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In The
Supreme Court of the United States
October Term, 1999

STATE OF VERMONT AGENCY OF NATURAL RESOURCES,

Petitioner,

v.

UNITED STATES OF AMERICA EX REL.
JONATHAN STEVENS, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SECOND CIRCUIT

AMICUS CURIAE **BRIEF OF ALABAMA MEDICAID AGENCY, ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES, CONNECTICUT DEPARTMENT OF SOCIAL SERVICES, IDAHO DEPARTMENT OF HEALTH AND WELFARE, KANSAS DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, LOUISIANA DEPARTMENT OF HEALTH AND HOSPITALS, MISSOURI DEPARTMENT OF SOCIAL SERVICES, RHODE ISLAND DEPARTMENT OF HUMAN SERVICES, AND UTAH DEPARTMENT OF HEALTH IN SUPPORT OF THE PETITIONER**

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AMICUS CURIAE BRIEF
IN SUPPORT OF PETITIONER

The Alabama Medicaid Agency, Alaska Department of Health and Social Services, Connecticut Department of Social Services, Idaho Department of Health and Welfare, Kansas Department of Social and Rehabilitation Services, Louisiana Department of Health and Hospitals, Missouri Department of Social Services, Rhode Island Department of Human Services, and Utah Department of Health

respectfully submit this brief *amicus curiae* in support of the petitioner in this case.[1]

INTEREST OF *AMICI CURIAE*

Amici are social service agencies responsible for assisting needy citizens in their respective States. Much of the funding for the programs administered by *amici* comes from the federal government through one or more of the statutes designed to advance "cooperative federalism" in public assistance. Examples of such programs are Medicaid, Temporary Assistance to Needy Families ("TANF"), Emergency Assistance, Child Support Enforcement, Foster Care and Adoption Assistance, the Child Health Insurance Program ("CHIP"), and Food Stamps. In all of these programs, States that opt to operate within the parameters set out in the governing federal statute are entitled to claim federal reimbursement for some percentage of their programmatic and administrative expenditures. Approximately one-half of the $270 billion dollars that the federal government paid to state and local governments last year flowed through these cooperatively-financed public assistance programs. Medicaid alone made up 37% of all federal grant awards to state and local governments in fiscal year 1998.

If States can be named as defendants in suits brought under the False Claims Act ("FCA"), their greatest potential liability will likely be in the public assistance programs administered by *amici* and their counterparts in other States,

[1] Letters from petitioner and respondents indicating consent to file this brief are on file with the Clerk. Pursuant to Rule 37.6, *amici* state that no counsel for any petitioner or respondent authored this brief in whole or in part. Nor did any person or entity, other than *amici*, make a monetary contribution to the preparation or submission of this brief.

because those are the programs that make up the greatest volume of claims and receive the greatest proportion of federal funds. Yet all of these programs already have in place, by statute and regulation, elaborate systems governing compliance, audit, disallowance of claims, and repayment of federal funds improperly claimed. Adding the potential for FCA suits seeking treble damages and additional penalties is unnecessary, inconsistent with the existing remedial structure, and antithetical to the spirit of "cooperative federalism" whereby the federal and state governments work together as partners to assist needy citizens.

SUMMARY OF ARGUMENT

The public assistance programs jointly financed by the federal and state governments represent the largest source of federal funds paid to (and claimed by) state governments. The premise of all of these programs is that both the programmatic and financial responsibility of caring for needy citizens is to be shared by the federal and state governments. States that elect to administer their programs in compliance with broad federal statutory and regulatory guidelines may seek varying percentages of "federal financial participation" in program expenditures.

The interplay between the governing federal laws and regulations and implementing state laws and regulations which together comprise the federal-state public assistance programs are notoriously complicated, and there has developed a comprehensive administrative framework to handle disagreements and disputes as to whether a State properly claimed federal funds in an expenditure. Issues that cannot be handled through negotiation (and most of them are) move through a multi-step administrative process in which the position of the federal agency is fully aired and tested before proceeding to federal court. It also is not unusual for some issues of significant importance to the State

or federal government to be resolved politically or through legislation.

Subjecting the state agencies administering these programs to False Claims Act suits significantly alters the cooperative nature of the programs and the basis on which the States agreed to participate in them. The False Claims Act—with its exclusive emphasis on litigation, its punitive standard of liability, and its embrace of private citizens acting as qui tam relators—is manifestly unsuitable to answer questions regarding the proper division of programmatic and financial obligations between the state and federal governments. Those questions are better left resolved by the administrative and political framework that already exists to address them. For this reason, the court below was wrong to hold that the "plain statement rule" was inapplicable to its construction of whether States were "persons" subject to suit under the Act. Application of the False Claims Act to these programs so changes the forum, the nature of the liability, and the availability of political compromise that the "cooperative" nature of the programs is no longer discernible. The decision below should be reversed.

ARGUMENT

I. Allowing False Claims Act Suits Against State Entities Responsible for Administering the Public Assistance Statutes Jointly Funded By the Federal and State Governments is Antithetical to the Cooperative Federalism On Which Those Programs Rest.

A. Medicaid and the Other Federal-State Assistance Programs Represent a Complex Partnership Between Two Sovereigns.

The economic Depression suffered by this country in the 1930s brought many to the realization that effective public assistance programs required the cooperative efforts of all levels of government—federal, state, and local. The public assistance programs which first surfaced as part of the New Deal, including the beginnings of the food stamp program and family support payments (first called Aid to Dependent Children, then Aid to Families with Dependent Children ("AFDC"), and now TANF), were all based on a "scheme of cooperative federalism" whereby federal funding was made available to States that opted to administer their programs within broad federal statutory and regulatory guidelines. *See King v. Smith*, 392 U.S. 309, 316 (1968). Later programs—including, most significantly, Medicaid, which was initiated in 1965, and more recently, the State Child Health Insurance Program which was established in 1997—continued to follow this general model of a federal-state partnership.

Federal contributions to States for varying forms of public assistance now make up at least one-half of all federal payments to state and local governments. For example, in fiscal year 1998, the federal government made grants and other payments to state and local governments totalling $253 billion dollars. *See* Federal Aid to States for Fiscal Year

1998 (U.S. Census Bureau). At least half that amount falls into the various public assistance programs of the type administered by *amici*: over $101 billion for Medicaid; $18.5 billion for family support payments (AFDC and TANF); $4 billion for foster care and adoption assistance; and $3.5 billion for the administrative costs of the food stamp program, in addition to numerous smaller programs that also operate on a cooperative basis. *See id.* (Table I).[2]

The Medicaid program—which, as the numbers show, is by far the largest of the federal-state public assistance programs and accounts for over 37% of all federal payments to state and local governments—aptly illustrates the federal-state partnership which is the hallmark of these programs. A State's participation in the Medicaid program is entirely voluntary. *See Wilder v. Virginia Hospital Ass'n*, 496 U.S. 498, 502 (1990). States that elect to participate must submit state "plans" for approval of the Health Care Financing Administration ("HCFA"), within the Department of Health and Human Services. *See id.* The plan describes the State's Medicaid program, including how it intends to comply with the various requirements of the Social Security Act and implementing federal regulations. *See* Social Security Act [hereinafter SSA] § 1902(a), 42 U.S.C. § 1396a(a); *see also* 42 C.F.R. § 430.10.

Although labeled a single program, Medicaid in fact consists of as many programs as States that partake in the system. States must provide Medicaid to certain population groups but have the option of covering others. Similarly, a State must cover certain basic services but may cover additional services if it chooses. States set their own payment rates for services, with some limitations. As long as a State abides by federal standards, it is free to structure its program to address the specific needs of its citizens. As a result, the program varies from State to State but shares certain unifying characteristics as required by federal law.[3]

Financially as well as programmatically, a "general policy of federal-state cooperation . . . underlies the entire program." *Connecticut Dep't of Income Maintenance v. Heckler*, 471 U.S. 524, 532 n.22 (1985). "The cornerstone of Medicaid is a financial contribution by both the Federal Government and the participating State." *Harris v. McRae*, 448 U.S. 297, 308 (1980). If a State agrees to establish a Medicaid plan that satisfies federal requirements, the federal government agrees to pay a specified percentage of the State's programmatic and administrative expenditures. This is known as "federal financial participation" or, more colloquially, as federal "matching funds." *See id.*[4]

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[2] By point of comparison, the Environmental Protection Agency's grants to States for all the programs it administers (including those involved in the instant case) totaled a little under $3 billion in the same year. *See id.*

[3] Forty-nine States participate in Medicaid. The exception is Arizona. Since 1982, Arizona has received federal funds for an alternative medical assistance program for low-income persons that is conditioned upon a system-wide waiver of Medicaid's statutory provisions. *See* SSA § 1115(a), 42 U.S.C. § 1315(a).

[4] Although AFDC also operated on a matching fund basis, TANF (which replaced it) operates as a block grant. *See* SSA title IV-A, 42 U.S.C. §§ 601 *et seq.* The program still operates with both federal and state funding. *See* SSA § 409(a)(7). TANF, like AFDC, sets out broad federal requirements but lets States largely free to determine the contours of their individual programs. *See, e.g., Saenz v. Roe*, 119 S. Ct. 1518, 1528-29 (1999) (TANF); *Lukhard v. Reed*, 481 U.S. 368, 371 (1987) (AFDC).

In the Food Stamp program, the federal government establishes uniform standards for food stamp eligibility and pays 100% of the cost of benefits. 7 U.S.C. § 2013(a). The States determine eligibility and distribute benefits, and the federal government reimburses 50% of those administrative costs. 7 U.S.C. § 2025(a).

The Court of Appeals for the Second Circuit once remarked that the governing federal laws and regulations and implementing state laws and regulations which comprise the federal-state public assistance laws such as Medicaid "present as complex a legislative mosaic as could possibly be conceived by man." *City of New York v. Richardson*, 473 F.2d 923, 926 (2d Cir. 1973). The federal requirements and funding formulae of the programs are notoriously complex, and not always certain. *See Rosado v. Wyman*, 397 U.S. 399, 412 (1970) (describing AFDC as a program in which "Congress . . . has voiced its wishes in muted strains and left it to the courts to discern the theme in the cacophony of political understanding"); *Rehabilitation Association of Virginia v. Kozlowski*, 42 F.3d 1444, 1450 (4th Cir. 1994) (financing provisions of Medicare and Medicaid "are among the most completely impenetrable texts within human experience"); *N.Y. State Department of Social Services v. Bowen*, 835 F.2d 360, 361 (D.C. Cir. 1987) (federal-state programs of the Social Security Act are "mind-numbing in complexity"); *Friedman v. Berger*, 547 F.2d 724, 727, n.7 (2d Cir. 1976) (stating that the Social Security Act, of which AFDC (now TANF) and Medicaid are a part, is "almost unintelligible to the uninitiated"), *cert. denied*, 430 U.S. 984 (1977).

These complex and highly technical programs for the most part are overseen by the Department of Health and Human Services.[5] The Secretary of HHS, through the agencies who have her delegated authority, is charged with approving state plans and state plan amendments and of making the federal financial contribution to approved state expenditures. HCFA (which oversees Medicaid), and the Administration for Children and Families (which oversees TANF and other family programs such as foster-care and adoption assistance) are divided into ten regional offices and a central office. The regional offices serve as the primary contact for the States in their respective regions.[6]

[5] The food stamp program and other federally-funded, state-administered nutritional programs (such as school lunch) are overseen by the Food and Nutrition Service within the Department of Agriculture.

The principal function of the regional offices is to work with the States in their region to ensure that they are in compliance with federal statutory and regulatory requirements. *See, e.g.*, Regional Office Manual—Medicaid, HCFA Pub. 23-6, at § 1101. In general, every effort is made to resolve compliance questions by negotiations at the regional level. *See, e.g., id*; *see also* 42 C.F.R. § 430.35(a)(2). If negotiations are unsuccessful and if the agency determines that the State's administration of its plan is in "substantial noncompliance" with federal requirements, it may initiate a compliance proceeding pursuant to SSA § 1116(a), 42 U.S.C. § 1316(a). Such a proceeding may result in termination of federal financial participation for entire categories of state assistance or even the entire state program. *See Bowen v. Massachusetts*, 487 U.S. 879, 885 (1988); *see also* 42 C.F.R. § 430.35(d). The result of these proceedings is reviewable in the federal courts. *See* SSA § 1116(d), 42 U.S.C. § 1316(d).

The regional offices are also responsible for approving specific claims for federal financial participation. As this Court noted in *Bowen*, "[a]lthough the federal contribution to a State's Medicaid program is referred to as a 'reimbursement,' the stream of revenue is actually a series of huge quarterly advance payments that are based on the State's estimate of its anticipated future expenditures." 487 U.S. at 883-84; *see also* SSA § 1903(d), 42 U.S.C. § 1396b(d). These estimates are periodically adjusted to reflect actual experience, so that overpayments in one period

[6] The FNS is similarly divided into a central office and regional offices.

are withheld from future advances in another. *See Bowen*, 487 U.S. at 884; *see also* SSA § 1903(d)(5), 42 U.S.C. § 1396b(d)(5).

The reconciliation between quarterly advances and actual expenditures is made by means of a quarterly expenditure report submitted by a State to its regional office that lists the expenditures for which federal funds were drawn. 42 C.F.R. § 430.30(c). Payment of a claim may be "deferred" if the regional office questions its allowability. 42 C.F.R. § 430.40(a). Deferral is accomplished by excluding the claimed amount from the grant award pending further review. 42 C.F.R. § 430.40(b).

If a regional office determines that a claim or a portion of a claim is improper, the Department will "disallow" the claim. 42 C.F.R. § 430.42. A State may then move for reconsideration before the HHS Departmental Appeals Board. 42 C.F.R. § 430.42(b), (c). If the Board's decision requires an adjustment of FFP, either upward or downward, a subsequent grant award will reflect the amount of increase or decrease. In the event of a decrease (*i.e.*, a "repayment" due to disallowance of claims for which funds were previously drawn), the regulations specify various time tables for repayment that ensure that the financial integrity of the State's program will not be threatened. 42 C.F.R. § 430.48.

In addition to the ordinary duties of the Medicaid Regional Offices, the HHS Office of Inspector General ("OIG") periodically audits state operations in order to determine whether the program is being operated in a cost-efficient manner and funds are being properly expended for the purposes for which they were appropriated. 42 C.F.R. § 430.33(a). After the OIG issues an audit report, state agencies are given an opportunity to submit additional facts that would support clearance of the audit exceptions. 42 C.F.R. § 430.33(c)(1). If the exception is not cleared, the Department takes a disallowance, and the state agency may

appeal the disallowance to the Departmental Appeals Board. 42 C.F.R. § 430.33(c)(2).

Although the question was at one point uncertain, this Court has established that States may seek review of a disallowance decision in district court. As this Court explained in *Bowen*, "[n]either a disallowance decision, nor the reversal of a disallowance decision, is properly characterized as an award of 'damages' " which would give the Court of Claims exclusive jurisdiction pursuant to the Tucker Act. *Bowen*, 487 U.S. at 892. According to the *Bowen* decision, a disallowance is not akin to "damages" of the sort that might arise from a fraud or breach of contract action. *Id.* Rather, a disallowance, or the reversal of a disallowance, merely represents "an adjustment . . . in the size of the federal grant to the State" in carrying out the cooperative program. *Id.*

The procedures for compliance, audit, deferrals, disallowances, and repayment in Medicaid follow HHS's general procedures for all matching fund programs. *See* 45 C.F.R. §§ 201.14 and 201.15 (general rules); *see also, e.g.*, 45 C.F.R. § 257.68 (adopting general rules for SSA title IV-A, at-risk child care program); 45 C.F.R. § 304.29 (adopting general rules for SSA title IV-D, child support enforcement); 64 Fed. Reg. 10412 (1999) (proposing similar rules for CHIP program). The Food Stamp program follows a similar protocol. *See* 7 C.F.R. § 276.4 (deferrals and disallowances); *id.* § 277.12 (audits).

B. Application of the False Claims Act Is Antithetical to the Complex and Cooperative Partnership That Exists Between the Federal and State Governments in Administering Public Assistance Programs.

There are two ways in which States administering federally-funded public assistance programs arguably present "claims" to the federal government for payment. The first is

when the state agency submits a periodic report supporting the federal funds it has drawn and affirming compliance with federal guidelines. For example, the Medicaid Quarterly Expenditure Report includes a certification that the amount expended for which federal financial participation is claimed is "correct" and that "the amounts reported are in accordance with the Social Security Act, the implementing Medicaid regulations, and [the] approved Medicaid state plan." HCFA Form 64. These type of generic certifications have been held sufficient to support a False Claims Act suit if they can be shown to be inaccurate. *See, e.g., Wilkins v. State of Ohio*, 885 F. Supp. 1055, 1061 (S.D. Ohio 1995).

The second type of claim that a state agency may submit is as a provider of services. For example, a Medicaid agency may agree to pay a sister state agency that operates hospitals for the mentally ill for services provided to Medicaid-eligible individuals for Medicaid-reimbursable services. Because the Medicaid program is supported in part by federal funds, the claims submitted to the Medicaid agency are considered claims presented to the federal government for payment. *See* 31 U.S.C. § 3729(c); *United States v. Country View Care Center, Inc.*, 797 F.2d 888, 890-91 (10th Cir. 1986).

Allowing False Claims Act suits to proceed against States and state entities making these sorts of claims in public assistance programs such as Medicaid, TANF, and Food Stamps would damage the complicated and delicate federal-state partnership upon which those programs are based.

First, because False Claims Act litigation can be brought and conducted by private citizens acting as qui tam relators, construing the Act to allow suits against States for claims made in connection with the federally-supported public assistance programs interposes a third party into the well-defined and well-regulated relationship between the state agency and its federal counterpart. As the courts have long recognized, the public assistance statutes and the

requirements they set out are exceedingly complex. *See supra*, p. 8. Disputes as to compliance with statutory terms or allowability of claims are inevitable, and there is an extensive administrative process in place to address those questions. Issues that cannot be handled through negotiation (and most of them are) move through a multi-step administrative hearing process in which the position of the federal agency is fully aired and tested before proceeding to federal court. It also is not unusual for some issues of significant importance to the State or federal government to be resolved politically or through legislation.[7]

A False Claims Act suit brought by a qui tam relator has no place within that structure. Judge Weinstein's dissent from the decision below well captures how federal-state dynamics are disrupted by qui tam actions, thereby impairing the successful function of cooperative federalism programs such as the public assistance programs administered by *amici*. *See United States ex rel. Stevens v. State of Vermont Agency of Natural Resources*, 162 F.3d 195, 225-29 (2d Cir. 1998). It undercuts the possibility of a collaborative negotiation between the federal and state agencies. *Id.* at 227-28. And it effectively eliminates the possibility of political intercession or compromise. *See id.* at 225-26.

The impropriety of allowing False Claims Act suits against state social service agencies is especially apparent if, by virtue of the compliance certifications signed as a condition of receiving federal funds, *see supra* p. 12, the Act can become a vehicle for challenging whether a State has in

[7] One example with which the Court is familiar is the debate between HCFA and New York State as to the allowability of the State's "provider taxes" which help support the Medicaid program. After administrative negotiations stalled, Congress as part of its appropriations package confirmed that the taxes were an allowable source of funds. *See Clinton v. City of New York*, 118 S. Ct. 2091, 2095-96 (1998).

fact complied with those requirements. Because there are many provisions of the Social Security Act and other public assistance statutes that cannot be enforced in a private right of action, *see, e.g., Blessing v. Freestone*, 520 U.S. 329 (1997); *Suter v. Artist M.*, 503 U.S. 347 (1992), such a result would mean that a private citizen who may not be able to bring an equitable action to enforce compliance can nonetheless bring suit, as a qui tam relator, seeking damages on the ground that a statement of compliance was the premise of a "false claim" against the federal government. In the latter case, as in the former, the Court should be wary of concluding that Congress intended for the federal courts to decide questions that are more properly resolved under the expertise and judgment of the federal agency with administrative oversight.

Equally significant, application of the False Claims Act improperly turns a disallowance of improperly or incorrectly claimed funds (which is a normal if disagreeable part of doing business in the public assistance programs) into a claim for damages. Penalties under the Act include a fine of up to $10,000 per claim and "3 times the amount of damages which the Government sustains because of the act of that person." 31 U.S.C. § 3729(a). Yet, as this Court held in *Bowen*, "[n]either a disallowance decision, nor the reversal of a disallowance decision, is properly characterized as . . . 'damages'." 487 U.S. at 892. Rather, a disallowance merely represents "an adjustment . . . in the size of the federal grant to the State." *Id.* Taking what might otherwise be a disallowance and trebling it because it has been the subject of a suit under the False Claims Act completely distorts the division of financial responsibility set out in the public assistance statutes and accepted by the States when they voluntarily agreed to conduct their programs according to federal guidelines in exchange for federal financial participation.

As the *Bowen* decision illustrates, the relationship between the federal and state governments in the cooperative

public assistance programs such as Medicaid is not akin to the prototypical commercial transaction where the federal government has to protect itself from "false claims." Rather, these programs are complex undertakings by two sovereign entities working in partnership for a shared constituency. Although questions about the propriety of claiming federal funds inevitably arises, the context of those disputes is not (as in the commercial context), whether the federal government got what it paid for, but rather the proper division of programmatic and financial obligations between the two levels of government. The False Claims Act—with its exclusive emphasis on litigation, its punitive standard of liability, and its embrace of private citizens acting as qui tam relators—is manifestly unsuitable to answer those questions, which are better left resolved by the administrative and political framework that already exists to address them.

II. The Incongruity Between the False Claims Act and the Public Assistance Programs, Which Constitute the Largest Source of Federal Grants to the States, Underscores That Congress Did Not Intend the "Persons" Subject to Suit Under the Act to Include States.

The court below held that it was not obliged to apply the "plain statement" rule to its interpretation of whether the "persons" subject to suit under the False Claims Act, 31 U.S.C. § 3729(a), included States and state entities. 162 F.3d at 203. Under the plain statement rule, "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." *United States v. Bass*, 404 U.S. 336, 349 (1971). The court below held that the "persons" subject to suit could be held to include States, even though States and state entities are not expressly mentioned, because the False Claims Act "does not intrude into any area of traditional state power." *U.S. ex rel. Stevens*, 162 F.3d at 203. According to the Court of Appeals, the "goal of the statute is simply to remedy and deter procurement of federal funds by means of fraud." *Id.*

As shown above, the court's assumption that extension of the False Claims Act to States does not upset the usual balance of federal and state powers is incorrect as applied to the cooperatively financed public assistance programs such as Medicaid and TANF. Those are voluntary programs that States have agreed to administer within the broad parameters set out by federal statutes and regulations in exchange for federal financial participation in the costs of running those programs. By submitting their state plans for federal approval, participating States have agreed that disputes as to compliance and the allowability of costs claimed are subject to the administrative process, and that funds claimed are subject to audit, deferral, and disallowance.

Subjecting the state agencies administering these programs to False Claims Act suits significantly alters the cooperative nature of the programs and the basis on which the States agreed to participate. States are no longer treated as sovereign partners working together to address the problems of their needy citizens, but as federal "contractors" who must be kept in line by the threat of treble damages. Complex questions as to the division of programmatic or financial responsibility between the federal and state governments are no longer presumed to be resolved by the administrative agencies who daily work together to implement the programs, but are subject to second-guessing and re-prioritizing by qui tam relators and the courts who must hear their suits.

The question is not whether a State already has an obligation not to claim federal funds not authorized by the governing federal statute, as the Court of Appeals mistakenly believed. The audit, deferral, and disallowance processes of the public assistance programs illustrate that that obligation has always been present. Rather, the question is in deciding whether a claim is "fraudulent," the False Claims Act so changes the forum, the nature of the liability, and the availability of political compromise that the "cooperative"

nature of the program is no longer discernible. Viewed in that light, application of the False Claims Act materially alters the landscape in which those programs operate and which the States accepted at the time that they decided to implement their programs, and it was error for the court below not to apply the plain statement rule in determining whether States are "persons" subject to suit under the Act.[8]

[8] On the other hand, the traditional authority of state governments is not implicated when States serve as relators, bringing suit in the name of the federal government against private parties. Contrary to the assumption of the court below, there is no anomaly in construing the False Claims Act so that States can be "persons" for purposes of bringing suit, but may not be "persons" subject to suit, because the plain statement rule applies only to the latter situation. *See, e.g., United States ex rel. Long v. SCS Business & Technical Institute, Inc.*, 173 F.3d 870 (D.C. Cir. 1999), *opinion supplemented by* 173 F.3d 890 (D.C. Cir. 1999). Even without application of the plain statement rule, Congress can choose to give a single word different meanings in different sections of the same statute. *See Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433 (1932).

CONCLUSION

For all of the foregoing reasons, *amici* respectfully urge that the judgment of the Court of Appeals for the Second Circuit be reversed.

Respectfully submitted,

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