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SUPREME COURT OF THE UNITED STATES

No. 97–42

EASTERN ENTERPRISES, PETITIONER *v.* KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY, ET AL.

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

[June 25, 1998]

JUSTICE O'CONNOR announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE THOMAS join.

In this case, the Court considers a challenge under the Due Process and Takings Clauses of the Constitution to the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), 26 U. S. C. §§9701–9722 (1994 ed. and Supp. II), which establishes a mechanism for funding health care benefits for retirees from the coal industry and their dependents. We conclude that the Coal Act, as applied to petitioner Eastern Enterprises, effects an unconstitutional taking.

I

A

For a good part of this century, employers in the coal industry have been involved in negotiations with the United Mine Workers of America (UMWA or Union) regarding the provision of employee benefits to coal miners. When petitioner Eastern Enterprises (Eastern) was

formed in 1929, coal operators provided health care to their employees through a prepayment system funded by payroll deductions. Because of the rural location of most mines, medical facilities were frequently substandard, and many of the medical professionals willing to work in mining areas were "company doctors," often selected by the coal operators for reasons other than their skills or training. The health care available to coal miners and their families was deficient in many respects. In addition, the cost of company-provided services, such as housing and medical care, often consumed the bulk of miners' compensation. See generally U. S. Dept. of Interior, Report of the Coal Mines Administration, A Medical Survey of the Bituminous-Coal Industry (1947) (Boone Report); Report of United States Coal Commission, S. Doc. No. 195, 68th Cong., 2d Sess. (1925).

In the late 1930's, the UMWA began to demand changes in the manner in which essential services were provided to miners, and by 1946, the subject of miners' health care had become a critical issue in collective bargaining negotiations between the Union and bituminous coal companies. When a breakdown in those negotiations resulted in a nationwide strike, President Truman issued an Executive order directing Secretary of the Interior Julius Krug to take possession of all bituminous coal mines and to negotiate "appropriate changes in the terms and conditions of employment" of miners with the UMWA. 11 Fed. Reg. 5593 (1946). A week of negotiations between Secretary Krug and UMWA President John L. Lewis produced the historic Krug-Lewis Agreement that ended the strike. See App. in No. 96–1947 (CA1), p. 610 (hereinafter App. (CA1)).

That agreement, described as "an almost complete victory for the miners," M. Fox, United We Stand 405 (1990), led to the creation of benefit funds, financed by royalties on coal produced and payroll deductions. The funds com-

pensated miners and their dependents and survivors for wages lost due to disability, death, or retirement. The funds also provided for the medical expenses of miners and their dependents, with the precise benefits determined by UMWA-appointed trustees. In addition, the Krug-Lewis Agreement committed the Government to undertake a comprehensive survey of the living conditions in coal mining areas in order to assess the improvements necessary to bring those communities up to "recognized American standards." Krug-Lewis Agreement §5, App. (CA1) 613. That study concluded that the medical needs of miners and their dependents would be more effectively served through "a broad prepayment system, based on sound actuarial principles." Boone Report 226–227.

Shortly after the study was issued, the mines returned to private control and the UMWA and several coal operators entered into the National Bituminous Coal Wage Agreement of 1947 (1947 NBCWA), App. (CA1) 615, which established the "United Mine Workers of America Welfare and Retirement Fund" (1947 W&R Fund), modeled after the Krug-Lewis benefit trusts. The Fund was to use the proceeds of a royalty on coal production to provide pension and medical benefits to miners and their families. The 1947 NBCWA did not specify the benefits to which miners and their dependents were entitled. Instead, three trustees appointed by the parties were given authority to determine "coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, and all other related matters." 1947 NBCWA 146, App. (CA1) 619.

Disagreement over benefits continued, however, leading to the execution of another NBCWA in 1950, which created a new multiemployer trust, the "United Mine Workers of America Welfare and Retirement Fund of 1950" (1950 W&R Fund). The 1950 W&R Fund established a 30-

cents-per-ton royalty on coal produced, payable by signatory operators on a "several and not joint" basis for the duration of the 1950 Agreement. 1950 NBCWA 63, App. (CA1) 640. As with the 1947 W&R Fund, the 1950 W&R Fund was governed by three trustees chosen by the parties and vested with responsibility to determine the level of benefits. *Id.*, at 59–61, App. (CA1) 638–639. Between 1950 and 1974, the 1950 NBCWA was amended on occasion, and new NBCWA's were adopted in 1968 and 1971. Except for increases in the amount of royalty payments, however, the terms and structure of the 1950 W&R Fund remained essentially unchanged. A 1951 amendment recognized the creation of the Bituminous Coal Operators' Association (BCOA), a multiemployer bargaining association, which became the primary representative of coal operators in negotiations with the Union. See App. (CA1) 647–648.

Under the 1950 W&R Fund, miners and their dependents were not promised specific benefits. As the 1950 W&R Fund's Annual Report for the fiscal year ending June 30, 1955 (1955 Annual Report) explained:

> "Under the legal and financial obligations . . . imposed [by the Trust Agreement], the Fund is operated on a pay-as-you-go basis, maintaining a sound relationship between revenues and expenditures. Resolutions adopted by the Trustees governing Fund Benefits– Pensions, Hospital and Medical Care, and Widows and Survivors Benefits– specifically provide that all these Benefits are subject to termination, revision, or amendment, by the Trustees in their discretion at any time. No vested interest in the Fund extends to any beneficiary." *Id.*, at 3–4, App. (CA1) 869–870.

See also *Mine Workers Health and Retirement Funds* v. *Robinson,* 455 U. S. 562, 565, and n. 2 (1982). Thus, the

Fund operated using a fixed amount of royalties, with the trustees having the authority to establish and adjust the level of benefits provided so as to remain within the budgetary constraints.

Subsequent annual reports of the 1950 W&R Fund reiterated that benefits were subject to change. See, *e.g.*, 1950 W&R Fund Annual Report for the Year Ending June 30, 1956 (1956 Annual Report), p. 30, App. (CA1) 929 ("Resolutions adopted by the Trustees governing Fund Benefits– Pensions, Hospital and Medical Care, and Widows and Survivors Benefits– specifically provide that all these Benefits are subject to termination, revision, or amendment, by the Trustees in their discretion at any time"); 1950 W&R Fund Annual Report for the Year Ending June 30, 1958, pp. 20–21, App. (CA1) 955–956 ("Trustee regulations governing Benefits specifically provide that all Benefits which have been authorized are subject to termination, suspension, revision, or amendment by the Trustees in their discretion at any time. Each beneficiary is officially notified of this governing provision at the time his Benefit is authorized").[1] Thus, although persons involved in the coal industry may have made occasional statements intimating that the 1950 W&R Fund promised lifetime health benefits, see App. (CA1) 1899, 1971–1972, it is

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[1]See also 1950 W&R Fund Annual Report for the Year Ending June 30, 1959, pp. 27–28, App. (CA1) 995–996; 1950 W&R Fund Annual Report for the Year Ending June 30, 1960 (1960 Annual Report), pp. 19–20, App. (CA1) 1028–1029; 1950 W&R Fund Annual Report for the Year Ending June 30, 1961 (1961 Annual Report), p. 5, App. (CA1) 1047; 1950 W&R Fund Annual Report for the Year Ending June 30, 1962, p. 5, App. (CA1) 1080; 1950 W&R Fund Annual Report for the Year Ending June 30, 1963 (1963 Annual Report), p. 5, App. (CA1) 1113; 1950 W&R Fund Annual Report for the Year Ending June 30, 1964, p. 8, App. (CA1) 1146; 1950 W&R Fund Annual Report for the Year Ending June 30, 1965, p. 18, App. (CA1) 1191; 1950 W&R Fund Annual Report for the Year Ending June 30, 1966 (1966 Annual Report), p. 19, App. (CA1) 1223.

clear that the 1950 W&R Fund did not, by its terms, guarantee lifetime health benefits for retirees and their dependents. In fact, as to widows of miners, the 1950 W&R Fund expressly limited health benefits to the time period during which widows would also receive death benefits. See, *e.g.*, *Robinson*, *supra*, at 565–566; 1956 Annual Report 14, App. (CA1) 913.

Between 1950 and 1974, the trustees often exercised their prerogative to alter the level of benefits according to the Fund's budget. In 1960, for instance, "[t]he Trustees of the Fund, recognizing their legal and fiscal obligation to soundly administer the Trust Fund, took action prior to the close of the fiscal year, to curtail the excess of expenditures over income," by "limit[ing] or terminat[ing] eligibility for [certain] Trust Fund Benefits." 1960 Annual Report 2, App. (CA1) 1011. Similar concerns prompted the trustees to reduce monthly pension benefits by 25% at one point, and to limit the range of medical and pension benefits available to miners employed by operators who did not pay the required royalties. See 1961 Annual Report 2, 11–12, App. (CA1) 1044, 1053–1054; 1963 Annual Report 13, 16, App. (CA1) 1121, 1124.

Reductions in benefits were not always acceptable to the miners, and some wildcat strikes erupted in the 1960's. See Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits, Coal Commission Report 22–23 (1990) (Coal Comm'n Report), App. (CA1) 1352–1353. Nonetheless, the 1950 W&R Fund continued to provide benefits on a "pay-as-you-go" basis, with the level of benefits fully subject to revision, until the Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. §1001 *et seq.*, introduced specific funding and vesting requirements for pension plans. To comply with ERISA, the UMWA and the BCOA entered into a new agreement, the 1974 NBCWA, which created four trusts, funded by royalties on coal production and

premiums based on hours worked by miners, to replace the 1950 W&R Fund. See *Robinson*, 455 U. S., at 566. Two of the new trusts, the UMWA 1950 Benefit Plan and Trust (1950 Benefit Plan) and the UMWA 1974 Benefit Plan and Trust (1974 Benefit Plan), provided nonpension benefits, including medical benefits. Miners who retired before January 1, 1976, and their dependents were covered by the 1950 Benefit Plan, while active miners and those who retired after 1975 were covered by the 1974 Benefit Plan.

The 1974 NBCWA thus was the first agreement between the UMWA and the BCOA to expressly reference health benefits for retirees; prior agreements did not specifically mention retirees, and the scope of their benefits was left to the discretion of fund trustees. The 1974 NBCWA explained that it was amending previous medical benefits to provide a Health Services card for retired miners until their death, and to their widows until their death or remarriage. 1974 NBCWA 99, 105 (Summary of Principal Provisions, UMWA Health and Retirement Benefits), App. (CA1) 755, 758. Despite the expanded benefits, the 1974 NBCWA did not alter the employers' obligation to contribute only a fixed amount of royalties, nor did it extend employers' liability beyond the life of the agreement. See *id.*, Art. XX, §(d), App. (CA1) 749.

As a result of the broadened coverage under the 1974 NBCWA, the number of eligible benefit recipients jumped dramatically. See 1977 Annual Report of the UMWA Welfare and Retirement Funds 3, App. (CA1) 1253. A 1993 Report of the House Committee on Ways and Means explained:

> "The 1974 agreement was the first NBCWA to mention retiree health benefits. As part of a substantial liberalization of benefits and eligibility under both the pension and health plans, the 1974 contract provided lifetime health benefits for retirees, disabled mine

> workers, and spouses, and extended the benefits for surviving spouses . . . ." House Committee on Ways and Means, Financing UMWA Coal Miner "Orphan Retiree" Health Benefits, 103d Cong., 1st Sess., 4 (Comm. Print 1993) (House Report).

The increase in benefits, combined with various other circumstances– such as a decline in the amount of coal produced, the retirement of a generation of miners, and rapid escalation of health care costs– quickly resulted in financial problems for the 1950 and 1974 Benefit Plans. In response, the next NBCWA, executed in 1978, assigned responsibility to signatory employers for the health care of their own active and retired employees. See 1978 NBCWA, Art. XX, §(c)(3), App. (CA1) 778. The 1974 Benefit Plan remained in effect, but only to cover retirees whose former employers were no longer in business.

To ensure the Plans' solvency, the 1978 NBCWA included a "guarantee" clause obligating signatories to make sufficient contributions to maintain benefits during that agreement, and "evergreen" clauses were incorporated into the Plans so that signatories would be required to contribute as long as they remained in the coal business, regardless whether they signed a subsequent agreement. See *id.*, §(h), App. (CA1) 787–788; House Report 5. As a result, the coal operators' liability to the Benefit Plans shifted from a defined contribution obligation, under which employers were responsible only for a predetermined amount of royalties, to a form of defined benefit obligation, under which employers were to fund specific benefits.

Despite the 1978 changes, the Benefit Plans continued to suffer financially as costs increased and employers who had signed the 1978 NBCWA withdrew from the agreement, either to continue in business with nonunion employees or to exit the coal business altogether. As more and more coal operators abandoned the Benefit Plans, the remaining signatories were forced to absorb the increasing

cost of covering retirees left behind by exiting employers. A spiral soon developed, with the rising cost of participation leading more employers to withdraw from the plans, resulting in more onerous obligations for those that remained. In 1988, the UMWA and BCOA attempted to relieve the situation by imposing withdrawal liability on NBCWA signatories who seceded from the Benefit Plans. See 1988 NBCWA, Art. XX, §§(i) and (j), App. (CA1) 805, 828–829. Even so, by 1990, the 1950 and 1974 Benefit Plans had incurred a deficit of about $110 million, and obligations to beneficiaries were continuing to surpass revenues. See House Report 9; Coal Comm'n Report 43–44, App. (CA1) 1373–1374.

B

In response to unrest among miners, such as the lengthy strike that followed Pittston Coal Company's refusal to sign the 1988 NBCWA, Secretary of Labor Elizabeth Dole announced the creation of the Advisory Commission on United Mine Workers of America Retiree Health Benefits (Coal Commission). The Coal Commission was charged with "recommend[ing] a solution for ensuring that orphan retirees in the 1950 and 1974 Benefit Trusts will continue to receive promised medical care." Coal Comm'n Report 2, App. (CA1) 1333. The Commission explained that "[h]ealth care benefits are an emotional subject in the coal industry, not only because coal miners have been promised and guaranteed health care benefits for life, but also because coal miners in their labor contracts have traded lower pensions over the years for better health care benefits." Coal Comm'n Report, Executive Summary vii, App. (CA1) 1324. The Commission agreed that "a statutory obligation to contribute to the plans should be imposed on current and former signatories to the [NBCWA]," but disagreed about "whether the entire [coal] industry should contribute to the resolution of the problem of orphan retir-

ees." *Id.*, at vii–viii, App. (CA1) 1324–1325. Therefore, the Commission proposed two alternative funding plans for Congress' consideration.

First, the Commission recommended that Congress establish a fund financed by an industrywide fee to provide health care to orphan retirees at the level of benefits they were entitled to receive at that fund's inception. To cover the cost of medical benefits for retirees from signatories to the 1978 or subsequent NBCWA's who remained in the coal business, the Commission proposed the creation of another fund financed by the retirees' most recent employers. *Id.*, at 61, App. (CA1) 1390. The Commission also recommended that Congress codify the "evergreen" obligation of the 1978 and subsequent NBCWA's. *Id.*, at 63, App. (CA1) 1392.

As an alternative to imposing industry-wide liability, the Commission suggested that Congress spread the cost of retirees' health benefits across "a broadened base of current and past signatories to the contracts," apparently referring to the 1978 and subsequent NBCWA's. See *id.*, at 58, 65, App. (CA1) 1387, 1394. Not all Commission members agreed, however, that it would be fair to assign such a burden to signatories of the 1978 agreement. Four Commissioners explained that "[i]ssues of elemental fairness are involved" in imposing obligations on "respectable operators who made decisions in the past to move to different locales, invest in different technology, or pursue their business with or without respect to union presence." *Id.*, at 85, App. (CA1) 1414 (statement of Commissioners Michael J. Mahoney, Carl J. Schramm, Arlene Holen, Richard M. Holsten); see also *id.*, at 81–82, App. (CA1) 1410–1411 (statement of Commissioner Richard M. Holsten).

After the Coal Commission issued its report, Congress considered several proposals to fund health benefits for UMWA retirees. At a 1991 hearing, a Senate subcommit-

tee was advised that more than 120,000 retirees might not receive "the benefits they were promised." Coal Commission Report on Health Benefits of Retired Coal Miners: Hearing before the Subcommittee on Medicare and Long-Term Care of the Senate Committee on Finance, 102d Cong., 1st Sess., 45 (1991) (statement of BCOA Chairman Michael K. Reilly). The Coal Commission's Chairman submitted a statement urging that Congress' assistance was needed "to fulfill the promises that began in the collective bargaining process nearly 50 years ago . . . ." *Id.*, at 306 (prepared statement of W. J. Usery, Jr.). Some Senators expressed similar concerns that retired miners might not receive the benefits promised to them. See *id.*, at 16 (statement of Sen. Dave Durenberger) (describing issue as involving "a whole bunch of promises made to a whole lot of people back in the 1940s and 1950s when the cost consequences of those problems were totally unknown"); *id.*, at 59 (prepared statement of Sen. Orrin G. Hatch) (stating that "miners and their families . . . were led to believe by their own union leaders and the companies for which they worked that they were guaranteed lifetime [health] benefits").

In 1992, as part of a larger bill, both Houses passed legislation based on the Coal Commission's first proposal, which required signatories to the 1978 or any subsequent NBCWA to fund their own retirees' health care costs and provided for orphan retirees' benefits through a tax on future coal production. See H. R. Conf. Rep. No. 102–461, pp. 268–295 (1992). President Bush, however, vetoed the entire bill. See H. R. Doc. No. 102–206, p. 1 (1992).

Congress responded by passing the Coal Act, a modified version of the Coal Commission's alternative funding plan. In the Act, Congress purported "to identify persons most responsible for [1950 and 1974 Benefit Plan] liabilities in order to stabilize plan funding and allow for the provision of health care benefits to . . . retirees." §19142(a)(2), 106

Stat. 3037, note following 26 U. S. C. §9701; see also 138 Cong. Rec. 34001 (1992) (Conference Report on Coal Act) (explaining that, under the Coal Act, "those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility for providing the health care benefits promised in their various collective bargaining agreements").

The Coal Act merged the 1950 and 1974 Benefit Plans into a new multiemployer plan called the United Mine Workers of America Combined Benefit Fund (Combined Fund). See 26 U. S. C. §§9702(a)(1), (2).[2] The Combined Fund provides "substantially the same" health benefits to retirees and their dependents that they were receiving under the 1950 and 1974 Benefit Plans. See §§9703(b)(1), (f). It is financed by annual premiums assessed against "signatory coal operators," *i.e.*, coal operators that signed any NBCWA or any other agreement requiring contributions to the 1950 or 1974 Benefit Plans. See §§9701(b)(1), (3); §9701(c)(1). Any signatory operator who "conducts or derives revenue from any business activity, whether or not in the coal industry," may be liable for those premiums. §9706(a); §9701(c)(7). Where a signatory is no longer involved in any business activity, premiums may be levied against "related person[s]," including successors in interest and businesses or corporations under common control. §9706(a); §9701(c)(2)(A).

The Commissioner of Social Security (Commissioner) calculates the premiums due from any signatory operator based on the following formula, by which retirees are assigned to particular operators:

> "For purposes of this chapter, the Commissioner of Social Security shall . . . assign each coal industry re-

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[2] The Coal Act also established another fund, the 1992 UMWA Benefit Plan, which is not at issue here. See 26 U. S. C. §9712.

tiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

"(1) First, to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

"(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which—

"(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

"(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

"(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement." §9706(a).

It is the application of the third prong of the allocation formula, §9706(a)(3), to Eastern that we review in this case.[3]

II

A

Eastern was organized as a Massachusetts business trust in 1929, under the name Eastern Gas and Fuel Asso-

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[3] The Coal Act also provides for an allocation of liability for unassigned beneficiaries. See 26 U. S. C. §9704(d). That liability, however, has thus far been covered through the transfer of funds from other sources. See §9705; 30 U. S. C. §1232(h). This case presents no question regarding the assignment to Eastern of liability for any retirees other than its own former employees.

ciates. Its current holdings include Boston Gas Company and a barge operator. Therefore, although Eastern is no longer involved in the coal industry, it is "in business" within the meaning of the Coal Act. Until 1965, Eastern conducted extensive coal mining operations centered in West Virginia and Pennsylvania. As a signatory to each NBCWA executed between 1947 and 1964, Eastern made contributions of over $60 million to the 1947 and 1950 W&R Funds. Brief for Petitioner 6.

In 1963, Eastern decided to transfer its coal-related operations to a subsidiary, Eastern Associated Coal Corp. (EACC). The transfer was completed by the end of 1965, and was described in Eastern's federal income tax return as an agreement by EACC to assume all of Eastern's liabilities arising out of coal mining and marketing operations in exchange for Eastern's receipt of EACC's stock. EACC made similar representations in SEC filings, describing itself as the successor to Eastern's coal business. See App. (CA1) 117–118. At that time, the 1950 W&R Fund had a positive balance of over $145 million. 1966 Annual Report 3, App. (CA1) 1207.

Eastern retained its stock interest in EACC through a subsidiary corporation, Coal Properties Corp. (CPC), until 1987, and it received dividends of more than $100 million from EACC during that period. See Brief for Petitioner 6, n. 13. In 1987, Eastern sold its interest in CPC to respondent Peabody Holding Company, Inc. (Peabody). Under the terms of the agreement effecting the transfer, Peabody, CPC, and EACC assumed responsibility for payments to certain benefit plans, including the "Benefit Plan for UMWA Represented Employees of EACC and Subs." App. 206a, 210a. As of June 30, 1987, the 1950 and 1974 Benefit Plans reported surplus assets, totaling over $33 million. House Report 9.

B

Following enactment of the Coal Act, the Commissioner assigned to Eastern the obligation for Combined Fund premiums respecting over 1,000 retired miners who had worked for the company before 1966, based on Eastern's status as the pre-1978 signatory operator for whom the miners had worked for the longest period of time. See 26 U. S. C. §9706(a). Eastern's premium for a 12-month period exceeded $5 million. See Brief for Petitioner 16.

Eastern responded by suing the Commissioner, as well as the Combined Fund and its trustees, in the United States District Court for the District of Massachusetts. Eastern asserted that the Coal Act, either on its face or as applied, violates substantive due process and constitutes a taking of its property in violation of the Fifth Amendment. Eastern also challenged the Commissioner's interpretation of the Coal Act. The District Court granted summary judgment for respondents on all claims, upholding both the Commissioner's interpretation of the Coal Act and the Act's constitutionality. *Eastern Enterprises* v. *Shalala,* 942 F. Supp. 684 (Mass. 1996).

The Court of Appeals for the First Circuit affirmed. *Eastern Enterprises* v. *Chater,* 110 F. 3d 150 (1997). The court rejected Eastern's challenge to the Commissioner's interpretation of the Coal Act. Addressing Eastern's substantive due process claim, the court described the Coal Act as "entitled to the most deferential level of judicial scrutiny," explaining that, "[w]here, as here, a piece of legislation is purely economic and does not abridge fundamental rights, a challenger must show that the legislature acted in an arbitrary and irrational way." *Id.*, at 155–156 (internal quotation marks omitted). In the court's view, the retroactive liability imposed by the Act was permissible "[a]s long as the retroactive application . . . is supported by a legitimate legislative purpose furthered by rational means," for "judgments about the wis-

dom of such legislation remain within the exclusive province of the legislative and executive branches." *Id.,* at 156. (internal quotation marks omitted). The court concluded that Congress' purpose in enacting the Coal Act was legitimate and that Eastern's obligations under the Act are rationally related to those objectives, because Eastern's execution of pre-1974 NBCWA's contributed to miners' expectations of lifetime health benefits. *Id.*, at 157. The court rejected Eastern's argument that costs of retiree health benefits should be borne by post-1974 coal operators, reasoning that Eastern's proposal would require coal operators to fund health benefits for miners whom the operators had never employed. *Id.*, at 158, n. 5. The court also noted the substantial dividends that Eastern had received from EACC. *Id.*, at 158.

The court analyzed Eastern's claim that the Coal Act effects an uncompensated taking under the three factors set out in *Connolly* v. *Pension Benefit Guaranty Corporation,* 475 U. S. 211, 225 (1986): "(1) the economic impact of the regulation on the claimant, (2) the extent to which the regulation interferes with the claimant's reasonable investment-backed expectations, and (3) the nature of the governmental action." 110 F. 3d, at 160. With respect to the Act's economic impact on Eastern, the court observed that the Act "does not involve the total deprivation of an asset." *Ibid.* The Act's terms, the court found, "reflec[t] a sufficient degree of proportionality" because Eastern is assigned liability only for miners "whom it employed for a relevant (and relatively long) period of time," and then only if no post-1977 NBCWA signatory (or related person) can be found. *Ibid.* The court also rejected Eastern's contention that the Act unreasonably interferes with its investment-backed expectations, explaining that the pattern of federal intervention in the coal industry and Eastern's role in fostering an expectation of lifetime health benefits meant that Eastern "had every reason to anticipate that it

might be called upon to bear some of the financial burden that this expectation engendered." *Id.*, at 161. Finally, in assessing the nature of the challenged governmental action, the court determined that the Coal Act does not result in the physical invasion or permanent appropriation of Eastern's property, but merely "adjusts the benefits and burdens of economic life to promote the common good." *Ibid.* (internal quotation marks omitted). The court also noted that the premiums are disbursed to the privately operated Combined Fund, not to a government entity. For those reasons, the court concluded, "there is no basis whatever for [Eastern's] claim that the [Coal Act] transgresses the Takings Clause." *Ibid.*

Other Courts of Appeals have also upheld the Coal Act against constitutional challenges.[4] In view of the importance of the issues raised in this case, we granted certiorari. 522 U. S. ___ (1997).

III

We begin with a threshold jurisdictional question, raised in the federal respondents' answer to Eastern's complaint: Whether petitioner's takings claim was properly filed in Federal District Court rather than the United States Court of Federal Claims. See App. (CA1) 40. Although the Commissioner no longer challenges the Court's adjudication of this action, see Brief for Federal Respondent 38–39, n. 30, it is appropriate that we clarify the basis of our jurisdiction over petitioner's claims.

Under the Tucker Act, 28 U. S. C. §1491(a)(1), the Court

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[4]See, *e.g., Holland* v. *Keenan Trucking Co.*, 102 F. 3d 736, 739–742 (CA4 1996); *Lindsey Coal Mining Co.* v. *Chater*, 90 F. 3d 688, 693–695 (CA3 1996); *In re Blue Diamond Coal Co.*, 79 F. 3d 516, 521–526 (CA6 1996), cert. denied, 519 U. S. 1055 (1997); *Davon, Inc.* v. *Shalala*, 75 F. 3d 1114, 1121–1130 (CA7), cert. denied, 519 U. S. 808 (1996); *In re Chateaugay Corp.*, 53 F. 3d 478, 486–496 (CA2), cert. denied *sub nom. LTV Steel Co.* v. *Shalala*, 516 U. S. 913 (1995).

of Federal Claims has exclusive jurisdiction to render judgment upon any claim against the United States for money damages exceeding $10,000 that is "founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." Accordingly, a claim for just compensation under the Takings Clause must be brought to the Court of Federal Claims in the first instance, unless Congress has withdrawn the Tucker Act grant of jurisdiction in the relevant statute. See, *e.g.*, *Ruckelshaus* v. *Monsanto Co.,* 467 U. S. 986, 1016–1019 (1984).

In this case, however, Eastern does not seek compensation from the Government. Instead, Eastern requests a declaratory judgment that the Coal Act violates the Constitution and a corresponding injunction against the Commissioner's enforcement of the Act as to Eastern. Such equitable relief is arguably not within the jurisdiction of the Court of Federal Claims under the Tucker Act. See *United States* v. *Mitchell,* 463 U. S. 206, 216 (1983) (explaining that, in order for a claim to be "cognizable under the Tucker Act," it "must be one for money damages against the United States"); see also, *e.g.*, *Bowen* v. *Massachusetts,* 487 U. S. 879, 905 (1988).

Some Courts of Appeals have accepted the view that the Tucker Act does not apply to suits seeking only equitable relief, see *In re Chateaugay Corp.*, 53 F. 3d 478, 493 (CA2), cert. denied *sub nom. LTV Steel Co.* v. *Shalala,* 516 U. S. 913 (1995); *Southeast Kansas Community Action Program, Inc.* v. *Secretary of Agriculture*, 967 F. 2d 1452, 1455–1456 (CA10 1992), while others have concluded that a claim for equitable relief under the Takings Clause is hypothetical, and therefore not within the district courts' jurisdiction, until compensation has been sought and refused in the Court of Federal Claims, see *Bay View, Inc.* v. *Ahtna, Inc.*,

105 F. 3d 1281, 1286 (CA9 1997); *Rose Acre Farms, Inc.* v. *Madigan*, 956 F. 2d 670, 673–674 (CA7), cert. denied, 506 U. S. 820 (1992).

On the one hand, this Court's precedent can be read to support the latter conclusion that regardless of the nature of relief sought, the availability of a Tucker Act remedy renders premature any takings claim in federal district court. See *Preseault* v. *ICC,* 494 U. S. 1, 11 (1990); see also *Monsanto, supra*, at 1016. On the other hand, in a case such as this one, it cannot be said that monetary relief against the Government is an available remedy. See Brief for Federal Respondent 38–39, n. 30. The payments mandated by the Coal Act, although calculated by a Government agency, are paid to the privately operated Combined Fund. Congress could not have contemplated that the Treasury would compensate coal operators for their liability under the Act, for "[e]very dollar paid pursuant to a statute would be presumed to generate a dollar of Tucker Act compensation." *In re Chateaugay Corp., supra*, at 493. Accordingly, the "presumption of Tucker Act availability must be reversed where the challenged statute, rather than burdening real or physical property, requires a direct transfer of funds" mandated by the Government. *Ibid.* In that situation, a claim for compensation "would entail an utterly pointless set of activities." *Student Loan Marketing Assn.* v. *Riley,* 104 F. 3d 397, 401 (CADC), cert. denied, 522 U. S. ___ (1997). Instead, as we explained in *Duke Power Co.* v. *Carolina Environmental Study Group, Inc.,* 438 U. S. 59, 71, n. 15 (1978), the Declaratory Judgment Act "allows individuals threatened with a taking to seek a declaration of the constitutionality of the disputed governmental action before potentially uncompensable damages are sustained."

Moreover, in situations analogous to this case, we have assumed the lack of a compensatory remedy and have granted equitable relief for Takings Clause violations

without discussing the applicability of the Tucker Act. See, *e.g.*, *Babbitt* v. *Youpee*, 519 U. S. 234, 243–245 (1997); *Hodel* v. *Irving,* 481 U. S. 704, 716–718 (1987). Without addressing the basis of this Court's jurisdiction, we have also upheld similar statutory schemes against Takings Clause challenges. See *Concrete Pipe & Products of Cal., Inc.* v. *Construction Laborers Pension Trust for Southern Cal.,* 508 U. S. 602, 641–647 (1993); *Connolly,* 475 U. S., at 221–228. "While we are not bound by previous exercises of jurisdiction in cases in which our power to act was not questioned but was passed *sub silentio*, neither should we disregard the implications of an exercise of judicial authority assumed to be proper" in previous cases. *Brown Shoe Co.* v. *United States,* 370 U. S. 294, 307 (1962) (citations omitted). Based on the nature of the taking alleged in this case, we conclude that the declaratory judgment and injunction sought by petitioner constitute an appropriate remedy under the circumstances, and that it is within the district courts' power to award such equitable relief.

IV

A

The Takings Clause of the Fifth Amendment provides: "[N]or shall private property be taken for public use, without just compensation." The aim of the Clause is to prevent the government "from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong* v. *United States,* 364 U. S. 40, 49 (1960).

This case does not present the "classi[c] taking" in which the government directly appropriates private property for its own use. See *United States* v. *Security Industrial Bank,* 459 U. S. 70, 78 (1982). Although takings problems are more commonly presented when "the interference with property can be characterized as a physical invasion by government, than when interference arises from some

public program adjusting the benefits and burdens of economic life to promote the common good," *Penn Central Transp. Co.* v. *New York City,* 438 U. S. 104, 124 (1978) (citation omitted), economic regulation such as the Coal Act may nonetheless effect a taking, see *Security Industrial Bank*, *supra*, at 78. See also *Calder* v. *Bull,* 3 Dall. 386, 388 (1798) (Chase, J.) ("It is against all reason and justice" to presume that the legislature has been entrusted with the power to enact "a law that takes *property* from A. and gives it to B"). By operation of the Act, Eastern is "permanently deprived of those assets necessary to satisfy its statutory obligation, not to the Government, but to [the Combined Benefit Fund]," *Connolly*, *supra*, at 222, and "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change," *Pennsylvania Coal Co.* v. *Mahon,* 260 U. S. 393, 416 (1922).

Of course, a party challenging governmental action as an unconstitutional taking bears a substantial burden. See *United States* v. *Sperry Corp.,* 493 U. S. 52, 60 (1989). Government regulation often "curtails some potential for the use or economic exploitation of private property," *Andrus* v. *Allard,* 444 U. S. 51, 65 (1979), and "not every destruction or injury to property by governmental action has been held to be a 'taking' in the constitutional sense," *Armstrong*, *supra*, at 48. In light of that understanding, the process for evaluating a regulation's constitutionality involves an examination of the "justice and fairness" of the governmental action. See *Andrus*, *supra*, at 65. That inquiry, by its nature, does not lend itself to any set formula, see *ibid.*, and the determination whether " 'justice and fairness' require that economic injuries caused by public action [must] be compensated by the government, rather than remain disproportionately concentrated on a few persons," is essentially ad hoc and fact intensive, *Kai-*

ser Aetna v. *United States*, 444 U. S. 164, 175 (1979) (internal quotation marks omitted). We have identified several factors, however, that have particular significance: "the economic impact of the regulation, its interference with reasonable investment backed expectations, and the character of the governmental action." *Ibid.;* see also *Connolly*, *supra*, at 224–225.

B

Our analysis in this case is informed by previous decisions considering the constitutionality of somewhat similar legislative schemes. In *Usery* v. *Turner Elkhorn Mining Co.,* 428 U. S. 1 (1976), we had occasion to review provisions of the Black Lung Benefits Act of 1972, 30 U. S. C. §901 *et seq.*, which required coal operators to compensate certain miners and their survivors for death or disability due to black lung disease caused by employment in coal mines. Coal operators challenged the provisions of the Act relating to miners who were no longer employed in the industry, arguing that those provisions violated substantive due process by imposing "an unexpected liability for past, completed acts that were legally proper and, at least in part, unknown to be dangerous at the time." 428 U. S., at 15.

In rejecting the operators' challenge, we explained that "legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and . . . the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way." *Ibid.* We observed that stricter limits may apply to Congress' authority when legislation operates in a retroactive manner, *id.*, at 16-17, but concluded that the assignment of liability for black lung benefits was "justified as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor,"

id., at 18.

Several years later, we confronted a due process challenge to the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), 94 Stat. 1208. See *Pension Benefit Guaranty Corporation* v. *R. A. Gray & Co.,* 467 U. S. 717 (1984). The MPPAA was enacted to supplement the Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. §1001 *et seq.*, which established the Pension Benefit Guaranty Corporation (PBGC) to administer an insurance program for vested pension benefits. For a temporary period, the PBGC had discretionary authority to pay benefits upon the termination of multiemployer pension plans, after which insurance coverage would become mandatory. If the PBGC exercised that authority, employers who had contributed to the plan during the five years before its termination faced liability for an amount proportional to their share of contributions to the plan during that period. See 467 U. S., at 720–721.

Despite Congress' effort to insure multiemployer plan benefits through ERISA, many multiemployer plans were in a precarious financial position as the date for mandatory coverage approached. After a series of hearings and debates, Congress passed the MPPAA, which imposed a payment obligation upon any employer withdrawing from a multiemployer pension plan, the amount of which depended on the employer's share of the plan's unfunded vested benefits. The MPPAA applied retroactively to withdrawals within the five months preceding the statute's enactment. *Id.*, at 721–725.

In *Gray*, an employer that had participated in a multiemployer pension plan brought a due process challenge to the statutory liability stemming from its withdrawal from the plan four months before the MPPAA was enacted. Relying on our decision in *Turner Elkhorn*, we rejected the employer's claim. It was rational, we determined, for Congress to impose retroactive liability "to

prevent employers from taking advantage of a lengthy legislative process [by] withdrawing while Congress debated necessary revisions in the statute." 467 U. S., at 731. In addition, we explained, "as the [MPPAA] progressed through the legislative process, Congress advanced the effective date chosen so that it would encompass only that retroactive time period that Congress believed would be necessary to accomplish its purposes." *Ibid.* Accordingly, we concluded that the MPPAA exemplified the "customary congressional practice" of enacting "retroactive statutes confined to short and limited periods required by the practicalities of producing national legislation." *Ibid.* (internal quotation marks omitted).

This Court again considered the constitutionality of the MPPAA in *Connolly* v. *Pension Benefit Guaranty Corporation,* 475 U. S. 211 (1986), which presented the question whether the Act's withdrawal liability provisions effected an unconstitutional taking. The action was brought by trustees of a multiemployer pension plan that, under collective bargaining agreements, received contributions from employers on the basis of the hours worked by their employees. We agreed that the liability imposed by the MPPAA constituted a permanent deprivation of assets, but we rejected the notion that "such a statutory liability to a private party always constitutes an uncompensated taking prohibited by the Fifth Amendment." *Id.*, at 222. "In the course of regulating commercial and other human affairs," we explained, "Congress routinely creates burdens for some that directly benefit others." *Id.*, at 223. Consistent with our decisions in *Gray* and *Turner Elkhorn*, we reasoned that legislation is not unlawful solely because it upsets otherwise settled expectations.

Moreover, given our holding in *Gray* that the MPPAA did not violate due process, we concluded that "it would be surprising indeed to discover" that the statute effected a taking. 475 U. S., at 223. Although the employers in

Connolly had contractual agreements expressly limiting their contributions to the multiemployer plan, we observed that "[c]ontracts, however express, cannot fetter the constitutional authority of Congress" and "the fact that legislation disregards or destroys existing contractual rights does not always transform the regulation into an illegal taking." *Id.*, at 223–224 (internal quotation marks omitted). Focusing on the three factors of "particular significance"– the economic impact of the regulation, the extent to which the regulation interferes with investment-backed expectations, and the character of the governmental action– we determined that the MPPAA did not violate the Takings Clause. *Id.*, at 225.

The governmental action at issue in *Connolly* was not a physical invasion of employers' assets; rather, it "safeguard[ed] the participants in multiemployer pension plans by requiring a withdrawing employer to fund its share of the plan obligations incurred during its association with the plan." *Ibid.* In addition, although the amounts assessed under the MPPAA were substantial, we found it important that "[t]he assessment of withdrawal liability [was] not made in a vacuum, . . . but directly depend[ed] on the relationship between the employer and the plan to which it had made contributions." *Ibid.* Further, "a significant number of provisions in the Act . . . moderate[d] and mitigate[d] the economic impact of an individual employer's liability." *Id.*, at 225–226. Accordingly, we found "nothing to show that the withdrawal liability actually imposed on an employer w[ould] always be out of proportion to its experience with the plan." *Id.*, at 226. Nor did the MPPAA interfere with employers' reasonable investment-backed expectations, for, by the time of the MPPAA's enactment, "[p]rudent employers . . . had more than sufficient notice not only that pension plans were currently regulated, but also that withdrawal itself might trigger additional financial obligations." *Id.*, at 227. For those

reasons, we determined that "fairness and justice" did not require anyone other than the withdrawing employers and the remaining parties to the pension agreements to bear the burden of funding employees' vested benefits. *Ibid.*

We once more faced challenges to the MPPAA under the Due Process and Takings Clauses in *Concrete Pipe & Products of Cal., Inc.* v. *Construction Laborers Pension Trust for Southern Cal.,* 508 U. S. 602 (1993). In that case, the employer focused on the fact that its contractual commitment to the multiemployer plan did not impose withdrawal liability. We first rejected the employer's substantive due process challenge based on our decisions in *Gray* and *Turner Elkhorn*, notwithstanding the employer's argument that the MPPAA imposed upon it a higher liability than its contract contemplated. 508 U. S., at 636–641. The claim under the Takings Clause, meanwhile, was resolved by *Connolly*. We explained that, as in that case, the government had not occupied or destroyed the employer's property. 508 U. S., at 643–644. As to the severity of the MPPAA's impact, we concluded that the employer had not shown that its withdrawal liability was "'out of proportion to its experience with the plan'" *Id.*, at 645 (quoting *Connolly*, *supra,* at 226). Turning to the employer's reasonable investment-backed expectations, we repeated our observation in *Connolly* that "pension plans had long been subject to federal regulation." 508 U. S., at 645. Moreover, although the employer's liability under the MPPAA exceeded ERISA's original cap on withdrawal liability, we found that there was "no reasonable basis to expect that [ERISA's] legislative ceiling would never be lifted." *Id.*, at 646. In sum, as in *Connolly*, the employer "voluntarily negotiated and maintained a pension plan which was determined to be within the strictures of ERISA," making the burden the MPPAA imposed upon it neither unfair nor unjust. 508 U. S., at 646–647 (internal quotation marks omitted).

Our opinions in *Turner Elkhorn*, *Connolly*, and *Concrete Pipe*, make clear that Congress has considerable leeway to fashion economic legislation, including the power to affect contractual commitments between private parties. Congress also may impose retroactive liability to some degree, particularly where it is "confined to short and limited periods required by the practicalities of producing national legislation." *Gray*, 467 U. S., at 731 (internal quotation marks omitted). Our decisions, however, have left open the possibility that legislation might be unconstitutional if it imposes severe retroactive liability on a limited class of parties that could not have anticipated the liability, and the extent of that liability is substantially disproportionate to the parties' experience.

C

We believe that the Coal Act's allocation scheme, as applied to Eastern, presents such a case. We reach that conclusion by applying the three factors that traditionally have informed our regulatory takings analysis. Although JUSTICE KENNEDY and JUSTICE BREYER would pursue a different course in evaluating the constitutionality of the Coal Act, they acknowledge that this Court's opinions in *Connolly* and *Concrete Pipe* indicate that the regulatory takings framework is germane to legislation of this sort. See *post*, at 8 (KENNEDY, J., concurring in judgment and dissenting in part); *post*, at 3 (BREYER, J., dissenting).

As to the first factor relevant in assessing whether a regulatory taking has occurred, economic impact, there is no doubt that the Coal Act has forced a considerable financial burden upon Eastern. The parties estimate that Eastern's cumulative payments under the Act will be on the order of $50 to $100 million. See Brief for Petitioner 2 ($100 million); Brief for Respondents The UMWA Combined Benefit Fund and its Trustees 46 ($51 million). Eastern's liability is thus substantial, and the company is

clearly deprived of the amounts it must pay the Combined Fund. See *Connolly*, 475 U. S., at 222. The fact that the Federal Government has not specified the assets that Eastern must use to satisfy its obligation does not negate that impact. It is clear that the Act requires Eastern to turn over a dollar amount established by the Commissioner under a timetable set by the Act, with the threat of severe penalty if Eastern fails to comply. See 26 U. S. C. §§9704(a) and (b) (directing liable operators to pay annual premiums as computed by the Commissioner); §9707 (imposing, with limited exceptions, a penalty of $100 per day per eligible beneficiary if payment is not made in accordance with §9704).

That liability is not, of course, a permanent physical occupation of Eastern's property of the kind that we have viewed as a *per se* taking. See *Loretto* v. *Teleprompter Manhattan CATV Corp.,* 458 U. S. 419, 441 (1982). But our decisions upholding the MPPAA suggest that an employer's statutory liability for multiemployer plan benefits should reflect some "proportion[ality] to its experience with the plan." *Concrete Pipe*, *supra*, at 645 (internal quotation marks omitted); see also *Connolly*, *supra*, at 225 (noting that employer's liability under the MPPAA "directly depend[ed] on the relationship between the employer and the plan to which it had made contributions"). In *Concrete Pipe* and *Connolly*, the employers had "voluntarily negotiated and maintained a pension plan which was determined to be within the strictures of ERISA," *Concrete Pipe*, *supra*, at 646 (internal quotation marks omitted); *Connolly*, *supra*, at 227, and consequently, the statutory liability was linked to the employers' conduct.

Here, however, while Eastern contributed to the 1947 and 1950 W&R Funds, it ceased its coal mining operations in 1965 and neither participated in negotiations nor agreed to make contributions in connection with the Benefit Plans under the 1974, 1978, or subsequent NBCWA's.

It is the latter agreements that first suggest an industry commitment to the funding of lifetime health benefits for both retirees and their family members. Although EACC continued mining coal until 1987 as a subsidiary of Eastern, Eastern's liability under the Act bears no relationship to its ownership of EACC; the Act assigns Eastern responsibility for benefits relating to miners that Eastern itself, not EACC, employed, while EACC would be assigned the responsibility for any miners that it had employed. See 26 U. S. C. §§9706(a). Thus, the Act does not purport, as JUSTICE BREYER suggests, *post*, at 14, to assign liability to Eastern based on the "'last man out' problem" that developed after benefits were significantly expanded in 1974. During the years in which Eastern employed miners, retirement and health benefits were far less extensive than under the 1974 NBCWA, were unvested, and were fully subject to alteration or termination. Before 1974, as JUSTICE BREYER notes, Eastern could not have contemplated liability for the provision of lifetime benefits to the widows of deceased miners, see *post*, at 10–11, a beneficiary class that is likely to be substantial. See General Accounting Office Report, Retired Coal Miners' Health Benefits 7 (1992) (reporting to Congress that widows comprised 45% of beneficiaries in Jan. 1992); see also Brief for Petitioner 45, n. 54 (citing affidavit that 75% of the beneficiaries assigned to Eastern are spouses or dependent children of miners). Although Eastern at one time employed the Combined Fund beneficiaries that it has been assigned under the Coal Act, the correlation between Eastern and its liability to the Combined Fund is tenuous, and the amount assessed against Eastern resembles a calculation "made in a vacuum." See *Connolly*, *supra*, at 225. The company's obligations under the Act depend solely on its roster of employees some 30 to 50 years before the statute's enactment, without any regard to responsibilities that Eastern accepted under any benefit plan the company

itself adopted.

It is true that Eastern may be able to seek indemnification from EACC or Peabody. But although the Act preserves Eastern's right to pursue indemnification, see 26 U. S. C. §9706(f)(6), it does not confer any right of reimbursement. See also Conference Report on Coal Act, 138 Cong. Rec., at 34004 (explaining that the Coal Act allows parties to "enter into private litigation to enforce . . . contracts for indemnification," but "does not create new private rights of action"). Moreover, the possibility of indemnification does not alter the fact that Eastern has been assessed over $5 million in Combined Fund premiums and that its liability under the Coal Act will continue for many years. To the extent that Eastern may have entered into contractual arrangements to insure itself against liabilities arising out of its former coal operations, that indemnity is neither enhanced nor supplanted by the Coal Act and does not affect the availability of the declaratory relief Eastern seeks.

We are also not persuaded by respondents' argument that the Coal Act "moderate[s] and mitigate[s] the economic impact" upon Eastern. See *Connolly*, *supra*, at 225–226. Although Eastern is not assigned the premiums for former employees who later worked for companies that signed the 1978 NBCWA, see 26 U. S. C. §§9706(a)(1), (2), Eastern had no control over the activities of its former employees subsequent to its departure from the coal industry in 1965. By contrast, the provisions of the MPPAA that we identified as potentially moderating the employer's liability in *Connolly* were generally within the employer's control. See 475 U. S., at 226, n. 8. The mere fact that Eastern is not forced to bear the burden of lifetime benefits respecting *all* of its former employees does not mean that the company's liability for some of those employees is not a significant economic burden.

For similar reasons, the Coal Act substantially interferes

with Eastern's reasonable investment-backed expectations. The Act's beneficiary allocation scheme reaches back 30 to 50 years to impose liability against Eastern based on the company's activities between 1946 and 1965. Thus, even though the Act mandates only the payment of future health benefits, it nonetheless "attaches new legal consequences to [an employment relationship] completed before its enactment." *Landgraf* v. *USI Film Products,* 511 U. S. 244, 270 (1994).

Retroactivity is generally disfavored in the law, *Bowen* v. *Georgetown Univ. Hospital,* 488 U. S. 204, 208 (1988), in accordance with "fundamental notions of justice" that have been recognized throughout history, *Kaiser Aluminum & Chemical Corp.* v. *Bonjorno,* 494 U. S. 827, 855 (1990) (SCALIA, J., concurring). See also, *e.g.*, *Dash* v. *Van Kleeck*, 7 Johns. *477, *503 (N Y 1811) ("It is a principle in the *English* common law, as ancient as the law itself, that a statute, even of its omnipotent parliament, is not to have a retrospective effect"); H. Broom, Legal Maxims 24 (8th ed. 1911) ("Retrospective laws are, as a rule, of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law"). In his Commentaries on the Constitution, Justice Story reasoned, "[r]etrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact." 2 J. Story, Commentaries on the Constitution §1398 (5th ed. 1891). A similar principle abounds in the laws of other nations. See, *e.g.*, *Gustavson Drilling (1964) Ltd.* v. *Minister of National Revenue*, 66 D. L. R. 3d 449, 462 (Can. 1975) (discussing rule that statutes should not be construed in a manner that would impair existing property rights); The French Civil Code, Preliminary Title,

art. 2, p. 2 ("Legislation only provides for the future; it has no retroactive effect") (J. Crabb trans., rev. ed. 1995); Aarnio, Statutory Interpretation in Finland 151, in Interpreting Statutes: A Comparative Study (D. MacCormick & R. Summers eds. 1991) (discussing prohibition against retroactive legislation). "Retroactive legislation," we have explained, "presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions." *General Motors Corp.* v. *Romein,* 503 U. S. 181, 191 (1992).

Our Constitution expresses concern with retroactive laws through several of its provisions, including the *Ex Post Facto* and Takings Clauses. *Landgraf, supra*, at 266. In *Calder* v. *Bull,* 3 Dall. 386 (1798), this Court held that the *Ex Post Facto* Clause is directed at the retroactivity of penal legislation, while suggesting that the Takings Clause provides a similar safeguard against retrospective legislation concerning property rights. See *id.*, at 394 (Chase, J.) ("The restraint against making any *ex post facto laws* was not considered, by the framers of the constitution, as extending to prohibit the depriving a citizen even of a *vested right to property*; or the provision, 'that *private* property should not be taken for public use, without just compensation,' was unnecessary"). In *Security Industrial Bank*, we considered a Takings Clause challenge to a Bankruptcy Code provision permitting debtors to avoid certain liens, possibly including those predating the statute's enactment. We expressed "substantial doubt whether the retroactive destruction of the appellees' liens . . . comport[ed] with the Fifth Amendment," and therefore construed the statute as applying only to lien interests vesting after the legislation took effect. 459 U. S., at 78–79. Similar concerns led this Court to strike down a bankruptcy provision as an unconstitutional taking where it affected substantive rights acquired before the provision was adopted.

Louisville Joint Stock Land Bank v. *Radford,* 295 U. S. 555, 601–602 (1935).

Like those provisions, the Coal Act operates retroactively, divesting Eastern of property long after the company believed its liabilities under the 1950 W&R Fund to have been settled. And the extent of Eastern's retroactive liability is substantial and particularly far reaching. Even in areas in which retroactivity is generally tolerated, such as tax legislation, some limits have been suggested. See, *e.g.*, *United States* v. *Darusmont,* 449 U. S. 292, 296–297 (1981) *(per curiam)* (noting Congress' practice of confining retroactive application of tax provisions to "short and limited periods"). The distance into the past that the Act reaches back to impose a liability on Eastern and the magnitude of that liability raise substantial questions of fairness. See *Connolly*, *supra*, at 229 (O'CONNOR, J., concurring) (questioning constitutionality of imposing liability on "employers for unfunded benefits that accrued in the past under a pension plan whether or not the employers had agreed to ensure that benefits would be fully funded"); see also *Landgraf*, *supra*, at 265 ("Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted").

Respondents and their *amici curiae* assert that the extent of retroactive liability is justified because there was an implicit, industrywide agreement during the time that Eastern was involved in the coal industry to fund lifetime health benefits for qualifying miners and their dependents. That contention, however, is not supported by the pre-1974 NBCWA's. No contrary conclusion can be drawn from the few isolated statements of individuals involved in the coal industry, see, *e.g.*, Brief for Respondents Peabody Holding Company, Inc., *et al.* 8–10, or from statements of Members of Congress while considering legislative re-

sponses to the issue of funding retiree benefits. Moreover, even though retirees received medical benefits before 1974, and perhaps developed a corresponding expectation that those benefits would continue, the Coal Act imposes liability respecting a much broader range of beneficiaries. In any event, the question is not whether miners had an expectation of lifetime benefits, but whether Eastern should bear the cost of those benefits as to miners it employed before 1966.

Eastern only participated in the 1947 and 1950 W&R Funds, which operated on a pay-as-you-go basis, and under which the degree of benefits and the classes of beneficiaries were subject to the trustees' discretion. Not until 1974, when ERISA forced revisions to the 1950 W&R Fund, could lifetime medical benefits under the multiemployer agreement have been viewed as promised. Eastern was no longer in the industry when the Evergreen and Guarantee clauses of the 1978 and subsequent NBCWA's shifted the 1950 and 1974 Benefit Plans from a defined contribution framework to a guarantee of defined benefits, at least for the life of the agreements. See *Connolly*, 475 U. S., at 230–231 (O'CONNOR, J., concurring) (imposition of liability "without regard to the extent of a particular employer's actual responsibility for [a benefit] plan's promise of fixed benefits to employees" could raise serious concerns under the Takings Clause). Thus, unlike the pension withdrawal liability upheld in *Concrete Pipe* and *Connolly*, the Coal Act's scheme for allocation of Combined Fund premiums is not calibrated either to Eastern's past actions or to any agreement– implicit or otherwise– by the company. Nor would the pattern of the Federal Government's involvement in the coal industry have given Eastern "sufficient notice" that lifetime health benefits might be guaranteed to retirees several decades later. See *Connolly*, *supra*, at 227.

Eastern's liability also differs from coal operators' re-

sponsibility for benefits under the Black Lung Benefits Act of 1972. That legislation merely imposed "liability for the effects of disabilities bred in the past [that] is justified as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor." *Turner Elkhorn*, 428 U. S., at 18. Likewise, Eastern might be responsible for employment-related health problems of all former employees whether or not the cost was foreseen at the time of employment, see *id*., at 16, but there is no such connection here. There is no doubt that many coal miners sacrificed their health on behalf of this country's industrial development, and we do not dispute that some members of the industry promised lifetime medical benefits to miners and their dependents during the 1970's. Nor do we, as JUSTICE STEVENS suggests, *post*, at 4, question Congress' policy decision that the miners are entitled to relief. But the Constitution does not permit a solution to the problem of funding miners' benefits that imposes such a disproportionate and severely retroactive burden upon Eastern.

Finally, the nature of the governmental action in this case is quite unusual. That Congress sought a legislative remedy for what it perceived to be a grave problem in the funding of retired coal miners' health benefits is understandable; complex problems of that sort typically call for a legislative solution. When, however, that solution singles out certain employers to bear a burden that is substantial in amount, based on the employers' conduct far in the past, and unrelated to any commitment that the employers made or to any injury they caused, the governmental action implicates fundamental principles of fairness underlying the Takings Clause. Eastern cannot be forced to bear the expense of lifetime health benefits for miners based on its activities decades before those benefits were promised. Accordingly, in the specific circumstances of this case, we conclude that the Coal Act's application to Eastern effects an unconstitutional taking.

D

Eastern also claims that the manner in which the Coal Act imposes liability upon it violates substantive due process. To succeed, Eastern would be required to establish that its liability under the Act is "arbitrary and irrational." *Turner Elkhorn*, *supra*, at 15. Our analysis of legislation under the Takings and Due Process Clauses is correlated to some extent, see *Connolly, supra*, at 223, and there is a question whether the Coal Act violates due process in light of the Act's severely retroactive impact. At the same time, this Court has expressed concerns about using the Due Process Clause to invalidate economic legislation. See *Ferguson* v. *Skrupa,* 372 U. S. 726, 731 (1963) (noting "our abandonment of the use of the 'vague contours' of the Due Process Clause to nullify laws which a majority of the Court believ[e] to be economically unwise" (footnote omitted)); see also *Williamson* v. *Lee Optical of Okla., Inc.,* 348 U. S. 483, 488 (1955) ("The day is gone when this Court uses the Due Process Clause . . . to strike down . . . laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought"). Because we have determined that the third tier of the Coal Act's allocation scheme violates the Takings Clause as applied to Eastern, we need not address Eastern's due process claim. Nor do we consider the first two tiers of the Act's allocation scheme, 26 U. S. C. §§9706(a)(1) and (2), as the liability that has been imposed on Eastern arises only under the third tier. Cf. *Printz* v. *United States*, 521 U. S. ___, ___ (1997) (slip op., at 35–37).

V

In enacting the Coal Act, Congress was responding to a serious problem with the funding of health benefits for retired coal miners. While we do not question Congress' power to address that problem, the solution it crafted improperly places a severe, disproportionate, and extremely

retroactive burden on Eastern. Accordingly, we conclude that the Coal Act's allocation of liability to Eastern violates the Takings Clause, and that 26 U. S. C. §9706(a)(3) should be enjoined as applied to Eastern. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings.

It is so ordered.