# SUPREME COURT OF THE UNITED STATES

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No. 96–643

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STEEL COMPANY, AKA CHICAGO STEEL AND PICKLING COMPANY, PETITIONER *v.* CITIZENS FOR A BETTER ENVIRONMENT

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

[March 4, 1998]

JUSTICE BREYER, concurring in part and concurring in the judgment.

I agree with the Court that the respondent in this case lacks Article III standing. I further agree that federal courts often and typically should decide standing questions at the outset of a case. That order of decision (first jurisdiction then the merits) helps better to restrict the use of the federal courts to those adversarial disputes that Article III defines as the federal judiciary's business. But my qualifying words "often" and "typically" are important. The Constitution, in my view, does not require us to replace those words with the word "always." The Constitution does not impose a rigid judicial "order of operations," when doing so would cause serious practical problems.

This Court has previously made clear that courts may "reserve[] difficult questions of . . . jurisdiction when the case alternatively could be resolved on the merits in favor of the same party." *Norton* v. *Mathews*, 427 U. S. 524, 532 (1976). That rule makes theoretical sense, for the difficulty of the jurisdictional question makes reasonable the court's jurisdictional assumption. And that rule makes enormous practical sense. Whom does it help to have appellate judges spend their time and energy puzzling over

the correct answer to an intractable jurisdictional matter, when (assuming an easy answer on the substantive merits) the same party would win or lose regardless? More importantly, to insist upon a rigid "order of operations" in today's world of federal court caseloads that have grown enormously over a generation means unnecessary delay and consequent added cost. See L. Mecham, Judicial Business of the United States Courts: 1996 Report of the Director 16, 18, 23; Report of the Proceedings of the Judicial Conference of the United States 106, 115, 143 (1971) (indicating that between 1971 and 1996, annual appellate court caseloads increased from 132 to 311 cases filed per judgeship, and district court caseloads increased from 341 to 490 cases filed per judgeship). It means a more cumbersome system. It thereby increases, to at least a small degree, the risk of the "justice delayed" that means "justice denied."

For this reason, I would not make the ordinary sequence an absolute requirement. Nor, even though the case before us is ordinary, not exceptional, would I simply reserve judgment about the matter. *Ante* at ___ (O'CONNOR, J., concurring). I therefore join only Parts I and IV of the Court's opinion.