Order Code RS20641
July 26, 2000

CRS Report for Congress

Received through the CRS Web

Vermont Agency of Natural Resources v. United States ex rel. Stevens: The Supreme Court Limits False Claims Actions Against States

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Summary

In *Vermont Agency of Natural Resources v. United States ex rel Stevens*, the Supreme Court considered whether states are "persons" under the False Claims Act (FCA). The Court also addressed the much broader question of whether *qui tam* relators meet Article III standing requirements. Analyzing the text of the Act as well as the long history of *qui tam* actions, the Court ruled that while relators do have Article III standing, the False Claims Act does not subject states to liability.

The False Claims Act ("FCA" or "Act") imposes liability on any "person" who knowingly makes a false claim for payment to the United States.[1] To encourage enforcement, the Act provides that a private person, known as a "relator" may bring a civil action for substantive violations of its strictures, "for the person and for the United States Government," with the action being brought "in the name of the Government."[2] Such suits are called *qui tam* actions, and the relator receives a share of any amount recovered in the action.[3] In *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, the respondent originally filed a *qui tam* suit asserting that the Agency had submitted false claims to the Environmental Protection Agency, thereby inducing the EPA to provide it with unearned grant money.[4] The Court of Appeals for the Second Circuit rejected Vermont's argument that a State is not a "person" subject to liability under the FCA and that any such action would also violate the Eleventh Amendment.

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[1] For a more detailed overview of the structure and history of the False Claims Act, *see* (nam e redacted), "Constitutional Aspects of Qui Tam Actions: Background and Analysis of Issues in *Vermont Agency of Natural Resources v. United States ex rel. Stevens*," Congressional Research Service Report No. RL30463.

[2] 31 U.S.C. §3729(a)(1)-(7); §3730(b)(1).

[3] 31 U.S.C. §3730(d)(1)-(2).

[4] *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 120 S.Ct. 1858, 1859 (2000).

Because of a split among the circuits, the Supreme Court granted certiorari in *Stevens*, initially limited to the issues decided by the Second Circuit. However, shortly before oral argument, the Court issued an order indicating that it would also consider whether *qui tam* suits violate the standing requirements of Article III.

In its opinion, the Court first addressed the jurisdictional question of whether Stevens had Article III standing to bring suit.[5] The Court identified three requirements which must be met to establish standing. First, a claimant must demonstrate an "injury in fact," meaning that there must be a concrete harm to his or her interests that is "actual or imminent." Second, the claimant must establish causation, in the form of a "connection between the alleged injury in fact and the alleged conduct of the defendant." Third, the claimant must make a showing of redressability by demonstrating that there is a "substantial likelihood that the relief sought will remedy the alleged injury. According to the court, these three requirements "constitute the 'irreducible constitutional minimum' of standing...an 'essential and unchanging part' of Article III's case or controversy requirement."[6]

Applying this standard to the case at hand, the Court noted that the complaint undoubtedly asserted an injury in fact to the United States. However, according to the Court, the question remained as to whether Stevens could pursue such a claim on behalf of the government, since "Article III judicial power exists only to redress or otherwise to protect against injury to the complaining party." Addressing this issue, the Court first opined that the relator could be viewed simply as a statutorily designated agent of the United States, further characterizing the relator's bounty as a fee received from the government's recovery for the successful pursuit of an action. The Court rejected this characterization, however, determining that the FCA gives the relator an interest in the action itself, "and not merely the right to retain a fee out of the recovery."[7]

The Court explained that while the relator's interest in the recovery created a concrete private interest in the outcome of the suit, the interest was identical in nature to that of an individual who had simply placed a wager on the outcome.[8] As this interest was unrelated to any injury in fact, the Court deemed it insufficient to confer standing on a relator. Elaborating on this point, the Court stressed that an interest sufficient to confer standing "must consist of obtaining compensation for, or preventing, the violation of a legally protected right." Since the pecuniary interest a qui tam relator seeks to vindicate does not mature until the successful resolution of litigation, the Court held that a relator cannot be said to have suffered an injury to a legally protected right.[9]

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[5] Justice Scalia wrote the opinion, and was joined by Chief Justice Rehnquist and Justices O'Connor, Kennedy, Thomas and Breyer. *Id*. at 1860.

[6] *Id*. at 1861-62.

[7] *Id*. at 1862 (quoting *Warth v. Seldin*, 422 U.S. 490, 499 (1975).

[8] *Id*. at 1862.

[9] *Id*. at 1862-63.

After declaring that the aforementioned rationales did not support Article III standing, the Court nonetheless determined that a qui tam relator's suit could be justified by "the doctrine that the assignee of a claim has standing to assert the injury in fact suffered by the assignor." Specifically, the Court explained that the FCA could be interpreted as "effecting a partial assignment of the Government's damages claim. While it had never before recognized such "'representational standing'" by assignees, the Court stressed that it had routinely entertained such suits, as well as suits by subrogees, or "'equitable assignees.'" Given this, the Court determined that "the United States' injury in fact suffices to confer standing" on qui tam relators.[10] Buttressing this conclusion, according to the Court, was "the long tradition of qui tam actions in England and the American Colonies." The Court found this "long tradition" particularly significant to a constitutional inquiry into standing, since "Article III's restriction of the judicial power to 'Cases' and 'Controversies' is properly understood to mean 'cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.'"[11] This historical basis, coupled with the "theoretical justification for relator standing" based on the doctrine of assignment, led the Court to declare that there is "no room for doubt that a qui tam relator under the FCA has Article III standing."[12]

Having disposed of this threshold issue, the Court turned to the merits of the case. Specifically, the State of Vermont argued that it was not a "person" subject to qui tam liability under the FCA. Furthermore, Vermont asserted that even if it could be characterized as a person under the Act, the Eleventh Amendment would nonetheless preclude such a suit. Analyzing the first argument, the Court noted that the text of 31 U.S.C. §3729(a), imposing liability on any "person" who "knowingly presents, or causes to be presented, to an officer or employee of the United States Government...a false or fraudulent claim for payment or approval," had to be interpreted in light of the "longstanding presumption that 'person' does not include the sovereign."[13] Specifically, the Court noted that this presumption is especially persuasive in instances "'where it is claimed that Congress has subjected the States to liability to which they had not been subject before.'"[14] Furthermore, the Court stressed that while such a presumption is not immutable, it nonetheless may be disregarded only upon a clear showing of contrary statutory intent.

Applying this maxim to the case at hand, the Court first looked to the "historical context" of the FCA. Noting that the FCA was originally enacted in 1863 to alleviate fraud by contractors during the Civil War, the Court determined that the original liability provision of the Act "bore no indication that States were subject to its penalties."[15] Moreover, the Court found that the original provision did not even make clear that private

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[10] *Id*. at 1863.

[11] *Id*. at 1863.

[12] *Id*. at 1865.

[13] *Id*. at 1865-66 (citing *United States v. Cooper Corp.,* 312 U.S. 600, 604 (1941); *United States v. Mine Workers*, 330 U.S. 258, 275 (1947)).

[14] *Id*. at 1866-67 (quoting *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 64 (1989); *Wilson v. Omaha Tribe*, 442 U.S. 653, 667 (1979)).

[15] *Id*. at 1867.

corporations fell within its ambit, as its express terms referred only to classes of real persons, and provided for criminal penalties including imprisonment. While the Court acknowledged that this structure did not undermine the assumption that corporations were indeed covered by the Act, it did "nothing to overcome the presumption that States are *not* covered."[16]

The Court next considered the subsequent amendments to the FCA, determining that none of the changes made to the Act indicated a "broadening of the term 'person' to include States."[17] The Court went on to explain that the current version of the FCA further supported "the conclusion that States are not subject to *qui tam* liability."[18] Specifically, the Court noted that 31 U.S.C. §3733 of the Act, which allows the Attorney General to issue civil investigative demands to any person possessing information relevant to a false claims law investigation, expressly defines "person" to include states for the purposes of that section. The Court determined that the inclusion of this provision in §3733, coupled with the absence of such in §3729, suggested again that States are not "persons" for purposes of qui tam liability.[19] The Court also found it significant that the current version of the FCA imposes damages that are punitive in practical effect, "which would be inconsistent with state *qui tam* liability in light of the presumption against imposition of punitive damages on governmental entities."[20] Finally, the Court noted that the Program Fraud Civil Remedies Act of 1986 (PFCRA), a related scheme establishing administrative remedies for false claims, "contains (unlike the FCA) a definition of 'persons' subject to liability, and that definition does not include States."[21] Given this, the Court held that states could not be considered persons under §3729, as it would "be most peculiar" to subject them to treble damages and civil penalties under the FCA while exempting them from "the relatively smaller damages provided under the PFCRA."[22]

In light of these factors, the Court declared "that various features of the FCA, both as originally enacted and as amended" established the states are not "persons" for purposes of *qui tam* liability. Concluding its disposition of the issue, the Court noted that its holding was buttressed by two other considerations. First, the Court reiterated "'the ordinary rule of statutory construction'" that Congress must make its intention to alter the federal/state balance "'unmistakably clear in the language of the statute.'"[23] Second, the Court also pointed to "the doctrine that statutes should be construed so as to avoid difficult constitutional questions."[24] Finally, the Court stressed that while its holding did not

[16] *Id*. at 1867-68 (emphasis in original).

[17] *Id*. at 1868.

[18] *Id*. at 1868.

[19] *Id*. at 1868-69.

[20] *Id*. at 1869.

[21] *Id*. at 1870 (citing 31 U.S.C. §3801(a)(6), which defines "person" as "any individual, partnership, corporation, association, or private organization").

[22] *Id*. at 1870.

[23] *Id*. at 1870 (quoting *Will*, 491 U.S. at 65).

[24] *Id*. at 1870.

express any view on the issue of whether a *qui tam* action by a relator against a state would violate the Eleventh Amendment, "there is a 'serious doubt' on that score."[25]

Justice Ginsburg penned a concurring opinion that was joined by Justice Breyer (who also joined the opinion of the Court). Justice Ginsburg explained that while she joined the Court's holding, she interpreted the opinion as leaving open the question of whether states should be considered "persons" when sued by the United States itself under the FCA.[26]

The dissent, written by Justice Stevens and joined by Justice Souter, maintained that the statutory text of the FCA did indeed support a finding that states are "persons" under the FCA.[27] Specifically, the dissent argued that the 1986 amendments declaring that a "person" who violated §3729, thereby triggering the civil investigative demand provision, "includes 'any State or political subdivision of a State" clearly established that Congress intended for states to be liable for FCA violations.[28] The dissent went on to argue that such a conclusion was "supported by the legislative history of the 1986 amendments," and was fully consistent with the Court's construction of federal statutes "in cases decided before those amendments were enacted."[29] Elaborating on this point, the dissent stated that cases decided before 1986 "uniformly support the proposition that the broad language used in the False Claims Act" subjects states to liability. In particular, the dissent argued that while "general statutory references to 'persons' are not normally construed to apply to the enacting sovereign...when Congress uses that word in federal statutes enforceable by the Federal Government or by a federal agency, it applies to States and state agencies as well as to private individuals and corporations."[30]

The dissent further argued that the False Claims Act is "all embracing in scope, national in its purpose, and as capable of being violated by state as by individual action."[31] Coupled with this broad purpose, according to the dissent, was the legislative history of the 1986 amendments which included a Senate Report declaring that the term "person" includes "'partnerships, associations, and corporations...as well as States and political subdivisions thereof."[32] Relying upon this characterization of the applicable law and

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[25] *Id*. at 1870 (quoting *Ashwander v. TVA*, 297 U.S. 288, 348 (1936) (Brandeis, J., concurring)).

[26] *Id*. at 1871.

[27] *Id*. at 1871 (Stevens, J., dissenting).

[28] *Id*. at 1872.

[29] *Id*. at 1872.

[30] *Id*. at 1872 (citing *United States v. Mine Workers*, 330 U.S. 258, 275 (1947)). The majority rejected this argument, stating that none of the cases relied upon by the dissent addressed "a statutory provision authorizing private suit against a State." Further, the majority stressed that "both comity and respect for our federal system demand that something more than the mere use of the word 'person' demonstrate the federal intent to authorize unconsented private suit against them." *Id*. at 13-14, n.9.

[31] *Id*. at 1873.

[32] *Id*. at 1874 (quoting S. Rep. No. 99-345, pp.8-9). It is again important to note that the majority refuted this aspect of the dissent's argument, finding that the legislative history and case law supported only a determination that "the FCA was intended to cover all types of *fraud*, not for the

(continued...)

principles, the dissent asserted that the majority's decision was an outgrowth of a series of recent cases "that cloak the States with an increasingly protective mantle of 'sovereign immunity' from liability for violating federal laws."[33]

While the decision in *Stevens* clarifies the proper application of the False Claims Act in relation to states and state entities, the Court expressed no views on other critical constitutional issues currently being considered in the lower courts. In *Riley v. St. Luke's Episcopal Hospital*, for instance, a Fifth Circuit panel held that *qui tam* suits violate the separation of powers and unconstitutionally intrude on the Executive Branch's duty under Article II to "take care that the laws are faithfully executed."[34] Having reached this conclusion, the court did not reach the argument that such actions also violate the appointments clause.[35] The court's opinion was vacated pending rehearing en banc. The determination of these issues could ultimately bring the constitutionality of the False Claims Act before the Court again. Furthermore, it is conceivable that Congress will respond to *Stevens* by amending the FCA to bring states within its ambit. Given Justice Scalia's statement that there would be a "serious doubt" as to the Eleventh Amendment validity of a False Claims suit against a state, such congressional action would undoubtedly lead to further review by the Supreme Court.[36]

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[32] (...continued)
additional proposition that the FCA was intended to cover all types of *fraudsters*, including States. *Id.* at 15, n.10 (emphasis in original).

[33] *Id*. at 1872.

[34] 196 F.3d 514, 530-31 (5th Cir. 1999).

[35] *Id*. at 531.

[36] *Stevens*, 120 S.Ct. At 1870.

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