SUPREME COURT OF THE UNITED STATES

No. 99–1786

GREAT-WEST LIFE & ANNUITY INSURANCE COMPANY, ET AL., PETITIONERS *v.* JANETTE KNUDSON AND ERIC KNUDSON

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

[January 8, 2002]

JUSTICE GINSBURG, with whom JUSTICE STEVENS, JUSTICE SOUTER, and JUSTICE BREYER join, dissenting.

Today's holding, the majority declares, is compelled by "Congress's choice to limit the relief available under §502(a)(3)." *Ante*, at 13. In the Court's view, Congress' placement of the word "equitable" in that provision signaled an intent to exhume the "fine distinction[s]" borne of the "days of the divided bench," *ante*, at 7, 10; to treat as dispositive an ancient classification unrelated to the substance of the relief sought; and to obstruct the general goals of ERISA by relegating to state court (or to no court at all) an array of suits involving the interpretation of employee health plan provisions. Because it is plain that Congress made no such "choice," I dissent.

I

The Court purports to resolve this case by determining the "nature of the relief" Great-West seeks. *Ante*, at 10. The opinion's analysis, however, trains on the question, deemed subsidiary, whether the disputed claim could have been brought in an equity court "[i]n the days of the divided bench." *Ante*, at 7–11 (inquiring whether the claim is akin to "an action derived from the common-law writ of assumpsit" that would have been brought at law, or in-

stead resembles a claim for return of particular assets that would "lie in equity"). To answer that question, the Court scrutinizes the form of the claim and contrasts its features with the technical requirements that once governed the jurisdictional divide between the premerger courts. Finding no clear match on the equitable side of the line, the Court concludes that Great-West's claim is beyond the scope of §502(a)(3) and therefore outside federal jurisdiction.

The rarified rules underlying this rigid and time-bound conception of the term "equity" were hardly at the fingertips of those who enacted §502(a)(3). By 1974, when ERISA became law, the "days of the divided bench" were a fading memory, for that era had ended nearly 40 years earlier with the advent of the Federal Rules of Civil Procedure. Those rules instruct: "There shall be one form of action" cognizable in the federal courts. Fed. Rule Civ. Proc. 2. Except where reference to historical practice might be necessary to preserve a right established before the merger, see, *e.g.*, *Curtis* v. *Loether,* 415 U. S. 189, 195 (1974) (Seventh Amendment jury trial), the doctrinal rules delineating the boundaries of the divided courts had receded. See 4 C. Wright & A. Miller, Federal Practice and Procedure §1041, p. 135 (1987); C. Wright, Handbook on Law of Federal Courts §67, p. 282 (2d ed. 1970) ("[I]nstances in which the old distinctions continue to rule from their graves are quite rare.").

It is thus fanciful to attribute to members of the 93d Congress familiarity with those "needless and obsolete distinctions," 4 C. Wright & A. Miller, *supra*, §1041, at 131, much less a deliberate "choice" to resurrect and import them wholesale into the modern regulatory scheme laid out in ERISA. "[T]here is nothing to suggest that ERISA's drafters wanted to embed their work in a time warp." *Health Cost Controls of Ill.* v. *Washington*, 187 F. 3d 703, 711 (CA7 1999) (Posner, J.); cf. *Mertens* v. *Hewitt*

Associates, 508 U. S. 248, 257, n. 7 (1993) (meaning of "equitable relief" in §502(a)(3) must be determined based on "the state of the law when ERISA was enacted").

That Congress did not intend to strap §502(a)(3) with the anachronistic rules on which the majority relies is corroborated by the anomalous results to which the supposed legislative "choice" leads. Although the Court recognizes that it need not decide the issue, see *ante*, at 15–16, its opinion surely contemplates that a constructive trust claim would lie; hence, the outcome of this case would be different if Great-West had sued the trustee of the Special Needs Trust, who has "possession" of the requested funds, instead of the Knudsons, who do not. See *ante*, at 8–9 (constructive trust unavailable because "the funds to which petitioners claim an entitlement . . . are not in respondents' possession"). Under that view, whether relief is "equitable" would turn entirely on the designation of the defendant, even though the substance of the relief Great-West could have obtained in a suit against the trustee—a judgment ordering the return of wrongfully withheld funds—is identical to the relief Great-West in fact sought from the Knudsons. Unlike today's majority, I resist this "rule unjustified in reason, which produces different results for breaches of duty in situations that cannot be differentiated in policy." *Moragne* v. *States Marine Lines, Inc.,* 398 U. S. 375, 405 (1970).

The procedural history of this case highlights the anomaly of upholding a judgment neither party supports,[1] one

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[1] In the District Court, both parties sought decision on the amount Great-West was entitled to recoup under the Plan's provision for recovery of benefits paid, and the court resolved that issue in the Knudsons' favor. The Ninth Circuit, however, refused to review the District Court's resolution of that question, holding instead that federal courts are without authority to grant any relief to parties in Great-West's situation. Because neither party defended that ruling in this

that will at least protract and perhaps preclude judicial resolution of the nub of the controversy—*i.e.*, what recoupment does the Plan's reimbursement provision call for. Great-West named the Knudsons as defendants before Janet Knudson's Special Needs Trust had been approved. There was no other defendant then in the picture. Seeking at that time to preserve the status quo, Great-West requested from the District Court preliminary injunctive relief to stop the Knudsons from disposing of the funds Hyundai paid to settle the state-court action. Only after the District Court denied that relief did the state court approve of, and order that the settlement funds be paid into, the Special Needs Trust. Great-West then moved for leave to amend its complaint to add the trustee as a defendant, but the District Court denied that motion without consideration in light of its judgment for the Knudsons on the merits. Had the District Court ruled differently on this peripheral issue, the majority would presumably reverse rather than affirm a disposition of this case that left in limbo the meaning of the Plan's reimbursement provision. If that is so, then the Court's decision rests on Great-West's failure to appeal an interlocutory issue made moot by the District Court's final judgment, an issue that, to all involved, must have seemed utterly inconsequential post judgment day.

The majority's avowed obedience to Congress' "choice" is further belied by the conflict between the Court's holding and Congress' stated goals in enacting ERISA. After today, ERISA plans and fiduciaries unable to fit their suits within the confines the Court's opinion constructs are barred from a federal forum; they may seek enforce-

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Court, Motion to Dismiss as Improvidently Granted 1, we appointed an *amicus curiae* to argue in support of the Ninth Circuit's judgment. See 532 U. S. 917 (2001). Both on brief and at oral argument, appointed counsel commendably developed the position the majority now adopts.

ment of reimbursement provisions like the one here at issue only in state court. Many such suits may be precluded by antisubrogation laws, see Brief for Maryland HMO Subrogation Plaintiffs as *Amici Curiae* 4–5, n. 2, others may be preempted by ERISA itself, and those that survive may produce diverse and potentially contradictory interpretations of the disputed plan terms.

We have recognized that Congress sought through ERISA "to establish a uniform administrative scheme" and to ensure that plan provisions would be enforced in federal court, free of "the threat of conflicting or inconsistent State and local regulation." *Fort Halifax Packing Co.* v. *Coyne,* 482 U. S. 1, 9 (1987) (internal quotation marks omitted) (quoting 120 Cong. Rec. 29933 (1974)). The majority's construction frustrates those goals by ascribing to Congress the paradoxical intent to enact a specific provision, §502(a)(3), that thwarts the purposes of the general scheme of which it is part. The Court is no doubt correct that "vague notions of a statute's 'basic purpose' are . . . inadequate to overcome the words of its text regarding the specific issue under consideration." *Ante*, at 16 (quoting *Mertens*, 508 U. S., at 261) (emphasis deleted). But when Congress' clearly stated purpose so starkly conflicts with questionable inferences drawn from a single word in the statute, it is the latter, and not the former, that must give way.

It is particularly ironic that the majority acts in the name of equity as it sacrifices congressional intent and statutory purpose to archaic and unyielding doctrine. "Equity eschews mechanical rules; it depends on flexibility." *Holmberg* v. *Armbrecht,* 327 U. S. 392, 396 (1946). And "[a]s this Court long ago recognized, 'there is inherent in the Courts of Equity a jurisdiction to . . . give effect to the policy of the legislature.'" *Mitchell* v. *Robert DeMario Jewelry, Inc.,* 361 U. S. 288, 291–292 (1960) (quoting *Clark* v. *Smith*, 13 Pet. 195, 203 (1839)); see *Albemarle Paper Co.* v.

Moody, 422 U. S. 405, 417 (1975) ("[W]hen Congress invokes the Chancellor's conscience to further transcendent legislative purposes, what is required is the principled application of standards consistent with those purposes."); cf. *Grupo Mexicano de Desarrollo, S. A.* v. *Alliance Bond Fund, Inc.,* 527 U. S. 308, 336 (1999) (GINSBURG, J., dissenting) (Court similarly "relie[d] on an unjustifiably static conception of equity jurisdiction").

II

Unprepared to agree that Congress chose to infuse §502(a)(3) with the recondite distinctions on which the majority relies, I would accord a different meaning to the term "equitable." Consistent with what Congress likely intended and with our decision in *Mertens*, I would look to the substance of the relief requested and ask whether relief of that character was "*typically* available in equity." *Mertens*, 508 U. S., at 256. Great-West seeks restitution, a category of relief fully meeting that measure even if the remedy was also available in cases brought at law. Accordingly, I would not oust this case from the federal courts.

That Great-West requests restitution is beyond dispute. The relief would operate to transfer from the Knudsons funds over which Great-West claims to be the rightful owner. See *Curtis*, 415 U. S., at 197 (describing an award as restitutionary if it would "requir[e] the defendant to disgorge funds wrongfully withheld from the plaintiff"); *Porter* v. *Warner Holding Co.,* 328 U. S. 395, 402 (1946) (restitution encompasses a decree "ordering the return of that which rightfully belongs to" the plaintiff). Great-West alleges that the Knudsons would be unjustly enriched if permitted to retain the funds. See 1 D. Dobbs, Law of Remedies §4.1(2), p. 557 (2d ed. 1993) ("The fundamental substantive basis for restitution is that the defendant has been unjustly enriched by receiving some-

thing, tangible or intangible, that properly belongs to the plaintiff."). And Great-West sued to recover an amount representing the Knudsons' unjust gain, rather than Great-West's loss. See 3 *id.*, §12.1(1), at 9 ("Restitutionary recoveries are based on the defendant's gain, not on the plaintiff's loss.").

As the majority appears to admit, see *ante*, at 10, our cases have invariably described restitutionary relief as "equitable" without even mentioning, much less dwelling upon, the ancient classifications on which today's holding rests. See, *e.g.*, *Tull* v. *United States,* 481 U. S. 412, 424 (1987) (restitution "traditionally considered an equitable remedy"); *Mertens*, 508 U. S., at 255 (restitution is a "remedy traditionally viewed as 'equitable' "); *Teamsters* v. *Terry,* 494 U. S. 558, 570 (1990) ("[W]e have characterized [money] damages as equitable where they are restitutionary."); *Mitchell,* 361 U. S., at 291–293 (District Court could exercise equitable authority under Fair Labor Standards Act to order restitution); cf. *Moses* v. *Macferlan*, 2 Burr. 1005, 1012, 97 Eng. Rep. 676, 681 (K. B. 1760) ("In one word, the gist of this kind of action is that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money."). These cases establish what the Court does not and cannot dispute: Restitution was "within the recognized power and within the highest tradition of a court of equity." *Porter*, 328 U. S., at 402.

More important, if one's concern is to follow the Legislature's will, Congress itself has treated as equitable a type of restitution substantially similar to the relief Great-West seeks here. Congress placed in Title VII of the Civil Rights Act of 1964 the instruction that, to redress violations of the Act, courts may award, *inter alia*, "appropriate . . . equitable relief," including "reinstatement or hiring of employees, with or without back pay." 42 U. S. C. §2000e–5(g)(1) (1994 ed.). Interpreting this provision, we have

recognized that backpay is "a form of restitution," *Curtis*, 415 U. S., at 197; see *Terry*, 494 U. S., at 572, and that "Congress specifically characterized backpay under Title VII as a form of 'equitable relief,' " *ibid.* The *Mertens* majority used Title VII's "equitable relief" provision as the touchstone for its interpretation of §502(a)(3), see 508 U. S., at 255; today's majority declares, with remarkable inconsistency, that "Title VII has nothing to do with this case," *ante*, at 14, n. 4. The Court inexplicably fails to offer any reason why Congress did not intend "equitable relief" in §502(a)(3) to include a plaintiff's "recover[y of] money to pay for some benefit the defendant had received from him," *ante*, at 8 (internal quotation marks omitted), but did intend those words to encompass such relief in a measure (Title VII) enacted years earlier.[2]

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[2]The Courts of Appeals have not aligned behind the Court's theory that Congress treated Title VII backpay as equitable "only in the narrow sense that" such relief is an "integral part" of the statutory remedy of reinstatement. *Ante*, at 14, n. 4. While some courts have employed the majority's rationale, others have adopted the position the Court denies: that Title VII backpay is restitutionary and "*therefore* equitable," *ante*, at 13, n. 4. See, *e.g.*, *EEOC* v. *Detroit Edison Co.*, 515 F. 2d 301, 308 (CA6 1975) ("Back pay in Title VII cases is considered a form of restitution, not an award of damages. Since restitution is an equitable remedy a jury is not required for the award of back pay."), vacated on other grounds, 431 U. S. 951 (1977); *Rogers* v. *Loether*, 467 F. 2d 1110, 1121 (CA7 1972) ("It is not unreasonable to regard an award of back pay [under Title VII] as an appropriate exercise of a chancellor's power to require restitution. Restitution is clearly an equitable remedy.") (footnote omitted), aff'd, 415 U. S. 189 (1974). See also *Hubbard* v. *EPA*, 949 F. 2d 453, 462 (CADC 1991) ("Courts have recognized the equitable nature of back pay awards in a number of different contexts. Generally, these decisions hold that back pay constitutes the very thing that the plaintiff would have received but for the defendant's illegal action; back pay is thus seen to reflect equitable restitution."), aff'd on other grounds, 982 F. 2d 531 (CADC 1992) (en banc).

Such a reading of §2000e–5(g)(1) accords with our recognition in

I agree that "not *all* relief falling under the rubric of restitution [was] available in equity," *ante*, at 7 (emphasis added); restitution was also available in claims brought at law, and the majority may be correct that in such cases restitution would have been termed "legal," *ante*, at 8. But that in no way affects the answer to the question at the core of this case. Section 502(a)(3) as interpreted in *Mertens* encompasses those "categories of relief that were *typically* available in equity," 508 U. S., at 256 (emphasis in original), not those that were *exclusively* so. Restitution plainly fits that bill. By insisting that §502(a)(3) embraces only those *claims* that, in the circumstances of the particular case, could be brought in chancery in times of yore, the majority labors against the holding of that case. Indeed, *Mertens* explicitly rejected a position close to the one embraced by the Court today; *Mertens* recognized that "[a]s memories of the divided bench, and familiarity with its technical refinements, recede further into the past, [an interpretation of §502(a)(3) keyed to the relief a court of equity could award in a particular case] becomes, perhaps, increasingly unlikely." 508 U. S., at 256–257.

My objection to the inquiry the Court today adopts in

Teamsters v. *Terry,* 494 U. S. 558, 572 (1990), that "Congress specifically characterized *backpay* under Title VII as a form of 'equitable relief.' " (Emphasis added). We were somewhat ambiguous in *Curtis* v. *Loether,* 415 U. S. 189, 197 (1974), about the rationale of the Courts of Appeals, reasoning that they had treated Title VII backpay as equitable because Congress had made backpay "an integral part of an equitable remedy, a form of restitution." But we spoke with greater clarity in *Terry*, 494 U. S., at 570–571, explaining that we could find an "exception to the general rule" that monetary relief is legal, rather than equitable, in two situations: *either* "where th[e relief is] restitutionary," a category into which we suggested Title VII backpay might fall, see *id.*, at 572 ("backpay sought from an employer under Title VII would generally be restitutionary in nature"); *or* where "a monetary award [is] 'incidental to or intertwined with injunctive relief,' " *id.*, at 571 (quoting *Tull* v. *United States,* 481 U. S. 412, 424 (1987)).

spite of *Mertens* does not turn on "the difficulty of th[e] task," *ante*, at 12. To be sure, I question the Court's confidence in the ability of "the standard works" to "make the answer clear"; the Court does not indicate what rule prevails, for example, when those works conflict, as they do on key points, compare Restatement of Restitution §160, comment *e,* p. 645 (1936) (constructive trust over money available only where transfer procured by abuse of fiduciary relation or where legal remedy inadequate), with 1 Dobbs, Law of Remedies §4.3(2), at 595, 597 (limitation of constructive trust to "misdealings by fiduciaries" a "misconception"; adequacy of legal remedy "seems irrelevant"). And courts have recognized that this Court's preferred method is indeed "difficult to apply," *Ross* v. *Bernhard,* 396 U. S. 531, 538, n. 10 (1970), calling for analysis that "may seem to reek unduly of the study," *Damsky* v. *Zavatt*, 289 F. 2d 46, 48 (CA2 1961) (Friendly, J.), " 'if not of the museum,' " *id.*, at 59 (Clark, J., dissenting).

Even if the Court's chosen texts always yielded a quick and plain answer, however, I would think it no less implausible that Congress intended to make controlling the doctrine those texts describe. See *supra*, at 2–6. Our reliance on that doctrine in the context of the Seventh Amendment and Judiciary Act of 1789, see *ante*, at 12, underscores the incongruity of applying it here. It may be arguable that "preserving" the meaning of those founding-era provisions requires courts to determine which tribunal would have entertained a particular claim in 18th-century England. See *Grupo Mexicano*, 527 U. S., at 318–319; *Terry*, 494 U. S., at 593 (KENNEDY, J., dissenting) ("We cannot preserve a right existing in 1791 unless we look to history to identify it."). But no such rationale conceivably justifies asking that question in cases arising under §502(a)(3)(B), a provision of a distinctly modern statute Congress passed in 1974.

That the import of the term "equity" might depend on

context does not signify a "rolling revision of its content," *ante*, at 13, but rather a recognition that equity, characteristically, was and should remain an evolving and dynamic jurisprudence, see *Grupo Mexicano*, 527 U. S., at 336–337 (GINSBURG, J., dissenting). Cf. *Mertens*, 508 U. S., at 257 ("[I]t remains a question of interpretation in each case which meaning [Congress] intended" to impart to the term "equitable relief."). As courts in the common-law realm have reaffirmed: "Principles of equity, we were all taught, were introduced by Lord Chancellors and their deputies . . . in order to provide relief from the inflexibility of common law rules." *Medforth* v. *Blake*, [1999] 3 All E. R. 97, 110 (C. A.); see *Boulting* v. *Association of Cinematograph, Television and Allied Technicians*, [1963] 2 Q. B. 606, 636 (C. A.) ("[A]ll rules of equity [are] flexible, in the sense that [they] develo[p] to meet the changing situations and conditions of the time."); *Pettkus* v. *Becker*, [1980] 2 S. C. R. 834, 847, 117 D. L. R. (3d) 257, 273 ("The great advantage of ancient principles of equity is their flexibility: the judiciary is thus able to shape these malleable principles so as to accommodate the changing needs and mores of society."). This Court's equation of "equity" with the rigid application of rules frozen in a bygone era, I maintain, is thus "unjustifiabl[e]" even as applied to a law grounded in that era. *Grupo Mexicano*, 527 U. S., at 336 (GINSBURG, J., dissenting). As applied to a statute like ERISA, however, such insistence is senseless.

Thus, there is no reason to ask what court would have entertained Great-West's claim "[i]n the days of the divided bench," *ante*, at 7, and no need to engage in the antiquarian inquiry through which the majority attempts to answer that question. Nor would reading §502(a)(3) to encompass restitution render the modifier "equitable" "utterly pointless," as the Court fears, *ante*, at 12. Such a construction would confine the scope of that provision to significantly "less than *all* relief," *ante*, at 4 (quoting *Mer-*

tens, 508 U. S., at 258, n. 8). Most notably, it would exclude compensatory and punitive damages, see *id.*, at 255, which, "though *occasionally* awarded in equity" under the "clean up doctrine," *Reich* v. *Continental Casualty Co.*, 33 F. 3d 754, 756 (CA7 1994), were not typically available in such courts. See 1 S. Symons, Pomeroy's Equity Jurisprudence §181, p. 257 (5th ed. 1941). That large limitation is indeed "unmistakable." But cf. *ante*, at 12. In sum, the reading I would adopt is entirely faithful to the core holding of *Mertens*: "equitable relief" in §502(a)(3) "refer[s] to those categories of relief that were *typically* available in equity (such as injunction, mandamus, and restitution, but not compensatory damages)." 508 U. S., at 256.

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Today's decision needlessly obscures the meaning and complicates the application of §502(a)(3). The Court's interpretation of that provision embroils federal courts in "recondite controversies better left to legal historians," *Terry*, 494 U. S., at 576 (Brennan, J., concurring in part and concurring in judgment), and yields results that are demonstrably at odds with Congress' goals in enacting ERISA. Because in my view Congress cannot plausibly be said to have "carefully crafted" such confusion, *ante*, at 16, I dissent.