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

SUPREME COURT OF THE UNITED STATES

523 U.S. 83;

October 6, 1997, Argued
March 4, 1998, Decided

PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.
DISPOSITION: 90 F.3d 1237, vacated and remanded.

OPINION BY: SCALIA

JUSTICE SCALIA delivered the opinion of the Court.

This is a private enforcement action under the citizen-suit provision of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), ... The case presents the merits question, answered in the affirmative by the United States Court of Appeals for the Seventh Circuit, whether EPCRA authorizes suits for purely past violations. It also presents the jurisdictional question whether respondent, plaintiff below, has standing to bring this action.

I

Respondent, an association of individuals interested in environmental protection, sued petitioner, a small manufacturing company in Chicago, for past violations of EPCRA. EPCRA establishes a framework of state, regional and local agencies designed to inform the public about the presence of hazardous and toxic chemicals, and to provide for emergency response in the event of health-threatening release. Central to its operation are reporting requirements compelling users of specified toxic and hazardous chemicals to file annual "emergency and hazardous chemical inventory forms" and "toxic chemical release forms," which contain, *inter alia*, the name and location of the facility, the name and quantity of the chemical on hand, and, in the case of toxic chemicals, the waste-disposal method employed and the annual quantity released into each environmental medium. 42 U.S.C. §§ 11022 and 11023. The hazardous-chemical inventory forms for any given calendar year are due the following March 1st, and the toxic-chemical release forms the following July 1st. * * *.

Enforcement of EPCRA can take place on many fronts. The Environmental Protection Agency (EPA) has the most powerful enforcement arsenal: it may seek criminal, civil, or administrative penalties. * * *. State and local governments can also seek civil penalties, as well as injunctive relief. * * *. For purposes of this case, however, the crucial enforcement mechanism is the citizen-suit provision, . . ., which likewise authorizes civil penalties and injunctive relief, ... This provides that "any person may commence a civil action on his own behalf against . . . an owner or operator of a facility for failure," among other things, to "complete and submit an inventory form under section 11022(a) of this title . . . [and] section 11023(a) of this title." * * *. As a prerequisite to bringing such a suit, the plaintiff must, 60 days prior to filing his complaint, give notice to the

Administrator of the EPA, the State in which the alleged violation occurs, and the alleged violator. * * *. The citizen suit may not go forward if the Administrator "has commenced and is diligently pursuing an administrative order or civil action to enforce the requirement concerned or to impose a civil penalty." * * *.

In 1995 respondent sent a notice to petitioner, the Administrator, and the relevant Illinois authorities, alleging -- accurately, as it turns out -- that petitioner had failed since 1988, the first year of EPCRA's filing deadlines, to complete and to submit the requisite hazardous-chemical inventory and toxic-chemical release forms . . .. Upon receiving the notice, petitioner filed all of the overdue forms with the relevant agencies. The EPA chose not to bring an action against petitioner, and when the 60-day waiting period expired, respondent filed suit in Federal District Court. Petitioner promptly filed a motion to dismiss under Federal Rule of Civil Procedure . . ., contending that, because its filings were up to date when the complaint was filed, the court had no jurisdiction to entertain a suit for a present violation; and that, because EPCRA does not allow suit for a purely historical violation, respondent's allegation of untimeliness in filing was not a claim upon which relief could be granted.

The District Court agreed with petitioner on both points. * * *. The Court of Appeals reversed, concluding that citizens may seek penalties against EPCRA violators who file after the statutory deadline and after receiving notice. * * *. We granted certiorari, ...

II

We granted certiorari in this case to resolve a conflict between the interpretation of EPCRA adopted by the Seventh Circuit and the interpretation previously adopted by the Sixth Circuit in -- a case relied on by the District Court, and acknowledged by the Seventh Circuit to be "factually indistinguishable,". Petitioner, however, both in its petition for certiorari and in its briefs on the merits, has raised the issue of respondent's standing to maintain the suit, and hence this Court's jurisdiction to entertain it. Though there is some dispute on this point, see Part III, *infra*, this would normally be considered a threshold question that must be resolved in respondent's favor before proceeding to the merits. * * *.

It is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the courts' statutory or constitutional *power* to adjudicate the case. * * *.

* * *.

* * *. This conclusion . . . is reflected in a long and venerable line of our cases. "Without jurisdiction the court cannot proceed at all in any cause. 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." * * *. "On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it." * * *. The

requirement that jurisdiction be established as a threshold matter "springs from the nature and limits of the judicial power of the United States" and is "inflexible and without exception." * * *.

This Court's insistence that proper jurisdiction appear begins at least as early as 1804, when we set aside a judgment for the defendant at the instance of the losing plaintiff *who had himself* failed to allege the basis for federal jurisdiction. *Capron* v. *Van Noorden*, (1804). * * *.

* * *.

While some of the above cases must be acknowledged to have diluted the absolute purity of the rule that Article III jurisdiction is always an antecedent question, none of them even approaches approval of a doctrine of "hypothetical jurisdiction" that enables a court to resolve contested questions of law when its jurisdiction is in doubt. Hypothetical jurisdiction produces nothing more than a hypothetical judgment -- which comes to the same thing as an advisory opinion, disapproved by this Court from the beginning. * * *. Much more than legal niceties are at stake here. The statutory and (especially) constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects. * * *. For a court to pronounce upon the meaning or the constitutionality of a state or federal law when it has no jurisdiction to do so is, by very definition, for a court to act ultra vires.

IV

. . . [W]e finally arrive at the threshold jurisdictional question: whether respondent, the plaintiff below, has standing to sue. Article III, § 2 of the Constitution extends the "judicial Power" of the United States only to "Cases" and "Controversies." We have always taken this to mean cases and controversies of the sort traditionally amenable to and resolved by the judicial process. * * *. Such a meaning is fairly implied by the text, since otherwise the purported restriction upon the judicial power would scarcely be a restriction at all. Every criminal investigation conducted by the Executive is a "case," and every policy issue resolved by congressional legislation involves a "controversy." These are not, however, the sort of cases and controversies that Article III, § 2, refers to . . .[.] * * *. Standing to sue is part of the common understanding of what it takes to make a justiciable case. * * *.[4]

4 [Footnote omitted.]

The "irreducible constitutional minimum of standing" contains three requirements. * * *. First and foremost, there must be alleged (and ultimately proven) an "injury in fact" -- a harm suffered by the plaintiff that is "concrete" and "actual or imminent, not 'conjectural' or 'hypothetical.'" * * *. Second, there must be causation -- a fairly traceable connection between the plaintiff's injury and the complained-of conduct of the defendant. * * *. And third, there must be redressability -- a likelihood that the requested relief will redress the alleged injury. * * *. This triad of injury in fact, causation, and redressability [5] comprises the core of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction bears the

burden of establishing its existence. * * *.

5 [Footnote omitted.]

We turn now to the particulars of respondent's complaint to see how it measures up to Article III's requirements. This case is on appeal from a Rule 12(b) motion to dismiss on the pleadings, so we must presume that the general allegations in the complaint encompass the specific facts necessary to support those allegations. * * *. The complaint contains claims "on behalf of both [respondent] itself and its members." [6] It describes respondent as an organization that seeks, uses, and acquires data reported under EPCRA. It says that respondent "reports to its members and the public about storage and releases of toxic chemicals into the environment, advocates changes in environmental regulations and statutes, prepares reports for its members and the public, seeks the reduction of toxic chemicals and further seeks to promote the effective enforcement of environmental laws." The complaint asserts that respondent's "right to know about [toxic chemical] releases and its interests in protecting and improving the environment and the health of its members have been, are being, and will be adversely affected by [petitioner's] actions in failing to provide timely and required information under EPCRA." * * *. The complaint also alleges that respondent's members, who live in or frequent the area near petitioner's facility, use the EPRCA-reported information "to learn about toxic chemical releases, the use of hazardous substances in their communities, to plan emergency preparedness in the event of accidents, and to attempt to reduce the toxic chemicals in areas in which they live, work and visit." * * *. The members'" safety, health, recreational, economic, aesthetic and environmental interests" in the information, it is claimed, "have been, are being, and will be adversely affected by [petitioner's] actions in failing to file timely and required reports under EPCRA." * * *.

6 EPCRA states that "any person may commence a civil action *on his own behalf* . . . " 42 U.S.C. § 11046(1) (emphasis added). "Person" includes an association, see § 11049(7), so it is arguable that the statute permits respondent to vindicate only its own interests as an organization, and not the interests of its individual members. Since it makes no difference to our disposition of the case, we assume without deciding that the interests of individual members may be the basis of suit.

As appears from the above, respondent asserts petitioner's failure to provide EPCRA information in a timely fashion, and the lingering effects of that failure, as the injury in fact to itself and its members. We have not had occasion to decide whether being deprived of information that is supposed to be disclosed . . . is a concrete injury in fact that satisfies Article III. * * *. And we need not reach that question in the present case because, assuming injury in fact, the complaint fails the third test of standing, redressability.

The complaint asks for (1) a declaratory judgment that petitioner violated EPCRA; (2) authorization to inspect periodically petitioner's facility and records (with costs borne by petitioner); (3) an order requiring petitioner to provide respondent copies of all compliance reports submitted to the EPA; (4) an order requiring petitioner to pay civil penalties of $ 25,000 per day for each violation . . .; (5) an award of all respondent's "costs, in connection with

the investigation and prosecution of this matter, including reasonable attorney and expert witness fees, as authorized by Section 326(f) of [EPCRA]"; and (6) any such further relief as the court deems appropriate. None of the specific items of relief sought, and none that we can envision as "appropriate" under the general request, would serve to reimburse respondent for losses caused by the late reporting, or to eliminate any effects of that late reporting upon respondent. [7]

7 [Footnote omitted.]

The first item, the request for a declaratory judgment that petitioner violated EPCRA, can be disposed of summarily. There being no controversy over whether petitioner failed to file reports, or over whether such a failure constitutes a violation, the declaratory judgment is not only worthless to respondent, it is seemingly worthless to all the world. * * *.

Item (4), the civil penalties authorized by the statute, . . ., might be viewed as a sort of compensation or redress to respondent if they were payable to respondent. But they are not. These penalties -- the only damages authorized by EPCRA -- are payable to the United States Treasury. In requesting them, therefore, respondent seeks not remediation of its own injury . . . but vindication of the rule of law . . .. This does not suffice. * * *.

Item (5), the "investigation and prosecution" costs "as authorized . . .," would assuredly benefit respondent as opposed to the citizenry at large. Obviously, however, a plaintiff cannot achieve standing to litigate a substantive issue by bringing suit for the cost of bringing suit. The litigation must give the plaintiff some other benefit besides reimbursement of costs that are a byproduct of the litigation itself. * * *. Respondent asserts that the "investigation costs" it seeks were incurred prior to the litigation, in digging up the emissions and storage information that petitioner should have filed, and that respondent needed for its own purposes. * * *. The recovery of such expenses unrelated to litigation would assuredly support Article III standing, but the problem is that § 326(f), which is the entitlement to monetary relief that the complaint invokes, covers only the "costs of litigation." [8] * * *. Respondent finds itself, in other words, impaled upon the horns of a dilemma: for the expenses to be reimbursable under the statute, they must be costs of litigation; but reimbursement of the costs of litigation cannot alone support standing. [9]

[Footnotes omitted.]

* * *.

Having found that none of the relief sought by respondent would likely remedy its alleged injury in fact, we must conclude that respondent lacks standing to maintain this suit, and that we and the lower courts lack jurisdiction to entertain it. However desirable prompt resolution of the merits EPCRA question may be, it is not as important as observing the constitutional limits set upon courts in our system of separated powers. EPCRA will have to await another day.

The judgment is vacated and the case remanded with instructions to direct that the complaint be dismissed.

It is so ordered.

CONCUR BY: O'CONNOR; BREYER (In Part); STEVENS; GINSBURG

CONCUR

JUSTICE O'CONNOR, with whom JUSTICE KENNEDY joins, concurring.

I join the Court's opinion. I agree that our precedent supports the Court's holding that respondent lacks Article III standing because its injuries cannot be redressed by a judgment that would, in effect, require only the payment of penalties to the United States Treasury. As the Court notes, . . ., had respondent alleged a continuing or imminent violation of the Emergency Planning and Community Right-To-Know Act . . ., the requested injunctive relief may well have redressed the asserted injury.

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.

For this reason, I would not make the ordinary sequence an absolute requirement. * * *.

JUSTICE STEVENS, with whom JUSTICE SOUTER joins as to Parts I, III, and IV, and with whom JUSTICE GINSBURG joins as to Part III, concurring in the judgment.

This case presents two questions: (1) whether the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), . . ., confers federal jurisdiction over citizen suits for wholly past violations; and (2) if so, whether respondent has standing under Article III of the Constitution. The Court has elected to decide the constitutional question first and, in doing so, has created new constitutional law. Because it is always prudent to avoid passing unnecessarily on an undecided constitutional question, . . ., the Court should answer the statutory question first. Moreover, because EPCRA, properly construed, does not confer jurisdiction over citizen suits for wholly past violations, the Court should leave the constitutional question for another day.

* * *.