

U.S. Supreme Court: A State Environmental Agency Can't be Sued for Damages Under the False Claims Act

The United States Supreme Court has decided that neither the United States nor an individual on behalf of the United States may sue a state agency for falsely obtaining federal grant money.

Jonathan Stevens, a former employee of the Vermont Agency of Natural Resources (VANR) sued the agency for falsely claiming reimbursement from the U.S. Environmental Protection Agency under several grant programs. Stevens sued the VANR under the False Claims Act (FCA), which allows individuals to sue on the federal government's behalf. Under the FCA, a person who successfully sues on the government's behalf is allowed to receive a "bounty" of up to 30% of the damages collected plus legal fees collected from a false claimant.

Stevens' suit was of a type termed a *qui tam* action. The expression *qui tam* is short for a latin expression meaning "who sues on behalf of the King as well as for himself."

The VANR asked the district court to dismiss the suit, contending that the state is not a "person" for purposes of the FCA. FCA can be invoked against 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." The state of 31 U.S.C. § 3729(a). Moreover, argued the state, the 11th Amendment to the U.S. Constitution accords states "sovereign immunity" and prohibits suits by individuals against a state unless that state consents to be sued.

The district court disagreed with VANR, and the agency appealed to the 2nd Circuit Court of Appeals. In the appeal, the U.S. government entered the case in support of Stevens. The Court of Appeals agreed with Stevens, and affirmed the district court's refusal to dismiss the case. The state then appealed to the U.S. Supreme Court.

The Supreme Court first addressed the threshold issue of whether Stevens had "standing" to sue in federal court. Only if the case was one that the Constitution says could be brought by the particular plaintiff could the Court consider any other issues. If a person lacks Constitutional standing, no federal court will entertain his lawsuit. A person has "standing" if three conditions are met:

1. The person seeking standing has actually been or will be injured by the defendant;
2. There is a causal connection between the defendants actions and the plaintiff's injuries; and,
3. The court is able to come up with a remedy that will cure the plaintiff's injuries.

It was clear to the Supreme Court that if Stevens had actually been injured by the VANR, any penalty paid by the state would be linked with the state's alleged fraud. Thus, the damages would remedy Stevens' injury. But it was not at all clear to the Court whether Stevens had actually suffered an injury for which he would be allowed under the Constitution to sue in a federal court. The Court examined the history the FCA and of *qui tam* lawsuits.

The Court considered whether Stevens had acted only on United States' behalf. If so, Stevens was akin to an agent - the bounty would simply be a fee that Stevens stood to receive for successfully suing the state on the US's behalf. If Stevens was not considered an agent, he would have been acting on his own behalf. The Court concluded that the lawsuit was for Stevens' benefit for the following reasons.

The FCA states that a person may sue for a violation of the FCA "for the person and for the United States Government." 31 U.S.C. § 1370(b). In a *qui tam* suit, the person suing for the government is called the "relator." The statute further allows a person to remain a part of the suit even if the U.S. takes over the prosecution. Moreover, before the U.S. can settle the case, the relator is entitled to a hearing to ensure that the settlement is fair. Thus, a relator has an interest in the suit beyond simply seeing that the government is not defrauded.

Because Stevens had a personal interest in the lawsuit, and a judgment in Stevens favor would punish the state of Vermont for filing false claims, the Court found that Stevens had standing to sue. Stevens' position was similar to that of a person who has been assigned the rights to a legal claim. Thus, it was as if the federal government had assigned its claim under the FCA to Stevens, and Stevens held an ownership interest in the government's claim for damages. The Court referred this type of standing as "representational standing."

Is a State Considered a "Person" Under the FCA?

The Court then considered the issue of whether the FCA was intended to make a state subject to lawsuits for filing false claims. The Court began with the "long standing presumption that 'person' does not include the sovereign." The general rule is that this presumption will not be disregarded unless the statute clearly shows that Congress intended otherwise. The *qui tam* provision of the FCA does not contain a definition of "person" upon which the Court could rely. The history of the FCA revealed that the United States originally enacted the statute to protect the country from fraud by private contractors during the Civil War. The court found it unlikely that Congress, during the Civil War, considered states to fall into the category of defense contractors.

The Court observed that the original FCA subjected violators to criminal imprisonment, a penalty that could not possibly have applied to states. The current version of the FCA still

retains penalties that are considered punitive. For example, violators can be required to pay treble damages. The Court found no reason to ignore a long-standing presumption that punitive damages do not apply to governmental entities.

The Court noted that, in comparison with the FCA provision authorizing actions for damages, another section of the FCA explicitly defines “persons” to include states for purposes of requiring those persons to cooperate in investigations of FCA violations.

Finally, the Court compared the FCA with another statute, the “Program Fraud Civil Remedies Act of 1986” (PFCRA), which provides for administrative actions with smaller potential damages against persons filing false claims. The PFCRA contains a definition of “person” that includes individuals, partnerships, corporations, associations, and private organizations, but not governmental entities. The Court found it unreasonable to conclude that the PFCRA provided for small civil damages against non-governmental entities while the FCA provided punitive damages against states.

Therefore, although Stevens was accorded “representational standing” because he had a financial interest in the damages caused by Vermont’s alleged false claim, Stevens could not maintain his lawsuit against VANR because the False Claims Act does not consider states to be “persons” that are potentially liable for damages. Because the Court was able to dismiss the case based on the “person” issue, it elected not to consider the 11th Amendment sovereign immunity issue.

***Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 2000 WL 646252 (U.S., May 22, 2000).**

This article was prepared by Stuart J. Weiss, an associate in our Environmental Department, and previously appeared in the August, 2000 edition of the Michigan Environmental Compliance Update, a monthly newsletter prepared by the Environmental Department and published by M. Lee Smith Publishers.