

STEVENS, J., dissenting

**SUPREME COURT OF THE UNITED STATES**

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No. 99–1786

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GREAT-WEST LIFE & ANNUITY INSURANCE COM-  
PANY, 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 STEVENS, dissenting.

In her lucid dissent, which I join, JUSTICE GINSBURG has explained why it is fanciful to assume that in 1974 Congress intended to revive the obsolete distinctions between law and equity as a basis for defining the remedies available in federal court for violations of the terms of a plan under the Employee Retirement Income Security Act of 1974 (ERISA). She has also convincingly argued that the relief sought in the present case is permissible even under the Court’s favored test for determining what qualifies as “equitable relief” under §502(a)(3)(B) of ERISA. I add this postscript because I am persuaded that Congress intended the word “enjoin,” as used in §502(a)(3)(A), to authorize any appropriate order that prohibits or terminates a violation of an ERISA plan, regardless of whether a precedent for such an order can be found in English Chancery cases.

I read the word “other” in §502(a)(3)(B) as having been intended to enlarge, not contract, a federal judge’s remedial authority. Consequently, and contrary to the Court’s view in *Mertens v. Hewitt Associates*, 508 U. S. 248, 256 (1993), I would neither read §502(a)(3)(B) as placing a *limitation* on a judge’s authority under §502(a)(3)(A), nor shackle an analysis of what constitutes “equitable relief”

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under §502(a)(3)(B) to the sort of historical analysis that the Court has chosen.

Nevertheless, *Mertens* is the law, and an inquiry under §502(a)(3)(B) now entails an analysis of what relief would have been “typically available in equity.” 508 U. S., at 256. This does not mean, however, that all inquiries under §502(a)(3) must involve historical analysis, as the Court seems to believe, *e.g.*, *ante*, at 4–5. In *Mertens*, our task was to interpret “other appropriate equitable relief” under §502(a)(3)(B), and our holding thus did not extend to the meaning of “to enjoin” in §502(a)(3)(A). As a result, an analysis of tradition is unnecessary with respect to §502(a)(3)(A). Moreover, that section provides a proper basis for federal jurisdiction in the present case, as petitioners brought suit “to enjoin any act or practice which violates . . . the terms of [a] plan.” §502(a)(3)(A).

Not only is an inclusive reading of §502(a)(3) consonant with the text of the statute, but it accomplishes Congress’ goal of providing a federal remedy for violations of the terms of plans governed by ERISA. Contrary to the Court’s current reluctance to conclude that wrongs should be remedied,<sup>1</sup> I believe that the historic presumption favoring the provision of remedies for violations of federal rights<sup>2</sup> should inform our construction of the remedial provisions of federal statutes. It is difficult for me to

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<sup>1</sup> See, *e.g.*, *Correctional Services Corp. v. Malesko*, 534 U. S. \_\_ (2001) (STEVENS, J., dissenting); *Alexander v. Sandoval*, 532 U. S. 275, 294–297 (2001) (STEVENS, J., dissenting).

<sup>2</sup> See, *e.g.*, *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U. S. 388, 392 (1971) (“[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief” (quoting *Bell v. Hood*, 327 U. S. 678, 684 (1946)); 403 U. S., at 397 (“The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury” (quoting *Marbury v. Madison*, 1 Cranch 137, 163 (1803))).

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understand why Congress would not have wanted to provide recourse in federal court for the plan violation disclosed by the record in this case. Cf., e.g., *Varity Corp. v. Howe*, 516 U. S. 489, 512–513, 515 (1996) (“We are not aware of any ERISA-related purpose that denial of a remedy would serve”). It is thus unsurprising that the Court’s opinion contains no discussion of why Congress would have intended its reading of §502(a)(3) and the resulting denial of a federal remedy in this case. Absent such discussion, the Court’s opinion is remarkably unpersuasive.<sup>3</sup>

I respectfully dissent.

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<sup>3</sup> In a response to this dissent that echoes Tennyson’s poem about the Light Brigade—“Theirs not to reason why, Theirs but to do and die”—the Court states that it is “not our job to find reasons for what Congress has plainly done,” *ante*, at 13. Congress, of course, has the power to enact unreasonable laws. Nevertheless, instead of blind obedience to what at first blush appears to be such a law, I think it both prudent and respectful to pause to ask why Congress would do so.