

No. 25-893

IN THE
Supreme Court of the United States

ROBERT V. SMITH,

Petitioner,

v.

JAY A. ODOM, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the requirements in 31 U.S.C. § 3730(e)(4) (B) of the False Claims Act, were properly applied by the Eleventh Circuit in determining that the Petitioner’s disclosures were “substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed” and that the Petitioner was not “an original source of the information.” 31 U.S.C. § 3730(e)(4)(A).

LIST OF PARTIES

Petitioners:

United States of America

State of Florida ex rel. Robert V. Smith

Robert Smith (“Smith”)

Respondents:

Jay A. Odom (“Odom”)

Okaloosa County, Board of County Commissioners
(the “County”)

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STATEMENT OF THE CASE¹

Respondent Okaloosa County (the “County”) owns and operates three airports, including the Destin Executive Airport (“Destin Airport”). In furtherance of its airport operations, the County has historically received financial assistance through Federal and State agencies. As an airport sponsor receiving such financial assistance, the County is required to make various written assurances to the government to be eligible for that funding. *See* 49 U.S.C. § 47107(a). Among those assurances is that the County would not award any fixed-base operator an exclusive right to offer services at the Destin Airport.²

Prior to 2009, Miracle Strip Aviation (“Miracle Strip”) was the sole fixed-base operator at the Destin Airport. In that year, the Destin Airport added a second fixed-base operator, Destin Jet, which was owned by Respondent Jay Odom (“Odom”). In 2012, Regal Capital acquired Miracle Strip. According to Petitioner Robert Smith (“Petitioner” or “Smith”), though Regal Capital was ostensibly owned by two individuals (Phillip Ward and Jack Simmons), Regal Capital’s purchase of Miracle Strip was actually funded by Odom. Thus, Mr. Ward and Mr. Simmons were “strawmen” who allowed Odom to acquire complete control of fixed-base operations at the Destin Airport.

1. References to the Petition and its Appendix are cited as “Pet. __” and “Pet. App. __,” respectively.

2. Fixed-base operators are commercial entities “providing aeronautical services such as fueling, maintenance, storage, ground and flight instructions, etc. to the public.” Airport Compliance Manual, FAA Order 5190.6B § 8.9 n.25 (September 30th, 2009).

In early 2013, the County learned of Regal Capital's acquisition, but the County was not aware of the alleged strawman scheme. As a result of Regal Capital's purchase, the County approved an assignment of Miracle Strip's lease to Regal Capital, and Miracle Strip was renamed as Regal Air. Less than a year later, Sterling Diversified (owned by Odom and two others) acquired Regal Capital (and by extension, Regal Air). In March 2014, the County learned that Odom had acquired an ownership interest in Regal Air.

At least two news outlets reported these events. On March 29, 2014—almost six years before Smith filed his original complaint in this action—the Northwest Florida Daily News reported that “a company associated with Destin Jet owner Jay Odom had bought out the competition at Destin Airport.” The article also quoted the Okaloosa County Airports Director as declaring that Odom's actions violated two Federal Aviation Administration (“FAA”) grant assurances. The article alleged that Odom told Airport administration that two fixed-base operators “could not coexist at Destin Airport in the current environment of declining general aviation activity.” The Airports Director also acknowledged that the case was compelling enough to point to a single fixed-base operator at the airport.

About a month later, Aviation International News also reported these events and published that Airport officials and owners of Destin Jet were working to resolve a dispute involving “county antitrust safeguards and FAA grant assurance violations that resulted when owners of Destin Jet allegedly purchased rival provider Regal Air Destin at the end of last year.” The article also stated that the

Airports Director agreed that fuel sale data suggested the Destin Airport could not support two fixed-base operators.

Smith alleges that in September 2014 the County reported Regal Air's ownership change to the FAA and asked whether the acquisition resulted in a violation of its exclusive-rights grant assurances. In response, Smith says, the FAA cautioned the County on "issues related to exclusive rights" and suggested that the County should obtain a legal opinion from the FAA's Office of General Counsel. No opinion was obtained. Instead, the County authorized Destin Jet and Regal Air to "operate under common ownership and brand." In the County's view, it had raised the compliance issues with the FAA, and the FAA responded that the acquisition of a competing fixed-base operator, even if it results in a single fixed-base operator, is a prevalent practice and "does not in itself constitute" a violation of grant assurances.

In 2016, Odom sold Destin Jet (which had merged with Regal Air). About three years later, Smith approached the County about establishing a competing fixed-base operation at the Destin Airport. The County denied Smith's request, citing both the pre-existing leases and a lack of available land. In 2020, after his request was denied, Smith brought an action under the False Claims Act against both Odom and the County.

Smith was not an employee of the County, Destin Jet, Miracle Strip, Regal Air, or Sterling Diversified, and thus, none of his information was acquired from specific inside information or from doing business with those entities. Rather, the sources of the information Smith disclosed to the government were the two local newspaper articles,

a public records request Smith made to the County, and conversations Smith says he had with some Airport employees (which the District Court characterized as “gossip”). The last two occurred while Smith conducted investigations for the purpose of building his case.

PROCEDURAL HISTORY

District Court

In 2020, Smith filed this action against Odom and the County as a *qui tam* relator under the Federal False Claims Act. Smith alleged that the 2012 strawman purchases, followed by Sterling Diversified’s acquisition of Regal Air, created an exclusive right for a single fixed-base operator, thereby rendering the County’s grant assurances false. Smith further alleged that the County maintained that exclusive right by authorizing the merger of Destin Jet and Regal Air, by later approving the assignments (which kept all the fixed-base operations under the control of a single operator), and by denying Smith’s 2019 request to establish a competing fixed-base operation. Smith also asserted parallel claims under the Florida False Claims Act, which, as the Eleventh Circuit recognized, is modeled on the federal statute and subject to the same analysis. (Pet. App. A (App-6, n.1)).

After Smith amended his complaint, both Odom and the County moved to dismiss. The District Court granted the motions and dismissed Smith’s amended complaint with prejudice. (Pet. App. F (App-87–App-111)). The trial court concluded that the False Claims Act’s public-disclosure provision barred Smith’s suit because the allegations in his complaint had been publicly disclosed in

the news articles. Smith moved to amend the judgment, which the District Court denied.

Eleventh Circuit

Smith appealed the District Court’s prejudicial dismissal to the United States Court of Appeals for the Eleventh Circuit. The Eleventh Circuit affirmed the District Court’s decision. The appellate court framed the public-disclosure inquiry as involving three questions: (1) whether the same general allegations had been publicly disclosed; (2) whether those allegations were “substantially the same” as those in the complaint; and (3), if so, whether Smith qualified as an original source whose knowledge was “independent of and materially adds to the publicly disclosed allegations.” (Pet. App. A (quoting 31 U.S.C. § 3730(e)(4)(B)); Pet App. G).

On the first two questions, the Eleventh Circuit determined that the news articles were public disclosures within the meaning of the statute and that they “outlined the same scheme that Smith raises in his complaint.” (Pet. App. A (App-10)). Although Smith argued that his complaint was broader—because it alleged an earlier, undisclosed strawman scheme—the court determined that those actions did not “change[] or expand[] the scheme.” (Pet. App. A (App-11)). The Eleventh Circuit, therefore, concluded that there was “significant overlap” between the complaint and the articles and that the public-disclosure bar was triggered. (Pet. App. A (App-11 (quoting *United States ex rel. Jacobs v. JP Morgan Chase Bank, N.A.*, 113 F.4th 1294, 1302 (11th Cir. 2024))).

Turning to the original-source question, the Eleventh Circuit determined that the cumulative allegations did not materially add to the allegations that were previously disclosed in the news articles. On that reasoning, the Eleventh Circuit concluded that Smith was not an original source because, although his knowledge may have been independent, his allegations did not materially add to the public disclosures. (Pet. App. A (App-11–App-13)). Thus, the Circuit Court affirmed the District Court’s dismissal.

ARGUMENT

Smith’s Petition for Writ of Certiorari seeks review of the Eleventh Circuit’s decision rendered in *United States ex rel. Smith v. Odom, et. al.*, 148 F.4th 1322 (11th Cir. 2025). Smith argues that this Court should accept jurisdiction based upon the need to resolve a purported multi-circuit conflict, and that by doing so, would result in the reversal of the decision below. Contrary to Smith’s suggestion, the Court should deny the Petition because the Eleventh Circuit’s decision was rendered following an appropriate and detailed review of the facts. Based upon that review, the Circuit Court determined that Smith was not the original source of the information and that the additional matters that Smith provided did not materially add to what had already been publicly disclosed. Further, the Eleventh Circuit’s analysis was consistent with the majority view among the Circuit Courts of Appeal.

I. The Eleventh Circuit Reasonably Applied the “Original Source” Provision of the False Claims Act.

Smith’s Petition for Writ of Certiorari contends that the Eleventh Circuit misapplied the False Claims Act when it concluded that the information provided by Smith did not materially add to the previous public disclosures. The Eleventh Circuit applied the three-part test to determine whether the public disclosure bar applies under the False Claims Act.

The initial prong of the Act is whether the allegations made have been publicly disclosed. *United States ex rel. Jacobs v. JP Morgan Chase Bank, N.A.*, 113 F.4th 1294 (11th Cir. 2024). In the present case, that clearly occurred. The appellate court’s decision is based upon the particular facts of this case. Smith alleged that Odom and the County violated the False Claims Act by falsely certifying that the County had not granted exclusive fixed-base operator rights at Destin Airport. However, those same allegations were included in two separate news articles in Spring 2014—nearly six years prior to Smith filing his complaint.

Due to these public disclosures, the next analysis addressed whether the pleading’s allegations were substantially the same as the matters contained within the previously available public disclosures. 31 U.S.C. § 3730(e) (4). The Eleventh Circuit performed a detailed analysis comparing the publicly disclosed material and Smith’s allegations and found that they were substantially the same. (Pet. App. A (App-10–App-11)).

Finally, under the third prong, the Court examined whether Smith was the original source of the information that had previously been provided to the government or whether Smith's knowledge was independent of, and materially added to, the publicly disclosed allegations. 31 U.S.C. § 3730(e)(4)(A)–(B). The thrust of the Petition concerns the application of the third prong.

The essence of Smith's Petition is that the Eleventh Circuit, relying upon its prior holdings in *United States ex rel. Osheroff v. Humana, Inc.*, 776 F.3d 805 (11th Cir. 2015) and *United States ex rel. Jacobs v. JP Morgan Chase Bank, N.A.*, 113 F.4th 1294 (11th Cir. 2024), merged the third prong of the analysis with the first two. Specifically, when public disclosures have already given rise to an inference of fraud, cumulative allegations will not be deemed to materially add to those allegations, and background information, which may provide context to a public disclosure, will likewise be deemed insufficient. (Pet., p. 12). Nothing in the Eleventh Circuit's opinion suggests adoption of this position. Rather, the Circuit Court analyzed the specific information provided by Smith, compared it to the publicly disclosed information, and found that Smith's additional allegations were lacking.

Further, Petitioner suggests that the analysis of the materiality provision requires “a distinct and substantive inquiry into how the facts provided by the relator might add to the public disclosures to bring fraud to light...” (Pet., p. 15). Relying upon this rationale, Smith contends that the Circuit Court erred in finding that he “was not an original source because, although his knowledge may have been independent, his allegations did not materially add to the public disclosures, because [t]he heart of

Smith’s complaint and the articles is the same.” (Pet., p. 13). Petitioner’s argument mischaracterizes the Eleventh Circuit’s analysis as to whether Smith was an original source or whether his allegations added materiality to the public disclosure.

Smith claims that the information he provided, which supposedly materially added to the publicly disclosed allegations, includes: that Odom used a “strawman” to gain control of both fixed-base operations; the County’s post-2015 scienter; and the County’s subsequent certification. But these pieces of information were substantially the same as those previously published. Smith asserts the consideration of “materially” requires “a distinct, second-order inquiry that asks whether a relator’s independent nonpublic information significantly improves the government’s understanding of a fraud that has been partially disclosed.”³ (Pet., pp. 15–16). Contrary to Smith’s argument, the Eleventh Circuit conducted a separate analysis of Petitioner’s additional information and determined that it consisted of no more than background information or additional details. Such matters were not material additions because they merely supplemented and contextualized the core fraud hypothesis that had already been disclosed. Though Smith contends that the Eleventh Circuit arrived at this determination based

3. Petitioner suggests that this standard is derived from a majority of Circuits. However, the established standard does not go to the “understanding of a fraud,” but rather, the information must affect the government’s decision-making. (Pet., p. 15); *United States ex rel. Winkelman v. CVS Caremark Corp.*, 827 F.3d 201, 211 (1st Cir. 2016); *United States ex rel. Maur v. Hage-Korban*, 981 F.3d 516, 527–28 (6th Cir. 2020); *United States ex rel. O’Connor v. United States Cellular Corp.*, 153 F.4th 1272, 1281 (D.C. Cir. 2025).

solely on the previously determined inference of fraud, that is not correct. The Circuit Court performed a detailed analysis of these facts and the extent that they added to the publicly disclosed material. That determination clearly established that the information asserted by Petitioner was cumulative and provided only context. None of the information would rise to the level where it would be pertinent to a governmental decisionmaker.

II. The Asserted Conflict Among the Circuits Does Not Rise to the Level to Justify Granting the Petition.

Smith asserts that review should be granted to address a conflict among the Circuit Courts. As articulated by Petitioner, the supposed conflict among the Circuits is “what it means for a relator’s information to ‘materially add to the publicly disclosed allegations or transactions’ for the purposes of the original source exception to the False Claims Act’s public-disclosure bar.” (Pet., p. 15). Petitioner then analyzes cases from various Circuits to arrive at his interpretation of the standard adopted by the majority of the Circuits. Specifically, Smith focuses on the Seventh Circuit’s decision in *Bellevue v. Universal Health Services of Hartgrove, Inc.*, 867 F.3d 712 (7th Cir. 2017), and characterizes it as diverging from the rationale for analyzing the False Claims Act that has been adopted and approved by various other Circuits Courts of Appeal. Petitioner asserts that the Eleventh Circuit has adopted the rationale of *Bellevue* but its conclusion is unsupported by the rationale of the opinions themselves. This is incorrect. A review of the Eleventh Circuit’s decisions after the 2010 amendment of the False Claims Act reflects that not only has the Eleventh Circuit not adopted the Seventh Circuit’s rationale, but the Eleventh Circuit has not addressed it in any of its opinions.

The Eleventh Circuit’s analysis, in the present matter, is similar to the approach taken by the vast majority of the other Circuit Courts. The Eleventh Circuit conducted a detailed analysis of the specific facts asserted by Smith and determined that the information was merely background that contextualized but did not materially impact any decision by the government.

Nor has the Eleventh Circuit adopted a standard that upon the establishment of an inference of fraud any cumulative or background always would be found insufficient. The Eleventh Circuit conducted a detailed review and determined that the factual matters Smith asserted did not rise to any level of materiality and were cumulative and mere background. Further, it is likely that many of the “majority” circuits identified by the Petitioner would have similarly rejected such matters as insufficient background detail. *See United States ex rel. Maur v. Hage-Korban*, 981 F.3d 516, 527–28 (6th Cir. 2020); *United States ex rel. O’Connor v. United States Cellular Corp.*, 153 F.4th 1272, 1281 (D.C. Cir. 2025); *United States ex rel. Reed v. Keypoint Gov’t Sols.*, 923 F.3d 729, 757 (10th Cir. 2019).

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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