SUPREME COURT OF THE UNITED STATES

No. 91–610

LOCAL 144 NURSING HOME PENSION FUND, ET AL., PETITIONERS *v.* NICHOLAS DEMISAY ET AL.

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

[June 14, 1993]

JUSTICE STEVENS, with whom JUSTICE WHITE and JUSTICE BLACKMUN join, concurring in the judgment.

The judgment of the Court of Appeals should be reversed because petitioners' failure to transfer assets to respondents' Southern Funds did not violate §302(c)(5) of the Labor Management Relations Act, 1947 (LMRA), 29 U. S. C. §186(c)(5) (1988 ed., Supp. III). Because the Court unnecessarily decides that §302(e) of the LMRA would not authorize injunctive relief even had petitioners violated the specific standards of §302(c)(5), I do not join its opinion.

As the Court explains, see *ante*, at 1–3, this case arose when respondent employers withdrew from the Greater Funds, a multiemployer trust fund, and negotiated an independent union agreement establishing the Southern Funds. Respondents then sought a transfer to the Southern Funds of that portion of the Greater Funds' assets representing respondents' past contributions on behalf of their employees. 935 F. 2d 528, 531 (CA2 1991). The Court of Appeals agreed that a transfer was necessary, reasoning that retention by the Greater Funds of the assets contributed by respondents would violate the "sole and exclusive benefit" provision of §302(c)(5). *Id.,* at 533–534; see *ante*, at 4–5. We granted certiorari to review that holding. See Pet. for Cert. i.

I would decide this case on the narrow ground presented: that the refusal to make the transfer at issue did not violate §302(c)(5), 29 U. S. C. §186(c)(5) (1988 ed., Supp. III). That provision allows payments into trusts not only "for the sole and exclusive benefit of the employees of [the contributing] employer," but also for the benefit of "such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents." To the extent respondents' previous contributions to the Greater Funds have not been used already to benefit respondents' own employees, they now will be used for the benefit of "employees of other employers making similar payments, and their families and dependents." *Ibid.* Hence, the Greater Funds continue to operate within the constraints of §302(c)(5), and no transfer is required.

That some portion of respondents' contributions will go to benefit the employees of other contributors is, of course, in the nature of a multiemployer plan. Such plans operate precisely as suggested by the language of §302(c)(5), by pooling employer contributions for the joint benefit of all participating employees. Segregation of funds by an employer is neither feasible nor contemplated. "An employer's contributions are not solely for the benefit of its employees or employees who have worked for it alone." *Concrete Pipe and Products of California, Inc.* v. *Construction Laborers Pension Trust for Southern California, post,* at ___ (slip op., at 35). See also *Stinson* v. *Ironworkers Dist. Council of Southern Ohio and Vicinity Benefit Trust,* 869 F. 2d 1014, 1021–1022 (CA7 1989) (use of employer's contributions for benefit of other than own employees does not violate "sole and exclusive benefit" requirement); *British Motor Car Distributors, Ltd.* v. *San Francisco Automotive Industries Welfare Fund,* 882 F. 2d 371, 377–378 (CA9 1989) (same).

In short, I agree with the United States, appearing as *amicus curiae*, that petitioners did not violate §302(c)(5) when they refused to transfer some proportional share of assets to the Southern Funds. The Court eschews this straightforward rule of decision, however, in favor of a far broader approach, quite unanticipated by the submissions of the parties. Without the benefit of argument on the point by either litigant, the Court reaches out to overrule decades of case law by deciding that §302(e) does not authorize a civil remedy for violations of §302(c)(5). In my view, this reinvention of §302 of the LMRA is as unwise as it is uninvited.

Section 302(c)(5) performs two distinct functions in the statutory scheme. First, as an exception to the criminal prohibitions of §§302(a) and (b), §302(c)(5) provides a "safe harbor" for contributions to legitimate pension funds. See *ante*, at 4. Second, §302(c)(5) sets forth certain standards that must be observed in the on-going administration of such funds. The importance of both these functions is illustrated by our decision in *Arroyo* v. *United States*, 359 U. S. 419 (1959), which involved a contribution lawful when made and thereafter diverted to an unlawful use. Because the payment was to a legitimate trust fund, we held, the transaction fell within §302(c)(5)'s exception, so that receipt of the payment was not a criminal violation of §302(b). *Id.,* at 423–424. At the same time, however, §302(e) was available to provide a civil remedy for the violation of §302(c)(5) that occurred when the funds subsequently were diverted. *Id.*, at 426–427.[1]

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[1]The majority relies heavily on one half of *Arroyo* while disregarding the other. See *ante*, at 8, n. 3. I note here only that the Court in *Arroyo* never determined that funds diverted after establishment of a trust are "held in trust for the purpose" of benefitting employees, *ibid.*; to the contrary, its reliance on

The majority repudiates this understanding of §302(c)(5)'s operation, reflected also in *NLRB* v. *Amax Coal Co.*, 453 U. S. 322, 331 (1981), and *Mine Workers Health and Retirement Funds* v. *Robinson*, 455 U. S. 562, 570–572 (1982), as "pure dictum." *Ante*, at 10. But the reasoning that led us to our conclusion in *Arroyo* is not so easily dismissed. As we explained in that case, §302(c)(5) was enacted not merely to exempt specified conduct from the prohibitions of §§302(a) and (b), but also to ensure that union trust funds, once established, would continue to benefit the designated employees. 359 U. S., at 424–427.

> "Congress believed that if welfare funds were established which did not define with specificity the benefits payable thereunder, a substantial danger existed that such funds might be employed to perpetuate control of union officers, for political purposes, or even for personal gain. See 92 Cong. Rec. 4892–4894, 4899, 5181, 5345–5346; S. Rep. No. 105, 80th Cong., 1st Sess., at 52; 93 Cong. Rec. 4678, 4746–4747. To remove these dangers, specific standards were established to assure that welfare funds would be established only for purposes which Congress considered proper and expended only for the purposes for which they were established. See Cox, Some Aspects of the Labor Management Relations Act, [61 Harv. L. Rev. 274, 290 (1947)]. Continuing compliance with these standards in the administration of welfare funds was made explicitly enforceable in federal district courts by

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§302(e) to remedy such abuses supports quite the opposite conclusion. In any event, what *Arroyo* held is that payment and receipt of trust funds do not violate §§302(a) and (b) if the funds are later diverted, not that the later diversion does not violate §302(c)(5).

civil proceedings under §302(e). The legislative history is devoid of any suggestion that defalcating trustees were to be held accountable under federal law, except by way of the injunctive remedy provided in that subsection." *Id.*, at 426–427. (footnote omitted).[2]

We made the same point in *Robinson*, stating that "`the sole purpose of §302(c)(5) is to ensure that employee benefit trust funds are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them . . . .'" 455 U. S., at 570 (quoting *Amax Coal*, 453 U. S., at 331) (internal quotation marks omitted). Our view that §302(c)(5) imposed continuing obligations on the actual use of trust funds, we found, was "amply supported by the legislative history," 453 U. S., at 571, which reflected a concern that "funds contributed by their employers for the benefit of the employees and their families might be diverted to other union purposes or even to the private benefit of faithless union leaders," *id.*, at 572. See also *id.*, at 570–572, and nn. 8–10, and sources cited therein. To prevent trust funds once legitimate from turning into vehicles for kick-backs and racketeering, §302(c)(5) requires not only that trust funds be "established" for proper purposes, but also that "employer contributions be *administered* for the sole and exclusive benefit of employees." *Id.,* at 572 (emphasis added).[3]

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[2]When the Court characterizes this passage as "leaping" to an "entirely unsupported conclusion," see *ante,* at 10, n. 4, it ignores the abundant support for that conclusion in the legislative history cited in Justice Stewart's opinion.

[3]Though we did not belabor the point in *Robinson*, as it was then (as until today) undisputed, it should be noted that the relevant statutory text supports the conclusion that §302(c)(5) creates on-going

The proposition that §302(c)(5)'s specific statutory standards are enforceable on a continuing basis has never been questioned before today, by this Court or by any Court of Appeals. It is true, as the majority notes, *ante*, at 6, that the precise scope of the civil remedy authorized by §302(e) has been the subject of controversy. Some courts have read §302(e) quite broadly, to authorize relief in cases of "unreasonable" or "arbitrary and capricious" trust administration. See, *e.g.*, *Phillips* v. *Alaska Hotel and Restaurant Employees Pension Fund*, 944 F. 2d 509, 515 (CA9 1991); *Stinson* v. *Ironworkers District Council of*

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obligations for trustees. According to the majority, §302(c)(5)'s requirements of a trust "established" for the benefit of employees and funds "held in trust for the purpose" of paying employees relate to the purpose for which a trust is first established; hence, they are fulfilled entirely, if ever, at the time of establishment. See *ante*, at 6–7, 11. Even on this narrow question, I depart from the majority; in my view, it is perfectly clear that funds are no longer "held in trust for the purpose" of benefitting employees if, immediately after deposit into a legitimate trust fund, they are diverted for some improper purpose.

More important, however, is the fact that other provisions of §302(c)(5) clearly set forth standards for the continuing administration of trust funds. By their very terms, these standards demand compliance on an on-going basis. See §302(c)(5)(B) (employees and employers must be equally represented in fund administration); §302(c)(5)(C) (payments to be used for pensions or annuities must be made to a separate trust). The obvious purpose of §302(e)—a subsection largely overlooked by the majority—is to provide a vehicle for enforcing §302(c)(5)'s on-going obligations, among them the requirement that funds be held in trust for the benefit of employees.

Southern Ohio and Vicinity Benefit Trust, 869 F. 2d at, 1019.[4] Others have read §302(e) more narrowly, as limited to remedying "violations of basic structure, as determined by the Congress, not violations of fiduciary obligations or standards of prudence in the administration of the trust fund." *Bowers* v. *Ulpiano Casal, Inc.*, 393 F. 2d 421, 424 (CA1 1968). For present purposes, how-ever, the important point is that every Court of Appeals has assumed that the federal courts may, at a minimum, enforce compliance with §302(c)(5)'s express commands.[5]

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[4]As the majority notes, petitioners argue that §302(c)(5) does not authorize such "broad jurisdiction" to "restructure and regulate employee benefit plans." See *ante,* at 7, n. 2. More precisely, the position with which respondents take issue in the cited pages of their brief, see *ibid.*, is that "a collectively bargained term of an employee benefit plan is not subject to federal court review for reasonableness under Section 302 of LMRA." Brief for Petitioners 19; see Brief for Respondents 18. It is disingenuous, to say the least, to characterize petitioners' argument as one "attacking the basic authority of federal courts to regulate §302(c)(5) trust funds," *ante*, at 7, n. 2. See n. 6, *infra.*

[5]See, *e.g.*, *Bowers* v. *Ulpiano Casal, Inc.*, 393 F. 2d 421, 424, n. 4 (CA1 1968); *Lugo* v. *Employees Retirement Fund of Illumination Products Industry,* 529 F. 2d 251, 254–256 (CA2 1976); *Sheet Metal Workers' Local 28 of New Jersey Welfare Fund* v. *Gallagher*, 960 F. 2d 1195, 1210 (CA3 1992); *Seafarers Pension Plan* v. *Sturgis*, 630 F. 2d 218, 220–221 (CA4 1980); *Johnson* v. *Franco*, 727 F. 2d 442, 446–447 (CA5 1984); *Sellers* v. *O'Connell*, 701 F. 2d 575, 577 (CA6 1983); *Stinson* v. *Ironworkers District Council of Southern Ohio and Vicinity Pension Trust,* 869 F. 2d 1014, 1019 (CA7 1989); *Holcomb* v. *United Automotive Assn. of St. Louis, Inc.,* 852 F. 2d 330,

Our unanimous opinion in *Robinson* is consistent with this well-established body of case law. In *Robinson*, we considered and rejected one of the broader views of §302(c)(5), holding that the provision does not empower the federal courts to impose a nonstatutory "reasonableness" requirement on trust fund eligibility criteria established by collective-bargaining agreement. 455 U. S., at 574. We also left open the question whether §302(e) authorizes enforcement of the traditional fiduciary duties of trustees. *Id.*, at 573, n. 12.[6] The question

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332–335 (CA8 1988); *Ponce* v. *Construction Laborers Pension Trust for Southern California,* 628 F. 2d 537, 541–542 (CA9 1980); *Ader* v. *Hughes*, 570 F. 2d 303, 306–308 (CA10 1978); *Central Florida Sheet Metal Contractors Assn., Inc.* v. *NLRB*, 664 F. 2d 489, 498 (CA5 1981); *Central Tool Co.* v. *International Assn. of Machinists Nat. Pension Fund*, 258 U. S. App. D.C. 309, 322, n. 77, 811 F. 2d 651, 664, n. 77 (1987).

[6]The Court seems to assume that the question reserved in *Robinson* was the very different one it answers today. See *ante*, at 6.

Petitioners, on the other hand, share our understanding of what was decided in *Robinson* and what remained open for decision. Notwithstanding the protestations of the majority, see *ante,* at 7, n. 2, petitioners' argument on this point was limited to the proposition that §302(c)(5) does not "establish federal fiduciary standards for trustees of employee benefit plans," Brief for Petitioners 10. Petitioners never argue that §302(e) does not provide a remedy when the specific standards of §302(c)(5) are violated; to the contrary, petitioners cite with approval the holding from *Bowers*, *supra*, that the only violations "within the federal courts' authority involved the failure to meet the *specific* requirements of Section 302(c)(5)." Brief for Petitioners 12 (emphasis in original). Nor do petitioners ever argue that §302(c)

with which we had no difficulty, however, is the one that the Court reaches out to answer today. We unequivocally stated:

> "It is, of course, clear that compliance with the specific standards of §302(c)(5) in the administration of welfare funds is enforceable in federal district courts under §302(e) of the LMRA." *Ibid.*[7]

The Court now seems to assume that it is confronted with a choice between "establishing an entire body of federal trust law," *ante*, at 9, on the one hand, and limiting the scope of §302(e) to

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(5)'s "exclusive benefit" obligation is satisfied finally at the time of trust establishment; rather, petitioners understand §302(c)(5) to require that a trust "(1) *use* employer contributions only for specified types of benefits; (2) *use* those assets only for benefits for employees and families of the contributing employer and the employees and families of other contributing employers . . . ." *Id.*, at 8 (emphasis added).

[7]Had this basic proposition been challenged in *Robinson*—and had the Court as then constituted found any merit in the challenge—then it would have been unnecessary to go on to decide whether the discrimination in that case violated §302(c)(5) as "unreasonable." In other words, this proposition provided the framework for all of the reasoning in *Robinson*, just as it provided the framework for all of our post-*Arroyo* cases under this statute. Whether or not the label "dicta," see *ante*, at 11, n. 5, is appropriately applied to such a proposition, our statement in *Robinson* represented an interpretation of an important federal statute that had been accepted uniformly by the bar, the judiciary, and the Congress for over three decades, since *Arroyo* was decided in 1959. The Court today simply ignores the interest in adhering to settled rules of law that undergirds the doctrines of stare decisis and judicial restraint.

injunctions against the making or acceptance of prohibited payments, on the other. As *Robinson* makes clear, however, there is no need to go so far in either direction; our understanding that §302(e) provides a remedy for violations of §302(c)(5)'s specific standards is independent of any view as to whether §302(e) makes general fiduciary duties enforceable in federal court.

In my view, if a trust fund is not complying with the standards of §302(c)(5)—if, for instance, it is making annual contributions to the Red Cross—then a federal court is authorized by §302(e) to enjoin the improper diversion of funds. There is no sensible reason why the court should instead be restricted to enjoining future payments to the fund, or receipt of those payments, as violations of §§302(a) and (b). Congress intended §302(c)(5) to operate as a guarantee against diversion of trust funds, and this purpose is effectuated by the reading we have always before given §302. Today's departure from this understanding seriously undermines the functioning of the statute. The Court's action is not only uninvited and unnecessary; it is a radical departure from the doctrine of judicial restraint.