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Scott H. Arney

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## *Vermont Agency of Natural Resources v. United States ex rel. Stevens:*

### A Private Individual May Not Bring Suit in Federal Court on Behalf of the United States Against a State Under the False Claims Act

By Scott H. Amey

The Supreme Court of the United States held that a private individual may not bring a suit in federal court on behalf of the United States against a State or state agency under the False Claims Act (“FCA”). *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 120 S. Ct. 1858 (2000). In so holding, the Court found that a State or state agency is not a “person” subject to FCA’s *qui tam*<sup>1</sup> provision. Furthermore, while the Court immunized States from lawsuits under the FCA, a private individual has standing to bring an action against “any person” in federal court on behalf of the United States.

Respondent Jonathan Stevens (“Stevens”) alleged that the Vermont Agency of Natural Resources (“Agency”), his former employer, submitted false claims to the U.S. Environmental Protection Agency (“EPA”) in connection with federal grant programs. Stevens alleged that the Agency overstated the amount of time spent by its employees on the federally funded projects, defrauding the federal government of more grant money than the Agency was entitled to receive.

Stevens brought a *qui tam* action in the United States District Court for the District of Vermont

against the Agency. The Agency filed a motion to dismiss, arguing that a State or state agency is not a “person” and thus not subject to liability under the FCA. In addition, the Agency contended that the Eleventh Amendment bars a *qui tam* action against a State. The district court denied the agency’s motion. Thereafter, the Agency filed an interlocutory appeal and the district court stayed further proceedings pending its outcome. The Court of Appeals for the Second Circuit affirmed the district court’s decision. The Supreme Court granted a writ of certiorari to determine if a private person has Article III standing to bring such a suit, whether the action against the state is barred by the 11<sup>th</sup> Amendment, and if a State is considered a “person” under the *qui tam* statute, and if so, whether the State is immune from suit.

The Court began its analysis by examining the FCA’s history. *Id.* at 1860. The FCA imposes civil liability upon “any person” who “knowingly presents, or causes to be presented, to any officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval.” *Id.* (citing 31 U.S.C. § 3729(a) (1994)). The defendant in such an action may be liable for up to

treble damages and a civil penalty up to \$10,000 per false claim. *Id.* In addition, a false claim action can be brought by either the federal government or a private person, also known as a relator. *Id.* In cases in which the relator initiates the action, he/she is entitled to receive a share of any of the proceeds that are recovered, including any amount received in a settlement or judgment, plus attorney’s fees and costs. *Id.* at 1861 (citing 31 U.S.C. § 3730(d)(1) & (2) (1994)).

Next, the Court addressed the jurisdictional question of whether Stevens had standing under the U.S. Constitution, art. III, section 2, clause 1. *Id.* at 1861. The Court found that there are three requirements for standing to be established: (1) the moving party must establish “injury in fact,” that is, a harm that is both “concrete” and “actual or imminent, not conjectural or hypothetical.” *Id.* (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)); (2) there must be causation, and “a fairly . . . trace[able]” connection between the injury in fact and the alleged conduct. *Id.* (quoting *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U.S. 26, 41, 96 S. Ct. 1917 (1976)); and, (3) redressability—a “substantial likelihood” that the requested relief

will resolve the alleged injury. *Id.* at 1861-62. (quoting *Simon* at 45, 96 S. Ct. at 1917)). The Court considered these factors to be essential to Article III's "case and controversy" requirement. *Id.* at 1862.

The Court explained that Steven's interest in the litigation, specifically his share of the proceeds of any recovery, provided Stevens with a "concrete private interest in the outcome of [the] suit." *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)). However, consistent with previous holdings, the Court found that the relator's interest in the recovery is not alone sufficient to justify standing. *Id.* at 1863. Instead, the Court turned to the theory that Stevens, the assignee of a claim, has standing to assert the injury in fact suffered by the assignor (the United States Government). *Id.* The Court found that in the case of the FCA, a partial assignment of the Government's damages claim is made to the relator, and thus standing is conferred to Stevens. *Id.*

The Court continued and examined the longstanding history of such statutes. *Id.* As the Court found above, *qui tam* actions date back to 14<sup>th</sup> century English statutes that confirm the relator's standing requirement mandated by Article III. *Id.* at 1863-64.

The Court then turned to the merits of the case: (1) the Agency's contention that a State is not a "person" subject to the FCA's *qui tam* provision, and (2) the Eleventh Amendment's bar to suing a State. *Id.* at 1865.

To determine the definition of the term "person," the Court analyzed the FCA's text to determine the "longstanding interpretive presumption that a 'person' does not include the sovereign." *Id.* at 1866. The Court found in the absence of an "affirmative showing of legislative intent to the contrary," the term "person" does not include States for the purposes of *qui tam* liability. *Id.* at 1867. Subsequent amendments, in 1982 and 1986, support the Court's finding that Congress did not intend the word "person" to include States or state agencies. *Id.* at 1868. In fact, the Court found that changes to the law present no evidence to suggest the term "person" included States. *Id.* Comparisons to terms defined in ensuing legislation suggested that States are not considered "persons." *Id.* In other acts Congress elected to define "person" and include State in the definition. *Id.* at 1869. The Court found that the absence of State in the false claim provision's definition of "person" is a further indication of the Legislature's intent to exclude States.

Moreover, the Court found that *qui tam* liability is very punitive in nature, and thus, considering a State a "person" would contradict the "presumption against imposition of punitive damages on governmental entities." *Id.* (quoting *Newport v. Fact Concerts, Inc.*, 435 U.S. 247, 262-63 (1981)).

Finally, the Court compared the term "person" in the FCA to the Program Fraud Civil Remedies Act of 1986 ("PFCRA"), an act creating administrative remedies for false

claims. *Id.* at 1870. The PFCRA exempts States from liability for monetary damages. *Id.* Thus, the Court utilized the PFCRA's text to conclude that the intended meaning of "person" in the FCA exempts States as well. *Id.*

Because the Agency was not deemed a "person" under the FCA, the Court declined to offer a ruling concerning the Eleventh Amendment immunity issue. *Id.* at 1859-60. However, the Court noted in dicta that a *qui tam* action against a State is in doubt as far as violating the Eleventh Amendment. *Id.* at 1860 (citing *Ashwander v. TVA*, 297 U.S. 288, 348 (1936)).

Justices Stevens and Souter dissented, opining, "the 1986 amendments also declare that a 'person' who could engage in a violation of § 3729 --thereby triggering the civil investigative demand provision-- includes any State or political subdivision of a State." *Id.* at 1871 (citing §6(a), 100 Stat. 3168 (codified at 31 U.S.C. § 3733(l)(1)(A), (2), & (4) (Supp. 2000)). In contradiction to the majority, the dissenters believed the statutory text makes it clear that Congress intended to include States in the term "person." *Id.*

The False Claims Act, originally enacted in 1863 and signed into law by President Lincoln, has returned more than \$3 billion to the federal treasury from those who knowingly present false or fraudulent claims for payment.<sup>2</sup> Nearly every year the health care and defense industries lobby Congress to gut the False Claims Act or attempt to defeat the law in the courts. The Supreme

Court's ruling adds validity to a very powerful and necessary instrument that prevents fraudulent activity.

Although a private citizen may not sue a State or state agency in federal court under the law, the Supreme Court upheld the constitutionality of the False Claims Act by holding that a relator has standing to bring suit. By doing so, the Court has ensured the statute's future use by the federal government and relators.

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<sup>1</sup> The term *qui tam* is Latin for "who as well for the King as for himself sues in this matter."

<sup>2</sup> <http://www.usdoj.gov/opa/pr/2000/February/079civ.htm>