

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-695

TITLE FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA,
Appellant v. CONSTRUCTION LABORERS VACATION TRUST
FOR SOUTHERN CALIFORNIA, ET AL.

PLACE Washington, D. C.

DATE April 19, 1983

PAGES 1 thru 52

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1 IN THE SUPREME COURT OF THE UNITED STATES
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3 FRANCHISE TAX BOARD OF THE STATE :
4 OF CALIFORNIA, :
5 Appellant :
6 v. : No. 82-695
7 CONSTRUCTION LABORERS VACATION :
8 TRUST FOR SOUTHERN CALIFORNIA, :
9 ET AL. :
10 - - - - -x

11
12 Washington, D.C.
13 Tuesday, April 19, 1983
14

15 The above-entitled matter came on for oral argument
16 before the Supreme Court of the United States at
17 11:16 a.m.

18
19 APPEARANCES:
20 MS. PATTI S. KITCHING, ESQ., Los Angeles, Cal.; on
 behalf of the Appellant.
21 JAMES P. WATSON, ESQ., Los Angeles, Cal.; on behalf of
22 the Appellee.

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	behalf of the Appellant	
4		
	JAMES P. WATSON, ESQ.,	20
5	on behalf of the Appellees	
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	on behalf of the Appellant - rebuttal	
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P R O C E E D I N G S

CHIEF JUSTICE BURGER: Ms. Kitching, you may proceed whenever you are ready.

ORAL ARGUMENT OF PATTI S. KITCHING, ESQ.

ON BEHALF OF APPELLANT

MS. KITCHING: Mr. Chief Justice and may it please the Court:

There are two issues in this case today. The first issue is whether the district court ever had subject matter jurisdiction of this action --

CHIEF JUSTICE BURGER: Could you raise your voice a little, Ms. Kitching.

MS. KITCHING: Yes.

The second question is whether the California tax collection statute has been preempted by the provisions of the Employee Income Security Act of 1974, otherwise known as ERISA.

This lawsuit began because various taxpayers were indebted to the State of California for income tax. There is no question in this lawsuit concerning the validity of those taxes.

These various taxpayers were employed as laborers in the construction industry and were participants in a vacation plan covered by selected provisions of ERISA. The employers of these workers

1 funded the vacation plan by contributing a certain
2 amount per hour to the fund for each employee. The
3 vacation fund paid out periodically the amount owing to
4 each employee.

5 In order to collect these workers' delinquent
6 income taxes, the Franchise Tax Board of the State of
7 California served what is called an order to withhold on
8 the trustees of the vacation plan. This order to
9 withhold is a type of levy authorized by the California
10 statute.

11 The trustees refused to honor the levy,
12 alleging that the California statute had been preempted
13 by ERISA. The Franchise Tax Board filed suit in Los
14 Angeles Superior Court to enforce their levy and to
15 obtain a declaration that future levies should be
16 honored.

17 The trustees removed the case to federal
18 court. The Franchise Tax Board brought a motion to
19 remand, which was denied. The district court found on
20 the merits for the Franchise Tax Board, that the statute
21 had not been preempted.

22 The Ninth Circuit reversed and found that the
23 statute was preempted. One member of the panel of the
24 Ninth Circuit dissented. He found: first of all, that
25 there was no subject matter jurisdiction; and secondly,

1 that the statute had not been preempted.

2 Before we discuss the merits of preemption, it
3 is necessary to first discuss the issue of whether the
4 district court ever had subject matter jurisdiction of
5 this action. California brought this action in state
6 court and relied solely on state law to collect the
7 delinquent taxes.

8 QUESTION: Ms. Kitching, when you say that
9 California relied solely on state law, is that true of
10 your declaratory -- prayer for declaratory relief, as
11 well as your prayer that the taxes be -- judgment be
12 given?

13 MS. KITCHING: Yes, Your Honor. We have a
14 state declaratory relief action. We rely -- statute,
15 pardon me. We relied on that statute to bring our
16 action.

17 QUESTION: Well, I realize that statute gave
18 you the procedural vehicle for a declaratory judgment.
19 But what was the substance of your claim for a
20 declaratory judgment that there had been no preemption?

21 MS. KITCHING: We wanted them to honor future
22 levies and we alleged that their defense of preemption
23 as to why they were not honoring our levies was not a
24 valid defense.

25 QUESTION: And did -- I suppose in that part

1 of your prayer for a declaratory judgment you had to
2 discuss some federal authorities?

3 MS. KITCHING: Well, not necessarily in my
4 prayer I didn't discuss --

5 QUESTION: Not in your prayer, perhaps, and
6 perhaps not in the allegations of your complaint. But
7 did you file a memorandum of supporting authorities
8 along with the complaint on a motion?

9 MS. KITCHING: No, Your Honor. We only filed
10 the complaint in state court. That complaint was
11 removed to district court. Am I understanding your
12 question?

13 QUESTION: Well, I'm trying to -- I suppose
14 everybody would concede that if your claim had simply
15 been that, you owe us the taxes because California
16 statute XYZ says you do, give us judgment, that there is
17 no -- under the well-pleaded complaint doctrine, there
18 is no raising of a federal question.

19 But I'm wondering whether when you add to that
20 a declaratory judgment prayer you don't, based on
21 preemption, you don't perhaps raise a federal question.

22 MS. KITCHING: No, I don't believe we do under
23 the authority of this Court, because that's only
24 anticipating what the defense of the Defendant was going
25 to be, which was going to be based on federal law. The

1 Franchise Tax Board was not relying on federal law for
2 its cause of action or for its remedy. It was relying
3 solely on state law.

4 The only way that federal law entered the case
5 was by the defense of the Defendant, and the Franchise
6 Tax Board simply anticipated that defense, and under the
7 authorities of this Court --

8 QUESTION: Well, but didn't the complaint
9 itself, though, refer to the question about whether
10 ERISA preempted the levy and referred to the position on
11 the face of the complaint taken by the trust fund, the
12 trustees?

13 MS. KITCHING: Yes, the complaint set out the
14 position of the trustees. But again, that was simply
15 their defense to the state cause of action. The state
16 was not relying on ERISA for anything in this case.
17 ERISA entered the case as a defense, and under the
18 authorities of this Court anticipating the Defendant's
19 defense does not create federal subject matter
20 jurisdiction.

21 We did not need federal law to collect our
22 taxes or to receive a declaratory judgment under
23 California law.

24 As I said, the trustees relied on ERISA as a
25 defense to the California causes of action. And again,

1 as I said, this Court has held for many years that this
2 defense does not create federal subject matter
3 jurisdiction.

4 The trustees argue that they could have
5 brought the action in federal court. However, there are
6 problems with this allegation. First of all, they did
7 not do that; and second of all, any action that they
8 would have brought in federal court would have been
9 barred by the provisions of 28 U.S.C. 1341, the Tax
10 Injunction Act, which declares that no district court
11 shall enjoin the collection of the tax where there is a
12 plain, speedy and efficient remedy in state court.

13 This case should have been remanded to state
14 court. That court was competent to decide whether ERISA
15 preempts the California statute. If the trustees did
16 not prevail in the California state court, they had the
17 option of pursuing this matter ultimately to this
18 Court.

19 Assuming for a moment that jurisdiction did
20 exist, the second --

21 QUESTION: Before we leave jurisdiction, for
22 the Tax Injunction Act to be applicable I suppose we
23 have to determine that there was an adequate state
24 remedy available. And I wondered whether under
25 California law the trustees, for example, could have

1 challenged the levy, since the California statute seems
2 to limit to only the taxpayers the right to challenge.

3 MS. KITCHING: Well, it's the position of the
4 Franchise Tax Board that the trustees could have
5 defended in the lawsuit which had been brought against
6 them.

7 QUESTION: They couldn't have brought an
8 action had they been concerned?

9 MS. KITCHING: No. Actually, we feel they
10 could have brought an action, too. Had they paid the
11 money over, they could have filed a claim with the State
12 Board of Control, and if that claim were denied then
13 they would have the right to bring an independent action
14 against the Franchise Tax Board for conversion and
15 litigate whether they should have turned over their
16 funds.

17 So we feel they had adequate remedies at state
18 law.

19 QUESTION: Well, what if the trustees had gone
20 to the federal court in the first place, beat you to the
21 courthouse, and wanted a declaratory judgment that ERISA
22 did preempt your tax scheme? Do you think there would
23 have been federal jurisdiction?

24 MS. KITCHING: No, I don't believe so, because
25 --

1 QUESTION: Do you think -- why not?

2 MS. KITCHING: Because of 28 U.S.C. 1341.

3 They clearly would have been enjoining the collection of
4 a tax.

5 QUESTION: But aside from that provision,
6 would there have been federal jurisdiction?

7 MS. KITCHING: The trustees have argued that
8 ERISA gives them --

9 QUESTION: They go in and --

10 MS. KITCHING: -- a statutory --

11 QUESTION: -- their claim, their federal
12 claim, is that ERISA preempts. That's their sole claim
13 in federal court. It may be thrown out under the
14 Injunction Act, but otherwise there would be
15 jurisdiction?

16 MS. KITCHING: If they can use a statute under
17 ERISA, they probably have jurisdiction in the federal
18 court.

19 Going to the principles of preemption, as this
20 Court has stated many times preemption is not lightly to
21 be presumed. And regarding the police power of the
22 State of California to collect the revenue, that power
23 should not be preempted unless that was the clear and
24 manifest intent of Congress.

25 ERISA is primarily pension legislation. It

1 comprehensively regulates pensions and mandates that
2 those benefits will not be alienated. By contrast, it
3 only regulates welfare plans in the areas of recording
4 and disclosure, fiduciary responsibility, and
5 administration and enforcement; and it does not mandate
6 a non-alienation provision. The vacation plan at issue
7 in this case is a welfare plan and not a pension plan.

8 ERISA's preemption provision is Section 514.
9 It provides that the provisions of Titles I and IV of
10 ERISA shall supersede any and all state laws insofar as
11 they relate to any benefit plan described. The term
12 "state" includes governmental entities which purport to
13 regulate, directly or indirectly, the terms and
14 conditions of benefit plans.

15 The Franchise Tax Board contends that
16 preemption under 514 is not limitless. Congress could
17 not have intended to preempt all state laws which
18 incidentally touch ERISA plans. It is more reasonable
19 to conclude that Congress only meant to preempt state
20 laws that regulated in the same areas as ERISA or that
21 interfered with the purposes of ERISA.

22 This interpretation is supported by the
23 comments of Representative John Dent and Senator
24 Harrison Williams, who said that the purpose of the
25 preemption clause was to eliminate the threat of

1 conflicting or inconsistent state and local regulation
2 of employee benefit plans.

3 The California statute does not relate to
4 vacation plans. It does not regulate or mandate the
5 terms and conditions of any plan. It does not conflict
6 with the purposes of ERISA.

7 The preemption section has recently been
8 amended. The background of this amendment begins with
9 certain Hawaii statutes that required employers in
10 Hawaii to provide health insurance benefits for their
11 employees. These laws were challenged by an employer in
12 the case of Standard Oil versus Aghsalud, where the
13 employer argued that the health insurance laws were
14 preempted by ERISA. The Ninth Circuit agreed and this
15 Court affirmed.

16 In order to save the concept of the Hawaii
17 law, which was that all employees in the State of Hawaii
18 be provided with health insurance by their employers,
19 Congress amended Section 514. This amendment exempts
20 Hawaii's health insurance plan from preemption and
21 states that nothing in the new exemption shall be
22 construed to exempt from preemption any state tax law
23 relating to employee benefit plans.

24 The words "state tax law" must be interpreted
25 within the context of the Hawaii amendment, as these

1 words were included in Section 514(a)(5), which deals
2 exclusively with the Hawaii problem. The words must
3 also be interpreted within the context of the Afsalud
4 case, where Hawaii unsuccessfully argued that the
5 payment required from the employer was a tax. The words
6 "tax law" in the amendment were apparently a response to
7 what Hawaii was attempting to classify as a tax.

8 The complete Section 514, the only place I
9 believe it's set out in any of the briefs is in the
10 amicus brief of the State of Connecticut on pages 10 and
11 11, which sets out the former Section 514 and the
12 amendment, which are Sections (5) and (6).

13 The only pertinent comment in regard to tax
14 laws in the legislative history with regard to the
15 amendment comes from Senator Dole, who stated that the
16 amendment was intended to exempt Hawaii's health plan
17 from preemption, but preclude Hawaii from imposing tax
18 liability on insurance premiums or benefits. If Senator
19 Dole's comment on tax laws is the reason why the words
20 "tax law" appear in the amendment, then the California
21 statute does not fall within the real of Senator Dole's
22 concern.

23 Moreover, there is evidence that the Hawaii
24 amendment did not change the scope of Section 514.
25 According to the Senate Committee on Finance, the

1 amendment "does not affect the status under the
2 preemption provisions of ERISA of any state tax law
3 relating to employee benefit plans."

4 In addition, the Conference Report explained
5 that the amendment continues preemption of state law
6 "with respect to matters governed by the reporting and
7 disclosure and the fiduciary responsibility provisions
8 of ERISA, as well as certain provisions of the
9 administration and enforcement rules of ERISA." If the
10 amendment is interpreted within the context of the
11 Agsalud case and the legislative history of the Hawaii
12 amendment, then the words "state tax law" can be seen
13 not to expand the scope or intent of Section 514.

14 It must also be noted that the amendment again
15 uses the words "relate to." The California statute did
16 not relate to benefit plans either before or after the
17 Hawaii amendment.

18 With these facts in mind, it is clear that the
19 California statute is not affected by this amendment.

20 The domestic relations cases have shown that
21 it is necessary for the courts to define the limits of
22 ERISA's preemption. Where courts have found a high
23 public purpose, they have interpreted the preemption
24 section accordingly. In the area of domestic relations,
25 almost all courts which have considered the problem have

1 allowed ex-spouses and children to levy on pension funds
2 for the collection of family maintenance or community
3 property rights. This is --

4 QUESTION: You feel that that is a precedent
5 for this case?

6 MS. KITCHING: We feel that we also have a
7 high public purpose, yes, we do. We feel that if the
8 domestic --

9 QUESTION: What is a high public service,
10 collection of taxes?

11 MS. KITCHING: Certainly, Your Honor, the
12 collection of taxes, which are the lifeblood of
13 government.

14 QUESTION: But there are other means of
15 collecting taxes, aren't there?

16 MS. KITCHING: Yes, Your Honor, and the state
17 has the ability to use all of its cumulative remedies.
18 The state must be allowed to use each of the remedies
19 which it possesses. Sometimes it cannot use its other
20 remedies, and this may be the only one that it has left
21 to it.

22 As in this case, where we're dealing with
23 transient workers, this may be the only remedy that the
24 state has to collect this outstanding income tax.

25 QUESTION: On that point, I suppose that the

1 spouses and dependent children of a beneficiary under
2 the trust fund stand in a special relationship, because
3 they are among the beneficiaries in a sense themselves,
4 the intended beneficiaries of those funds ultimately,
5 unlike perhaps the State of California.

6 MS. KITCHING: The State of California does
7 not have the same purpose, of course, as the ex-spouse
8 and children. However, it does have a high public
9 purpose, and the point we are showing is that when there
10 is a high public purpose there are exceptions to ERISA
11 and the preemption does not cover those areas where the
12 state can show that it has a high public purpose, and
13 that Congress would not intend to preempt that state
14 law.

15 QUESTION: Do you have withholding in
16 California?

17 MS. KITCHING: Yes, we do, Your Honor.

18 QUESTION: And that was insufficient in these
19 cases?

20 MS. KITCHING: Yes, Your Honor. In these
21 cases, some of them were by assessment a certain amount
22 would have been withheld and that would not have covered
23 the ultimate tax liability, yes, Your Honor.

24 QUESTION: Well, I ask that because you
25 emphasize the transient character of these workers.

1 Normally, withholding would catch those that do opt, if
2 they're in there for just a short time and then go out
3 and leave the state.

4 MS. KITCHING: Well, in some cases it would,
5 Your Honor. In not all cases, however, did it cover
6 their tax liability. Sometimes there are assessments
7 after the return is filed and there's an audit and it's
8 determined that the taxpayer owes more money. Perhaps
9 it hasn't withheld enough money to cover his tax
10 liability.

11 QUESTION: This is just a test case, of
12 course, but the great sum of \$308 or something like
13 that?

14 MS. KITCHING: That's right, Your Honor.
15 However, there are over 400,000 people who belong to
16 vacation trusts in California, and millions of dollars
17 per year are contributed by the employers into these
18 accounts.

19 In this case the Department of Labor has
20 provided its opinion that the California statute has
21 been preempted. However, this opinion is of little
22 assistance because it simply cites sections of ERISA and
23 the trust agreement and comes to the conclusion, with no
24 legal analysis.

25 It should be noted that the Department of

1 Labor supports an preemption for domestic relations
2 law. Apparently within the context of domestic
3 relations laws they are not concerned with ERISA's
4 preemption section, the fiduciary responsibility
5 section, or the anti-alienation provisions. These are
6 the very sections which the Department of Labor relies
7 upon to preclude the Board's levy. However, if these
8 sections are not effective as to domestic relations
9 laws, the Franchise Tax Board contends they should not
10 be effective as to state collection laws.

11 In conclusion, the Franchise Tax Board does
12 not regulate nor relate to this vacation plan. There is
13 no tax being imposed on the fund itself. There is no
14 tax being imposed on the benefits paid. There is no tax
15 being imposed on the employer. The money is in the fund
16 and it belongs to the taxpayer. It has been levied upon
17 to satisfy old tax liabilities.

18 If the trustees prevail in their argument that
19 all terms in a vacation plan are protected from state
20 law by ERISA's preemption section, then there is no end
21 to the trust's ability to exempt itself and the assets
22 of its participants from any valid state law or any
23 other state law.

24 If the trust provisions can prohibit
25 California from levying on a vacation plan, could they

1 also provide that one-half of the participants' wages
2 should be considered vacation pay and not subject to
3 state tax or withholding at all? Under the argument of
4 the trustee, that is what could happen.

5 It is clear that the district court never had
6 jurisdiction of this case. Furthermore, with regard to
7 ERISA, Congress could not have intended to interfere
8 with the California revenue collection statutes, which
9 do not regulate the terms or conditions of an ERISA plan
10 or interfere with the purposes of ERISA.

11 Your Honors, I will reserve the rest of my
12 time for rebuttal.

13 QUESTION: Of course, if we were to vacate and
14 remand this case on your jurisdictional approach, that
15 doesn't mean you've necessarily won it in state court,
16 does it?

17 MS. KITCHING: You're correct, Your Honor. It
18 should be heard in state court --

19 QUESTION: Actually, you won it at the
20 district court level on the federal side.

21 MS. KITCHING: Yes. Yes, we did win at the
22 district court level, Your Honor.

23 QUESTION: And you're complaining now because
24 you got tipped over in the Court of Appeals.

25 MS. KITCHING: Yes, we are. It would start

1 over in the state court, Your Honors, similar to the
2 Grace Brethren case which you had last season.

3 CHIEF JUSTICE BURGER: Mr. Watson?

4 ORAL ARGUMENT OF JAMES P. WATSON, ESQ.

5 ON BEHALF OF APPELLEES

6 MR. WATSON: Mr. Chief Justice and may it
7 please the Court:

8 I will first address the jurisdictional issue
9 which has been raised by the state in this case. The
10 starting point for the Appellees is the unanimous
11 decision of this Court almost 50 years ago through Mr.
12 Justice Cardozo in the Gully case. In that case,
13 Justice Cardozo warned that it would be futile to
14 attempt to determine the issue of federal question
15 jurisdiction in future cases without specific reference
16 to the context of the case.

17 In that case he suggested that the court apply
18 a common sense accommodation of judgment to
19 kaleidoscopic situation which characterize the law in
20 other areas, such as the treatment of the problem of
21 proximate cause in tort law. He advocated a selective
22 process which picks the substantial federal causes out
23 of the web and lays the others aside.

24 We believe the Court should have no difficulty
25 in finding federal question jurisdiction in this case

1 without doing violence to its precedents in cases such
2 as Louisville & Nashville Railroad versus Mottley and
3 other cases of that ilk.

4 QUESTION: When did the federal question arise
5 in the case?

6 MR. WATSON: I think the federal question
7 arose in the case, Your Honor, immediately when the
8 complaint was filed. The complaint and the exhibits to
9 the complaint lay out the federal dispute in great
10 detail.

11 The Department of Labor's opinion is attached
12 as an exhibit to the complaint. It is incorporated by
13 reference in the complaint. And in paragraph 20 of the
14 complaint the state asks not merely for a collection of
15 the tax delinquencies of the laborers; it rather asks
16 for a declaration of the rights and obligations of all
17 the parties, including the trustees and the trust.

18 That leads me into the first reason why
19 federal question jurisdiction must exist in this case.

20 QUESTION: Mr. Watson, it is correct, is it
21 not, that the entire prayer of the complaint, the four
22 paragraphs after the "wherefore," say nothing at all
23 about anything federal?

24 MR. WATSON: That is right, Your Honor. It's
25 in the body of the complaint and in the exhibits, not in

1 the prayer. Under some Ninth Circuit authorities, I
2 might add, the prayer itself is not considered part of
3 the text of the complaint, only the allegations of the
4 complaint and the incorporated exhibits.

5 QUESTION: Would you not also agree that the
6 reference to the federal claim is in the nature of what
7 the Defendants will assert by way of defense?

8 MR. WATSON: I would agree that the Board has
9 laid out the federal question and stated that it is the
10 position of the trust that there is a federal
11 preemption, that is true. I have no quarrel with that.

12 Certainly the state has a contention, however,
13 also about the effect of the federal law, albeit a
14 negative one.

15 QUESTION: But the prayer for relief and what
16 they ask for is not a claim arising under federal law,
17 is it?

18 MR. WATSON: The declaratory judgment action
19 they have filed is not a federal remedy and their claim
20 is founded on a California statute, that is clear.

21 QUESTION: Could the state have filed this
22 action in the federal court?

23 MR. WATSON: I believe could have, Your
24 Honor.

25 QUESTION: On what grounds?

1 MR. WATSON: Well, I believe it raises an
2 issue under Section 301. At least in the Ninth Circuit,
3 it has been held that collective bargaining agreements
4 -- and trust fund documents are considered collective
5 bargaining agreements in the Ninth Circuit under the
6 Rehmar case -- that third parties --

7 QUESTION: How does 301 get here?

8 MR. WATSON: Well, 301 gets here because 301
9 provides that there is concurrent jurisdiction in state
10 and federal courts of suits --

11 QUESTION: Did the complaint allege anything
12 about 301?

13 MR. WATSON: It did not mention 301.

14 QUESTION: Well, I asked could this complaint
15 have been filed in a federal court.

16 MR. WATSON: It could have.

17 QUESTION: Originally?

18 MR. WATSON: It could have.

19 QUESTION: And on what basis?

20 MR. WATSON: On the basis that the state as a
21 third party under our Ninth Circuit law would have the
22 right, since it asserts a claim arising under this
23 collective bargaining agreement -- it says, the trust
24 fund holds assets, the trustees are obligated to give
25 those assets to us --

1 QUESTION: And you would agree to
2 jurisdiction?

3 MR. WATSON: In federal court, yes, we would.

4 QUESTION: You'd have been in there fighting
5 just like you're fighting now, wouldn't you?

6 MR. WATSON: Yes, I would, and gladly so.

7 If I may now turn to the first of my reasons
8 why I think there is federal question jurisdiction here,
9 under Section 502(a)(3) of ERISA Congress gave
10 fiduciaries the right to bring suit to obtain a
11 determination of rights and obligations under a trust
12 agreement such as this or under ERISA itself, and
13 provided that federal courts would have exclusive
14 jurisdiction over such suits.

15 Now, it's the position of the trustees in this
16 case that the Congressional intent is clear that federal
17 courts decide these issues. There would be no reason to
18 provide for exclusive federal court jurisdiction of
19 these cases unless Congress intended that.

20 QUESTION: But the Tax Injunction Act, which
21 Congress also passed, certainly would indicate that the
22 district courts will not enjoin the state tax, and Grace
23 Brethren says that applies to declaratory judgment as
24 well.

25 MR. WATSON: I was going to get to that later,

1 but let me address that now, since Your Honor brings it
2 up. The Tax Injunction Act, as Your Honor has already
3 commented, contains an exception requiring that a plain,
4 speedy and effective remedy exist. Otherwise it will be
5 of no effect.

6 In this case, as the Court already noted in
7 colloquy with counsel, the plain, speedy and effective
8 remedy exists, all right, for the taxpayer, but it
9 doesn't exist for the fiduciary. Nor does the taxpayer
10 have the incentive to raise the legal issues the
11 fiduciaries would.

12 We don't know whether these taxpayers owe
13 these taxes or not. As far as I am aware, they probably
14 do. If they have a claim against the state, it's only
15 that we don't owe the tax, we already paid it in the
16 year in which it was due. They have no incentive to go
17 out and hire a lawyer and say, just a minute here, these
18 are trust fund assets and you're breaking the trust
19 agreement. There is no reason to suppose that they
20 would even have standing to raise such an issue in a
21 state administrative proceeding for refund.

22 So it's clear that the Tax Injunction Act
23 doesn't provide the plain, speedy and effective remedy
24 to the trustees in this case that it provides to the
25 taxpayer, and it's also clear that the taxpayer probably

1 would not raise the fiduciary issue.

2 A second reason, however, exists to provide
3 that the Tax Injunction Act would not apply here. In
4 Mitchum versus Foster, a 1972 decision of this Court
5 through Mr. Justice Stewart, the Court held that in
6 cases of conflicts between federal statutes providing
7 for injunctive remedies and the general federal
8 anti-injunction statute, that 28 U.S. Code 2283, the
9 Court must look to see whether application of the
10 general anti-injunction statute would frustrate the
11 Congressional purpose in enacting the subsequent law
12 providing for injunctive relief.

13 That's exactly what we have here. It's clear,
14 it seems to me, that Congress intended trustees to get
15 equitable relief, declaratory judgments, injunctive
16 relief, and did not specifically address the issue of
17 tax laws, although they must have realized tax laws were
18 one possible area of preemption, and applying the Tax
19 Injunction Act to prevent them from getting that kind of
20 relief in this case would frustrate the clear
21 Congressional intent to permit them to get instruction
22 from the federal courts about how to properly operate
23 the trust under ERISA.

24 QUESTION: Well, Mr. Watson, perhaps Congress
25 thought that tax laws weren't preempted.

1 MR. WATSON: That's another possibility, Your
2 Honor. But the legislative history suggests strongly to
3 the contrary, and although this gets into my preemption
4 argument, it's clear from the preemption statute itself,
5 which contains its own exceptions for banking laws,
6 insurance laws, securities laws, it doesn't mention tax
7 laws and it doesn't mention state levies, and it
8 certainly doesn't mention individual creditors, even if
9 they are individual government bodies acting as
10 creditors.

11 That isn't in the statute, and, as counsel for
12 the state pointed out, the statute has recently been
13 amended, after the Ninth Circuit ruled in this case. If
14 Congress wanted to change this statute and say, the
15 Ninth Circuit made a mistake, we want to make it clear
16 that state levy laws -- not tax laws now, but levy laws,
17 because that's what we're talking about here -- are not
18 preempted, they could have added that in when they
19 amended 514 this year.

20 They did not do so, and this Court in the has
21 dealt with the issue of Congressional silence in a way
22 which I think would suggest in this case that, even if
23 Congress didn't know in 1974 that they were preempting
24 state levy laws, they surely must know now. And of
25 course, there's been litigation in other courts about

1 this matter also indicating that ERISA preemption is
2 very broad.

3 So surely the Congressional intent is tacitly
4 in the record. Moreover, there is copious and I think
5 even redundant quotes from the sponsors of the original
6 ERISA bill set forth in the briefs which show how
7 broadly they felt the preemption statute was to be
8 read.

9 They did not suggest that all common law
10 remedies would never apply to the trust funds, but they
11 did suggest, as in the collective bargaining cases, like
12 Lincoln Mills and Aero Lodge and cases of that kind,
13 that a federal common law would be developed by the
14 federal court to govern this type of situation, and
15 exactly that type of thing ought to be done in the
16 debtor-creditor type situation we have here.

17 We're not saying that federal courts might not
18 develop a federal common law authorized by ERISA that
19 would permit some kind of levy in the future. But that
20 hasn't been done yet and it can't be done under state
21 law. That's our main point.

22 QUESTION: May I ask, before you get too far
23 away from the jurisdictional question, on the question
24 of an adequate state California remedy, are you telling
25 me that, supposing the state had levied, had a case of

1 mistaken identity, for example, that a person that they
2 said owed them taxes was not really a beneficiary of the
3 trust or something like that -- wouldn't the trustees
4 have a remedy in resisting the levy in some state
5 proceeding that would be prompt and efficient?

6 MR. WATSON: Well, I know of no reported state
7 case that addresses the issue as Your Honor has framed
8 it, but the statute refers to the taxpayer as having the
9 remedy. Now, I concede to the Court that probably when
10 the California statute was drafted nobody thought about
11 trust funds like this, but they surely must have thought
12 about third party creditors the state might be chasing
13 after in order to collect tax funds, and apparently they
14 decided to leave it up to the taxpayer to fight his own
15 battle.

16 QUESTION: Well, let me just be sure I
17 understand your position. You're not questioning the
18 fact that the trustee would have a prompt and adequate
19 state remedy to determine whether or not it had any
20 obligation to comply with the levy, are you?

21 MR. WATSON: Oh, yes, I am. I'm saying the
22 statute does not provide that. In so many words, the
23 statute provides that remedy to the taxpayer.

24 QUESTION: And you don't think there is any
25 declaratory judgment proceeding in California law at all

1 that would enable the trustee to question a levy of this
2 kind?

3 MR. WATSON: I'm saying -- I'm saying to the
4 Court that the specific statutory proceeding which is
5 provided is apparently the exclusive remedy, and I'm
6 quite clear that the Board would take the position that
7 the trust doesn't have the standing to come into court
8 and say, wait a minute, Mr. Zarate doesn't owe this tax,
9 and that in effect it's none of the trust fund's
10 business as long as the trust fund holds assets payable
11 to Mr. Zarate, he being one of the taxpayers in this
12 case.

13 QUESTION: Do you think that the duty of the
14 trustee always would be just to pay over the money?

15 MR. WATSON: I think the statute is set up in
16 such a way as to require the taxpayer to fight his own
17 battle, and --

18 QUESTION: And you think the trustees would
19 just automatically pay over the money in all cases?

20 MR. WATSON: If it weren't for ERISA --

21 QUESTION: Yes.

22 MR. WATSON: -- and it weren't for the
23 strictures --

24 QUESTION: I'm assuming no ERISA problem, just
25 the state law, you know, sort of garden variety

1 defense.

2 MR. WATSON: Well, the state law that also
3 limits the recovery rights to the taxpayer also
4 protects, also protects the third party who pays the
5 money over against suit or challenge by the taxpayer.
6 So the trustees would have no reason not to and in fact
7 would be compelled to by the state.

8 QUESTION: Thank you.

9 MR. WATSON: And frankly, if we took just an
10 ordinary third party, as opposed to the trustees, given
11 the protections the statute gives them if they pay the
12 money to the state and given the judicial process the
13 state has to compel it, they would have no reason in the
14 world not to pay the money over.

15 I mean, the pressure comes from the state, not
16 from the taxpayer, at that point. They're facing suit
17 by a state agency. It can be a fairly serious thing.

18 QUESTION: Mr. Watson, if I understood Ms.
19 Kitching correctly, she suggested that the state remedy
20 was for the trustees to pay it over and then sue for
21 conversion?

22 MR. WATSON: Yes, and I don't follow that.

23 QUESTION: Is that the theory?

24 MR. WATSON: I don't follow that. One of the
25 difficulties in this case is that the state has raised

1 the Tax Injunction Act in its reply brief filed just one
2 week ago, so the Board does not have the benefit of full
3 briefs from both parties on that. Had it been raised in
4 the original brief, I would have addressed the matter in
5 detail, and some of the questions that Justice Stevens
6 has asked suggest that perhaps the matter ought to be
7 looked into in greater detail.

8 Let me pass, if I might, though, to a second
9 important reason why federal question jurisdiction ought
10 to exist here. As I mentioned a moment ago in response
11 to one of Justice Marshall's questions, it's clear at
12 least under Ninth Circuit law that this trust agreement
13 is a collective bargaining agreement. It was signed by
14 the employers and the union. It is part and parcel of
15 the collective bargaining process.

16 This Court has made it clear in Section 301
17 suits, in Avco and Boys Market and other suits, that the
18 federal interest in the collective bargaining process is
19 pervasive and, even when such suits on common law
20 theories are brought in state courts under Section 301,
21 they can be removed by the defendant party to federal
22 court and once in federal court they must stay there.
23 That's in the Aero case and that's cited in our brief.

24 This same overwhelming federal interest is
25 present in this case, not only because this is a form of

1 collective bargaining agreement, but also because of the
2 very comprehensive umbrella of ERISA and the very clear
3 statements in the legislative history and in Section 502
4 that Congress wanted these questions resolved in federal
5 courts.

6 Now, there's a third reason why federal
7 question jurisdiction exists here, I believe. In 1974
8 in the Oneida case this Court held federal question
9 jurisdiction to exist in a suit brought under a simple
10 common law ejectment theory in New York by an Indian
11 tribe, because the Court found that inevitably the
12 federal question would arise. It was not a speculative
13 issue, it was not something lurking in the background
14 like Gully. It was central in the total focus of the
15 case.

16 That is exactly what we have here. Some of
17 the lower courts have used the so-called pivotal
18 question doctrine to find federal question
19 jurisdiction. In this case the federal question isn't
20 the pivotal question; it's the only question. There is
21 no other question in the case.

22 The trustees have no other defense to the
23 payment of these moneys, we don't know whether these
24 taxpayers owe the money, and the state of California
25 gives the state the right to collect and leaves it to

1 the taxpayer to fight it out once they've gotten the
2 money.

3 QUESTION: Mr. Watson, suppose the trust fund
4 didn't pay its property tax. Would that be a federal
5 case?

6 MR. WATSON: If it didn't pay its property
7 tax?

8 QUESTION: Yes, sir, on the building it
9 owned.

10 MR. WATSON: Yes. If it didn't pay property
11 tax on the building it owns, I assume that it would not
12 have a defense under ERISA. I don't believe that would
13 be preempted.

14 QUESTION: The only reason it has a defense is
15 -- well, let me try. They didn't pay the property tax
16 and they alleged in the complaint that this was an
17 agreement they had and all. Would that change it?

18 MR. WATSON: No, I don't think it would, Your
19 Honor. And there's a crucial difference between that
20 type of tax and what we have going on here, where
21 someone outside, albeit a state agency, is trying to
22 take assets of the fund. In this case, necessarily --

23 QUESTION: They're trying to take assets of
24 the fund. They're trying to get their taxes.

25 MR. WATSON: Well, they're trying to get

1 property taxes.

2 QUESTION: In both cases they're trying to get
3 money.

4 MR. WATSON: That's true. In this case,
5 though, they're trying to get money set aside by the
6 trust to pay benefits to the beneficiaries of the trust,
7 based entirely on a third party dispute. In the case
8 you posit, it's an indebtedness of the trust itself --

9 QUESTION: You couldn't take the property
10 taxes out of that money if there was no other money?

11 MR. WATSON: No, it's quite clear to me that
12 the trust as a general debtor itself in the state of
13 California would not have a special position, although
14 the Heffernan case from Connecticut does suggest that
15 direct taxes on the trust fund may be preempted by
16 ERISA, special taxes directed just at trust assets.

17 But if the trust owns real estate and is
18 subject to property taxes, I do not believe that the
19 ERISA preemption provision, which says that it preempts
20 statutes which indirectly regulate these trust funds, as
21 this kind of levy would by taking away the benefits
22 payable to the individuals -- that's simply not the same
23 thing.

24 Here there's a very real risk of depleting
25 trust fund assets that were set aside for another

1 purpose, and that is what we're concerned about here.

2 I might comment that the problem is not made
3 simpler by the fact that this is a state agency. An
4 Ohio district court, in an opinion cited in the state's
5 brief, has found that general creditors can invade this
6 trust.

7 And I might also comment that, although we
8 realize as we stand before you today that a vacation
9 trust does not seem by its very essence to be a very
10 important kind of trust fund, the Court must understand
11 that Congress treats the vacation trust in the same way
12 as health and welfare trusts and apprenticeship trusts
13 and education trusts that provide medical and dental
14 care and visual care and things of that kind.

15 QUESTION: Differently from pension trusts.

16 MR. WATSON: Differently from pension trusts
17 in the sense that there's less regulation. But the
18 preable to ERISA indicates that Congress was concerned
19 about all these employee benefit plans.

20 Perhaps this case looks and sounds less
21 weighty because we're not talking about seizing the
22 money payable for surgical benefits for a laborer's wife
23 who has been in the hospital and he doesn't have any
24 other money. Since it's a vacation trust, it looks like
25 a check that's payable to him for a relatively

1 inconsequential purpose.

2 But by letting the state invade this fund now
3 for this reason, the Court will open the door to having
4 the health and welfare benefits taken, the educational
5 benefits taken, and any other benefits that creditors
6 want to latch onto. And if the Ohio court's theory were
7 followed -- and they followed the dissent of the Ninth
8 Circuit -- this would not be limited to state agencies.
9 This would be limited to any general creditor. So we
10 have I think a rather significant federal problem in the
11 case.

12 There is a fourth reason why we think that
13 this is clearly a federal question case. In two recent
14 cases in this Court, Jones versus Rath Packing, and the
15 Alessi case, Alessi versus Raybestos-Manhattan, this
16 Court has accepted and heard cases on the merits raising
17 preemption issues, the Jones case from the Ninth
18 Circuit, the Alessi cases, two of them, from the Third
19 Circuit.

20 Both of those cases were cases where in the
21 courts below extended consideration was given to whether
22 jurisdiction existed under the so-called "arising under"
23 language, and in both cases the employers were able to
24 convince the courts that that was so. This Court left
25 those findings undisturbed, and since subject matter

1 jurisdiction is never waived I can only conclude that
2 this Court was satisfied that there was an adequate
3 jurisdictional ground.

4 QUESTION: That doesn't answer the propriety
5 of removal here.

6 MR. WATSON: That is true, Your Honor, that is
7 true. However, the removal statute provides that cases
8 which could have been brought in the district court
9 which are arising under federal law may be removed. And
10 since the preemption issue we believe furnishes the
11 adequate basis for, as this complaint came to the Court
12 and as it was pleaded, the "arising under" jurisdiction,
13 we don't think there's a problem with that.

14 QUESTION: Well, I don't suppose there's any
15 doubt that, had the trustees sought to sue, they could
16 have found some basis for federal jurisdiction. But
17 that doesn't answer the propriety of removal on the
18 basis of the state's complaint.

19 MR. WATSON: I think Your Honor is right. The
20 Court has to take the case as it finds it, although I
21 might comment that the Wong case, which is discussed in
22 some detail in our brief, does indicate that courts have
23 the power to realign the parties, and because of the
24 pervasive federal interest and the fact that all of the
25 features of the dispute were known, it would not be

1 beyond the power of the district court in determining
2 whether jurisdiction existed to bring the case
3 originally to say, well, effectively the trustees can be
4 treated as plaintiffs here.

5 That's what happened in Bacon versus Wong,
6 where the original complaint did not adequately state
7 --

8 CHIEF JUSTICE BURGER: We will resume there at
9 1:00 o'clock, counsel.

10 (Whereupon, at 12:00 noon, the argument in the
11 above-entitled matter was recessed, to reconvene at 1:00
12 p.m. the same day.)
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1 AFTERNOON SESSION

2 (12:58 p.m.)

3 MR. CHIEF JUSTICE BURGER: Mr. Watson, you may
4 continue.

5 ORAL ARGUMENT OF JAMES P. WATSON, ESQ.,

6 ON BEHALF OF APPELLEES

7 MR. WATSON: Yes, Your Honor.

8 Mr. Chief Justice and may it please the
9 Court:

10 I would like now to move to the preemption
11 phase of the case in the remaining ten minutes of my
12 argument. As Mr. Justice Powell has noted in many
13 opinions for this Court, the primary source for
14 interpreting the statute is the statute itself. In this
15 case, we believe the provisions of the statute, both the
16 preemption provision and Section 403, which limits the
17 right of the trustees as fiduciaries to spend money for
18 the purposes set forth in the trust agreement and for
19 the reasonable costs of defraying trust expenses, are
20 very, very clear.

21 If there were any doubt about the breadth of
22 the preemption provision, we think the legislative
23 history wipes away that doubt. And I will not take the
24 Court's time this afternoon to quote that history. It
25 is extensive and in the briefs.

1 The state suggests that, as in the marital
2 dissolution cases, there ought to be some kind of
3 implicit exception for state tax levies. They say that
4 state courts and some federal courts have found such an
5 exception in cases where pension benefits and other
6 benefits had to be divided between former spouses to a
7 dissolved marriage, and they say, why not us as well.

8 And we think there are two answers to that:
9 One, it is not clear from the opinions of this Court
10 that the marital dissolution cases are correct.
11 Although this Court summarily dismissed the Campa case
12 for want of a substantial federal question, there is no
13 authoritative opinion of this Court approving the
14 reasoning of the lower court decisions in the marital
15 dissolution cases.

16 Second, as was brought out in the colloquy
17 between counsel for the state and one of the members of
18 this Court, there is a distinct difference between
19 dividing benefits among co-beneficiaries of one of these
20 trust funds and giving those intended benefits to a
21 creditor. And in a case like this, the state is nothing
22 more --

23 QUESTION: What is the difference? What is
24 the significant difference as far as this case is
25 concerned?

1 QUESTION: Well, the significant difference as
2 far as this case is concerned is that it can be argued,
3 and I say not necessarily rightly, but it can be argued,
4 that the purpose of the trust instrument is met when you
5 give the benefits to co-beneficiaries, a husband and
6 wife, particularly in a community property state where
7 they jointly own the whole community property, with
8 California as a community property state.

9 When you give the benefits to a third party
10 creditor not interested in benefits under the trust
11 fund, simply trying to latch onto those assets to
12 satisfy some alleged debt incurred by one of the
13 beneficiaries, you are defeating the purpose of the
14 trust in a way you are not doing when you give the
15 benefits to another person, a spouse, a husband or a
16 wife, who shares those benefits under California law
17 with the named beneficiary under the trust fund.

18 QUESTION: Well, I suppose if there were a
19 levy on a life insurance policy that had a large cash
20 value and a lot of beneficiaries in a community property
21 state, it wouldn't be any different, would it?

22 MR. WATSON: Well --

23 QUESTION: Is there any barrier to a creditor
24 levying on the cash value of a life insurance policy in
25 California?

1 MR. WATSON: You're talking now not about a
2 life insurance policy under one of these controlled
3 trusts, but just a general life insurance policy. I
4 think the answer is no. I think that there could be a
5 levy on such a policy.

6 QUESTION: Why should there be a difference
7 because it's in a controlled trust?

8 MR. WATSON: Because in this situation the
9 trust is controlled by ERISA and ERISA explicitly in
10 Section 403 limits the way in which the assets can be
11 disbursed, and apparently does that, if I may expand on
12 that, because Congress was concerned in passing ERISA
13 that trust fund benefits were being dissipated in ways
14 which cause the purpose of the trust to be defeated. We
15 all know that the main reason --

16 QUESTION: The purpose of the life insurance
17 trust would be defeated, too.

18 MR. WATSON: Well, it would. But since it's a
19 private arrangement and one in which Congress has not
20 injected itself, the federal interest is not there.
21 There could be federal legislation on that at some time
22 in the future, but absent that there would be no
23 argument in a federal court on it like there is today.

24 I mean, ERISA is the reason we are here, and I
25 think that --

1 QUESTION: Would you be making the same
2 argument if all these events occurred after 1982?

3 MR. WATSON: Oh, yes, I definitely would. If
4 the Court is asking, do the new amendments to the
5 statute affect the outcome of this case in any way, I
6 would say the only way in which they do so is to make it
7 clear that Congress was satisfied with the result the
8 Ninth Circuit reached in this case.

9 It is not unusual, as the Court knows from the
10 Kaiser-Mullins case, for Congress to comment on
11 decisions by the Court of Appeals and lower federal
12 courts, and the legislative history in Kaiser-Mullins,
13 many lower court decisions are cited.

14 This legislation, which was passed and signed
15 just in January of this year, six months after this
16 decision was issued, two years after the Heffernan
17 delinquent, contains no indication that Congress was
18 dissatisfied.

19 QUESTION: Do you think the '82 amendment just
20 confirmed the meaning of the prior law?

21 MR. WATSON: I do, Your Honor. I do think
22 that. I think that in attacking the Agsalud problem and
23 leaving this problem alone, Congress was telling this
24 Court and other courts that it is satisfied with the
25 preemption results being reached by lower courts.

1 QUESTION: That isn't what it says. It really
2 -- it just didn't disturb whatever the law was.

3 MR. WATSON: That's exactly right, yes. I am
4 not representing to the Court that the legislative
5 history specifically says, we think the result the Ninth
6 Circuit reached in this case is a good one. But by --

7 QUESTION: So it didn't really change, the '82
8 amendment --

9 MR. WATSON: It didn't change it, that's
10 exactly right.

11 QUESTION: -- didn't purport to change what
12 the law was or anything of the kind.

13 MR. WATSON: That's exactly right. That's
14 exactly right.

15 Prior to the break Justice Marshall had asked
16 why it would be that the trust would have to pay
17 property taxes but would not have to pay this kind of
18 levy. The simple answer to that is in Section 403 of
19 the Act, which provides that the trustees may pay out
20 trust assets for the purposes described in the trust
21 document and also for defraying the expenses of
22 operating the trust.

23 Having a building, hiring employees, paying
24 the taxes incurred in operating the trust, those are
25 clearly permissible purposes.

1 QUESTION: It said "may." It didn't say they
2 had to.

3 MR. WATSON: It said "may." It didn't say
4 "had to."

5 QUESTION: That's right.

6 MR. WATSON: That's correct.

7 Those are clearly permissible purposes,
8 however, that don't raise the preemption problem here.

9 Finally, if I may turn to one other question
10 that was raised before the break, Justice Stevens had
11 asked, well, couldn't the trustees get some kind of
12 remedy in state court using some kind of common law
13 theory. Even if the statute provides only the taxpayer
14 has the remedy, surely the trustees can go in and
15 challenge this whole setup.

16 The quick answer to that, and it gets us back
17 to the jurisdictional issue, is that Section 502
18 requires that the trustees, when they seek instruction
19 from the court about their fiduciary responsibilities or
20 their responsibilities under ERISA, it requires that
21 those suits be brought in federal court.

22 So if the trustees in this case had brought
23 their own suit against the state in state court, the
24 state would have had a total defense: the state court
25 simply does not have jurisdiction. Again, it gets us

1 back to why this must be a federal court case.

2 Finally, and I will conclude on this point,
3 the state has suggested, in referring to the marital
4 dissolution cases, that there's that implicit exception
5 in the Act; perhaps, as some lower courts have stated
6 and suggested, other high public purposes deserve an
7 equal exemption.

8 My response to that is simply, there is
9 nothing in the legislative history to suggest that
10 Congress intended that every high public purpose would
11 create an implicit exemption to the very clear
12 preemption statute.

13 A second response to that is: How many high
14 public purposes are there and who is to decide what they
15 are? If the Court goes along with the idea that levying
16 on trust assets to satisfy tax delinquencies of the
17 beneficiaries is a high public purpose, we will see many
18 more cases before this Court and lower courts where
19 people are asserting that their purposes are equally
20 worthy.

21 That is surely not what the framers of the Act
22 intended. It is very foreign to the purpose of the
23 ERISA statute.

24 I thank the Court.

25 QUESTION: Mr. Watson, let me be sure I

1 understood your answer to my other question. Where is
2 the requirement that the trustees must proceed in
3 federal court?

4 MR. WATSON: The requirement is in Section
5 502(a)(3) and 502(e) of the Act.

6 QUESTION: Of ERISA?

7 MR. WATSON: Of ERISA. It provides that the
8 trustees may bring an action seeking equitable or other
9 relief, including injunctive relief -- which gets us to
10 the Tax Injunction Act problem, as it may conflict in
11 this language with that -- to determine their rights and
12 obligations under the trust instrument or under ERISA
13 itself.

14 Now, in the case Your Honor posited the only
15 defense the trustees have, the only one we're asserting
16 here, is that ERISA prevents us from paying out this
17 money to third party creditors. That is exactly the
18 kind of suit, exactly the kind of question, that Section
19 502(e) says federal courts have exclusive jurisdiction
20 of. And if a state court proceeding were allowed to get
21 at that kind of critical issue under ERISA despite the
22 exclusive jurisdiction language in the statute, the
23 whole purpose of the statute, to keep these very
24 sensitive questions in federal court, would be
25 completely frustrated.

1 QUESTION: So you're saying -- excuse me, go
2 ahead.

3 QUESTION: I just want to be sure. What
4 you're saying is the reason there's no state remedy is
5 that ERISA has preempted the state remedy? That's what
6 you're argument is?

7 MR. WATSON: I'm saying that, regardless of
8 the remedy that the trustee sought --

9 QUESTION: That the absence of the adequate
10 state remedy, if I understand your argument, is because
11 there's a provision in ERISA which preempts what might
12 otherwise be a state remedy?

13 MR. WATSON: Yes. I am saying that, whether
14 the trustees call the lawsuit a cow or a pony, whether
15 they say it's a state court declaratory relief action or
16 under some state common law theory like conversion, it's
17 clear that what they're really looking for is
18 instruction about how to operate under their fiduciary
19 obligations under ERISA, and the statute says that's
20 preempted. It's got to be in federal court.

21 QUESTION: In other words, the state court
22 would have no jurisdiction to pass on your defense?

23 MR. WATSON: That's exactly right. The state
24 lacks the jurisdiction to reach that issue.

25 QUESTION: It's sort of like in antitrust,

1 federal courts have exclusive jurisdiction over
2 antitrust cases, and I take it state courts haven't got
3 any jurisdiction.

4 I might, before you sit down: you're lucky
5 that your brief was filed in this Court. I didn't see a
6 summary in your brief, and I thought our rules provided
7 for a summary. Usually briefs get sent back if they
8 don't have a summary, but you were just lucky.

9 Thank you.

10 MR. WATSON: Your Honor, I apologize to the
11 Court if there was a defect in the brief.

12 CHIEF JUSTICE BURGER: Ms. Kitching.

13 REBUTTAL ARGUMENT OF PATTI KITCHING, ESQ.

14 ON BEHALF OF APPELLANT

15 MS. KITCHING: Mr. Chief Justice and may it
16 please the Court:

17 I just have a few brief remarks in the area of
18 jurisdiction. The adequate remedy principle doesn't
19 provide that they should be able to challenge the tax,
20 but whether they can litigate the issue of preemption in
21 the state court. It is our contention that they could
22 have litigated that issue of preemption in a defensive
23 manner in the lawsuit which we already brought against
24 them. They could have raised the issue of preemption.

25 QUESTION: What do you think about 502(a)(3),

1 then?

2 MS. KITCHING: Well, we're not talking about
3 where they're bringing the lawsuit. We're talking about
4 where they're defending the lawsuit. And this Court has
5 held a state --

6 QUESTION: You don't think it was Congress'
7 intention, then, to reserve those kinds of
8 considerations for a federal court?

9 MS. KITCHING: No, Your Honor. I think this
10 Court has held many times the state courts are perfectly
11 capable and they're mandated to consider federal
12 questions.

13 QUESTION: What do you say about the '82
14 amendment?

15 MS. KITCHING: We agree that it has not
16 changed anything under ERISA and that whatever was --

17 QUESTION: You wouldn't be making this
18 argument, then, after -- or would you, after '82?

19 MS. KITCHING: We don't think the statute has
20 changed anything. We think if something was not
21 preempted before 1982 it is not preempted now. If it
22 was preempted before it is still preempted.

23 However, the state of California contends that
24 their levy does not relate to a vacation trust and
25 therefore wouldn't be preempted either before or after

1 the amendment.

2 Just one further point. The adequate remedy
3 principle does not mean that they can litigate the
4 validity of the tax, but only if they could litigate the
5 same issue that they could have litigated in federal
6 court, and here that would be the issue of preemption.
7 And this Court has found that state courts are perfectly
8 capable of deciding any federal issues and they are
9 bound to do just that.

10 Thank you very much.

11 CHIEF JUSTICE BURGER: Thank you, counsel.

12 The case is submitted.

13 (Whereupon, at 1:11 p.m., the case in the
14 above-entitled matter was submitted.)

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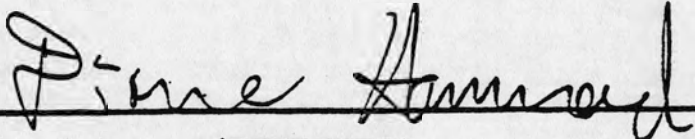
CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the Matter of: Franchise Tax Board of the State of California, Appellant v. CONSTRUCTION LABORERS VACATION TRUST FOR SOUTHERN CALIFORNIA,

et al. #82-695

and that these attached pages constitute the original transcript of the proceedings for the records of the court.

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