SUPREME COURT OF THE UNITED STATES

No. 98–822

FRIENDS OF THE EARTH, INCORPORATED, ET AL., PETITIONERS *v.* LAIDLAW ENVIRONMENTAL SERVICES (TOC), INC.

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

[January 12, 2000]

JUSTICE GINSBURG delivered the opinion of the Court.

This case presents an important question concerning the operation of the citizen-suit provisions of the Clean Water Act. Congress authorized the federal district courts to entertain Clean Water Act suits initiated by "a person or persons having an interest which is or may be adversely affected." 33 U. S. C. §§1365(a), (g). To impel future compliance with the Act, a district court may prescribe injunctive relief in such a suit; additionally or alternatively, the court may impose civil penalties payable to the United States Treasury. §1365(a). In the Clean Water Act citizen suit now before us, the District Court determined that injunctive relief was inappropriate because the defendant, after the institution of the litigation, achieved substantial compliance with the terms of its discharge permit. 956 F. Supp. 588, 611 (SC 1997). The court did, however, assess a civil penalty of $405,800. *Id.*, at 610. The "total deterrent effect" of the penalty would be adequate to forestall future violations, the court reasoned, taking into account that the defendant "will be required to reimburse plaintiffs for a significant amount of legal fees and has,

itself, incurred significant legal expenses." *Id.*, at 610–611.

The Court of Appeals vacated the District Court's order. 149 F. 3d 303 (CA4 1998). The case became moot, the appellate court declared, once the defendant fully complied with the terms of its permit and the plaintiff failed to appeal the denial of equitable relief. "[C]ivil penalties payable to the government," the Court of Appeals stated, "would not redress any injury Plaintiffs have suffered." *Id.*, at 307. Nor were attorneys' fees in order, the Court of Appeals noted, because absent relief on the merits, plaintiffs could not qualify as prevailing parties. *Id.*, at 307, n. 5.

We reverse the judgment of the Court of Appeals. The appellate court erred in concluding that a citizen suitor's claim for civil penalties must be dismissed as moot when the defendant, albeit after commencement of the litigation, has come into compliance. In directing dismissal of the suit on grounds of mootness, the Court of Appeals incorrectly conflated our case law on initial standing to bring suit, see, *e.g.*, *Steel Co.* v. *Citizens for Better Environment,* 523 U. S. 83 (1998), with our case law on post-commencement mootness, see, *e.g.*, *City of Mesquite* v. *Aladdin's Castle, Inc.*, 455 U. S. 283 (1982). A defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case. The Court of Appeals also misperceived the remedial potential of civil penalties. Such penalties may serve, as an alternative to an injunction, to deter future violations and thereby redress the injuries that prompted a citizen suitor to commence litigation.

I

A

In 1972, Congress enacted the Clean Water Act (Act), also known as the Federal Water Pollution Control Act, 86

Stat. 816, as amended, 33 U. S. C. §1251 *et seq.* Section 402 of the Act, 33 U. S. C. §1342, provides for the issuance, by the Administrator of the Environmental Protection Agency (EPA) or by authorized States, of National Pollutant Discharge Elimination System (NPDES) permits. NPDES permits impose limitations on the discharge of pollutants, and establish related monitoring and reporting requirements, in order to improve the cleanliness and safety of the Nation's waters. Noncompliance with a permit constitutes a violation of the Act. §1342(h).

Under §505(a) of the Act, a suit to enforce any limitation in an NPDES permit may be brought by any "citizen," defined as "a person or persons having an interest which is or may be adversely affected." 33 U. S. C. §§1365(a), (g). Sixty days before initiating a citizen suit, however, the would-be plaintiff must give notice of the alleged violation to the EPA, the State in which the alleged violation occurred, and the alleged violator. §1365(b)(1)(A). "[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 . . . render unnecessary a citizen suit." *Gwaltney of Smithfield, Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U. S. 49, 60 (1987). Accordingly, we have held that citizens lack statutory standing under §505(a) to sue for violations that have ceased by the time the complaint is filed. *Id.*, at 56–63. The Act also bars a citizen from suing if the EPA or the State has already commenced, and is "diligently prosecuting," an enforcement action. 33 U. S. C. §1365(b)(1)(B).

The Act authorizes district courts in citizen-suit proceedings to enter injunctions and to assess civil penalties, which are payable to the United States Treasury. §1365(a). In determining the amount of any civil penalty, the district court must take into account "the seriousness of the violation or violations, the economic benefit (if any) resulting from the violation, any history of such violations,

any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require." §1319(d). In addition, the court "may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such award is appropriate." §1365(d).

B

In 1986, defendant-respondent Laidlaw Environmental Services (TOC), Inc., bought a hazardous waste incinerator facility in Roebuck, South Carolina, that included a wastewater treatment plant. (The company has since changed its name to Safety-Kleen (Roebuck), Inc., but for simplicity we will refer to it as "Laidlaw" throughout.) Shortly after Laidlaw acquired the facility, the South Carolina Department of Health and Environmental Control (DHEC), acting under 33 U. S. C. §1342(a)(1), granted Laidlaw an NPDES permit authorizing the company to discharge treated water into the North Tyger River. The permit, which became effective on January 1, 1987, placed limits on Laidlaw's discharge of several pollutants into the river, including– of particular relevance to this case– mercury, an extremely toxic pollutant. The permit also regulated the flow, temperature, toxicity, and pH of the effluent from the facility, and imposed monitoring and reporting obligations.

Once it received its permit, Laidlaw began to discharge various pollutants into the waterway; repeatedly, Laidlaw's discharges exceeded the limits set by the permit. In particular, despite experimenting with several technological fixes, Laidlaw consistently failed to meet the permit's stringent 1.3 ppb (parts per billion) daily average limit on mercury discharges. The District Court later found that

Laidlaw had violated the mercury limits on 489 occasions between 1987 and 1995. 956 F. Supp., at 613–621.

On April 10, 1992, plaintiff-petitioners Friends of the Earth (FOE) and Citizens Local Environmental Action Network, Inc. (CLEAN) (referred to collectively in this opinion, together with later joined plaintiff-petitioner Sierra Club, as "FOE") took the preliminary step necessary to the institution of litigation. They sent a letter to Laidlaw notifying the company of their intention to file a citizen suit against it under §505(a) of the Act after the expiration of the requisite 60-day notice period, *i.e.*, on or after June 10, 1992. Laidlaw's lawyer then contacted DHEC to ask whether DHEC would consider filing a lawsuit against Laidlaw. The District Court later found that Laidlaw's reason for requesting that DHEC file a lawsuit against it was to bar FOE's proposed citizen suit through the operation of 33 U. S. C. §1365(b)(1)(B). 890 F. Supp. 470, 478 (SC 1995). DHEC agreed to file a lawsuit against Laidlaw; the company's lawyer then drafted the complaint for DHEC and paid the filing fee. On June 9, 1992, the last day before FOE's 60-day notice period expired, DHEC and Laidlaw reached a settlement requiring Laidlaw to pay $100,000 in civil penalties and to make "'every effort'" to comply with its permit obligations. 890 F. Supp., at 479–481.

On June 12, 1992, FOE filed this citizen suit against Laidlaw under §505(a) of the Act, alleging noncompliance with the NPDES permit and seeking declaratory and injunctive relief and an award of civil penalties. Laidlaw moved for summary judgment on the ground that FOE had failed to present evidence demonstrating injury in fact, and therefore lacked Article III standing to bring the lawsuit. Record, Doc. No. 43. In opposition to this motion, FOE submitted affidavits and deposition testimony from members of the plaintiff organizations. Record, Doc. No. 71 (Exhs. 41–51). The record before the District Court

also included affidavits from the organizations' members submitted by FOE in support of an earlier motion for preliminary injunctive relief. Record, Doc. No. 21 (Exhs. 5–10). After examining this evidence, the District Court denied Laidlaw's summary judgment motion, finding– albeit "by the very slimmest of margins"– that FOE had standing to bring the suit. App. in No. 97–1246 (CA4), pp. 207–208 (Tr. of Hearing 39–40 (June 30, 1993)).

Laidlaw also moved to dismiss the action on the ground that the citizen suit was barred under 33 U. S. C. §1365(b)(1)(B) by DHEC's prior action against the company. The United States, appearing as *amicus curiae*, joined FOE in opposing the motion. After an extensive analysis of the Laidlaw-DHEC settlement and the circumstances under which it was reached, the District Court held that DHEC's action against Laidlaw had not been "diligently prosecuted"; consequently, the court allowed FOE's citizen suit to proceed. 890 F. Supp., at 499.[1] The record indicates that after FOE initiated the suit, but before the District Court rendered judgment, Laidlaw violated the mercury discharge limitation in its permit 13 times. 956 F. Supp., at 621. The District Court also found that Laidlaw had committed 13 monitoring and 10 reporting violations during this period. *Id.*, at 601. The last recorded mercury discharge violation occurred in January 1995, long after the complaint was filed but about two years before judgment was rendered. *Id.*, at 621.

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[1]The District Court noted that "Laidlaw drafted the state-court complaint and settlement agreement, filed the lawsuit against itself, and paid the filing fee." 890 F. Supp., at 489. Further, "the settlement agreement between DHEC and Laidlaw was entered into with unusual haste, without giving the Plaintiffs the opportunity to intervene." *Ibid.* The court found "most persuasive" the fact that "in imposing the civil penalty of $100,000 against Laidlaw, DHEC failed to recover, or even to calculate, the economic benefit that Laidlaw received by not complying with its permit." *Id.*, at 491.

On January 22, 1997, the District Court issued its judgment. 956 F. Supp. 588 (SC 1997). It found that Laidlaw had gained a total economic benefit of $1,092,581 as a result of its extended period of noncompliance with the mercury discharge limit in its permit. *Id.*, at 603. The court concluded, however, that a civil penalty of $405,800 was adequate in light of the guiding factors listed in 33 U. S. C. §1319(d). 956 F. Supp., at 610. In particular, the District Court stated that the lesser penalty was appropriate taking into account the judgment's "total deterrent effect." In reaching this determination, the court "considered that Laidlaw will be required to reimburse plaintiffs for a significant amount of legal fees." *Id.*, at 610–611. The court declined to grant FOE's request for injunctive relief, stating that an injunction was inappropriate because "Laidlaw has been in substantial compliance with all parameters in its NPDES permit since at least August 1992." *Id.*, at 611.

FOE appealed the District Court's civil penalty judgment, arguing that the penalty was inadequate, but did not appeal the denial of declaratory or injunctive relief. Laidlaw cross-appealed, arguing, among other things, that FOE lacked standing to bring the suit and that DHEC's action qualified as a diligent prosecution precluding FOE's litigation. The United States continued to participate as *amicus curiae* in support of FOE.

On July 16, 1998, the Court of Appeals for the Fourth Circuit issued its judgment. 149 F. 3d 303. The Court of Appeals assumed without deciding that FOE initially had standing to bring the action, *id.*, at 306, n. 3, but went on to hold that the case had become moot. The appellate court stated, first, that the elements of Article III standing– injury, causation, and redressability– must persist at every stage of review, or else the action becomes moot. *Id.*, at 306. Citing our decision in *Steel Co.*, the Court of Appeals reasoned that the case had become moot because

"the only remedy currently available to [FOE]– civil penalties payable to the government– would not redress any injury [FOE has] suffered." *Id.*, at 306–307. The court therefore vacated the District Court's order and remanded with instructions to dismiss the action. In a footnote, the Court of Appeals added that FOE's "failure to obtain relief on the merits of [its] claims precludes any recovery of attorneys' fees or other litigation costs because such an award is available only to a 'prevailing or substantially prevailing party.'" *Id.*, at 307, n. 5 (quoting 33 U. S. C. §1365(d)).

According to Laidlaw, after the Court of Appeals issued its decision but before this Court granted certiorari, the entire incinerator facility in Roebuck was permanently closed, dismantled, and put up for sale, and all discharges from the facility permanently ceased. Respondent's Suggestion of Mootness 3.

We granted certiorari, 525 U. S. 1176 (1999), to resolve the inconsistency between the Fourth Circuit's decision in this case and the decisions of several other Courts of Appeals, which have held that a defendant's compliance with its permit after the commencement of litigation does not moot claims for civil penalties under the Act. See, *e.g.*, *Atlantic States Legal Foundation, Inc.* v. *Stroh Die Casting Co.*, 116 F. 3d 814, 820 (CA7), cert. denied, 522 U. S. 981 (1997); *Natural Resources Defense Council, Inc.* v. *Texaco Rfg. and Mktg., Inc.*, 2 F. 3d 493, 503–504 (CA3 1993); *Atlantic States Legal Foundation, Inc.* v. *Pan American Tanning Corp.*, 993 F. 2d 1017, 1020–1021 (CA2 1993); *Atlantic States Legal Foundation, Inc.* v. *Tyson Foods, Inc.*, 897 F. 2d 1128, 1135–1136 (CA11 1990).

II

A

The Constitution's case-or-controversy limitation on

federal judicial authority, Art. III, §2, underpins both our standing and our mootness jurisprudence, but the two inquiries differ in respects critical to the proper resolution of this case, so we address them separately. Because the Court of Appeals was persuaded that the case had become moot and so held, it simply assumed without deciding that FOE had initial standing. See *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 66–67 (1997) (court may assume without deciding that standing exists in order to analyze mootness). But because we hold that the Court of Appeals erred in declaring the case moot, we have an obligation to assure ourselves that FOE had Article III standing at the outset of the litigation. We therefore address the question of standing before turning to mootness.

In *Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560–561 (1992), we held that, to satisfy Article III's standing requirements, a plaintiff must show (1) it has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision. An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt* v. *Washington State Apple Advertising Comm'n*, 432 U. S. 333, 343 (1977).

Laidlaw contends first that FOE lacked standing from the outset even to seek injunctive relief, because the plaintiff organizations failed to show that any of their members had sustained or faced the threat of any "injury in fact" from Laidlaw's activities. In support of this contention

Laidlaw points to the District Court's finding, made in the course of setting the penalty amount, that there had been "no demonstrated proof of harm to the environment" from Laidlaw's mercury discharge violations. 956 F. Supp., at 602; see also *ibid*. ("[T]he NPDES permit violations at issue in this citizen suit did not result in any health risk or environmental harm."). The relevant showing for purposes of Article III standing, however, is not injury to the environment but injury to the plaintiff. To insist upon the former rather than the latter as part of the standing inquiry (as the dissent in essence does, *post*, at 2–3) is to raise the standing hurdle higher than the necessary showing for success on the merits in an action alleging noncompliance with an NPDES permit. Focusing properly on injury to the plaintiff, the District Court found that FOE had demonstrated sufficient injury to establish standing. App. in No. 97–1246 (CA4), pp. 207–208 (Tr. of Hearing 39–40 (June 30, 1993)). For example, FOE member Kenneth Lee Curtis averred in affidavits that he lived a half-mile from Laidlaw's facility; that he occasionally drove over the North Tyger River, and that it looked and smelled polluted; and that he would like to fish, camp, swim, and picnic in and near the river between 3 and 15 miles downstream from the facility, as he did when he was a teenager, but would not do so because he was concerned that the water was polluted by Laidlaw's discharges. Record, Doc. No. 71 (Exhs. 41, 42). Curtis reaffirmed these statements in extensive deposition testimony. For example, he testified that he would like to fish in the river at a specific spot he used as a boy, but that he would not do so now because of his concerns about Laidlaw's discharges. *Ibid*. (Exh. 43, at 52–53; Exh. 44, at 33).

Other members presented evidence to similar effect. CLEAN member Angela Patterson attested that she lived two miles from the facility; that before Laidlaw operated

the facility, she picnicked, walked, birdwatched, and waded in and along the North Tyger River because of the natural beauty of the area; that she no longer engaged in these activities in or near the river because she was concerned about harmful effects from discharged pollutants; and that she and her husband would like to purchase a home near the river but did not intend to do so, in part because of Laidlaw's discharges. Record, Doc. No. 21 (Exh. 10). CLEAN member Judy Pruitt averred that she lived one-quarter mile from Laidlaw's facility and would like to fish, hike, and picnic along the North Tyger River, but has refrained from those activities because of the discharges. *Ibid.* (Exh. 7). FOE member Linda Moore attested that she lived 20 miles from Roebuck, and would use the North Tyger River south of Roebuck and the land surrounding it for recreational purposes were she not concerned that the water contained harmful pollutants. Record, Doc. No. 71 (Exhs. 45, 46). In her deposition, Moore testified at length that she would hike, picnic, camp, swim, boat, and drive near or in the river were it not for her concerns about illegal discharges. *Ibid.* (Exh. 48, at 29, 36–37, 62–63, 72). CLEAN member Gail Lee attested that her home, which is near Laidlaw's facility, had a lower value than similar homes located further from the facility, and that she believed the pollutant discharges accounted for some of the discrepancy. Record, Doc. No. 21 (Exh. 9). Sierra Club member Norman Sharp averred that he had canoed approximately 40 miles downstream of the Laidlaw facility and would like to canoe in the North Tyger River closer to Laidlaw's discharge point, but did not do so because he was concerned that the water contained harmful pollutants. *Ibid.* (Exh. 8).

These sworn statements, as the District Court determined, adequately documented injury in fact. We have held that environmental plaintiffs adequately allege injury in fact when they aver that they use the affected area and

are persons "for whom the aesthetic and recreational values of the area will be lessened" by the challenged activity. *Sierra Club* v. *Morton*, 405 U. S. 727, 735 (1972). See also *Defenders of Wildlife*, 504 U. S., at 562–563 ("Of course, the desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purposes of standing.").

Our decision in *Lujan* v. *National Wildlife Federation*, 497 U. S. 871 (1990), is not to the contrary. In that case an environmental organization assailed the Bureau of Land Management's "land withdrawal review program," a program covering millions of acres, alleging that the program illegally opened up public lands to mining activities. The defendants moved for summary judgment, challenging the plaintiff organization's standing to initiate the action under the Administrative Procedure Act, 5 U. S. C. §702. We held that the plaintiff could not survive the summary judgment motion merely by offering "averments which state only that one of [the organization's] members uses unspecified portions of an immense tract of territory, on some portions of which mining activity has occurred or probably will occur by virtue of the governmental action." 497 U. S., at 889.

In contrast, the affidavits and testimony presented by FOE in this case assert that Laidlaw's discharges, and the affiant members' reasonable concerns about the effects of those discharges, directly affected those affiants' recreational, aesthetic, and economic interests. These submissions present dispositively more than the mere "general averments" and "conclusory allegations" found inadequate in *National Wildlife Federation*. *Id.*, at 888. Nor can the affiants' conditional statements– that they would use the nearby North Tyger River for recreation if Laidlaw were not discharging pollutants into it– be equated with the speculative "'some day' intentions" to visit endangered species halfway around the world that we held insufficient

to show injury in fact in *Defenders of Wildlife*. 504 U. S., at 564.

Los Angeles v. *Lyons*, 461 U. S. 95 (1983), relied on by the dissent, *post*, at 3, does not weigh against standing in this case. In *Lyons*, we held that a plaintiff lacked standing to seek an injunction against the enforcement of a police chokehold policy because he could not credibly allege that he faced a realistic threat from the policy. 461 U. S., at 107, n. 7. In the footnote from *Lyons* cited by the dissent, we noted that "[t]he reasonableness of Lyons' fear is dependent upon the likelihood of a recurrence of the allegedly unlawful conduct," and that his "subjective apprehensions" that such a recurrence would even *take place* were not enough to support standing. *Id*., at 108, n. 8. Here, in contrast, it is undisputed that Laidlaw's unlawful conduct– discharging pollutants in excess of permit limits– was occurring at the time the complaint was filed. Under *Lyons*, then, the only "subjective" issue here is "[t]he reasonableness of [the] fear" that led the affiants to respond to that concededly ongoing conduct by refraining from use of the North Tyger River and surrounding areas. Unlike the dissent, *post*, at 3, we see nothing "improbable" about the proposition that a company's continuous and pervasive illegal discharges of pollutants into a river would cause nearby residents to curtail their recreational use of that waterway and would subject them to other economic and aesthetic harms. The proposition is entirely reasonable, the District Court found it was true in this case, and that is enough for injury in fact.

Laidlaw argues next that even if FOE had standing to seek injunctive relief, it lacked standing to seek civil penalties. Here the asserted defect is not injury but redressability. Civil penalties offer no redress to private plaintiffs, Laidlaw argues, because they are paid to the government, and therefore a citizen plaintiff can never have standing to seek them.

Laidlaw is right to insist that a plaintiff must demonstrate standing separately for each form of relief sought. See, *e.g., Lyons*, 461 U. S., at 109 (notwithstanding the fact that plaintiff had standing to pursue damages, he lacked standing to pursue injunctive relief); see also *Lewis* v. *Casey*, 518 U. S. 343, 358, n. 6 (1996) ("[S]tanding is not dispensed in gross."). But it is wrong to maintain that citizen plaintiffs facing ongoing violations never have standing to seek civil penalties.

We have recognized on numerous occasions that "all civil penalties have some deterrent effect." *Hudson* v. *United States*, 522 U. S. 93, 102 (1997); see also, *e.g.*, *Department of Revenue of Mont.* v. *Kurth Ranch*, 511 U. S. 767, 778 (1994). More specifically, Congress has found that civil penalties in Clean Water Act cases do more than promote immediate compliance by limiting the defendant's economic incentive to delay its attainment of permit limits; they also deter future violations. This congressional determination warrants judicial attention and respect. "The legislative history of the Act reveals that Congress wanted the district court to consider the need for retribution and deterrence, in addition to restitution, when it imposed civil penalties. . . . [The district court may] seek to deter future violations by basing the penalty on its economic impact." *Tull* v. *United States*, 481 U. S. 412, 422–423 (1987).

It can scarcely be doubted that, for a plaintiff who is injured or faces the threat of future injury due to illegal conduct ongoing at the time of suit, a sanction that effectively abates that conduct and prevents its recurrence provides a form of redress. Civil penalties can fit that description. To the extent that they encourage defendants to discontinue current violations and deter them from committing future ones, they afford redress to citizen plaintiffs who are injured or threatened with injury as a consequence of ongoing unlawful conduct.

The dissent argues that it is the *availability* rather than the *imposition* of civil penalties that deters any particular polluter from continuing to pollute. *Post*, at 11–12. This argument misses the mark in two ways. First, it overlooks the interdependence of the availability and the imposition; a threat has no deterrent value unless it is credible that it will be carried out. Second, it is reasonable for Congress to conclude that an actual award of civil penalties does in fact bring with it a significant quantum of deterrence over and above what is achieved by the mere prospect of such penalties. A would-be polluter may or may not be dissuaded by the existence of a remedy on the books, but a defendant once hit in its pocketbook will surely think twice before polluting again.[2]

We recognize that there may be a point at which the deterrent effect of a claim for civil penalties becomes so insubstantial or so remote that it cannot support citizen standing. The fact that this vanishing point is not easy to ascertain does not detract from the deterrent power of such penalties in the ordinary case. Justice Frankfurter's observations for the Court, made in a different context nearly 60 years ago, hold true here as well:

> "How to effectuate policy– the adaptation of means to legitimately sought ends– is one of the most intractable of legislative problems. Whether proscribed

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[2]The dissent suggests that there was little deterrent work for civil penalties to do in this case because the lawsuit brought against Laidlaw by DHEC had already pushed the level of deterrence to "near the top of the graph." *Post*, at 11. This suggestion ignores the District Court's specific finding that the penalty agreed to by Laidlaw and DHEC was far too low to remove Laidlaw's economic benefit from noncompliance, and thus was inadequate to deter future violations. 890 F. Supp. 470, 491–494, 497–498 (SC 1995). And it begins to look especially farfetched when one recalls that Laidlaw itself prompted the DHEC lawsuit, paid the filing fee, and drafted the complaint. See *supra*, at 5, 6, n. 1.

> conduct is to be deterred by *qui tam* action or triple damages or injunction, or by criminal prosecution, or merely by defense to actions in contract, or by some, or all, of these remedies in combination, is a matter within the legislature's range of choice. Judgment on the deterrent effect of the various weapons in the armory of the law can lay little claim to scientific basis." *Tigner* v. *Texas*, 310 U. S. 141, 148 (1940).[3]

In this case we need not explore the outer limits of the principle that civil penalties provide sufficient deterrence to support redressability. Here, the civil penalties sought by FOE carried with them a deterrent effect that made it likely, as opposed to merely speculative, that the penalties would redress FOE's injuries by abating current violations and preventing future ones– as the District Court reasonably found when it assessed a penalty of $405,800. 956 F. Supp., at 610–611.

Laidlaw contends that the reasoning of our decision in *Steel Co.* directs the conclusion that citizen plaintiffs have no standing to seek civil penalties under the Act. We disagree. *Steel Co.* established that citizen suitors lack standing to seek civil penalties for violations that have abated by the time of suit. 523 U. S., at 106–107. We specifically noted in that case that there was no allegation in the complaint of any continuing or imminent violation, and that no basis for such an allegation appeared to exist. *Id.*, at 108; see also *Gwaltney*, 484 U. S., at 59 ("the harm sought to be addressed by the citizen suit lies in the present or the future, not in the past"). In short, *Steel Co.* held that private plaintiffs, unlike the Federal Government, may not sue to assess penalties for wholly past violations,

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[3] In *Tigner* the Court rejected an equal protection challenge to a statutory provision exempting agricultural producers from the reach of the Texas antitrust laws.

but our decision in that case did not reach the issue of standing to seek penalties for violations that are ongoing at the time of the complaint and that could continue into the future if undeterred.[4]

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[4] In insisting that the redressability requirement is not met, the dissent relies heavily on *Linda R. S.* v. *Richard D.*, 410 U. S. 614 (1973). That reliance is sorely misplaced. In *Linda R. S.*, the mother of an out-of-wedlock child filed suit to force a district attorney to bring a criminal prosecution against the absentee father for failure to pay child support. *Id.*, at 616. In finding that the mother lacked standing to seek this extraordinary remedy, the Court drew attention to "the special status of criminal prosecutions in our system," *id.*, at 619, and carefully limited its holding to the "unique context of a challenge to [the non-enforcement of] a criminal statute," *id.*, at 617. Furthermore, as to redressability, the relief sought in *Linda R. S.*– a prosecution which, if successful, would automatically land the delinquent father in jail for a fixed term, *id.*, at 618, with predictably negative effects on his earning power– would scarcely remedy the plaintiff's lack of child support payments. In this regard, the Court contrasted "the civil contempt model whereby the defendant 'keeps the keys to the jail in his own pocket' and may be released whenever he complies with his legal obligations." *Ibid.* The dissent's contention, *post* at 7, that "precisely the same situation exists here" as in *Linda R. S.* is, to say the least, extravagant.

Putting aside its mistaken reliance on *Linda R. S.*, the dissent's broader charge that citizen suits for civil penalties under the Act carry "grave implications for democratic governance," *post*, at 6, seems to us overdrawn. Certainly the federal Executive Branch does not share the dissent's view that such suits dissipate its authority to enforce the law. In fact, the Department of Justice has endorsed this citizen suit from the outset, submitting *amicus* briefs in support of FOE in the District Court, the Court of Appeals, and this Court. See *supra*, at 6, 7. As we have already noted, *supra*, at 3, the Federal Government retains the power to foreclose a citizen suit by undertaking its own action. 33 U. S. C. §1365(b)(1)(B). And if the Executive Branch opposes a particular citizen suit, the statute allows the Administrator of the EPA to "intervene as a matter of right" and bring the Government's views to the attention of the court. §1365(c)(2).

B

Satisfied that FOE had standing under Article III to bring this action, we turn to the question of mootness.

The only conceivable basis for a finding of mootness in this case is Laidlaw's voluntary conduct— either its achievement by August 1992 of substantial compliance with its NPDES permit or its more recent shutdown of the Roebuck facility. It is well settled that "a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice." *City of Mesquite*, 455 U. S., at 289. "'[I]f it did, the courts would be compelled to leave [t]he defendant . . . free to return to his old ways.'" *Id.*, at 289, n. 10 (citing *United States* v. *W. T. Grant Co.*, 345 U. S. 629, 632 (1953)). In accordance with this principle, the standard we have announced for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: "A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *United States* v. *Concentrated Phosphate Export Assn., Inc.*, 393 U. S. 199, 203 (1968). The "heavy burden of persua[ding]" the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness. *Ibid.*

The Court of Appeals justified its mootness disposition by reference to *Steel Co.*, which held that citizen plaintiffs lack standing to seek civil penalties for wholly past violations. In relying on *Steel Co.*, the Court of Appeals confused mootness with standing. The confusion is understandable, given this Court's repeated statements that the doctrine of mootness can be described as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Arizonans for Official English*, 520

U. S., at 68, n. 22 (quoting *United States Parole Comm'n* v. *Geraghty*, 445 U. S. 388, 397 (1980), in turn quoting Monaghan, Constitutional Adjudication: The Who and When, 82 Yale L. J. 1363, 1384 (1973)) (internal quotation marks omitted).

Careful reflection on the long-recognized exceptions to mootness, however, reveals that the description of mootness as "'standing set in a time frame'" is not comprehensive. As just noted, a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur. *Concentrated Phosphate Export Assn.*, 393 U. S., at 203. By contrast, in a lawsuit brought to force compliance, it is the plaintiff's burden to establish standing by demonstrating that, if unchecked by the litigation, the defendant's allegedly wrongful behavior will likely occur or continue, and that the "threatened injury [is] certainly impending." *Whitmore* v. *Arkansas*, 495 U. S. 149, 158 (1990) (citations and internal quotation marks omitted). Thus, in *Lyons*, as already noted, we held that a plaintiff lacked initial standing to seek an injunction against the enforcement of a police chokehold policy because he could not credibly allege that he faced a realistic threat arising from the policy. 461 U. S., at 105–110. Elsewhere in the opinion, however, we noted that a citywide moratorium on police chokeholds– an action that surely diminished the already slim likelihood that any particular individual would be choked by police– would not have mooted an otherwise valid claim for injunctive relief, because the moratorium by its terms was not permanent. *Id.*, at 101. The plain lesson of these cases is that there are circumstances in which the prospect that a defendant will engage in (or resume) harmful conduct may be too speculative to support standing, but not too speculative to overcome mootness.

Furthermore, if mootness were simply "standing set in a time frame," the exception to mootness that arises when the defendant's allegedly unlawful activity is "capable of repetition, yet evading review" could not exist. When, for example, a mentally disabled patient files a lawsuit challenging her confinement in a segregated institution, her postcomplaint transfer to a community-based program will not moot the action, *Olmstead* v. *L. C.*, 527 U. S. ___, ___, n. 6 (1999) (slip. op., at 8, n. 6), despite the fact that she would have lacked initial standing had she filed the complaint after the transfer. Standing admits of no similar exception; if a plaintiff lacks standing at the time the action commences, the fact that the dispute is capable of repetition yet evading review will not entitle the complainant to a federal judicial forum. See *Steel Co.*, 523 U. S., at 109 ("'the mootness exception for disputes capable of repetition yet evading review . . . will not revive a dispute which became moot before the action commenced'") (quoting *Renne* v. *Geary*, 501 U. S. 312, 320 (1991)).

We acknowledged the distinction between mootness and standing most recently in *Steel Co.*:

> "The United States . . . argues that the injunctive relief does constitute remediation because 'there is a presumption of [future] injury when the defendant has voluntarily ceased its illegal activity in response to litigation,' even if that occurs before a complaint is filed. . . . This makes a sword out of a shield. The 'presumption' the Government refers to has been applied to refute the assertion of mootness by a defendant who, when sued in a complaint that alleges present or threatened injury, ceases the complained-of activity. . . . It is an immense and unacceptable stretch to call the presumption into service as a substitute for the allegation of present or threatened in-

jury upon which initial standing must be based." 523 U. S., at 109.

Standing doctrine functions to ensure, among other things, that the scarce resources of the federal courts are devoted to those disputes in which the parties have a concrete stake. In contrast, by the time mootness is an issue, the case has been brought and litigated, often (as here) for years. To abandon the case at an advanced stage may prove more wasteful than frugal. This argument from sunk costs[5] does not license courts to retain jurisdiction over cases in which one or both of the parties plainly lacks a continuing interest, as when the parties have settled or a plaintiff pursuing a nonsurviving claim has died. See, *e.g.*, *DeFunis* v. *Odegaard*, 416 U. S. 312 (1974) *(per curiam)* (non-class-action challenge to constitutionality of law school admissions process mooted when plaintiff, admitted pursuant to preliminary injunction, neared graduation and defendant law school conceded that, as a matter of ordinary school policy, plaintiff would be allowed to finish his final term); *Arizonans*, 520 U. S., at 67 (non-class-action challenge to state constitutional amendment declaring English the official language of the State became moot when plaintiff, a state employee who sought to use her bilingual skills, left state employment). But the argument surely highlights an important difference between the two doctrines. See generally *Honig* v. *Doe*, 484 U. S. 305, 329–332 (1988) (REHNQUIST, C. J., concurring).

In its brief, Laidlaw appears to argue that, regardless of the effect of Laidlaw's compliance, FOE doomed its own

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[5] Of course we mean sunk costs to the judicial system, not to the litigants. *Lewis* v. *Continental Bank Corp.*, 494 U. S. 472 (1990) (cited by the dissent, *post*, at 17) dealt with the latter, noting that courts should use caution to avoid carrying forward a moot case solely to vindicate a plaintiff's interest in recovering attorneys' fees.

civil penalty claim to mootness by failing to appeal the District Court's denial of injunctive relief. Brief for Respondent 14–17. This argument misconceives the statutory scheme. Under §1365(a), the district court has discretion to determine which form of relief is best suited, in the particular case, to abate current violations and deter future ones. "[A] federal judge sitting as chancellor is not mechanically obligated to grant an injunction for every violation of law." *Weinberger* v. *Romero-Barcelo*, 456 U. S. 305, 313 (1982). Denial of injunctive relief does not necessarily mean that the district court has concluded there is no prospect of future violations for civil penalties to deter. Indeed, it meant no such thing in this case. The District Court denied injunctive relief, but expressly based its award of civil penalties on the need for deterrence. See 956 F. Supp., at 610–611. As the dissent notes, *post*, at 8, federal courts should aim to ensure "'the framing of relief no broader than required by the precise facts.'" *Schlesinger* v. *Reservists Comm. to Stop the War*, 418 U. S. 208, 222 (1974). In accordance with this aim, a district court in a Clean Water Act citizen suit properly may conclude that an injunction would be an excessively intrusive remedy, because it could entail continuing superintendence of the permit holder's activities by a federal court– a process burdensome to court and permit holder alike. See *City of Mesquite*, 455 U. S., at 289 (although the defendant's voluntary cessation of the challenged practice does not moot the case, "[s]uch abandonment is an important factor bearing on the question whether a court should exercise its power to enjoin the defendant from renewing the practice").

Laidlaw also asserts, in a supplemental suggestion of mootness, that the closure of its Roebuck facility, which took place after the Court of Appeals issued its decision, mooted the case. The facility closure, like Laidlaw's earlier achievement of substantial compliance with its permit

requirements, might moot the case, but– we once more reiterate– only if one or the other of these events made it absolutely clear that Laidlaw's permit violations could not reasonably be expected to recur. *Concentrated Phosphate Export Assn.*, 393 U. S., at 203. The effect of both Laidlaw's compliance and the facility closure on the prospect of future violations is a disputed factual matter. FOE points out, for example– and Laidlaw does not appear to contest– that Laidlaw retains its NPDES permit. These issues have not been aired in the lower courts; they remain open for consideration on remand.[6]

C

FOE argues that it is entitled to attorneys' fees on the theory that a plaintiff can be a "prevailing party" for purposes of 33 U. S. C. §1365(d) if it was the "catalyst" that triggered a favorable outcome. In the decision under review, the Court of Appeals noted that its Circuit precedent construed our decision in *Farrar* v. *Hobby*, 506 U. S. 103 (1992), to require rejection of that theory. 149 F. 3d, at 307, n. 5 (citing *S–1 & S–2* v. *State Bd. of Ed. of N. C.*, 21 F. 3d 49, 51 (CA4 1994) (en banc)). Cf. *Foreman* v. *Dallas County*, 193 F. 3d 314, 320 (CA5 1999) (stating, in dicta, that "[a]fter *Farrar* . . . the continuing validity of the catalyst theory is in serious doubt").

Farrar acknowledged that a civil rights plaintiff awarded nominal damages may be a "prevailing party"

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[6] We note that it is far from clear that vacatur of the District Court's judgment would be the appropriate response to a finding of mootness on appeal brought about by the voluntary conduct of the party that lost in the District Court. See *U. S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U. S. 18 (1994) (mootness attributable to a voluntary act of a nonprevailing party ordinarily does not justify vacatur of a judgment under review); see also *Walling* v. *James V. Reuter, Inc.*, 321 U. S. 671 (1944).

under 42 U. S. C. §1988. 506 U. S., at 112. The case involved no catalytic effect. Recognizing that the issue was not presented for this Court's decision in *Farrar*, several Courts of Appeals have expressly concluded that *Farrar* did not repudiate the catalyst theory. See *Marbley* v. *Bane*, 57 F. 3d 224, 234 (CA2 1995); *Baumgartner* v. *Harrisburg Housing Authority*, 21 F. 3d 541, 546–550 (CA3 1994); *Zinn* v. *Shalala*, 35 F. 3d 273, 276 (CA7 1994); *Little Rock School Dist.* v. *Pulaski County Special Sch. Dist., #1*, 17 F. 3d 260, 263, n. 2 (CA8 1994); *Kilgour* v. *Pasadena*, 53 F. 3d 1007, 1010 (CA9 1995); *Beard* v. *Teska*, 31 F. 3d 942, 951–952 (CA10 1994); *Morris* v. *West Palm Beach*, 194 F. 3d 1203, 1207 (CA11 1999). Other Courts of Appeals have likewise continued to apply the catalyst theory notwithstanding *Farrar*. *Paris* v. *United States Dept. of Housing and Urban Development*, 988 F. 2d 236, 238 (CA1 1993); *Citizens Against Tax Waste* v. *Westerville City School*, 985 F. 2d 255, 257 (CA6 1993).

It would be premature, however, for us to address the continuing validity of the catalyst theory in the context of this case. The District Court, in an order separate from the one in which it imposed civil penalties against Laidlaw, stayed the time for a petition for attorneys' fees until the time for appeal had expired or, if either party appealed, until the appeal was resolved. See 149 F. 3d, at 305 (describing order staying time for attorneys' fees petition). In the opinion accompanying its order on penalties, the District Court stated only that "this court has considered that Laidlaw will be required to reimburse plaintiffs for a significant amount of legal fees," and referred to "potential fee awards." 956 F. Supp., at 610–611. Thus, when the Court of Appeals addressed the availability of counsel fees in this case, no order was before it either denying or awarding fees. It is for the District Court, not this Court, to address in the first instance any request for reimbursement of costs, including fees.

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For the reasons stated, the judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.