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 STEVENS, with whom JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join, dissenting.

Some appellate judges are better historians than others. With respect to the central issue resolved by the Coal Act of 1992, I am persuaded that the consensus among the circuit judges who have appraised the issue is more accurate than the views of this Court's majority.[1] The uneasy truce between the coal operators and the miners that enabled coal production to continue during the 1950's and 1960's depended more on the value of a handshake than the fine print in written documents. During that period there was an implicit understanding on both sides of the bargaining table that the operators would provide the miners with lifetime health benefits. It was this understanding that kept the mines in operation and enabled Eastern to earn handsome profits before it transferred its coal business to a wholly-owned subsidiary in 1965.

My understanding of this critical fact is shared by the

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[1] See *ante*, at 33–35 (plurality opinion of O'CONNOR, J., joined by REHNQUIST, C.J., and SCALIA and THOMAS, JJ.); *ante*, at 1, 11–12 (KENNEDY, J., concurring in judgment and dissenting in part).

judges of the Seventh Circuit,[2] the Sixth Circuit,[3] and the

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[2] "[E]very [National Bituminous Coal Wage Agreement (NBCWA)] signatory company shared some responsibility in creating a legitimate expectation among miners of lifetime health benefits. Imposing liability on companies that have profited from the retirees' labor was found rational in [*Usery* v. *Turner Elkhorn Mining Co.*, 428 U. S. 1, 18 (1976)] . . . . Every signatory company, including plaintiffs, participated in the creation and development of a multi-employer health benefit program that provided lifetime health benefits for retirees for almost fifty years. Congress could rationally have concluded that such participation led to a legitimate expectation of lifetime health benefits that should be honored under the Coal Act. Again, in this light, it would have been arbitrary to draw the line anywhere other than at all NBCWA signatories. Plaintiffs respond that it was not until the 1974 NBCWA and the 'guarantee' and 'evergreen' clauses of the 1978 NBCWA that miners were promised lifetime health benefits– promises that plaintiffs never made. Therefore, they argue, it was irrational for Congress to require contributions from pre-1974 signatories. But the fact that plaintiffs never contractually agreed to provide lifetime benefits does not rebut the rationality of finding that they contributed to the expectation of lifetime benefits. The Coal Commission and Congress found that the promise of lifetime benefits dates back to the 1940s, even though it is not explicit in any NBCWA until 1974." *Davon, Inc.* v. *Shalala*, 75 F. 3d 1114, 1124–1125 (1996) (footnote omitted).

[3] "Blue Diamond further argues that it was irrational for Congress to impose Coal Act liability upon Blue Diamond because Blue Diamond did not promise its employees that they would receive lifetime health benefits. It is undisputed that the NBCWAs did not contain an explicit promise of lifetime benefits until the 1974 NBCWA agreement. However, several federal courts have found that [United Mine Workers of America (UMWA)] members had a legitimate expectation of lifetime benefits before the 1974 NBCWA, based on the various funds' more than 30-year history of continuous payment of benefits and the statements of coal industry officials. *Davon*, 75 F. 3d at 1124–25 ('Congress could rationally have concluded that such participation [in the NBCWA benefit funds] led to a legitimate expectation of lifetime benefits.'). *See also Templeton Coal* [*Co., Inc.* v. *Shalala*, 882 F. Supp. 799, 825 (SD Ind. 1995)] (describing basis for lifetime benefits expectation). Congress certainly had a rational basis for concluding that all NBCWA signatories and 'me-too' operators who agreed to be bound by the NBCWAs, including Blue Diamond, contributed toward the legitimate expectations of the UMWA members." *In re Blue Diamond Coal Co.*, 79

First Circuit.[4] It is the same understanding that motivated the members of the Coal Commission to conclude that the operators who had employed the "orphaned miners" should share responsibility for their health benefits.[5] And it is the same understanding that led legislators in both political parties to conclude that the Coal Act of 1992 represented a fair solution to a difficult problem.

Given the critical importance of the reasonable expectations of both the miners and the operators during the period before their implicit agreement was made explicit in 1974, I am unable to agree with the plurality's conclusion

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F. 3d 516, 522 (1996).

[4] "[I]t is not accurate to claim that only those [signatory operators] which executed NBCWAs in or after 1974 created a legitimate expectation of lifetime health benefits for miners. Congress and the Coal Commission both reviewed the historical evidence and concluded that pre-1974 signatories had made an *implicit* commitment to furnish such benefits. . . .

"Of course, the appellant is correct in insisting that the commitment distilled by Congress from the historical data was not made explicit in the text of those NBCWAs which were written before 1974. But Eastern reads too much into that omission. To be sure, such an implied commitment might not be enforceable in a civil suit *ex contractu*— but this is a constitutional challenge, not a breach of contract case. For purposes of due process review, Congress' determination that a commitment was made need not rest upon a legally enforceable promise; it is enough that Congress' conclusions as to the existence and effects of such a commitment are rational." 110 F. 3d 150, 157 (1997).

[5] "The Commission firmly believes that the retired miners are entitled to the health care benefits that were promised and guaranteed them and that such commitments must be honored. . . .

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"Retired coal miners have legitimate expectations of health care benefits for life; that was the promise they received during their working lives and that is how they planned their retirement years. That commitment should be honored. But today those expectations and commitments are in jeopardy." Secretary of Labor's Advisory Commission on United Mine Workers of America Retiree Health Benefits, Coal Commission Report (1990), quoted in App. 237a, 245a–246a.

that the retroactive application of the 1992 Act is an unconstitutional "taking" of Eastern's property. Rather, it seems to me that the plurality and JUSTICE KENNEDY have substituted their judgment about what is fair for the better informed judgment of the Members of the Coal Commission and Congress.[6]

Accordingly, I conclude that, whether the provision in question is analyzed under the Takings Clause or the Due Process Clause, Eastern has not carried its burden of overcoming the presumption of constitutionality accorded to an act of Congress, by demonstrating that the provision is unsupported by the reasonable expectations of the parties in interest.

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[6]It may well be true that the majority might have been able to fashion a wiser solution to a difficult problem. Nevertheless, as Chief Justice Hughes observed in a dissent joined by Justices Brandeis, Stone, and Cardozo: "The power committed to Congress to govern interstate commerce does not require that its government should be wise, much less that it should be perfect." *Railroad Retirement Bd.* v. *Alton R. Co.*, 295 U. S. 330, 391–392 (1935).