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 THOMAS, concurring in the judgment.

I agree with the Court that the judgment of the Court of Appeals should be reversed. The Court persuasively addresses the Court of Appeals' many errors in this case. See *ante*, at 14–19. I do not, however, find convincing the Court's reliance on textual "indications," *ante*, at 8. The text of the Employee Retirement Income Security Act of 1974 (ERISA), is certainly consistent with the Court's interpretation of the word "employee" to include so-called "working owners."* *Ibid*. However, the various Title I exemptions relied upon so heavily by the Court, see *ante*, at 9-11, are equally consistent with an interpretation of "employee" that would not include all "working owners."

As an example, the Court places weight on the exception to the exemption from 29 U. S. C. §1106, which bars loans made to parties in interest that are "'made available to highly compensated employees . . . in an amount greater than the amount made available to other employees.'" *Ante*, at 10–11 (quoting 29 U. S. C. §1108(b)(1)(B)). The

*The Court does not clearly define who exactly makes up this class of "working owners," even though members of this class are now considered categorically to fall under ERISA's definition of "employee."

Court notes that "some working owners . . . qualify as 'highly compensated employees.'" *Ante*, at 11. That may be true, but there are surely numerous "highly compensated employees" who would both be "employees" under the usual, common-law meaning of that term (and hence "employees" under ERISA, see *Nationwide Mut. Ins. Co.* v. *Darden*, 503 U. S. 318 (1992)), and would also not be considered "working owners" as the Court uses the term. It is entirely possible, then, that Congress was merely attempting to exclude these individuals from §1106, rather than assuming that all "working owners" were "employees." Hence, the existence of this exception tells us nothing about whether Congress "intended working owners" to be "employees" under ERISA. *Ante*, at 8.

Since the text is inconclusive, we must turn to the common-law understanding of the term "employee." *Darden*, *supra*, at 322–323. On remand, then, I would direct the Court of Appeals to address whether the common-law understanding of the term "employee," as used in ERISA, includes Dr. Yates. I would be surprised if it did not, see *In re Baker*, 114 F. 3d 636, 639 (CA7 1997) (corporation's separate legal existence from shareholder must be respected), *Madonia* v. *Blue Cross & Blue Shield of Virginia*, 11 F. 3d 444, 448–449 (CA4 1993) (same), but this is a matter best resolved, in the first instance, by the court below.