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New Information Quality Act Case Filed In Ninth Circuit Regarding A Department Of Justice Press Release On A Wire Fraud Conviction

Center for Regulatory Effectiveness (CRE) Files Amicus Curiae Brief

WASHINGTON, June 12, 2013 /PRNewswire/ -- The case, *Harkonen v. U.S. Dept. of Justice* (No. 13-15197), seeks judicial review of allegedly inaccurate statements made by the Department of Justice (DOJ) in a press release describing a wire fraud conviction. The conviction was for statements made in a company press release concerning interpretation of the results of a clinical drug trial. The Office of Management and Budget is also named as a Defendant-Appellee. Harkonen's opening brief was filed on May 31, 2013, and CRE's unopposed amicus brief was filed June 7, 2013.

The DOJ denied Harkonen's petition under the IQA (Information Quality Act, aka Data Quality Act) solely on the basis that it did not have to respond to the merits of the petition because press releases are completely exempted from the IQA in the OMB government-wide IQA Guidelines. The district court upheld the DOJ's petition denial, holding, first, that the IQA and its Guidelines do not confer a legal "right" to seek and obtain a correction, and, second, that there are no meaningful standards to guide judicial review. In so holding, the district court relied substantially on the Fourth Circuit's 2006 Salt Institute opinion.

CRE filed an amicus brief due to the importance of the judicial reviewability issue and because of its historical involvement in the IQA. CRE's involvement is also a result of its constant oversight of the IQA, its mastery of detailed OMB guidance and interpretative rulings which limit the press release exemption, and its knowledge of the details concerning the actual controversy involved in the Salt Institute case. CRE's brief argues that the IQA press release exemption is not a blanket exemption but rather has been interpreted by OMB as limited, and that the Salt Institute opinion is restricted to attempts to obtain data not to correct it.

Besides the irony involved in a federal agency bringing criminal charges for allegedly false statements in a company press release while claiming that it is immune from challenge to its own press releases, CRE views the case as potentially having great importance as the first circuit court IQA case that might clearly confront the judicial reviewability issue, and because if all federal agencies have a "blanket" IQA exemption for press releases, they could effectively "regulate by press release" by including all manner of materially inaccurate information in a dissemination and calling it a "press release." Indeed, DOJ posted its press release about Dr. Harkonen on its website for nearly two years, yet asserted that the IQA guidelines governing information disseminated on a website do not apply because the information was in the form of an agency press release.

The CRE amicus brief can be found here:

http://thecre.com/pdf/20130609_Harkonen_Amicus.pdf

The brief for Dr. W. Scott Harkonen can be found here:

http://thecre.com/pdf/20130609_2013.05.31%5B8-1%5DBriefofDrWScottHarkonen.pdf

SOURCE Center for Regulatory Effectiveness

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