SUPREME COURT OF THE UNITED STATES

No. 96–643

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 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), 42 U. S. C. §11001 *et seq.*, 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, see *Ashwander* v. *TVA*, 297 U. S. 288, 345–348 (1936) (Brandeis, J., concurring), 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.

I

The statutory issue in this case can be viewed in one of two ways: whether EPCRA confers "jurisdiction" over citizen suits for wholly past violations, or whether the

statute creates such a "cause of action." Under either analysis, the Court has the power to answer the statutory question first.

EPCRA frames the question in terms of "jurisdiction." Section 326(c) states:

> "The district court shall have jurisdiction in actions brought under [§326(a)] against an owner or operator of a facility to enforce the requirement concerned and to impose any civil penalty provided for violation of that requirement." 42 U. S. C. §11046(c).

Thus, if §326(a) authorizes citizen suits for wholly past violations, the district court has jurisdiction over these actions; if it does not, the court lacks jurisdiction.

Given the text of the statute, it is not surprising that the parties and the District Court framed the question in jurisdictional terms. Respondent's complaint alleged that the District Court had "subject matter jurisdiction under Section 326(a) of EPCRA, 42 U. S. C. §11046(a)." App. 3. The merits questions that were raised by respondent's complaint were whether the Steel Company violated EPCRA and, if so, what relief should be granted. The District Court, however, made no ruling on the merits when it granted the Steel Company's motion to dismiss. It held that dismissal was required because respondent had merely alleged "a failure to timely file the required reports, a violation of the Act for which there is no jurisdiction for a citizen suit." App. to Pet. for Cert. A26.[1] The

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[1] See also *Don't Waste Arizona, Inc.* v. *McLane Foods, Inc.*, 950 F. Supp. 972, 977–978 (Ariz. 1997) ("[T]his Court has jurisdiction to hear this citizen suit brought pursuant to 42 U. S. C. §11046(a) for a wholly past violation of the EPCRA"); *Delaware Valley Toxics Coalition* v. *Kurz-Hastings*, 813 F. Supp. 1132, 1141 (ED Pa. 1993) ("This court concludes that 42 U. S. C. §11046(a)(1) does provide the federal courts with jurisdiction for wholly past violations of the EPCRA"); *Atlantic States Legal Foundation* v. *Whiting Roll-Up Door Manufacturing Corp.*,

Steel Company has also framed the question as a jurisdictional one in its briefs before this Court.[2]

The threshold issue concerning the meaning of §326 is virtually identical to the question that we decided in *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U. S. 49 (1987). In that case, we considered whether §505(a) of the Clean Water Act allows suits for wholly past violations.[3] We unanimously characterized that question as a matter of "jurisdiction":

> "In this case, we must decide whether §505(a) of the Clean Water Act, also known as the Federal Water Pollution Control Act, 33 U. S. C. §1365(a), confers federal jurisdiction over citizen suits for wholly past violations." *Id.*, at 52.

See also *Block* v. *Community Nutrition Institute*, 467 U. S. 340, 353, n. 4 (1984) (citing *National Railroad Passenger Corp.* v. *National Assn. of Railroad Passengers*, 414 U. S. 453, 456, 465, n. 13 (1974)); *National Railroad Passenger Corp., ibid.* If we resolve the comparable statutory issue in the same way in this case, federal courts will have no jurisdiction to address the merits in future similar cases. Thus, this is not a case in which the choice between re-

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772 F. Supp. 745, 750 (WDNY 1991) ("The plain language of EPCRA's reporting, enforcement and civil penalty provisions, when logically viewed together, compel a conclusion that EPCRA confers federal jurisdiction over citizen lawsuits for past violations").

[2] Brief for Petitioner 12 ("A statute conferring jurisdiction on the federal courts should . . . be strictly construed, and any doubts resolved against jurisdiction. Here there are serious doubts that Congress intended citizens to sue for past EPCRA violations, and all citizen plaintiffs can highlight is a slight difference in language and attempt to stretch that difference into federal jurisdiction"); see also *id.*, at 26, 30.

[3] Gwaltney contended that "because its last recorded violation occurred several weeks before respondents filed their complaint, the District Court lacked subject-matter jurisdiction over respondents' action." *Gwaltney*, 484 U. S., at 55.

solving the statutory question or the standing question first is a choice between a merits issue and a jurisdictional issue; rather, it is a choice between two jurisdictional issues.

We have routinely held that when presented with two jurisdictional questions, the Court may choose which one to answer first. In *Sierra Club* v. *Morton*, 405 U. S. 727 (1972), for example, we were presented with a choice between a statutory jurisdictional question and a question of Article III standing. In that case, the United States, as respondent, argued that petitioner lacked standing under the Administrative Procedure Act and under the Constitution.[4] Rather than taking up the constitutional issue, the Court stated:

> "Where . . . Congress has authorized public officials to perform certain functions according to law, and has provided by statute for judicial review of those actions under certain circumstances, *the inquiry as to standing must begin with a determination of whether the statute in question authorizes review at the behest of*

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[4] 405 U. S., at 753–755 (App. to opinion of Douglas, J., dissenting) (Extract from Oral Argument of the Solicitor General); Brief for Respondent in *Sierra Club* v. *Morton*, O. T. 1970, No. 70–34, p. 18 ("The irreducible minimum requirement of standing reflects the constitutional limitation of judicial power to 'Cases' and 'Controversies'— 'whether the party invoking federal court jurisdiction has "a personal stake in the outcome of the controversy." . . . and whether the dispute touches upon the "legal relations of parties having adverse legal interests."' *Flast* v. *Cohen*, 392 U. S. 83, 101 [(1968)]"); see also Brief for the County of Tulare as *Amicus Curiae* in *Sierra Club* v. *Morton*, O. T. 1970, No. 70–34, pp. 13–14 ("This Court long ago held that to have standing . . . a party must show he has sustained or is immediately in danger of sustaining some direct injury . . . and not merely that he suffers in some indefinite way in common with people generally. This is an outgrowth of Article III of the Constitution which limits the jurisdiction of federal courts to cases and controversies. U. S. CONST. art III, §2." (citation and internal quotation marks omitted)).

the plaintiff." *Id.*, at 732 (emphasis added).

The Court concluded that petitioner lacked standing under the statute, *id.*, at 732–741, and, therefore, did not need to decide whether petitioner had suffered a sufficient injury under Article III.

Similarly, in *Block* v. *Community Nutrition Institute,* 467 U. S. 340 (1984), the Court was faced with a choice between a statutory jurisdictional issue and a question of Article III standing. The Court of Appeals had held that the respondents had standing under both the statute and the Constitution. 698 F. 2d 1239, 1244–1252 (CADC 1983). On writ of certiorari to this Court, the United States, as petitioner, argued both issues: that the respondents did not come within the "zone of interests" of the statute, and that they did not have standing under Article III of the Constitution.[5] A unanimous Court bypassed the constitutional standing question in order to decide the statutory question. It therefore construed the statute, and concluded that respondents could not bring suit under the statute. The only mention of the constitutional question came in a footnote at the end of the opinion: "Since congressional preclusion of judicial review is in effect jurisdictional, we need not address the standing issue decided by the Court of Appeals in this case." *Block,* 467 U. S., at 353, n. 4 (citing *National Railroad Passenger Corp.,* 414 U. S., at 456, 465, n. 13).

Finally, in *Gladstone, Realtors* v. *Village of Bellwood,* 441 U. S. 91 (1979), we were also faced with a choice between a statutory and constitutional jurisdictional ques-

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[5] Brief for Petitioners in *Block* v. *Community Nutrition Institute,* O. T. 1983, No. 83–458, pp. 32–50 (arguing that respondents failed to meet the injury-in-fact and redressability requirements of Article III); see also Brief for Respondents in *Block* v. *Community Nutrition Institute,* O. T. 1983, No. 83–458, pp. 17–28; Reply Brief for Petitioners in *Block* v. *Community Nutrition Institute,* O. T. 1983, No. 83–458, pp. 15–17.

tion. *Id.*, at 93 ("This case presents both statutory and constitutional questions concerning standing to sue under Title VIII"). The statutory question was whether respondents had standing to sue under §812 of the Fair Housing Act. The Court, reluctant to address the constitutional question, opted to decide the statutory question first so as to avoid the constitutional question if possible:

> "The issue [of the meaning of §812] is a critical one, for if the District Court correctly understood and applied §812 [in denying respondents standing under the statute], we do not reach the question whether the minimum requirements of Art. III have been satisfied. If the Court of Appeals is correct [in holding that respondents have statutory standing], however, then the constitutional question is squarely presented." *Id.*, at 101.

See also *Bennett* v. *Spear*, 520 U. S. ___, ___ (1997) (slip op., at 8–9) (SCALIA, J.) (stating that "[t]he first question in the present case is whether the [Endangered Species Act's] citizen-suit provision . . . negates the zone-of-interests test," and turning to the constitutional standing question only after determining that standing existed under the statute); *Food and Commercial Workers* v. *Brown Group, Inc.*, 517 U. S. 544, ___ (1996) (analyzing the statutory question before turning to the constitutional standing question); *Cross-Sound Ferry Services* v. *ICC*, 934 F. 2d 327, 341 (CADC 1991) (Thomas, J., concurring in part and concurring in the denial of the petition for review) (courts exceed the scope of their power "only if the ground passed over is jurisdictional and the ground rested upon is nonjurisdictional, for courts properly rest on one jurisdictional ground instead of another"). Thus, our precedents clearly support the proposition that, given a choice between two jurisdictional questions– one statutory and the other constitutional– the Court has the power to answer the statu-

tory question first.

Rather than framing the question in terms of "jurisdiction," it is also possible to characterize the statutory issue in this case as whether respondent's complaint states a "cause of action."[6] Framed this way, it is also clear that we have the power to decide the statutory question first. As our holding in *Bell* v. *Hood*, 327 U. S. 678, 681–685 (1946), demonstrates, just as a court always has jurisdiction to determine its own jurisdiction, *United States* v. *Mine Workers*, 330 U. S. 258, 290 (1947), a federal court also has jurisdiction to decide whether a plaintiff who alleges that she has been injured by a violation of federal law has stated a cause of action.[7] Indeed, *Bell* held that we have jurisdiction to decide this question *even when it is unclear whether the plaintiff's injuries can be redressed*.[8]

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[6] As Justice Cardozo stated, "'"cause of action" may mean one thing for one purpose and something different for another.'" *Davis* v. *Passman*, 442 U. S. 228, 237 (1979) (quoting *United States* v. *Memphis Cotton Oil Co.*, 288 U. S. 62, 67–68 (1933)). Under one meaning of the term, it is clear that citizens have a "cause of action" to sue under the statute. Under that meaning, "cause of action is a question of whether a particular plaintiff is a member of the class of litigants that may, as a matter of law, appropriately invoke the power of the court." *Davis*, 442 U. S., at 240, and n. 18 (emphasis deleted); see also *id.*, at 239 ("The concept of a 'cause of action' is employed specifically to determine *who* may judicially enforce the statutory rights or obligations" (emphasis added)). Since EPCRA expressly gives citizens the right to sue, 42 U. S. C. §11046(a)(1), there is no question that citizens are "member[s] of the class of litigants that may, as a matter of law, appropriately invoke the power of the court," *Davis*, 442 U. S., at 240, and n. 18.

[7] "Jurisdiction . . . is not defeated . . . by the possibility that the averments might fail to state a cause of action on which petitioners could actually recover." *Bell*, 327 U. S., at 682.

[8] In *Bell*, a precursor to *Bivens* v. *Six Unknown Fed. Narcotics Agents*, 403 U. S. 388 (1971), petitioners brought suit in federal court "to recover damages in excess of $3,000 from . . . agents of the Federal Bureau of Investigation" for allegedly violating their Fourth and Fifth Amendment rights. *Bell*, 327 U. S., at 679. The question whether petitioners' injuries were redressable— "whether federal courts can grant money

Thus, *Bell* demonstrates that the Court has the power to decide whether a cause of action exists even when it is unclear whether the plaintiff has standing.[9]

National Railroad Passenger Corp. also makes it clear that we have the power to decide this question before addressing other threshold issues. In that case, we were faced with the interrelated questions of "whether the Amtrak Act can be read to create a private right of action to enforce compliance with its provisions; whether a federal district court has jurisdiction under the terms of the Act to entertain such a suit [under 28 U. S. C. §1337[10]]; and

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recovery for damages said to have been suffered as a result of federal officers violating the Fourth and Fifth Amendments"– was an open one, *id.*, at 684 (which the Court did not decide until *Bivens*, 403 U. S., at 389). Nonetheless, even though it was unclear whether there was a remedy, the Court held that federal courts have jurisdiction to determine whether a cause of action exists. *Bell*, 327 U. S., at 685.

[9]The Court incorrectly states that I "used to understand the fundamental distinction between arguing no cause of action and arguing no Article III redressability," *ante*, at 11. The Court gives me too much credit. I have never understood any fundamental difference between arguing: (1) plaintiff's complaint does not allege a cause of action because the law does "not provide a remedy" for the plaintiff's injury; and (2) plaintiff's injury is "not redressable." In *Lake Country Estates, Inc.* v. *Tahoe Regional Planning Agency*, 440 U. S. 391, 398 (1979), we stated that the absence of a remedy, *i.e.* the lack of redressability, was not the sort of jurisdictional issue that the Court raises on its own motion. That was the law when that case was decided, and it would still be the law today if the Court had not supplemented the standing analysis set forth in *Baker* v. *Carr*, 369 U. S. 186, 204 (1962), with its current fascination with "redressability." What has changed is not the admittedly imperfect state of my understanding, but rather the state of the Court's standing doctrine.

[10]Section 1337 states, in relevant part: "district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies." 28 U. S. C. §1337(a); see also *Potomac Passengers Assn.* v. *Chesapeake & Ohio R. Co.*, 475 F. 2d 325, 339 (CADC 1973), rev'd on other grounds, *National Railroad Passenger Corp.* v. *National Assn. of Railroad Passengers*, 414 U. S. 453 (1974).

whether respondent has [statutory] standing to bring such a suit." 414 U. S., at 455–456. In choosing its method of analysis, the Court stated:

> "[H]owever phrased, the *threshold question* clearly is whether the Amtrak Act or any other provision of law *creates a cause of action* whereby a private party such as the respondent can enforce duties and obligations imposed by the Act; for it is only if such a right of action exists that we need consider whether the respondent had standing to bring the action and whether the District Court had jurisdiction to entertain it." *Id.*, at 456 (emphasis added).[11]

After determining that there was no cause of action under the statute, the Court concluded: "Since we hold that no right of action exists, questions of standing and jurisdiction become immaterial." *Id.*, at 465, n. 13.[12]

Thus, regardless of whether we characterize this issue in terms of "jurisdiction" or "causes of action," the Court clearly has the power to address the statutory question first. *Gwaltney* itself powerfully demonstrates this point. As noted, that case involved a statutory question virtually identical to the one presented here— whether the statute permitted citizens to sue for wholly past violations. While the Court framed the question as one of "jurisdiction,"

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[11] The Court distinguished this "threshold question" from respondent's claim "on the merits," *National Railroad Passenger Corp.*, 414 U. S., at 455, n. 3.

[12] In insisting that the Article III standing question must be answered first, the Court finds itself in a logical dilemma. For if "A" (whether a cause of action exists) can be decided before "B" (whether there is statutory standing), *id.*, at 456, 465, n. 13; and if "B" (whether there is statutory standing) can be decided before "C" (whether there is Article III standing), *e.g.*, *Block* v. *Community Nutrition Institute*, 467 U. S. 340, 353, n. 4 (1984); then logic dictates that "A" (whether a cause of action exists) can be decided before "C" (whether there is Article III standing)— precisely the issue of this case.

supra, at 3, it could also be said that the case presented the question whether the plaintiffs had a "cause of action." Regardless of the label, the Court resolved the statutory question without pausing to consider whether the plaintiffs had standing to sue for wholly past violations.[13] Of course, the fact that we did not discuss standing in *Gwaltney* does not establish that the plaintiffs had standing there. Nonetheless, it supports the proposition that— regardless of how the issue is characterized— the Court has the power to address the virtually identical statutory question in this case as well.

The Court disagrees, arguing that the standing question must be addressed first. Ironically, however, before "first" addressing standing, the Court takes a long excursion that entirely loses sight of the basic reason why standing is a matter of such importance to the proper functioning of the judicial process. The "gist of the question of standing" is whether plaintiffs have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."[14] The Court completely disregards this core purpose of standing in its discussion of "hypothetical jurisdiction." Not only is that portion of the Court's opinion pure dictum because it is entirely unnecessary to an explanation of the Court's decision; it is also not informed by any adversary submission by either party. Neither the topic of "hypothetical juris-

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[13] In *Gwaltney*, in addition to answering the question whether the statute confers jurisdiction over citizen suits for wholly past violations, we considered whether the allegation of on-going injury sufficed to support jurisdiction. The fact that we discussed "standing" in connection with that secondary issue, *Gwaltney*, 484 U. S., at 65–66, adds significance to the omission of even a passing reference to any standing issue in connection with the principal holding.

[14] *Baker* v. *Carr*, 369 U. S., at 204.

diction," nor any of the cases analyzed, distinguished, and criticized in Part III, was the subject of any comment in any of the briefs submitted by the parties or their *amici*. It therefore did not benefit from the "concrete adverseness" that the standing doctrine is meant to ensure. The discussion, in short, "comes to the same thing as an advisory opinion, disapproved by this Court from the beginning." *Ante*, at 17; see also *Muskrat* v. *United States*, 219 U. S. 346, 362 (1911) (stressing that Article III limits federal courts to "deciding cases or controversies arising between opposing parties").[15]

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[15]The Court boldly distinguishes away no fewer than five of our precedents. In each of these five cases, the Court avoided deciding a jurisdictional issue by assuming that jurisdiction existed for the purpose of that case. In *Norton* v. *Mathews*, 427 U. S. 524, 532 (1976), for example, we stated:

"It . . . is evident that whichever disposition we undertake, the effect is the same. It follows that there is no need to decide the theoretical question of jurisdiction in this case. In the past, we similarly have reserved difficult questions of our jurisdiction when the case alternatively could be resolved on the merits in favor of the same party. See *Secretary of Navy* v. *Avrech*, 418 U. S. 676 (1974). The Court has done this even when the original reason for granting certiorari was to resolve the jurisdictional issue. See *United States* v. *Augenblick*, 393 U. S. 348, 349–352 (1969). . . . Making the assumption, then, without deciding, that our jurisdiction in this cause is established, we affirm the judgment in favor of the Secretary . . . ."

See also *Philbrook* v. *Glodgett*, 421 U. S. 707, 720–722 (1975) (REHNQUIST, J.) (declining to reach "subtle and complex" jurisdictional issue and assuming that jurisdiction existed); *Secretary of Navy* v. *Avrech*, 418 U. S. 676, 677–678 (1974) *(per curiam)* ("[a]ssuming, *arguendo*, that the District Court had jurisdiction"; leaving "to a future case the resolution of the jurisdictional issue"); *Chandler* v. *Judicial Council of Tenth Circuit*, 398 U. S. 74, 89 (1970) ("Whether the Council's action was administrative action not reviewable in this Court, or whether it is reviewable here, plainly petitioner has not made a case for the extraordinary relief of mandamus or prohibition"); *United States* v. *Augenblick*, 393 U. S. 348, 351–352 (1969) (assuming, *arguendo*, that jurisdiction existed).

Moreover, in addition to the five cases that the Court distinguishes,

The doctrine of "hypothetical jurisdiction" is irrelevant because this case presents us with a choice between two threshold questions that are intricately interrelated— as there is only a standing problem if the statute confers jurisdiction over suits for wholly past violations. The Court's opinion reflects this fact, as its analysis of the standing issue is predicated on the hypothesis that §326 may be read to confer jurisdiction over citizen suits for

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there are other cases that support the notion that a court can assume jurisdiction. See, *e.g.*, *Moor* v. *County of Alameda*, 411 U. S. 693, 715 (1973) ("Whether there exists judicial power to hear the state law claims against the County is, in short, a subtle and complex question with far-reaching implications. But we do not consider it appropriate to resolve this difficult issue in the present case, for we have concluded that even assuming, *arguendo*, the existence of power to hear the claim, the District Court [did not err]"); *Neese* v. *Southern R. Co.*, 350 U. S. 77 (1955) *(per curiam)* ("We reverse the judgment of the Court of Appeals without reaching the constitutional challenge to that court's jurisdiction . . . . Even assuming such appellate power to exist . . . , [the Court of Appeals erred]"); see also *Ellis* v. *Dyson*, 421 U. S. 426, 436 (1975) (REHNQUIST, J., concurring) ("While it would have been more in keeping with conventional adjudication had [the District Court] first inquired as to the existence of a case or controversy, . . . I cannot fault the District Court for disposing of the case on what it quite properly regarded at that time as an authoritative ground of decision. Indeed, this Court has on occasion followed essentially the same practice").

Because this case involves a choice between two threshold questions that are intricately interrelated, I do not take a position on the propriety of courts assuming jurisdiction. Nonetheless, I strongly disagree with the Court's decision to reach out and decide this question, especially in light of the fact that we have not had the benefit of briefing and argument. See *Philbrook*, 421 U. S., at 721 (REHNQUIST, J.) (declining to answer a "complex question of federal jurisdiction" because of "the absence of substantial aid from the briefs of either of the parties"); *Avrech*, 418 U. S., at 677 ("Without the benefit of further oral argument, we are unwilling to decide the difficult jurisdictional issue which the parties have briefed"); *ante*, at 14 (noting that the *Avrech* Court "was unwilling to decide the jurisdictional question without oral argument" and emphasizing the importance of zealous advocacy to sharpen issues).

wholly past violations. If, as I think it should, the Court were to reject that hypothesis and construe §326,[16] the standing discussion would be entirely unnecessary. Thus, ironically, the Court is engaged in a version of the "hypothetical jurisdiction" that it has taken pains to condemn at some length.

II

There is an important reason for addressing the statutory question first: to avoid unnecessarily passing on an undecided constitutional question. *New York Transit Authority* v. *Beazer*, 440 U. S. 568, 582–583 (1979); *Ashwander* v. *TVA*, 297 U. S. 288, 345–348 (1936) (Brandeis, J., concurring).[17] Whether correct or incorrect, the Court's constitutional holding represents a significant extension of prior case law.

The Court's conclusion that respondent does not have standing comes from a mechanistic application of the "re-

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[16] Indeed, the Court acknowledges– as it must– that the Court has the power to construe the statute, as it is impossible to resolve the standing issue without construing some provisions of the Act. Thus, in order to determine whether respondent's investigation and prosecution costs are sufficient to confer standing, the Court construes §326(f) of EPCRA, which authorizes the district court to "award costs of litigation" to the prevailing party. *Ante*, at 23–24. Yet if §326(f) were construed to cover the cost of the investigation that preceded the filing of respondent's complaint, even under the Court's reasoning respondent would have alleged a "redressable" injury and would have standing. See *ibid*.

[17] There are two other reasons that counsel in favor of answering the statutory question first. First, it is the statutory question that has divided the courts of appeals and that we granted certiorari to resolve. See Pet. for Cert. i. Second, the meaning of the statute is a matter of general and national importance, whereas the Court's answer to the constitutional question depends largely on a construction of the allegations of this particular complaint, *ante*, at 19 ("We turn now to the particulars of respondent's complaint to see how it measures up to Article III's requirements").

dressability" aspect of our standing doctrine. "Redressability," of course, does not appear anywhere in the text of the Constitution. Instead, it is a judicial creation of the past 25 years, see *Simon* v. *Eastern Ky. Welfare Rights Organization,* 426 U. S. 26, 38, 41–46 (1976); *Linda R. S.* v. *Richard D.,* 410 U. S. 614, 617–618 (1973)— a judicial interpretation of the "Case" requirement of Article III, *Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 559–561 (1992).[18]

In every previous case in which the Court has denied standing because of a lack of redressability, the plaintiff was challenging some governmental action or inaction. *Leeke* v. *Timmerman,* 454 U. S. 83, 85–87 (1981) *(per curiam)* (suit against Director of the Department of Corrections and another prison official); *Simon,* 426 U. S., at 28 (suit against the Secretary of the Treasury and the Commissioner of Internal Revenue); *Warth* v. *Seldin,* 422 U. S. 490, 493 (1975) (suit against the town of Penfield and members of Penfield's Zoning, Planning, and Town Boards); *Linda R. S.,* 410 U. S., at 615–616, 619 (suit against prosecutor); see also *Renne* v. *Geary,* 501 U. S. 312, 314 (1991) (suit against the City and County of San Francisco, its board of supervisors, and other local officials).[19] None of these cases involved an attempt by one private party to impose a statutory sanction on another private party.[20]

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[18] In an attempt to demonstrate that redressability has always been a component of the standing doctrine, the Court cites our decision in *Marye* v. *Parsons,* 114 U. S. 325 (1884), a case in which neither the word "standing" nor the word "redressability" appears.

[19] Although the Court discussed redressability, *Renne* did not in fact turn on that issue. While the Court stated that "[t]here is reason to doubt . . . that the injury alleged . . . can be redressed" by the relief sought, *Renne,* 501 U. S., at 319, it then went on to hold that the claims were nonjusticable because "respondents have not demonstrated a live controversy ripe for resolution by the federal courts," *id.,* at 315, 320–324.

[20] This distinction is significant, as our standing doctrine is rooted in separation of powers concerns. *E.g., Lujan* v. *Defenders of Wildlife,* 504

In addition, in every other case in which this Court has held that there is no standing because of a lack of redressability, the injury to the plaintiff by the defendant was *indirect* (*e.g.*, dependent on the action of a third party). This is true in the two cases that the Court cites for the "redressability" prong, *ante*, at 18; see also *Simon*, 426 U. S., at 40–46 ("[T]he 'case or controversy' limitation of Art. III . . . requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, *and not injury that results from the independent action of some third party not before the court*" (emphasis added)); *Warth*, 422 U. S., at 504–508 (stating that "the indirectness of the injury . . . may make it substantially more difficult to meet the minimum requirement of Art. III," and holding that the injury at issue was too indirect to be redressable), as well as in every other case in which the Court denied standing because of a lack of redressability, *Leeke*, 454 U. S., at 86–87 (injury indirect because it turned on the action of a prosecutor, a party not before the Court); *Linda R. S.*, 410 U. S., at 617–618 (stating that "[t]he party who invokes [judicial] power must be able to show . . . that he has sustained or is immediately in danger of sustaining some *direct* injury" (emphasis in original) (internal quotation marks omitted); injury indirect because it turned on the action of the father, a party not before the Court); see also 3 K. Davis & R. Pierce, Administrative Law Treatise 30 (3d ed. 1994).[21] Thus, as far as I am aware, the Court has never held— until today— that a plaintiff who is

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U. S. 555, 573–578 (1992); *Allen* v. *Wright*, 468 U. S. 737, 750 (1984); see also *infra*, at 18–20.

[21] "It is an established principle that to entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action he must show that he has sustained or is immediately in danger of sustaining a direct injury as the result of that action . . . ." *Ex parte Levitt*, 302 U. S. 633, 634 (1937).

directly injured[22] by a defendant lacks standing to sue because of a lack of redressability.[23]

The Court acknowledges that respondent would have had standing if Congress had authorized some payment to respondent. *Ante*, at 22 ("[T]he civil penalties authorized by the statute . . . might be viewed as a sort of compensation or redress to respondent if they were payable to respondent"). Yet the Court fails to specify why payment to respondent— even if only a peppercorn— would redress respondent's injuries, while payment to the Treasury does not. Respondent clearly believes that the punishment of

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[22] Assuming that EPCRA authorizes suits for wholly past violations, then Congress has created a legal right in having EPCRA reports filed on time. Although this is not a traditional injury,

"[W]e must be sensitive to the articulation of new rights of action that do not have clear analogs in our common-law tradition. . . . Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before . . . ." *Lujan* v. *Defenders of Wildlife*, 504 U. S., at 580 (KENNEDY, J., concurring in part and concurring in judgment); see also *Havens Realty Corp.* v. *Coleman*, 455 U. S. 363, 373–374 (1982); *Warth* v. *Seldin*, 422 U. S. 312, 500 (1975).

[23] In another context, the Court has specified that there is a critical distinction between whether a defendant is directly or indirectly harmed. In *Lujan* v. *Defenders of Wildlife*, a case involving a challenge to Executive action, the Court stated:

"When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred (at the summary judgment stage) or proved (at the trial stage) in order to establish standing depends considerably upon whether the plaintiff is himself an object of the action (or forgone action) at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it. When, however, as in this case, a plaintiff's asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*, much more is needed. In that circumstance, causation and redressability ordinarily hinge on the response of the regulated (or regulable) third party to the government action or inaction— and perhaps on the response of others as well." 504 U. S., at 561–562 (emphasis in original).

the Steel Company, along with future deterrence of the Steel Company and others, redresses its injury, and there is no basis in our previous standing holdings to suggest otherwise.

When one private party is injured by another, the injury can be redressed in at least two ways: by awarding compensatory damages or by imposing a sanction on the wrongdoer that will minimize the risk that the harm-causing conduct will be repeated. Thus, in some cases a tort is redressed by an award of punitive damages; even when such damages are payable to the sovereign, they provide a form of redress for the individual as well.

History supports the proposition that punishment or deterrence can redress an injury. In past centuries in England,[24] in the American colonies, and in the United States,[25] private persons regularly prosecuted criminal

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[24] "Several scholars have attempted to trace the historical origins of private prosecution in the United States. Without exception, these scholars have determined that the notion of private prosecutions originated in early common law England, where the legal system primarily relied upon the victim or the victim's relatives or friends to bring a criminal to justice. According to these historians, private prosecutions developed in England as a means of facilitating private vengeance." Bessler, The Public Interest and the Unconstitutionality of Private Prosecutors, 47 Ark. L. Rev. 511, 515 (1994) (footnotes omitted).

[25] "American citizens continued to privately prosecute criminal cases in many locales during the nineteenth century. In Philadelphia, for example, all types of cases were privately prosecuted, with assault and battery prosecutions being the most common. However, domestic disputes short of assault also came before the court. Thus, 'parents of young women prosecuted men for seduction; husbands prosecuted their wives' paramours for adultery; wives prosecuted their husbands for desertion.' Although many state courts continued to sanction the practice of private prosecutions without significant scrutiny during the nineteenth century, a few state courts outlawed the practice." *Id.*, at 581 (footnotes omitted); A. Steinberg, The Transformation of Criminal Justice: Philadelphia, 1800–1880, p. 5 (1989) ("'Private prosecution and the minor judiciary were firmly rooted in Philadelphia's colonial past.

cases. The interest in punishing the defendant and deterring violations of law by the defendant and others was sufficient to support the "standing" of the private prosecutor even if the only remedy was the sentencing of the defendant to jail or to the gallows. Given this history, the Framers of Article III surely would have considered such proceedings to be "Cases" that would "redress" an injury even though the party bringing suit did not receive any monetary compensation.[26]

The Court's expanded interpretation of the redressability requirement has another consequence. Under EPCRA, Congress gave enforcement power to state and local governments. 42 U. S. C. §11046(a)(2). Under the Court's reasoning, however, state and local governments would not have standing to sue for past violations, as a payment to the Treasury would no more "redress" the injury of these governments than it would redress respondent's injury. This would be true *even if Congress explicitly granted state and local governments this power*. Such a conclusion is unprecedented.

It could be argued that the Court's decision is rooted in another separation of powers concern: that this citizen suit somehow interferes with the Executive's power to "take Care that the Laws be faithfully executed," Art. II, §3. It is hard to see, however, how EPCRA's citizen-suit provision impinges on the power of the Executive. As an initial matter, this is not a case in which respondent merely possesses the "undifferentiated public interest" in seeing

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Both were examples of the creative American adaptation of the English common law. By the seventeenth century, private prosecution was a fundamental part of English common law"); see also F. Goodnow, Principles of the Administrative Law of the United States 412–413 (1905).

[26] When such a party obtains a judgment that imposes sanctions on the wrongdoer, it is proper to presume that the wrongdoer will be less likely to repeat the injurious conduct that prompted the litigation. The lessening of the risk of future harm is a concrete benefit.

EPCRA enforced. *Ante*, at 22; see also *Lujan* v. *Defenders of Wildlife*, 504 U. S., at 577. Here, respondent— whose members live near the Steel Company— has alleged a sufficiently particularized injury under our precedents. App. 5 (complaint alleges that respondent's members "reside, own property, engage in recreational activities, breathe the air, and/or use areas near [the Steel Company's] facility").

Moreover, under the Court's own reasoning, respondent would have had standing if Congress had authorized some payment to respondent. *Ante*, at 22 ("[T]he civil penalties authorized by the statute . . . might be viewed as a sort of compensation or redress to respondent if they were payable to respondent"). This conclusion is unexceptional given that respondent has a more particularized interest than a plaintiff in a *qui tam* suit, an action that is deeply rooted in our history. *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537, 541, n. 4 (1943) ("'Statutes providing for actions by a common informer, who himself has no interest whatever in the controversy other than that given by statute, have been in existence for hundreds of years in England, and in this country ever since the foundation of our Government'" (quoting *Marvin* v. *Trout*, 199 U. S. 212, 225 (1905)); *Adams* v. *Woods*, 2 Cranch 336, 341 (1805) (Marshall, C. J.) ("Almost every fine or forfeiture under a penal statute, may be recovered by an action of debt [*qui tam*] as well as by information [by a public prosecutor]"); 3 W. Blackstone, Commentaries 160 (1768); Comment, 99 Yale L. J. 341, 342, and n. 3 (describing *qui tam* actions authorized by First Congress); see also *Lujan* v. *Defenders of Wildlife*, 504 U. S., at 572–573.

Yet it is unclear why the separation of powers question should turn on whether the plaintiff receives monetary compensation. In either instance, a private citizen is enforcing the law. If separation of powers does not preclude standing when Congress creates a legal right that au-

thorizes compensation to the plaintiff, it is unclear why separation of powers should dictate a contrary result when Congress has created a legal right but has directed that payment be made to the federal Treasury.

Indeed, in this case (assuming for present purposes that respondent correctly reads the statute) not only has Congress authorized standing, but the Executive Branch has also endorsed its interpretation of Article III. Brief for United States as *Amicus Curiae* Supporting Respondent 7–30. It is this Court's decision, not anything that Congress or the Executive has done, that encroaches on the domain of other branches of the Federal Government.[27]

It is thus quite clear that the Court's holding today represents a significant new development in our constitutional jurisprudence. Moreover, it is equally clear that the Court has the power to answer the statutory question first. It is, therefore, not necessary to reject the Court's resolution of the standing issue in order to conclude that it would be prudent to answer the question of statutory construction before announcing new constitutional doctrine.

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[27] Ironically, although the Court insists that the standing question must be answered first, it relies on the merits when it answers the standing question. Proof that the Steel Company repeatedly violated the law by failing to file EPCRA reports for eight years should suffice to establish the district court's power to impose sanctions, or at least to decide what sanction, if any, is appropriate. Evidence that the Steel Company was ignorant of the law and has taken steps to avoid future violations is highly relevant to the merits of the question whether any remedy is necessary, but surely does not deprive the district court of the power to decide the remedy issue. Cf. *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 633 (1953) ("Here the defendants told the court that the interlocks no longer existed and disclaimed any intention to revive them. Such a profession does not suffice to make a case moot although it is one of the factors to be considered in determining the appropriateness of granting an injunction against the now-discontinued acts").

III

EPCRA's citizen-suit provision states, in relevant part:

> "[A]ny person may commence a civil action on his own behalf against . . . [a]n owner or operator of a facility for failure to do any of the following: . . . Complete and submit an inventory form under section 11022(a) of this title . . . [or] [c]omplete and submit a toxic chemical release form under section 11023(a) of this title." 42 U. S. C. §§11046(a)(1)(A)(iii)–(iv).

Unfortunately, this language is ambiguous. It could mean, as the Sixth Circuit has held, that a citizen only has the right to sue for a "failure . . . to complete and submit" the required forms. Under this reading, once the owner or operator has filed the forms, the district court no longer has jurisdiction. *Atlantic States Legal Foundation* v. *United Musical*, 61 F. 3d 473, 475 (1995). Alternatively, it could be, as the Seventh Circuit held, that the phrases "under section 11022(a)" and "under section 11023(a)" incorporate the requirements of those sections, including the requirement that the reports be filed by particular dates. *Citizens for a Better Environment* v. *Steel Co.*, 90 F. 3d 1237, 1243 (1996).

Although the language of the citizen-suit provision is ambiguous, other sections of EPCRA indicate that Congress did not intend to confer jurisdiction over citizen suits for wholly past violations. First, EPCRA requires the private litigant to give the alleged violator notice at least 60 days before bringing suit. 42 U. S. C. §11046(d)(1).[28] In

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[28] "No action may be commenced under subsection (a)(1)(A) of this section prior to 60 days after the plaintiff has given notice of the alleged violation to the Administrator, the State in which the alleged violation occurs, and the alleged violator. Notice under this paragraph shall be given in such manner as the Administrator shall prescribe by regulation."

Gwaltney, we considered the import of a substantially identical notice requirement, and concluded that it indicated a congressional intent to allow suit only for on-going and future violations:

> "[T]he purpose of notice to the alleged violator is to give it an opportunity to bring itself into complete compliance with the Act and thus likewise render unnecessary a citizen suit. If we assume, as respondents urge, that citizen suits may target wholly past violations, the requirement of notice to the alleged violator becomes gratuitous. Indeed, respondents, in propounding their interpretation of the Act, can think of no reason for Congress to require such notice other than that 'it seemed right' to inform an alleged violator that it was about to be sued. Brief for Respondents 14." 484 U. S., at 60.

Second, EPCRA places a ban on citizen suits once EPA has commenced an enforcement action. 42 U. S C. §11046(e).[29] In *Gwaltney*, we considered a similar provision and concluded that it indicated a congressional intent to prohibit citizen suits for wholly past violations:

> "The bar on citizen suits when governmental enforcement action is under way suggests that the citizen suit is meant to supplement rather than supplant governmental action. . . . Permitting citizen suits for wholly past violations of the Act could undermine the supplementary role envisioned for the citizen suit. This danger is best illustrated by an example. Suppose that the Administrator identified a violator of the

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[29] "No action may be commenced under subsection (a) of this section against an owner or operator of a facility 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 under this Act with respect to the violation of the requirement."

> Act and issued a compliance order . . . . Suppose further that the Administrator agreed not to assess or otherwise seek civil penalties on the condition that the violator take some extreme corrective action, such as to install particularly effective but expensive machinery, that it otherwise would not be obliged to take. If citizens could file suit, months or years later, in order to seek the civil penalties that the Administrator chose to forgo, then the Administrator's discretion to enforce the Act in the public interest would be curtailed considerably. The same might be said of the discretion of state enforcement authorities. Respondents' interpretation of the scope of the citizen suit would change the nature of the citizens' role from interstitial to potentially intrusive." *Id.*, at 60–61.

Finally, even if these two provisions did not resolve the issue, our settled policy of adopting acceptable constructions of statutory provisions in order to avoid the unnecessary adjudication of constitutional questions– here, the unresolved standing question– strongly supports a construction of the statute that does not authorize suits for wholly past violations. As we stated in *Edward J. DeBartolo Corp.* v. *Florida Gulf Coast Building & Constr. Trades Council,* 485 U. S. 568, 575 (1988): "This cardinal principle has its roots in Chief Justice Marshall's opinion for the Court in *Murray* v. *The Charming Betsy,* 2 Cranch 64, 118 (1804), and has for so long been applied by this Court that it is beyond debate." See also *NLRB* v. *Catholic Bishop of Chicago,* 440 U. S. 490, 500–501 (1979); *Machinists* v. *Street,* 367 U. S. 740, 749–750 (1961); *Crowell* v. *Benson,* 285 U. S. 22, 62 (1932); *Lucas* v. *Alexander,* 279 U. S. 573, 577 (1929); *Panama R. Co.* v. *Johnson,* 264 U. S. 375, 390 (1924); *United States ex rel. Attorney General* v. *Delaware & Hudson Co.,* 213 U. S. 366, 407–408 (1909); *Parsons* v. *Bedford,* 3 Pet. 433, 448–449 (1830) (Story, J.).

IV

For these reasons, I concur in the Court's judgment, but do not join its opinion.