

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 98–1828

VERMONT AGENCY OF NATURAL RESOURCES,
PETITIONER *v.* UNITED STATES
EX REL. STEVENS

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

[May 22, 2000]

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether a private individual may bring suit in federal court on behalf of the United States against a State (or state agency) under the False Claims Act, 31 U. S. C. §§3729–3733.

I

Originally enacted in 1863, the False Claims Act (FCA) is the most frequently used of a handful of extant laws creating a form of civil action known as *qui tam*.¹ As

¹ *Qui tam* is short for the Latin phrase *qui tam pro domino rege quam pro se ipso in hac parte sequitur*, which means “who pursues this action on our Lord the King’s behalf as well as his own.” The phrase dates from at least the time of Blackstone. See 3 W. Blackstone, Commentaries *160.

Three other *qui tam* statutes, all also enacted over a hundred years ago, remain on the books. See 25 U. S. C. §81 (providing cause of action and share of recovery against a person contracting with Indians in an unlawful manner); §201 (providing cause of action and share of recovery against a person violating Indian protection laws); 35 U. S. C. §292(b) (providing cause of action and share of recovery against a

amended, the FCA imposes civil liability upon “[a]ny person” who, *inter alia*, “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.” 31 U. S. C. §3729(a). The defendant is liable for up to treble damages and a civil penalty of up to \$10,000 per claim. *Ibid.* An FCA action may be commenced in one of two ways. First, the Government itself may bring a civil action against the alleged false claimant. §3730(a). Second, as is relevant here, a private person (the “relator”) may bring a *qui tam* civil action “for the person and for the United States Government” against the alleged false claimant, “in the name of the Government.” §3730(b)(1).

If a relator initiates the FCA action, he must deliver a copy of the complaint, and any supporting evidence, to the Government, §3730(b)(2), which then has 60 days to intervene in the action, §§3730(b)(2), (4). If it does so, it assumes primary responsibility for prosecuting the action, §3730(c)(1), though the relator may continue to participate in the litigation and is entitled to a hearing before voluntary dismissal and to a court determination of reasonableness before settlement, §3730(c)(2). If the Government declines to intervene within the 60-day period, the relator has the exclusive right to conduct the action, §3730(b)(4), and the Government may subsequently intervene only on a showing of “good cause,” §3730(c)(3). The relator receives a share of any proceeds from the action—generally ranging from 15 to 25 percent if the Government inter-

person falsely marking patented articles); cf. 18 U. S. C. §962 (providing for forfeiture to informer of share of vessels privately armed against friendly nations, but not expressly authorizing suit by informer); 46 U. S. C. §723 (providing for forfeiture to informer of share of vessels removing undersea treasure from the Florida coast to foreign nations, but not expressly authorizing suit by informer).

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venes (depending upon the relator's contribution to the prosecution), and from 25 to 30 percent if it does not (depending upon the court's assessment of what is reasonable)— plus attorney's fees and costs. §§3730(d)(1)–(2).

Respondent Jonathan Stevens brought this *qui tam* action in the United States District Court for the District of Vermont against petitioner Vermont Agency of Natural Resources, his former employer, alleging that it had submitted false claims to the Environmental Protection Agency (EPA) in connection with various federal grant programs administered by the EPA. Specifically, he claimed that petitioner had overstated the amount of time spent by its employees on the federally funded projects, thereby inducing the Government to disburse more grant money than petitioner was entitled to receive. The United States declined to intervene in the action. Petitioner then moved to dismiss, arguing that a State (or state agency) is not a “person” subject to liability under the FCA and that a *qui tam* action in federal court against a State is barred by the Eleventh Amendment. The District Court denied the motion in an unpublished order. App. to Pet. for Cert. 86–87. Petitioner then filed an interlocutory appeal,² and the District Court stayed proceedings pending its outcome. Respondent United States intervened in the appeal in support of respondent Stevens. A divided panel of the Second Circuit affirmed, 162 F. 3d 195 (1998), and we granted certiorari, 527 U. S. 1034 (1999).

²The denial of a motion to dismiss based on a claim of Eleventh Amendment immunity is immediately appealable. See *Puerto Rico Aqueduct and Sewer Authority v. Metcalf & Eddy, Inc.*, 506 U. S. 139 (1993). The Second Circuit exercised pendent appellate jurisdiction over the statutory question. See *Swint v. Chambers County Comm'n*, 514 U. S. 35, 50–51 (1995).

II

We first address the jurisdictional question whether respondent Stevens has standing under Article III of the Constitution to maintain this suit. See *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 93–102 (1998).

As we have frequently explained, a plaintiff must meet three requirements in order to establish Article III standing. See, e.g., *Friends of Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U. S. ___, ___ (2000) (slip op., at 9). First, he must demonstrate “injury in fact”—a harm that is both “concrete” and “actual or imminent, not conjectural or hypothetical.” *Whitmore v. Arkansas*, 495 U. S. 149, 155 (1990) (internal quotation marks and citation omitted). Second, he must establish causation—a “fairly . . . trace[able]” connection between the alleged injury in fact and the alleged conduct of the defendant. *Simon v. Eastern Ky. Welfare Rights Organization*, 426 U. S. 26, 41 (1976). And third, he must demonstrate redressability—a “substantial likelihood” that the requested relief will remedy the alleged injury in fact. *Id.*, at 45. These requirements together constitute the “irreducible constitutional minimum” of standing, *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 560 (1992), which is an “essential and unchanging part” of Article III’s case-or-controversy requirement, *ibid.*, and a key factor in dividing the power of government between the courts and the two political branches, see *id.*, at 559–560.

Respondent Stevens contends that he is suing to remedy an injury in fact suffered by the United States. It is beyond doubt that the complaint asserts an injury to the United States—both the injury to its sovereignty arising from violation of its laws (which suffices to support a criminal lawsuit by the Government) and the proprietary injury resulting from the alleged fraud. But “[t]he Art. III judicial power exists only to redress or otherwise to protect against injury *to the complaining party.*” *Warth v. Seldin*,

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422 U. S. 490, 499 (1975) (emphasis added); see also *Sierra Club v. Morton*, 405 U. S. 727, 734–735 (1972). It would perhaps suffice to say that the relator here is simply the statutorily designated agent of the United States, *in whose name* (as the statute provides, see 31 U. S. C. §3730(b)) the suit is brought— and that the relator’s bounty is simply the fee he receives *out of the United States’ recovery* for filing and/or prosecuting a successful action on behalf of the Government. This analysis is precluded, however, by the fact that the statute gives the relator himself an interest *in the lawsuit*, and not merely the right to retain a fee out of the recovery. Thus, it provides that “[a] person may bring a civil action for a violation of section 3729 *for the person and for the United States Government*,” §3730(b) (emphasis added); gives the relator “the right to continue as a party to the action” even when the Government itself has assumed “primary responsibility” for prosecuting it, §3730(c)(1); entitles the relator to a hearing before the Government’s voluntary dismissal of the suit, §3730(c)(2)(A); and prohibits the Government from settling the suit over the relator’s objection without a judicial determination of “fair[ness], adequa[cy] and reasonable[ness],” §3730(c)(2)(B). For the portion of the recovery retained by the relator, therefore, some explanation of standing other than agency for the Government must be identified.

There is no doubt, of course, that as to this portion of the recovery— the bounty he will receive if the suit is successful— a *qui tam* relator has a “concrete private interest in the outcome of [the] suit.” *Lujan, supra*, at 573. But the same might be said of someone who has placed a wager upon the outcome. An interest unrelated to injury in fact is insufficient to give a plaintiff standing. See *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U. S. 464, 486 (1982); *Sierra Club, supra*, at 734–735. The interest must consist

of obtaining compensation for, or preventing, the violation of a legally protected right. See *Lujan, supra*, at 560–561. A *qui tam* relator has suffered no such invasion— indeed, the “right” he seeks to vindicate does not even fully materialize until the litigation is completed and the relator prevails.³ This is not to suggest that Congress cannot define new legal rights, which in turn will confer standing to vindicate an injury caused to the claimant. See *Warth, supra*, at 500. As we have held in another context, however, an interest that is merely a “byproduct” of the suit itself cannot give rise to a cognizable injury in fact for Article III standing purposes. See *Steel Co., supra*, at 107 (“[A] plaintiff cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit”); see also *Diamond v. Charles*, 476 U. S. 54, 69–71 (1986) (holding that assessment of attorney’s fees against a party does not confer standing to pursue the action on appeal).

We believe, however, that adequate basis for the relator’s suit for his bounty is to be found in the doctrine that the assignee of a claim has standing to assert the injury in fact suffered by the assignor. The FCA can reasonably be regarded as effecting a partial assignment of the Government’s damages claim.⁴ Although we have never expressly recognized “representational standing” on the part of

³Blackstone noted, with regard to English *qui tam* actions, that “no particular person, A or B, has any right, claim or demand, in or upon [the bounty], till after action brought,” and that the bounty constituted an “inchoate imperfect degree of property . . . [which] is not consummated till judgment.” 2 W. Blackstone, Commentaries *437.

⁴In addressing the Eleventh Amendment issue that we leave open today, the dissent suggests that we are asserting that a *qui tam* relator “is, in effect, suing as an assignee of the United States.” *Post*, at 14; see also *post*, at 8–9 (same). More precisely, we are asserting that a *qui tam* relator is, in effect, suing as a *partial* assignee of the United States.

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assignees, we have routinely entertained their suits, see, e.g., *Poller v. Columbia Broadcasting System, Inc.*, 368 U. S. 464, 465 (1962); *Automatic Radio Mfg. Co. v. Hazeltine Research, Inc.*, 339 U. S. 827, 829 (1950); *Hubbard v. Tod*, 171 U. S. 474, 475 (1898)— and also suits by subrogees, who have been described as “equitable assign[ees],” L. Simpson, *Law of Suretyship* 205 (1950), see, e.g., *Vimar Seguros y Reaseguros, S. A. v. M/V Sky Reefer*, 515 U. S. 528, 531 (1995); *Musick, Peeler & Garrett v. Employers Ins. of Wausau*, 508 U. S. 286, 288 (1993). We conclude, therefore, that the United States’ injury in fact suffices to confer standing on respondent Stevens.

We are confirmed in this conclusion by the long tradition of *qui tam* actions in England and the American Colonies. That history is particularly relevant to the constitutional standing inquiry since, as we have said elsewhere, 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.” *Steel Co.*, 523 U. S., at 102; see also *Coleman v. Miller*, 307 U. S. 433, 460 (1939) (opinion of Frankfurter, J.) (the Constitution established that “[j]udicial power could come into play only in matters that were the traditional concern of the courts at Westminster and only if they arose in ways that to the expert feel of lawyers constituted ‘Cases’ or ‘Controversies’”).

Qui tam actions appear to have originated around the end of the 13th century, when private individuals who had suffered injury began bringing actions in the royal courts on both their own and the Crown’s behalf. See, e.g., *Prior of Lewes v. De Holt* (1300), reprinted in 48 Selden Society 198 (1931). Suit in this dual capacity was a device for getting their private claims into the respected royal courts, which generally entertained only matters involving the Crown’s interests. See Milsom, *Trespass from Henry*

III to Edward III, Part III: More Special Writs and Conclusions, 74 L. Q. Rev. 561, 585 (1958). Starting in the 14th century, as the royal courts began to extend jurisdiction to suits involving wholly private wrongs, the common-law *qui tam* action gradually fell into disuse, although it seems to have remained technically available for several centuries. See 2 W. Hawkins, Pleas of the Crown 369 (8th ed. 1824).

At about the same time, however, Parliament began enacting statutes that explicitly provided for *qui tam* suits. These were of two types: those that allowed injured parties to sue in vindication of their own interests (as well as the Crown's), see, e.g., Statute Providing a Remedy for Him Who Is Wrongfully Pursued in the Court of Admiralty, 2 Hen. IV, ch. 11 (1400), and— more relevant here— those that allowed informers to obtain a portion of the penalty as a bounty for their information, even if they had not suffered an injury themselves, see, e.g., Statute Prohibiting the Sale of Wares After the Close of Fair, 5 Edw. III, ch. 5 (1331); see generally Common Informers Act, 14 & 15 Geo. VI, ch. 39, sched. (1951) (listing informer statutes). Most, though not all, of the informer statutes expressly gave the informer a cause of action, typically by bill, plaint, information, or action of debt. See, e.g., Bill for Leases of Hospitals, Colleges, and Other Corporations, 33 Hen. VIII, ch. 27 (1541); Act to Avoid Horse-Stealing, 31 Eliz. I, ch. 12, §2 (1589); Act to Prevent the Over-Charge of the People by Stewards of Court-Leets and Court-Barons, 2 Jac. I, ch. 5 (1604).

For obvious reasons, the informer statutes were highly subject to abuse, see M. Davies, The Enforcement of English Apprenticeship 58–61 (1956)— particularly those relating to obsolete offenses, see generally 3 E. Coke, Institutes of the Laws of England 191 (4th ed. 1797) (informer prosecutions under obsolete statutes had been used to “vex and entangle the subject”). Thus, many of the old

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enactments were repealed, see Act for Continuing and Reviving of Divers Statutes and Repeal of Divers Others, 21 Jac. I, ch. 28, §11 (1623), and statutes were passed deterring and penalizing vexatious informers, limiting the locations in which informer suits could be brought, and subjecting such suits to relatively short statutes of limitation, see Act to Redress Disorders in Common Informers, 18 Eliz. I, ch. 5 (1576); Act Concerning Informers, 31 Eliz. I, ch. 5 (1589); see generally Davies, *supra*, at 63–76. Nevertheless, laws allowing *qui tam* suits by informers continued to exist in England until 1951, when all of the remaining ones were repealed. See Note, The History and Development of Qui Tam, 1972 Wash. U. L. Q. 81, 88, and n. 44 (citing Common Informers Act, 14 & 15 Geo. VI, ch. 39 (1951)).

Qui tam actions appear to have been as prevalent in America as in England, at least in the period immediately before and after the framing of the Constitution. Although there is no evidence that the Colonies allowed common-law *qui tam* actions (which, as we have noted, were dying out in England by that time), they did pass several informer statutes expressly authorizing *qui tam* suits. See, e.g., Act for the Restraining and Punishing of Privateers and Pirates, 1st Assembly, 4th Sess. (N. Y. 1692), reprinted in 1 Colonial Laws of New York 279, 281 (1894) (allowing informers to sue for, and receive share of, fine imposed upon officers who neglect their duty to pursue privateers and pirates). Moreover, immediately after the framing, the First Congress enacted a considerable number of informer statutes.⁵ Like their English counterparts,

⁵In addition, the First Congress passed one statute allowing injured parties to sue for damages on both their own and the United States' behalf. See Act of May 31, 1790, ch. 15, §2, 1 Stat. 124–125 (allowing author or proprietor to sue for and receive half of penalty for violation of copyright); cf. Act of Mar. 1, 1790, ch. 2, §6, 1 Stat. 103 (allowing

some of them provided both a bounty and an express cause of action;⁶ others provided a bounty only.⁷

We think this history well nigh conclusive with respect

census taker to sue for and receive half of penalty for failure to cooperate in census); Act of July 5, 1790, ch. 25, §1, 1 Stat. 129 (extending same to Rhode Island).

⁶See Act of Mar. 1, 1790, ch. 2, §3, 1 Stat. 102 (allowing informer to sue for, and receive half of fine for, failure to file census return); Act of July 5, 1790, ch. 25, §1, 1 Stat. 129 (extending same to Rhode Island); Act of July 20, 1790, ch. 29, §§1, 4, 1 Stat. 131, 133 (allowing private individual to sue for, and receive half of fine for, carriage of seamen without contract or illegal harboring of runaway seamen); Act of July 22, 1790, ch. 33, §3, 1 Stat. 137–138 (allowing private individual to sue for, and receive half of goods forfeited for, unlicensed trading with Indian tribes); Act of Mar. 3, 1791, ch. 15, §44, 1 Stat. 209 (allowing person who discovers violation of spirits duties, or officer who seizes contraband spirits, to sue for and receive half of penalty and forfeiture, along with costs, in action of debt); cf. Act of Apr. 30, 1790, ch. 9, §§16, 17, 1 Stat. 116 (allowing informer to conduct prosecution, and receive half of fine, for criminal larceny or receipt of stolen goods).

⁷See Act of July 31, 1789, ch. 5, §29, 1 Stat. 44–45 (giving informer full penalty paid by customs official for failing to post fee schedule); Act of Aug. 4, 1790, ch. 35, §55, 1 Stat. 173 (same); Act of July 31, 1789, ch. 5, §38, 1 Stat. 48 (giving informer quarter of penalties, fines, and forfeitures authorized under a customs law); Act of Sept. 1, 1789, ch. 11, §21, 1 Stat. 60 (same under a maritime law); Act of Aug. 4, 1790, ch. 35, §69, 1 Stat. 177 (same under another customs law); Act of Sept. 2, 1789, ch. 12, §8, 1 Stat. 67 (providing informer half of penalty upon conviction for violation of conflict-of-interest and bribery provisions in Act establishing Treasury Department); Act of Mar. 3, 1791, ch. 8, §1, 1 Stat. 215 (extending same to additional Treasury employees); Act of Feb. 25, 1791, ch. 10, §§8, 9, 1 Stat. 195–196 (providing informer half or fifth of fines resulting from improper trading or lending by agents of Bank of United States); cf. Act of Aug. 4, 1790, ch. 35, §4, 1 Stat. 153 (apportioning half of penalty for failing to deposit ship manifest to official who should have received manifest, and half to collector in port of destination).

We have suggested, in dictum, that “[s]tatutes providing for a reward to informers which do not specifically either authorize or forbid the informer to institute the action are construed to authorize him to sue.” *United States ex rel. Marcus v. Hess*, 317 U. S. 537, 541, n. 4 (1943).

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to the question before us here: whether *qui tam* actions were “cases and controversies of the sort traditionally amenable to, and resolved by, the judicial process.” *Steel Co.*, 523 U. S., at 102. When combined with the theoretical justification for relator standing discussed earlier, it leaves no room for doubt that a *qui tam* relator under the FCA has Article III standing.⁸ We turn, then, to the merits.

III

Petitioner makes two contentions: (1) that a State (or state agency) is not a “person” subject to *qui tam* liability under the FCA; and (2) that if it is, the Eleventh Amendment bars such a suit. The Courts of Appeals have disagreed as to the order in which these statutory and Eleventh Amendment immunity questions should be addressed. Compare *United States ex rel. Long v. SCS Business & Technical Institute, Inc.*, 173 F. 3d 890, 893–898 (CA5 1999) (statutory question first), with *United States ex rel. Foulds v. Texas Tech Univ.*, 171 F. 3d 279, 285–288 (CA5 1999) (Eleventh Amendment immunity question first).

Questions of jurisdiction, of course, should be given

⁸In so concluding, we express no view on the question whether *qui tam* suits violate Article II, in particular the Appointments Clause of §2 and the “take Care” Clause of §3. Petitioner does not challenge the *qui tam* mechanism under either of those provisions, nor is the validity of *qui tam* suits under those provisions a jurisdictional issue that we must resolve here. See *Steel Co. v. Citizens for Better Environment*, 523 U. S. 83, 102, n. 4 (1998) (“[O]ur standing jurisprudence, . . . though it may sometimes have an impact on Presidential powers, derives from Article III and not Article II”); see also *Lujan v. Defenders of Wildlife*, 504 U. S. 555, 576–578 (1992).

The dissent implicitly attacks us for “introduc[ing] [this question] *sua sponte*.” *Post*, at 14. We raise the question, however, only to make clear that it is not at issue in this case. It is only the dissent that proceeds to volunteer an answer. See *post*, at 13–14.

priority— since if there is no jurisdiction there is no authority to sit in judgment of anything else. See *Steel Co.*, *supra*, at 93–102. “Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.” *Ex parte McCardle*, 7 Wall. 506, 514 (1869). Even jurisdiction over the person (as opposed to subject-matter jurisdiction) “is ‘an essential element of the jurisdiction of a district . . . court,’ without which the court is ‘powerless to proceed to an adjudication.’” *Ruhrgas AG v. Marathon Oil Co.*, 526 U. S. 574, 584 (1999) (quoting *Employers Reinsurance Corp. v. Bryant*, 299 U. S. 374, 382 (1937)).

We nonetheless have routinely addressed *before* the question whether the Eleventh Amendment forbids a particular statutory cause of action to be asserted against States, the question whether the statute itself *permits* the cause of action it creates to be asserted against States (which it can do only by clearly expressing such an intent). See, e.g., *Kimel v. Florida Bd. of Regents*, 528 U. S. ___, ___ (2000) (slip op., at 8–13); *Seminole Tribe of Fla. v. Florida*, 517 U. S. 44, 55–57 (1996); cf. *Hafer v. Melo*, 502 U. S. 21, 25–31 (1991); *Mt. Healthy City Bd. of Ed. v. Doyle*, 429 U. S. 274, 277–281 (1977). When these two questions are at issue, not only is the statutory question “logically antecedent to the existence of” the Eleventh Amendment question, *Amchem Products, Inc. v. Windsor*, 521 U. S. 591, 612 (1997), but also there is no realistic possibility that addressing the statutory question will expand the Court’s power beyond the limits that the jurisdictional restriction has imposed. The question whether the statute provides for suits against the States (as opposed, for example, to the broader question whether the statute creates any private cause of action whatever, or the question whether the facts alleged make out a “false claim” under the statute) does not, as a practical matter, permit the court to pronounce upon any issue, or upon the

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rights of any person, beyond the issues and persons that would be reached under the Eleventh Amendment inquiry anyway. The ultimate issue in the statutory inquiry is whether States can be sued under this statute; and the ultimate issue in the Eleventh Amendment inquiry is whether unconsenting States can be sued under this statute. This combination of logical priority and virtual coincidence of scope makes it possible, and indeed appropriate, to decide the statutory issue first. We therefore begin (and will end) with the statutory question.

The relevant provision of the FCA, 31 U. S. C. §3729(a), subjects to liability “[a]ny person” who, *inter alia*, “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.” We must apply to this text our longstanding interpretive presumption that “person” does not include the sovereign. See *United States v. Cooper Corp.*, 312 U. S. 600, 604 (1941); *United States v. Mine Workers*, 330 U. S. 258, 275 (1947).⁹

⁹The dissent claims that, “[a]lthough 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.” *Post*, at 2 (citation omitted). The dissent cites three cases in support of this assertion. None of them, however, involved a statutory provision authorizing private suit against a State. *California v. United States*, 320 U. S. 577 (1944), disregarded the presumption in a case brought against a State by the Federal Government (and under a statutory provision authorizing suit *only* by the Federal Government). See *id.*, at 585–586. *United States v. California*, 297 U. S. 175 (1936), found the presumption overcome in similar circumstances— and with regard to a statute that used not the word “person,” but rather the phrase “common carrier.” See *id.*, at 186–187. And *Georgia v. Evans*, 316 U. S. 159 (1942), held that the presumption was overcome when, if a State were not regarded as a “person” for purposes of *bringing* an action under §7 of the Sherman Act, it would be left “without any redress for injuries resulting from practices

The presumption is “particularly applicable where it is claimed that Congress has subjected the States to liability to which they had not been subject before.” *Will v. Michigan Dept. of State Police*, 491 U. S. 58, 64 (1989); *Wilson v. Omaha Tribe*, 442 U. S. 653, 667 (1979). The presumption is, of course, not a “hard and fast rule of exclusion,” *Cooper Corp.*, *supra*, at 604–605, but it may be disregarded only upon some affirmative showing of statutory intent to the contrary. See *International Primate Protection League v. Administrators of Tulane Ed. Fund*, 500 U. S. 72, 83 (1991).

As the historical context makes clear, and as we have often observed, the FCA was enacted in 1863 with the principal goal of “stopping the massive frauds perpetrated by large [private] contractors during the Civil War.”

outlawed by that Act.” *Id.*, at 162.

The dissent contends that “[t]he reason for presuming that an enacting sovereign does not intend to authorize litigation against itself simply does not apply to federal statutes that apply equally to state agencies and private entities.” *Post*, at 10. That is true enough, but in the American system there is a different reason, equally valid. While the States do not have the immunity against federally authorized suit that international law has traditionally accorded foreign sovereigns, see *National City Bank of N. Y. v. Republic of China*, 348 U. S. 356, 358–359 (1955), they are sovereigns nonetheless, and both comity and respect for our federal system demand that something more than mere use of the word “person” demonstrate the federal intent to authorize unconsented private suit against them. In any event, JUSTICE STEVENS fought and lost this battle in *Will v. Michigan Dept. of State Police*, 491 U. S. 58 (1989), in which the Court applied the presumption to a federal statute when the “person” at issue was a State. See *id.*, at 64; but see *id.*, at 73 (Brennan, J., dissenting, joined by Marshall, Blackmun, and STEVENS, JJ.). Moreover, JUSTICE STEVENS actually joined the Court’s opinion in *Wilson v. Omaha Tribe*, 442 U. S. 653 (1979), in which the Court likewise applied the presumption to a federal statute in a case involving a State. See *id.*, at 667. (*Wilson* is omitted from the dissent’s discussion of “[c]ases decided before 1986,” which it claims “uniformly support” its reading of the statute. *Post*, at 2.)

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United States v. Bornstein, 423 U. S. 303, 309 (1976); see also *United States ex rel. Marcus v. Hess*, 317 U. S. 537, 547 (1943).¹⁰ Its liability provision— the precursor to today’s §3729(a)— bore no indication that States were subject to its penalties. Indeed, far from indicating that States were covered, it did not even make clear that *private corporations* were, since it applied only to “any person not in the military or naval forces of the United States, nor in the militia called into or actually employed in the service of the United States,” and imposed criminal penalties that included imprisonment.¹¹ Act of Mar. 2, 1863, ch. 67, §3, 12 Stat. 698. We do not suggest that these features directed only at natural persons cast doubt upon the courts’ assumption that §3729(a) extends to corporations, see, e.g., *United States ex rel. Woodard v. Country View Care Center, Inc.*, 797 F. 2d 888, 890 (CA10 1986)— but that is because the presumption with regard to corporations is just the opposite of the one governing here: they are presumptively *covered* by the term “person,” see 1 U. S. C. §1. But the text of the original statute does less than nothing to overcome the presumption that States are *not* covered.

Although the liability provision of the original FCA has undergone various changes, none of them suggests a broadening of the term “person” to include States. In

¹⁰The dissent contends that the FCA was “intended to cover the full range of fraudulent acts, including those perpetrated by States.” *Post*, at 4–5, and n. 2 (quoting *United States v. Neifert-White Co.*, 390 U. S. 228, 232 (1968); *Rainwater v. United States*, 356 U. S. 590, 592 (1958); H. R. Rep. No. 99–660, p. 18 (1985)). The sources the dissent quotes, however, support its contention only as far as the comma. They stand for the unobjectionable proposition (codified in §3729(c)) that the FCA was intended to cover all types of *fraud*, not for the additional proposition that the FCA was intended to cover all types of *fraudsters*, including States.

¹¹The criminal provision remains on the books and is currently codified separately, as amended, at 18 U. S. C. §287.

1982, Congress made a housekeeping change, replacing the phrase “any person not in the military or naval forces of the United States, nor in the militia called into or actually employed in the service of the United States” with the phrase “[a] person not a member of an armed force of the United States,” thereby incorporating the term of art “member of an armed force” used throughout Title 10 of the United States Code. 31 U. S. C. §3729 (1982 ed.). And in 1986, Congress eliminated the blanket exemption for members of the Armed Forces, replacing the phrase “[a] person not a member of an armed force of the United States” with the current “[a]ny person.” 31 U. S. C. §3729(a).¹²

¹²The dissent claims that “[t]he term ‘person’ in §3729(a) that we are interpreting today was enacted by the 1986 Congress, not by the 1863 Congress.” *Post*, at 6, n. 5. But the term “person” has remained in the statute unchanged since 1863; the 1986 amendment merely changed the modifier “[a]” to “[a]ny.” This no more caused the word “person” to include States than did the replacement of the word “any” with “[a]” four years earlier. The dissent’s sole basis for giving the change from “[a]” to “[a]ny” this precise and unusual consequence is a single sentence of legislative history from the 1986 Congress. That would be unequal to the task in any event, but as it happens the sentence was not even describing the consequence of the proposed revision, but was setting forth a Senate Committee’s (erroneous) understanding of the meaning of the statutory term enacted some 123 years earlier. The paragraph in which the sentence appears discusses the FCA “[i]n its present,” *i.e.*, pre-1986, “form.” S. Rep. No. 99–345, p. 8 (1986).

The dissent contradicts its contention that the “intent” of the 1986 Congress, rather than that of the 1863 Congress, controls here, by relying heavily on a House Committee Report from 1862. *Post*, at 3–4 (citing H. R. Rep. No. 2, 37th Cong., 2d Sess., pt. ii–a, pp. xxxviii–xxxix (1862)). Even for those disposed to allow the meaning of a statute to be determined by a single committee, that Report is utterly irrelevant, since it was not prepared in connection with the 1863 Act, or indeed in connection with any proposed false claims legislation. In repeating the Second Circuit’s unsupported assertion that Congress must have had this Report in mind a year later when it enacted the FCA, the dissent asks us to indulge even a greater suspension of disbelief than legisla-

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Several features of the current statutory scheme further support the conclusion that States are not subject to *qui tam* liability. First, another section of the FCA, 31 U. S. C. §3733, which enables the Attorney General to issue civil investigative demands to “any person . . . possessi[ng] information relevant to a false claims law investigation,” §3733(a)(1), contains a provision expressly defining “person,” “[f]or purposes of this section,” to include States, §3733(l)(4).¹³ The presence of such a definitional provision in §3733, together with the absence of such a provision from the definitional provisions contained in §3729, see §§3729(b)–(c), suggests that States are not “persons” for purposes of *qui tam* liability under §3729.¹⁴

tive history normally requires. And finally, this irrelevant committee Report does not provide the promised support for the view that “[t]he False Claims Act is . . . as capable of being violated by State as by individual action,” *post*, at 3. The cited portion details a single incident of fraud by a state *official* against a *State*, not an incident of fraud by a State against the Federal Government.

¹³The dissent points out that the definition of “person” in §3733(l)(4) also applies to §3733(l)(2), a definitional provision which defines the phrase “false claims law investigation” as “any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law.” See *post*, at 1, 7–8. But the effect of assuming a State to be a “person” for purposes of that definitional section is *not* to embrace investigations of States within the definition. A “false claims investigation” will *still* not include an investigation of a State, since whether a “person” (*however* broadly defined) “is or has been engaged in any violation of a false claims law” depends on whether that person is *subject to* the “false claims law,” which refers us back to §3729, to which §3733(l)(4)’s definition of “person” is explicitly made inapplicable. What the application of §3733(l)(4) to §3733(l)(2) *does* achieve is to subject States, *not to qui tam* liability, but to civil investigative demands. That is entirely appropriate, since States will often be able to provide useful evidence in investigations of private contractors.

¹⁴The dissent contends that our argument “prove[s] too much,” since the definition of “person” in §3733(l)(4) includes not just States, but also “any natural person, partnership, corporation, association, or other

Second, the current version of the FCA imposes damages that are essentially punitive in nature, which would be inconsistent with state *qui tam* liability in light of the presumption against imposition of punitive damages on governmental entities. See, e.g., *Newport v. Fact Concerts, Inc.*, 453 U. S. 247, 262–263 (1981).¹⁵ Although this Court

legal entity”; under our reasoning, it contends, all of those entities would *also* be excluded from the definition of “person” under §3729. *Post*, at 11. That is not so. Unlike States, all of those entities are presumptively *covered* by the term “person.” See 1 U. S. C. §1. The *addition* of States to 31 U. S. C. §3733, and the failure to add States to §3729, suggests that States are not subject to *qui tam* liability under §3729.

The dissent attempts to explain the absence of a definitional provision in §3729 by suggesting that Congress “simply saw no need to add a definition of ‘person’ in §3729 because . . . the meaning of the term ‘person’ was already well understood.” *Post*, at 11. If that were so, and if the “understanding” included States, there would have been no need to include a definition of “person” in §3733.

¹⁵The dissent attempts to distinguish *Newport* on the basis of a single sentence in that opinion stating that “courts vie[w] punitive damages [against governmental bodies] as contrary to sound public policy, because such awards would burden the very taxpayers and citizens for whose benefit the wrongdoer was being chastised.” *Newport v. Fact Concerts, Inc.*, 453 U. S. 247, 263 (1981). The dissent contends that *Newport* is inapplicable where, as here, “[t]he taxpaying ‘citizens for whose benefit’ the [statute] is designed are the citizens of the United States, not the citizens of any individual State that might violate the [statute].” *Post*, at 13. The problem with this is that 42 U. S. C. §1983– the statute at issue in *Newport*– is, like the FCA, a federal law designed to benefit “the citizens of the United States, not the citizens of any individual State that might violate the [statute].” A better reading of *Newport* is that we were concerned with imposing punitive damages on taxpayers under any circumstances. “[Punitive damages], being evidently vindictive, cannot, in our opinion, be sanctioned by this court, as they are to be borne by widows, orphans, aged men and women, and strangers, who, admitting that they must repair the injury inflicted by the Mayor on the plaintiff, cannot be bound beyond that amount, which will be sufficient for her indemnification.” *Newport, supra*, at 261 (quoting *McGary v. President & Council of City of Lafayette*, 12 Rob.

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suggested that damages under an earlier version of the FCA were remedial rather than punitive, see *Bornstein*, 423 U. S., at 315; but see *Smith v. Wade*, 461 U. S. 30, 85 (1983) (REHNQUIST, J., dissenting), that version of the statute imposed only double damages and a civil penalty of \$2,000 per claim, see 31 U. S. C. §231 (1976 ed.); the current version, by contrast, generally imposes treble damages and a civil penalty of up to \$10,000 per claim, see 31 U. S. C. §3729(a).¹⁶ Cf. *Marcus*, 317 U. S., at 550 (noting that double damages in original FCA were not punitive, but suggesting that treble damages, such as those in the antitrust laws, would have been). “The very idea of treble damages reveals an intent to punish past, and to deter future, unlawful conduct, not to ameliorate the liability of wrongdoers.” *Texas Industries, Inc. v. Radcliff Materials, Inc.*, 451 U. S. 630, 639 (1981).

Third, the Program Fraud Civil Remedies Act of 1986 (PFCRA), a sister scheme creating administrative remedies for false claims— and enacted just before the FCA was amended in 1986— contains (unlike the FCA) a definition of “persons” subject to liability, and that definition does not include States. See 31 U. S. C. §3801(a)(6) (defining “person” as “any individual, partnership, corporation, association, or private organization”). It would be most peculiar to subject States to treble damages and civil penalties in *qui tam* actions under the FCA, but exempt them from the relatively smaller damages provided under the PFCRA. See §3802(a)(1).¹⁷

668, 677 (La. 1846)).

¹⁶As the dissent correctly points out, see *post*, at 13, n. 11, treble damages may be reduced to double damages in certain cases, see §3729(a). This exception, however, applies only in some of those (presumably few) cases involving defendants who provide information concerning the violation before they have knowledge that an investigation is underway. See *ibid*.

¹⁷The dissent attempts to distinguish the PFCRA on the ground that

In sum, we believe that various features of the FCA, both as originally enacted and as amended, far from providing the requisite affirmative indications that the term “person” included States for purposes of *qui tam* liability, indicate quite the contrary. Our conclusion is buttressed by two other considerations that we think it unnecessary to discuss at any length: first, “the ordinary rule of statutory construction” that “if Congress intends to alter the usual constitutional balance between States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute,” *Will*, 491 U. S., at 65 (internal quotation marks and citation omitted); see also *Gregory v. Ashcroft*, 501 U. S. 452, 460–461 (1991); *United States v. Bass*, 404 U. S. 336, 349 (1971), and second, the doctrine that statutes should be

it is a separate and subsequently enacted statute. See *post*, at 11–12, and n. 10. But it is well established that a court can, and should, interpret the text of one statute in the light of text of surrounding statutes, even those subsequently enacted. See *FDA v. Brown & Williamson Tobacco Corp.*, 529 U. S. ___, ___ (2000) (slip op., at 9–10); *United States v. Fausto*, 484 U. S. 439, 453 (1988). Moreover, there is no question that the PFCRA was designed to operate in tandem with the FCA. Not only was it enacted at virtually the same time as the FCA was amended in 1986, but its scope is virtually identical to that of the FCA. Compare §3729(a) (FCA) (“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 . . .”) with §3802(a)(1) (PFCRA) (“Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know . . . is false, fictitious, or fraudulent . . .”). The dissent would, in any event, subject States to suit under the PFCRA no less than under the FCA— despite its detailed definition of “person” that does not include States. In justification of this the dissent again cites *California v. United States*, 320 U. S., at 585, and *Evans*, 316 U. S., at 160. In addition to being inapposite because they did not authorize suits against States by private parties, see n. 9, *supra*, the definitions of “person” in the statutes at issue in those cases were not as detailed as that of the PFCRA, and set forth what the term “person” *included*, rather than, as the PFCRA does, what the term “person” *means*,” see 31 U. S. C. §3801(a)(6) (emphasis added).

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construed so as to avoid difficult constitutional questions. We of course express no view on the question whether an action in federal court by a *qui tam* relator against a State would run afoul of the Eleventh Amendment, but we note that there is “a serious doubt” on that score. *Ashwander v. TVA*, 297 U. S. 288, 348 (1936) (Brandeis, J., concurring) (internal quotation marks and citation omitted).¹⁸

* * *

We hold that a private individual has standing to bring suit in federal court on behalf of the United States under the False Claims Act, 31 U. S. C. §§3729–3733, but that the False Claims Act does not subject a State (or state agency) to liability in such actions. The judgment of the Second Circuit is reversed.

It is so ordered.

¹⁸Although the dissent concludes that States can be “persons” for purposes of *commencing* an FCA *qui tam* action under §3730(b), see *post*, at 6–7, we need not resolve that question here, and therefore leave it open.