

No. 98-1828

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF VERMONT
AGENCY OF NATURAL RESOURCES,
Petitioner,

v.

UNITED STATES OF AMERICA, EX REL.
JONATHAN STEVENS,
Respondent.

**MOTION FOR LEAVE TO FILE BRIEF AND
BRIEF FOR FRIENDS OF THE EARTH, SIERRA CLUB
AND CITIZENS LOCAL ENVIRONMENTAL ACTION
NETWORK AS *AMICI CURIAE* IN SUPPORT OF
RESPONDENT ON THE ISSUE OF
ARTICLE III STANDING**

Filed November 30, 1999

This is a replacement cover page for the above referenced brief filed at the
U.S. Supreme Court. Original cover could not be legibly photocopied

TABLE OF CONTENTS

	Page
MOTION FOR LEAVE TO FILE BRIEF	1
POSITION OF THE PARTIES	1
INTEREST OF AMICI	1
BRIEF OF AMICI CURIAE	3
SUMMARY OF ARGUMENT	3
ARGUMENT	3
CONCLUSION	5

TABLE OF AUTHORITIES

Cases:	Page
<i>Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc.</i> , No. 98-822	2
<i>Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.</i> , 454 U.S. 464 (1982)	4
 Federal Statutes	
31 U.S.C. 3729-3733	1
33 U.S.C. 1251	1
42 U.S.C. 6972(a)(1)(B)	4

MOTION FOR LEAVE TO FILE BRIEF

POSITION OF THE PARTIES

Petitioner consents to the filing of amici’s brief. Respondent takes no position on this motion.

INTEREST OF AMICI ^{1/}

This is an action brought under the False Claims Act, 31 U.S.C. 3729-3733, by a private person in the name of the United States to remedy an alleged false or fraudulent claim to the United States. Such actions are known as *qui tam* actions. The False Claims Act allows the private person bringing suit, known as the relator, to receive a portion of the recovery due to the United States from the suit. 31 U.S.C. 3729-3733.

This *qui tam* action alleges that the Vermont Agency of Natural Resources made false claims to the United States Environmental Protection Agency in conjunction with grants used to administer the Clean Water Act, 33 U.S.C. 1251, *et seq.*, within the State. This Court granted certiorari on the questions of whether a State is a "person" subject to liability under the False Claims Act and whether the Eleventh Amendment precludes a *qui tam* relator from commencing and prosecuting a False Claims Act suit against a state. On November 19, 1999, this Court directed the parties to file supplemental briefs addressing the issue: "Does a private person have standing under Article III to litigate claims of fraud upon the government?"

Friends of the Earth, Sierra Club and Citizens Local

^{1/}Pursuant to Supreme Court Rule 37.6, *amici* state that no counsel for a party has authored this brief in whole or in part, and that no person or entity other than *amici* and their counsel has made a monetary contribution to the preparation or submission of this brief.

Environmental Action Network hereby move this Court for leave to file a brief as *amici curiae* in support of Respondent on the issue of Article III standing. For many years, *amici* have used the citizen suit provisions of various federal environmental laws to protect their members' interests which have been adversely affected by illegal environmental practices. *Amici* are the petitioners in *Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc.*, No. 98-822, currently pending before this Court. In the briefing in the *Laidlaw* case, the respondent raised an Article III standing issue.² *Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc.*, No. 98-822, Oct. Term 1998, Br. for Respondent, pp. 10-41.

Citizen suits under environmental statutes have sometimes been likened to *qui tam* actions because citizen suit plaintiffs and *qui tam* relators act as private attorneys general. In other words, both kinds of plaintiffs step into the shoes of the government to prosecute a violation of federal law that has not been prosecuted by the government. Because of the relationship between the two types of actions, it is possible that a decision in this case on the Article III standing of a *qui tam* relator could affect analysis of the Article III standing of a citizen suit plaintiff. As a result, *amici* request leave to file this brief on the Article III standing issue as to which this Court sought briefing.

In accordance with this Court's Order of November 19,

²In the *Laidlaw* case, the Article III standing issue was raised in the court of appeals but not reached due to the court of appeals having determined that the case was moot. Since the issue was not reached by the court of appeals and it was not one on which *certiorari* was granted, petitioners have requested that this Court remand the standing issue to the court of appeals in the event it reverses on the mootness issue. *Friends of the Earth v. Laidlaw Environmental Services (TOC), Inc.*, No. 98-822, Oct. Term 1998, Reply Br. for Petitioners, pp. 8-9.

1999, 20 copies of this motion and brief are being submitted by 3 p.m. on November 30, 1999. Forty copies of the motion and brief prepared in accordance with Rule 33.1 will be submitted as soon as possible.

BRIEF OF AMICI CURIAE

SUMMARY OF ARGUMENT

Amici support the position of the *qui tam* relator and the United States that he has standing in this case. However, in the event that this Court concludes that *qui tam* relators do not have standing under Article III, *amici* urge this Court to restrict its holding so that it applies only to *qui tam* actions and not to citizen suits under environmental statutes. Citizen plaintiffs suing under environmental statutes must show injury and otherwise satisfy the standing requirements of Article III. Their standing, unlike *qui tam* relators, is not based on any right provided by Congress to share in a monetary recovery. Consequently, any holding by this Court as to lack of standing of *qui tam* relators almost certainly would not apply to citizen plaintiffs in environmental suits.

ARGUMENT

For the reasons set forth in the briefs of the Respondent and the United States, *amici* urge this Court to find that a *qui tam* relator has standing under Article III to litigate claims of fraud upon the government. *Amici* submit this brief solely to advise this Court of the litigation difficulties that could be faced by citizen suit plaintiffs if this Court concludes that *qui tam* relators lack Article III standing and does not restrict its holding in such a way so as to make clear that the holding applies only to *qui tam* actions and not to citizen suits under environmental statutes.

Due to the similarity between citizen suits and *qui tam*

actions (*see* p. 2), a holding by this Court that *qui tam* relators lack Article III standing could erroneously result in the dismissal of citizen suits or at least the prolonged litigation of Article III standing unless this Court crafts its holding in such a way as to make clear that the holding applies only to *qui tam* actions and not to citizen suits.^{3/}

The injury-in-fact part of the three-part test for Article III standing established in *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982), is the most likely to be affected in citizen suits by a determination by this Court concerning standing in the present case. If this Court were to hold that *qui tam* relators cannot satisfy the injury-in-fact part of the standing test, it could be argued that the same would be true for citizen suit plaintiffs. Such an assumption would lead to wasteful litigation because a citizen suit plaintiff's injury-in-fact is entirely different from that of a *qui tam* relator.

Unlike a *qui tam* relator, a citizen suit plaintiff sues "on his own behalf" not on behalf of the United States. *E.g.*, 33 U.S.C. 1365(a) (Clean Water Act); 42 U.S.C. 6972(a) (Resource Conservation and Recovery Act (RCRA)), 9359(a) (CERCLA), 11046(a) (Emergency Planning and Community Right-to-Know Act). Moreover, unlike a *qui tam* relator whose injury-in-fact may solely spring from his financial interest in the bounty he may collect for successful prosecution of a fraudulent claim against the government, a citizen suit plaintiff has suffered an injury-in-fact that is directly related to the unlawful conduct of the defendant. For example, in citizen suits under RCRA, the plaintiff is generally a person who resides near an area where the defendant has disposed of

hazardous waste in such a manner as to endanger health or the environment. 42 U.S.C. 6972(a)(1)(B). RCRA does not provide for damages or any other financial benefit to the plaintiff. The plaintiff's interest therefore arises from the fact that his health is, or may be, adversely affected by the defendant's improper disposal of hazardous waste, not from any financial interest in the outcome of the litigation. Thus, if this Court holds that *qui tam* relators do not have standing based on their financial interests in the recovery due to the United States, this holding will have no effect on the standing of citizen plaintiffs under environmental statutes.

CONCLUSION

For the foregoing reasons, we urge this Court to craft carefully any holding that *qui tam* relators lack Article III standing so as to not suggest Article III standing issues in citizen suits under environmental statutes.

Respectfully submitted,



Bruce J. Terris
 Carolyn Smith Pravlik
 Monica Wagner
 James S. Chandler, Jr.
Counsel for Amici

November 30, 1999

^{3/}By standing, we mean here the issue of whether any citizen suit plaintiff has Article III standing as opposed to the issue of whether the particular plaintiff in a citizen suit has satisfied the Article III standing requirements.