SUPREME COURT OF THE UNITED STATES

No. 02–458

RAYMOND B. YATES, M.D., P.C. PROFIT SHARING PLAN, AND RAYMOND B. YATES, TRUSTEE, PETITIONERS *v.* WILLIAM T. HENDON, TRUSTEE

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

[March 2, 2004]

JUSTICE SCALIA, concurring in the judgment.

The Court uses a sledgehammer to kill a gnat—though it may be a sledgehammer prescribed by *United States* v. *Mead Corp.,* 533 U. S. 218 (2001). I dissented from that case, see *id.*, at 257, and remain of the view that authoritative interpretations of law by the implementing agency, if reasonable, are entitled to respect. *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837 (1984).

In the present case the Solicitor General of the United States, in a brief signed by the Acting Solicitor of Labor, has put forward as the "considered view of the agency charged by Congress with the administration and enforcement of Title I of ERISA," an interpretation of the relevant terms of that Act which would allow working owners (including sole owners, such as Dr. Yates) to be plan participants under the Employee Retirement Income Security Act of 1974 (ERISA). Brief for United States as *Amicus Curiae* 26. There is no doubt that this position is the official view of the Department of Labor, and that it has not been contrived for this litigation. The Solicitor General's brief relies upon a Department of Labor advi-

sory opinion, issued more than five years ago, which concluded that "the statutory provisions of ERISA, taken as a whole, reveal a clear Congressional design to include 'working owners' within the definition of 'participant' for purposes of Title I of ERISA." Pension and Welfare Benefits Admin., U. S. Dept. of Labor, Advisory Opinion 99–04A (Feb. 4, 1999), 26 BNA Pension and Benefits Rptr. 559, 560 (1999).

The Department's interpretive conclusion is certainly reasonable (the Court's lengthy analysis says that it is inevitable); it is therefore binding upon us. See *Barnhart* v. *Thomas*, 540 U. S. __, __ (2003) (slip op., at 6). I would reverse the judgment of the Sixth Circuit on that basis. The Court's approach, which denies many agency interpretations their conclusive effect and thrusts the courts into authoritative judicial interpretation, deprives administrative agencies of two of their principal virtues: (1) the power to resolve statutory questions promptly, and with nationwide effect, and (2) the power (within the reasonable bounds of the text) to change the application of ambiguous laws as time and experience dictate. The Court's approach invites lengthy litigation in all the circuits—the product of which (when finally announced by this Court) is a rule of law that only Congress can change.