vogel, *supra* note 104, at 601-04.

166. *Siller*, 21 F.3d at 1353 (citing *Wang ex rel. United States v. FMC Corp.*, 975 F.2d 1412, 1418 (9th Cir. 1992).

167. *Id.*
cluded that the statutory requirement of "direct and independent" was sufficient to prevent parasitic suits and that the additional requirement that the *qui tam* plaintiff be a "whistle-blower" imposed a criterion not intended by Congress.168

The Court of Appeals for the Eleventh Circuit is the most recent court to wrestle with the question of whether a *qui tam* plaintiff must also be a "whistle-blower" in order to maintain jurisdiction under the act.169 In *Cooper ex rel. United States v. Blue Cross and Blue Shield of Florida, Inc.*,170 the *qui tam* plaintiff filed a suit under the Act charging his medical insurance company with fraudulent billing practices.171 Even though the *qui tam* plaintiff had notified members of Congress and a federal agency of his allegations, the Eleventh Circuit held that, because Cooper had acquired his knowledge of the alleged wrongdoing through years of researching claims, he therefore had direct knowledge obtained independently of any disclosed allegations.172 The court noted that the original source inquiry was designed to be the focus of the Act's jurisdictional provisions and held that the plaintiff fulfilled the requirements of an "original source."173

168. *Id.* at 1355. See also *infra* notes 228-235 and accompanying text for a complete discussion of the Fourth Circuit's analysis of the Ninth Circuit's opinion in *Wang*. 169. *Cooper ex rel. United States v. Blue Cross and Blue Shield, Inc.*, 19 F.3d 562 (11th Cir. 1994). Since the Eleventh Circuit's decision in *Cooper*, the United States Courts of Appeals for the First and Eighth Circuits have also dealt with the issue of "original source" and the jurisdictional bar in § 3730(e)(b)(4). United States *ex rel. LeBlanc v. Raytheon Co.*, 874 F. Supp. 35 (D. Mass.), aff'd, 62 F.3d 1411 (1st Cir. 1995) (*qui tam* relator's action barred because plaintiff actually derived allegations from public disclosure); United States *ex rel. Barth v. Ridgedale Electric, Inc.*, 44 F.3d 699 (8th Cir. 1995) (*qui tam* plaintiff must have independent and direct knowledge to satisfy subject matter jurisdiction; "We do not reach the question whether the relator must also satisfy a third requirement [whistle-blower] . . . as determined by the Second and Ninth Circuits."); *see also United States ex rel. Rabushka v. Crane Co.*, 40 F.3d 1509 (8th Cir. 1994), *cert. denied* 115 S. Ct. 2579 (1995) (narrowing the based upon/publicly disclosed test to avoid the "original source" inquiry). In addition, the District Court for the Eastern District of Louisiana has ruled that a private plaintiff is not an original source under the statute where it did not come into existence until after public disclosure. United States *ex rel. Federal Recovery Services, Inc. v. Crescent City EMS, Inc.*, No. 91-4150, 1993 WL 345655 (E.D. La. Aug. 30, 1993), *reh'g denied* by United States *v. Crescent City EMS, Inc.*, No. 4150, 1994 WL 518171 (E.D. La. Sept. 21, 1994).

170. 19 F.3d 562 (11th Cir. 1994).

171. *Id.* at 564.

172. *Id.* at 568.

173. *Id.* at 568 n.10 (citing United States *ex rel. Precision v. Koch Indus., Inc.*, 971 F.2d 548, 552 (10th Cir. 1992), *cert. denied*, 113 S. Ct. 1364 (1993)). *See also False Claims Act Implementation: Hearing Before the Subcomm. on Admin. Law and Gov. Relations of the House Comm. on the Judiciary, 101st Cong., 2d Sess. 5 (1990) [hereinafter 1990 Implementation Hearing].* Congress wanted to both encourage citizen involve-
Citing the Tenth Circuit's holding in *Precision*, the *Cooper* court noted that the "based upon" test was intended to be a "quick trigger" test, forcing inquiry forward to the more exacting standard of "original source." The court specifically rejected the Second Circuit's holding in *LILCO* requiring the relator to prove he was the original source of the information to the disclosing entity. The *Cooper* court found no support for this rule in the plain language or in the legislative history, noting that "[t]his requirement would impose a tough burden on the relator and could discourage citizen involvement, even when the citizen has direct and independent knowledge of fraud."

### III. Legal Analysis

While rejecting what it termed to be a flawed analysis of legislative history by the Second and Ninth Circuits, the Fourth Circuit, in *United States ex rel Siller v. Becton Dickinson & Co.*, pointed out a fundamental problem with many of the decisions in which other courts of appeals have attempted to apply the jurisdictional bar in section 3730(e)(4). Citing the Third Circuit in *United States ex rel Stinson v. Prudential Insurance Co.* and its attempt to glean the true meaning of the statute from the "principal intent" of the legislation, the Fourth Circuit warned that it was

[E]specially inappropriate (not to mention frighteningly treacherous) to attempt, as these courts have done, to distill from such broad, generalized objectives, the answers to the kind of specific statutory questions that we herein address; fine calibrations are just not possible through the use of such crude instruments. This is particularly so in this context, given that, although we can perhaps divine from these abstract purposes a congressional intention to balance the need to encourage *qui tam* actions against the need to prevent parasitic suits, we can discern virtually nothing as to precisely how Congress ultimately believed it achieved that balance. If the language of law is to have any meaning at all, then surely it must prevail over the kind of speculation that is entailed in such an enterprise as these courts have undertaken.

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174. *Cooper*, 19 F.3d at 568 n.10 (citing *Precision*, 971 F.2d at 552).
175. *Id.* at 568 n.13.
176. *Id.*
178. *Id.* at 1354-55 (citing *United States ex rel Stinson v. Prudential Ins. Co.*, 944
A. **Statutory Construction**

The final section of the Fourth Circuit's opinion in *Siller* strongly emphasizes the "language of the law" and warns against the imprecise use of legislative history in statutory construction. The proper use of legislative history in statutory construction has long troubled the courts. The foundation of a democracy rests on the separation of powers; with this in mind, the unelected judiciary frequently feels pressure to take the expectations of the legislature into consideration when interpreting statutes. Nonetheless, there has been considerable debate over the proper emphasis to place upon legislative history in statutory construction and which forms of legislative history are most useful. Text is concededly the preferred starting point in statutory construction, and textual arguments are frequently persuasive. The language of a statute can

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[S]ome elements of the legislative history of a statute can conflict with other components. One part of legislative history supporting one view can be offset by another element of it. For each element of legislative history supporting one view, there often exists an equal, but opposite supporting a conflicting view. These problems should not, however, automatically eliminate consideration of legislative history from the interpretive process. *Id.* at 145.

179. *Siller*, 21 F.3d at 1354-55. Justice Stevens, in a 1992 article, suggested that statutory construction fundamentally rests on the following canons, which should be evaluated in sequence: (1) Read the statute, i.e., look to the plain meaning of the language of the statute; (2) Read the *entire* statute; (3) Read the statute in its contemporary context; (4) If ambiguity persists, consult the legislative history; (5) Avoid an interpretation that would produce absurd results. See Justice John Paul Stevens, *The Shakespeare Canon of Statutory Construction*, 140 U. PA. L. REV. 1373 (1992).


183. *Id.* at 354. This reflects a view that it is the language of the law alone that has been approved by the legislature and signed by the President, and that legislative supremacy therefore dictates that an interpreter pay close attention to the text of the statute. *Id.* "The beginning, and usually the end, of statutory interpretation should be the apparent meaning of the statutory language." *Id.* at 340. See also Antonin Scalia, *The Rule of Laws as a Law of Rules*, 56 U. CHI. L. REV. 1175 (1989).
totally control statutory interpretation, however, only if the text is
unambiguous.\textsuperscript{184} Legislators sometimes purposely leave ambiguities in a statute to build support for its passage, with the understanding that courts or agencies will then be charged with its interpretation.\textsuperscript{185} Further, regardless of the specific language of the statute, the meaning of any text is always influenced by context.\textsuperscript{186} And, while it is true that it is only the text of a statute that has the formal assent of Congress and the President, it is hard to imagine that the President or any member of Congress would have the time to carefully read the over 7,000 pages of enacted bills passed in an average session of Congress.\textsuperscript{187}

Another difficulty with accepting the plain language of a statute as exclusively authoritative lies with authorship. Members of Congress rarely draft their own legislation, delegating that responsibility to committee staff, lobbyists, the Office of Legislative Counsel, or accepting recommendations from the executive branch.\textsuperscript{188} In interpreting the plain language of a statute, therefore, courts frequently feel justified in seeking guidance from the legislature that enacted the law.\textsuperscript{189}

In a significant number of cases, the Supreme Court has applied the "soft" plain meaning rule of statutory construction, which allows the court to use legislative history where the statutory language is ambiguous or in direct conflict with congressional intent.\textsuperscript{190}

\begin{quote}
In a democratic system . . . the general rule of law has special claim to preference, since it is the normal product of that branch of government most responsive to the people. . . . Statutes that are seen as establishing rules of inadequate clarity or precision are criticized, on that account, as undemocratic — and, in the extreme, unconstitutional — because they leave too much to be decided by persons other than the people's representatives.
\end{quote}

\textit{Id.} at 1176.

\begin{itemize}
\item \textsuperscript{184} Eskridge \& Frickey, \textit{supra} note 181, at 341.
\item \textsuperscript{185} \textit{Id.} at 347.
\item \textsuperscript{186} \textit{Id.} at 342.
\item \textsuperscript{187} \textit{Zeppos, supra} note 181, at 1311-12 \& n.63.
\item \textsuperscript{188} \textit{Id.} at 1312-13. For an illustrative analysis of the flaws inherent in the process of drafting and passing legislation, see Eric J. Gouvin, \textit{Truth in Savings and the Failure of Legislative Methodology}, 62 U. \textit{CIN. L. REV.} 1281, 1316-53 (1994).
\item \textsuperscript{190} Eskridge, \textit{supra} note 180, at 628 (citing, e.g., Kelly v. Robinson, 479 U.S. 36 (1986); Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986); Midatlantic Nat'l Bank v. N.J. Dep't of Envtl. Protection, 474 U.S. 494 (1986)). \textit{See also} Holder v. Hall, 114 S. Ct. 2581, 2612 \& n.28 (1994) (O'Connor, J., concurring). Since the elevation of
The danger inherent in this "soft" rule is that virtually any document which offers an explanation of a statute can be used in statutory construction to determine congressional intent.\textsuperscript{191} This is particularly problematic where the court is attempting to recreate the intent of the enacting Congress by tracing the evolution of the statute from early legislative proposals to enactment.\textsuperscript{192}

Despite the problems inherent in an in-depth search for legislative history, "in an inquiry to reconstruct Congress' original intent or purpose, much of what passes as legislative history is obviously relevant."\textsuperscript{193} However, as the Fourth Circuit noted in \textit{United States ex rel. Siller v. Becton Dickinson & Co.}, and as the Third Circuit observed in \textit{United States ex rel. Stinson v. Prudential}, a statute that relies too heavily upon legislative history for its meaning is subject to a wide variance of interpretations.\textsuperscript{194} Therefore, the choice of which legislative history to use in interpreting a statute is of paramount importance.

The Supreme Court has determined that the most authoritative source of congressional intent is found in committee reports, especially conference committee reports, which provide insight into the intent of those who were responsible for the language of the statute.\textsuperscript{195} Sponsor statements are also given substantial weight by the


\textsuperscript{192} Eskridge, supra note 180, at 630 (citing, e.g., Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana, 472 U.S. 237 (1985); Securities Indus. Ass'n v. Board of Governors of the Fed. Reserve Sys., 468 U.S. 137 (1984)).

\textsuperscript{193} Id. at 632. The Supreme Court has identified areas where legislative history is useful in statutory construction. Warner, supra note 180, at 170. Where the literal interpretation of the statute is in direct conflict with clearly expressed congressional intent, a court would be "overreaching" if it failed to consider legislative history. Id. (citing Griffin, 458 U.S. at 571). Where a literal interpretation of the statute produces an "absurd result," judges must use the statute's legislative history to develop a "rational construction" of the statute. Id. at 171 (citing Stevens, supra note 179, at 1383). Where the statute's language is ambiguous and cannot be interpreted literally, the courts must look to legislative history. Id.


\textsuperscript{195} Eskridge, supra note 180, at 637. "A committee report represents the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." Id. (quoting Zuber v. Allen, 396 U.S. 168, 186 (1969)).
Court when determining legislative intent, unless they are ambiguous and contradicted by floor and hearing colloquy.196 Evidence of proposals that have been rejected by Congress is not usually considered primary legislative history.197 The Court is also wary of testimony in committee hearings and of floor debate, unless the discussion is concerned with "precise analyses . . . by the sponsors of the proposed laws."198

In an application with significance for the statutory interpretation of section 3730(e)(4), the Supreme Court has indicated that congressional acts occurring after the passage of legislation (subsequent or post-enactment legislative history) may be accorded weight in statutory construction.199 This is especially true where Congress has passed a statute to clarify an earlier statute, or a legislative committee has made a post-enactment pronouncement with respect to previously enacted legislation.200 Moreover, a pronouncement may be accorded significant weight when the committee responsible for the post-enactment report also reported the bill that became law, and the post-enactment report was issued within

196. Eskridge, supra note 180, at 637-38.

"[R]emarks . . . of the sponsor of the language ultimately enacted, are an authoritative guide to the statute's construction," because the sponsors are the Members of Congress most likely to know what the proposed legislation is all about, and other Members can be expected to pay special heed to their characterizations of the legislation.

Id. at 638 (quoting Northaven Bd. of Educ. v. Bell, 456 U.S. 512, 526-27 (1982)). See also National Woodworkers Mfrs. Ass'n v. NLRB, 386 U.S. 612, 640 (1967) ("It is the sponsors that we look to when the meaning of the statutory words is in doubt."). But see Landgraf v. USI Film Products, 114 S. Ct. 1483, 1496 n.15 (1994) (debating the usefulness of partisan statements by members of Congress).


198. Id. at 639 (quoting S & E Contractors, Inc. v. United States, 406 U.S. 1, 13 n.9 (1972)).

199. Id. at 635-36 (citing, e.g., Jett v. Dallas Indep. Sch. Dist., 109 S. Ct. 2702, 2715-17 (1989); Bowen v. Yuckert, 482 U.S. 137, 148-52 (1987); Andrus v. Shell Oil Co., 446 U.S. 657, 666 n.8 (1980)). Although subsequent history is usually too ambiguous to be useful as legislative history, the Court does occasionally take it into consideration. "[W]hile the views of subsequent Congresses cannot override the unmistakable intent of the enacting one, such views are entitled to significant weight, and particularly so when the precise intent of the enacting Congress is obscure." Id. at 640 (quoting Sea- train Shipbuilding Corp. v. Shell Oil Co., 444 U.S. 572, 596 (1980) (citations omitted)). But see Pension Benefit Guar. Corp. v. LTV Corp., 496 U.S. 633, 649 (1990) (subsequent legislative history forms hazardous basis for determination of congressional intent). See infra notes 241-263 and accompanying text for a discussion of the import of subsequent legislative history on the interpretation of § 3730(e)(4).

five years of the original legislation. 201

There are, however, legitimate concerns with the reliability of many of these forms of legislative history in statutory construction. 202 The “intent” ascribed to the legislative body is, in fact, the collective intent of a group of individuals who each may have had a different motive for approving the legislation at hand, and that motive may have had nothing to do with the legislator’s understanding of the language of the statute. 203 Further, although statements in committee reports and the views of the sponsors of the legislation are presumed to be representative of the views of the legislature as a whole, they are not necessarily representative of the entire Congress. 204 As for cleaving to the purpose of the statute, the actual “purpose” of the statute may be a hybrid of legislators’ responses to pressures from special interest groups. 205

The “original source” provision in section 3730(e)(4) is an example of an instance where traditional statutory construction has resulted in varying interpretations. 206 This may not be surprising considering the fact that the “plain language” of the statute is anything but plain, and the legislative history is susceptible to divergent interpretation. 207 Faced with the challenge of identifying the “true meaning” of the original source provision, the circuits that have had a recent opportunity to review the jurisdictional bar in section 3730(e)(4) have attempted to present an approach to the interpretation of the statute that would ensure the application of the bar in the manner closest to that intended by Congress. 208 A step-by-step analysis of statutory construction coupled with a comparison of the various circuit decisions suggests not only that an application of the

202. Eskridge & Frickey, supra note 181, at 327.
203. Id. at 326.
204. Id. at 327. See also Araujo, supra note 178, at 131 & n.296 (citing Joseph Chamberlain, The Courts and Committee Reports, 1 U. Chi. L. Rev. 81, 82 (1933)).
205. Eskridge & Frickey, supra note 181, at 334-35. The questions that are determinative in evaluating the usefulness of any sort of legislative history are based on the relative reliability of the source of the history. Eskridge, supra note 180, at 635. Does the source accurately reflect the views of the enacting Congress? Is the source well-informed? Is there a possibility that either individual members of Congress or groups with a particular bias were attempting to “pack” the legislative history to influence future judicial review? Id.
206. See supra part II for a discussion of the various circuit holdings on the “original source” provision.
208. Id.
standard of "direct and independent knowledge" is the best test of "original source" in section 3730(e)(4) but also that the imposition of a "whistle-blower" requirement is unnecessary to achieve the goals of the legislation. This application of the jurisdictional bar is the surest way of achieving Congress' dual purposes of encouraging private citizens with knowledge of fraud to come forward while protecting against false claims lawsuits that are truly parasitic in nature. Of the recent court of appeals decisions which have wrestled with the jurisdictional bar in section 3730(e)(4), the Fourth Circuit's decision in United States ex rel. Siller v. Becton Dickinson & Co. represents the most thorough and thoughtful analysis.

B. Statutory Construction and Its Application in Section 3730(e)(4)

1. Plain Language

In its interpretation of the jurisdictional bar in section 3730(e)(4), the Fourth Circuit in Siller carefully applied a reasoned analysis of the plain language of the statute in combination with a judicious use of the appropriate legislative history. Accordingly, the Fourth Circuit's decision in Siller offers the best starting point for a reasoned analysis of the statute among the varied holdings of the other federal courts of appeals.

The Siller court began its analysis by looking carefully at the plain language of the statute. To better understand the "original source" provision in section 3730(e)(4), the court replaced the words "original source" in (e)(4)(A) with the words of its definition in (e)(4)(B). The court determined that the language of the statute, when read in this form, required only that the qui tam plaintiff:

1. have direct and independent knowledge of the information on which the allegations of false claim are based; and

2. voluntarily provide the information to the government before filing her qui tam suit.

Read in this form, the plain language of the statute

209. Id.
210. Id. at 1351. See Stevens, supra note 179, at 1374.
211. Siller, 21 F.3d at 1351. With this substitution, according to the Fourth Circuit, subparagraph (A) would then be properly read as follows:

No court shall have jurisdiction over an action . . . based upon the public disclosure of allegations . . . in a . . . civil . . . hearing . . . unless . . . the person bringing the action . . . has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Government before filing an action under this section which is based on the information.

Id. (quoting 31 U.S.C. § 3730(e)(4) (1988) (emphasis added)).
imposes no additional requirement that the relator be a source to the original disclosing entity.\textsuperscript{212}

The Siller court's interpretation of the language of the statute was a direct rejection of the logic of the Second Circuit in \textit{LILCO}.\textsuperscript{213} The Fourth Circuit noted that the Second Circuit in \textit{LILCO} had focused on the word "information," which appears in both sub-paragraphs (A) and (B) of the statutory definition of "original source."\textsuperscript{214} The Second Circuit had concluded that the word "information" was intended to mean different things in each paragraph,\textsuperscript{215} and held that this "'slight difference in meaning ... permits the interpretation that [section] (4)(B) does not contain the exclusive requirements in order for one to be an 'original source' and that an additional requirement is to be found in [section] (4)(A).'"\textsuperscript{216}

The Siller court disagreed with the Second Circuit's interpretation: "it is so unlikely that Congress would have even noticed the technical redundancy, that no significance can reasonably be inferred."\textsuperscript{217} Instead, the Fourth Circuit in Siller argued that a straightforward reading of the language of the statute expressly contradicted the Second Circuit's interpretation and provided support for its conclusion that requiring a \textit{qui tam} plaintiff to be a "whistle-blower" would be extra-textual.\textsuperscript{218}

2. Legislative History

Although it found ample support within the plain language of the statute for its interpretation of the "original source" requirement in section 3730(e)(4), the Fourth Circuit went further and reviewed the complex legislative history of the Act to determine if its conclusion was supported by comments of the enacting Congress.\textsuperscript{219}

\textsuperscript{212} \textit{Id}.
\textsuperscript{213} \textit{Id.} at 1351-53 (citing United States ex rel. Dick v. Long Island Lighting Co., 912 F.2d 13, 16 (2d Cir. 1990)).
\textsuperscript{214} \textit{Id.} at 1352.
\textsuperscript{215} \textit{Id.} at 1351-53 (citing \textit{LILCO}, 912 F.2d at 16). The textual analysis of the Second Circuit concluded that the word "information" in § 3730(e)(4)(A) referred to the information that has previously been publicly disclosed. The word "information" in § 3730(e)(4)(B), however, according to the Second Circuit, referred to the information upon which the relator based her false claims suit. \textit{Id.} (citing \textit{LILCO}, 912 F.2d at 16). See \textit{supra} note 51 for the relevant text of § 3730(e)(4).
\textsuperscript{216} \textit{Siller}, 21 F.3d at 1352 (quoting \textit{LILCO}, 912 F.2d at 16).
\textsuperscript{217} \textit{Id.} at 1352.
\textsuperscript{218} \textit{Id.} at 1351-54 (citing \textit{LILCO}, 912 F.2d 13). \textit{See also} Vogel, \textit{supra} note 104, at 603.
\textsuperscript{219} \textit{Siller}, 21 F.3d at 1351-54.
The Fourth Circuit concluded that there were fundamental flaws in the Second Circuit's reliance on legislative history from the 1986 amendments.\textsuperscript{220} The \textit{Siller} court reasoned that the requirement that the relator be both independently informed of the allegations and also the source of their disclosure imposed "an additional, extra-textual requirement that was not intended by Congress."\textsuperscript{221}

In rejecting the reasoning applied in \textit{LILCO}, the Fourth Circuit pointed to a flaw in the Second Circuit's use of the legislative history of the 1986 amendments.\textsuperscript{222} The Fourth Circuit in \textit{Siller} found that the Second Circuit had manufactured an ambiguity when it assigned two different meanings to the word 'important' in sections 3730(e)(4)(A) and (B) "in order to justify use of [legislative] history as dispositive evidence of congressional intent."\textsuperscript{223} According to the \textit{Siller} court, the Second Circuit improperly based its analysis on legislative history for the 1986 amendments, which referred to language that was later significantly altered.\textsuperscript{224} The Senate Report that accompanied the 1986 amendments when they were reported to the floor of the Senate\textsuperscript{225} was based on statutory language that was substantially changed between the time of the report, July 26, 1986, and the final passage of the legislation, October 7, 1986.\textsuperscript{226} "These . . . changes suggest that, even assuming that Congress may at one point have intended a plaintiff to be a source to the disclosing entity [in order] to be an original source, which is

\begin{itemize}
  \item \textsuperscript{220} \textit{Id.} at 1352.
  \item \textsuperscript{221} \textit{Id.} at 1351. "[I]t is unlikely that Congress intended implicitly to include this . . . requirement in the definition of original source. . . . [T]he relator's role was anything but parasitic. . . . [T]he Second Circuit effectively overrode [the] judgment of Congress." Vogel, \textit{supra} note 104, at 603.
  \item \textsuperscript{222} \textit{Siller}, 21 F.3d at 1352.
  \item \textsuperscript{223} \textit{Id.}
  \item \textsuperscript{224} \textit{Id.} at 1352-55 (citing \textit{LILCO}, 912 F.2d at 17 (quoting 132 \textit{Cong. Rec.} 20536 (1986)). The court in \textit{LILCO} cited floor comments by Senator Grassley, sponsor of the amendments, that referred to a version of the amendments which was later significantly altered. \textit{Id.} at 1353 (citing \textit{LILCO}, 912 F.2d at 17). After the Senate Report was filed, Congress deleted "the media" from the list of entities which the original source was required to inform. \textit{Id.} Congress also inserted a provision requiring the \textit{qui tam} plaintiff to inform the government "before filing [the] action." \textit{Id.} (quoting 31 U.S.C. § 3730(e)(4)(B) (1988)). According to the Fourth Circuit, these two changes suggest that Congress did not intend to enact a provision into the law that would have required the plaintiff to be a source to the disclosing entity in order to qualify as an original source. \textit{Id.}
  \item \textsuperscript{226} \textit{Legislative History, supra} note 16, Vol. 1 § 11, Vol 2 § 30. See also, \textit{Siller}, 21 F.3d at 1352-53 and \textit{supra} note 224 for a discussion of some of the changes that were made in the bill after the Senate Report was submitted.
\end{itemize}
anything but clear, it ultimately chose not to enact such a require-
ment into law."227

The Fourth Circuit in Siller noted further that the Ninth Circuit in Wang, although seemingly in accord with the Second Circuit's "whistle-blower" requirement, rested its conclusion on a completely different section of the Act's legislative history.228 The Siller court similarly rejected the Ninth Circuit's analysis.229

The Ninth Circuit in Wang had reasoned that one of the purposes of the 1986 amendments to section 3730(e)(4) was to "correct" the holding in United States ex rel. Wisconsin v. Dean, where a plaintiff with first hand knowledge of fraudulent activity who had voluntarily disclosed information to the government was nonetheless barred from bringing a qui tam action.230 The Siller court noted, however, that the jurisdictional provision in effect at the time of the decision in Dean did not bar qui tam suits that were based upon prior public disclosures; the jurisdictional bar at that time prohibited only suits that were based upon "evidence or information in the possession of the United States . . . at the time such suit was brought."231 The Fourth Circuit found that the Ninth's Circuit's error was in assuming, without explanation, that Congress would not have been able to "correct" Dean without requiring that a plaintiff have provided information to the disclosing entity.232 The Siller court observed that the language of section 3730(e)(4)(B) provides that a plaintiff who has produced his independently ob-
tained information to the government is excepted from the jurisdic-
tional bar of section 3730(e)(4)(A) and that this requirement alone served to solve the problem presented by the court's decision in Dean.233 Thus, according to the Fourth Circuit, a correction of Dean would not have forced Congress to require that a qui tam plaintiff provide information to the "disclosing entity" in order to

227. Siller, 21 F.3d at 1353.
228. Id. (citing Wang ex rel. United States v. FMC Corp., 975 F.2d 1412, 1418-19 (9th Cir. 1992)).
229. Id. at 1353-54 (citing Wang, 975 F.2d at 1418-19).
231. Siller, 21 F.3d at 1354 (quoting 31 U.S.C. § 232(c) (1982) (superseded) (em-
phasis added)). See supra note 35 for the relevant text of § 3730(b)(4) and supra notes 39-45 for a discussion of Dean.
232. Siller, 21 F.3d at 1354.
233. Id.
be considered an "original source." The Siller analysis of the Act's legislative history demonstrates no support for the contention that Congress intended the relator to be a "whistle-blower" in order to maintain her suit under the False Claims Act.

C. Additional Support for "Direct and Independent" as the Standard for Original Source

1. The Surrounding Language of the Statute

When read in light of the surrounding sections of the jurisdictional provisions in the statute, the implausibility of the extratextual requirement, imposed by LILCO and Wang in the application of section 3730(e)(4), becomes more apparent. In section 3730(d)(1), "Award to Qui Tam Plaintiff," the 1986 amendments to the False Claims Act specifically restrict the amount of an award that can be paid to a qui tam plaintiff where the action is one "which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a . . . hearing, . . . [or] report . . . or from the news media." This section of the 1986 amendments comes directly before the jurisdictional provision in section 3730(e)(4) and does not refer to any requirement that the qui tam plaintiff be responsible for furnishing any of the information to the disclosing entity. Moreover, section

234. Id.
235. Id.
236. See Stevens, supra note 179, at 1376.
237. 31 U.S.C. § 3730(d)(1) (1988). The full text of the applicable provision reads as follows:

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to 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, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

Id. (emphasis added). See supra part I.A.3-4 for a full discussion of the 1986 amendments.
238. § 3730(d)(1).
3730(d)(1) clearly anticipates that a plaintiff may file a suit under the False Claims Act where at least some of the information upon which the qui tam suit is based is not original with the relator.\textsuperscript{239} As the two provisions share much of the same language,\textsuperscript{240} the fact that section 3730(d)(1) does not require the qui tam plaintiff to play a hand in the public disclosure of the allegations that form a part of the suit, coupled with the lack of any such requirement in section 3730(e)(4), is compelling evidence that Congress believed the "original source" language of (e)(4)(B) to be sufficient to protect it from parasitic actions.

2. Post-Enactment Legislative History

The Third Circuit in \textit{United States ex rel. Stinson v. Prudential Insurance Co.} noted that "[t]he . . . 1986 amendments underwent substantial revisions during [their] legislative path. This provides ample opportunity to search the legislative history and find some support somewhere for almost any construction of the many ambiguous terms in the final version."\textsuperscript{241} In fact, Judge Scirica's dissent in \textit{Prudential} used the same series of congressional reports and implementation hearings as the \textit{Prudential} majority in support of his arguments.\textsuperscript{242} As it was used to support the rationale of both the \textit{Prudential} majority and the dissent, it seems that the pre-enactment legislative history of the False Claims Act offers no clearer guidance to congressional intent than does the language of the jurisdictional bar itself.

If, however, the Senate had passed the 1992 amendments to the False Claims Act, and they had become law without further alteration, the question of "original source" would have been rendered moot.\textsuperscript{243} Although another new series of amendments was proposed in the House and Senate by the original sponsors of the

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\textsuperscript{239} \textit{Id.}

\textsuperscript{240} Compare the language of § 3730(d)(1), \textit{supra} note 237, with § 3730(e)(4)(A)'s description of 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 . . . ." 31 U.S.C. § 3730(e)(4)(A) (1988).


\textsuperscript{242} \textit{Prudential}, 944 F.2d at 1162-76 (Scirica, J., dissenting). Judge Scirica, in a dissent that is actually longer than the majority opinion, completely retraces the legislative history of the False Claims Act. \textit{Id.}

\textsuperscript{243} \textit{See supra} notes 72-95 and accompanying text for a discussion of the 1992 and 1993 amendments to the Act.
1986 amendments, to date the only bill that has actually been passed by Congress is House Bill 4563; the only committee report that has been issued is the Report from the House Committee on the Judiciary which accompanied House Bill 4563; no other bills have been passed and no other committee reports issued. An important question remains: do House Bill 4563 and its accompanying committee report have any significance in the interpretation of section 3730(e)(4)?

The role of subsequent legislative history in statutory construction has been subject to considerable debate. Notwithstanding the circuits' ability to find support in the legislative history of the Act for a variety of interpretations, Congress' fundamental purpose in the 1986 amendments was to encourage qui tam suits that were not parasitic in nature. Accepting this purpose, however, the problem for the courts is to determine exactly what constitutes a "parasitic suit." In their application of the jurisdictional bar, the LILCO and Wang courts have gone too far, barring suits in cases where the government has not filed suit and otherwise would not have recovered any damages. Inasmuch as contemporaneous legislative history has proven as ambiguous as the language of the statute itself, this is one of the rare instances in which judicious use of subsequent legislative history may be useful in statutory construction. Although congressional debate is not an appropriate or reliable guide to the meaning of a statute, statements by committee chairmen or the legislative sponsors or authors may be entitled to some weight. Further, subsequent legislation on the same topic may be persuasive, as will committee reports issued within

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244. See supra note 85-95 and accompanying text for a discussion of the 1993 amendments.
246. Araujo, supra note 178, at 125 & n.271.
247. See Kaner, supra note 40, at 294.
248. See Wang ex rel. United States v. FMC Corp., 975 F.2d 1412 (9th Cir. 1992); United States ex rel. Dick v. Long Island Lighting Co., 912 F.2d 13 (2d Cir. 1990); see also, Kaner, supra note 40, at 294-95; Vogel, supra note 104, at 604; Oparil, supra note 54, at 549.
250. See supra notes 199-205 and accompanying text for a discussion of the value and use of subsequent legislative history.
five years by the same committee that originally reported on the previous legislation.  

A review of Congress’ post-enactment activity regarding the False Claims Act thus proves useful in evaluating the weight to be accorded the portion of the Act’s legislative history. The House Committee on the Judiciary was responsible for the committee reports that accompanied both House Bill 4827 in 1986 and House Bill 4653 in 1992. The sponsor of the 1992 amendments in the House was Representative Berman, the same individual who, together with Senator Grassley, was responsible for shepherding the 1986 amendments through Congress. Although the 1992 House Committee Report on House Bill 4563 misses the recommended five year period by a few months, a court which was seeking guidance on the true congressional intent of section 3730(e)(4) could find additional clarification in the language of the 1992 Amendments and their accompanying report. Thus, the nature and quality of the post-enactment legislative activity is such that it may be accorded some weight in construing the statute.

The clear language of these amendments and the unambiguous interpretation of section 3730(e)(4) in the committee report fully support the conclusion that a qui tam plaintiff can bring suit under the False Claims Act even where she was not a source to the entity that publicly disclosed the allegations on which her suit is based. The committee report for the 1992 amendments pointed specifically to the need to clarify the language of the jurisdictional bar because of various courts’ incorrect interpretations, specifically citing what it termed to be the flawed decision of the Second Circuit in LILCO. As a result, the language of the 1992 amendments

Harv. L. Rev. 863, 888-89 (1930) & 140 (citing Jack Davies, Legislative Law and Process at § 15-1 (1986)).

252. See supra note 205.


255. See supra notes 199-205 and accompanying text for a discussion of the use of subsequent legislative history in statutory construction.

256. See supra notes 199-205 and accompanying text for a discussion of the weight to be accorded post-enactment legislative history.


would have allowed a *qui tam* plaintiff to bring a suit as long as some part of her information did not come from a public disclosure.\(^{259}\) Thus, the post-enactment legislative history of the False Claims Act is both useful and compelling evidence that the true congressional intent was not to require the relator to be a "whistleblower," as mandated by the courts in *LILCO* and *Wang*.

Further, although House Bill 2915 and Senate Bill 841 were not passed by the 103rd Congress, the congressional hearings on Senate Bill 841 afforded the sponsors of the original 1986 amendments the opportunity to address the jurisdictional bar and offer clarifying interpretations of the original intent of Congress.\(^{260}\) Thus, the 1992 amendments, their accompanying committee report, and the comments of Senator Grassley and Representative Berman in the hearings on the 1993 amendments provide some additional support for the Fourth Circuit's holding in *Siller*.\(^{261}\) Nonetheless, it must be remembered that Congress has, in fact, passed no new legislation concerning the *qui tam* provisions of the False Claims Act since the 1986 amendments.\(^{262}\) As a result, a reliance on the proposed amendments as anything more than subtle support for the conclusion in the *Siller* court would be unwise. Despite what seems to be clear post-enactment evidence of congressional intent and purpose, the Court's return to textualism and Justice Scalia's repeated resistance to legislative history in any form suggest that the use of post-enactment legislative history is probably ill-advised.\(^{263}\)

Thus far, the Supreme Court has been unwilling to grant certiorari to review any federal court decisions interpreting the "original source" provision of section 3730(e)(4).\(^{264}\) In the Supreme Court's

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\(^{259}\) See supra note 74 for the complete text of the proposed amendment.

\(^{260}\) See 1993 Hearing, supra note 90. See also supra notes 90-94 and accompanying text.

holding in United States ex rel. Marcus v. Hess, the Court sent a clear message to Congress that it would not correct the problems inherent in the statute.\textsuperscript{265} No such clear direction can be inferred from the Court's repeated denial of certiorari; nonetheless, the challenge of unifying the federal courts' interpretation of the "original source" provision of the False Claims Act rests squarely on the shoulders of Congress.

CONCLUSION

The fundamental precept behind the passage of the original False Claims Act in 1863 was to enlist the aid of private citizens in exposing fraud committed against the federal government by unscrupulous contractors. While successive amendments to the Act attempted to limit the ability of private plaintiffs to capitalize on information concerning such fraud already in the public domain, the original purpose of the Act nonetheless remains intact: the federal government needs the assistance of private individuals in order to curtail fraud and recover stolen funds.

The irreconcilable split among the various circuits over the proper interpretation of the "original source" provision contained in 31 U.S.C. § 3730(e)(4) is a reflection of the confusion this clause has engendered since its enactment. Of the rationales offered by the various courts of appeals that have considered the "original source" provision of 31 U.S.C. § 3730(e)(4), the Fourth Circuit's holding in United States ex rel. Siller v. Becton Dickinson & Co. is most faithful to the proper methodology of statutory construction. Specifically, the Fourth Circuit's interpretation of the "original source" provision allows suits by private plaintiffs to go forward, effecting the primary purposes of the act, deterrence and recovery. As interpreted by the Fourth Circuit, the requirement that the

\textsuperscript{265} See Marcus v. Hess, 317 U.S. 537 (1943). "[T]he trouble with these arguments [to deny jurisdiction] is that they are addressed to the wrong forum. Conditions may have changed, but the statute has not." Id. at 547. See also supra note 30 and accompanying text for a discussion of the Court's direction to Congress in its decision in Hess. Congress was also directed to rewrite the legislation by the Seventh Circuit in its decision in United States ex rel. Wisconsin v. Dean, 729 F.2d 1100 (7th Cir. 1984). "If the State of Wisconsin desires a special exemption to the False Claims Act . . . then it should ask Congress to provide the exemption." Id. at 1106.
plaintiff have “direct and independent” knowledge of any publicly disclosed allegations upon which her suit is based is sufficient to protect against suits that are parasitic in nature without the extra-textual requirement that the “original source” have been the “whistle-blower,” an interpretation that would prevent many worthwhile qui tam suits from going forward.

The United States Courts of Appeals should therefore be guided in their analysis of the “original source” provision of section 3730(e)(4) by the Fourth Circuit’s holding in Siller. The Fourth Circuit’s decision utilizes fundamental statutory construction to analyze the plain language of the statute and supports its analysis with a judicious use of authoritative legislative history. After carefully reviewing the statute, contemporaneous legislative history, and relevant case law, the Fourth Circuit concluded that a qui tam plaintiff may maintain her suit under the False Claims Act as long as she has direct and independent knowledge of the information upon which her claims are based and voluntarily provides that information to the government before filing her claim.

The conclusion that a straightforward application of the “direct and independent” standard is sufficient to determine whether a relator can qualify as an “original source” is further supported by the provision in the section of the statute that immediately precedes section 3730(e)(4), “Award to Qui Tam Plaintiff,” which does not mention the “whistle-blower” requirement imposed by the courts in LILCO and Wang. Additional support for this conclusion is found in the passage by the House of amendments to the Act in 1992. The 1992 amendments indicate that the original intent of Congress in the 1986 amendments to the Act is accurately reflected in the holding of the four circuits — the Fourth, Tenth, Eleventh, and D.C. Circuits — which have ruled on the jurisdictional bar since the Ninth and Second Circuits established the “direct and independent plus” standard.

To insure clarity and uniformity in the interpretation of section


267. Although Congress’ proposal of the 1993 amendments to the Act cannot be accorded significant weight as no legislation was passed, the statements of Sen. Grassley and Rep. Berman in hearings on the proposed amendments interpreting the original intent of the 1986 Amendments, also provide support the conclusion reached by the Fourth, Eleventh, and D.C. Circuits. See 1993 Hearings, supra note 90, at 3 & 6.
3730(e)(4), Congress should pass amendments to the Act such as those originally proposed in the 102d and 103d Congress. Such legislation would discredit the contrary reasoning of the Second and Ninth Circuits and would result in unanimity on this significant issue among the courts of appeals. The demonstrated impact of the False Claims Act on the public fisc since the passage of the 1986 amendments — over a half billion dollars between the enactment of the amendments and the first quarter of 1994 alone — reinforces the need for consistency among the federal courts. A narrow reading of the jurisdictional bar in section 3730(e)(4) will result in additional identification of fraudulent activities against the government and increased awards, which will both supplement the federal treasury and act as a deterrent to unscrupulous contractors and suppliers. Thus, the "Lincoln Law" will fulfill its original promise, and Congress will finally reach a reasoned and reasonable compromise between opportunity and opportunism.

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