SUPREME COURT OF THE UNITED STATES

No. 92–166

KEENE CORPORATION, PETITIONER *v.*
UNITED STATES

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

[May 24, 1993]

JUSTICE STEVENS, dissenting.

In my opinion, 28 U. S. C. §1500 does not require the Court of Federal Claims to dismiss an action against the United States simply because another suit on the same claim was once, but is no longer, pending in district court. Rather, the plaintiff may continue to pursue his claim so long as there is no other suit pending when the Court of Federal Claims decides the motion to dismiss. Neither the text nor the history of the statute demands more of the plaintiff than that he make an "election either to leave the Court of Claims or to leave the other courts" at that time.[1]

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[1]Senator Edmunds explained the purpose of the provision that is now §1500, as follows:

"`The object of this amendment is to put to their election that large class of persons having cotton claims particularly, who have sued the Secretary of the Treasury and the other agents of the Government in more than a hundred suits that are now pending, scattered over the country here and there, and who are here at the same time endeavoring to prosecute their claims, and have filed them in the Court of Claims, so that after they put the Government to the expense of beating them once in a court of law they can turn around and try the whole question in the Court of Claims. The object is to put that class of persons to their election either to leave the Court of Claims or to leave the other courts. I am sure everybody will agree to that.'" *UNR Industries, Inc.* v. *United States*, 962 F. 2d 1013, 1018 (CA Fed. 1992)

Section 1500 is not itself a grant of jurisdiction to the Court of Federal Claims. That function is performed by other sections of the Judicial Code immediately preceding §1500, which give the court "jurisdiction *to render judgment* upon any claim against the United States 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," 28 U. S. C. §1491(a)(1), and "jurisdiction *to render judgment* upon any claim by a disbursing officer of the United States . . . ," 28 U. S. C. §1496 (emphases added). See also 28 U. S. C. §1497; 28 U. S. C. §1499 (granting jurisdiction to "render judgment" over other claims).[2] Section 1500, by contrast, "takes away jurisdiction even though the subject matter of the suit may appropriately be before the Claims Court." *UNR Industries, Inc.* v. *United States*, 962 F. 2d 1013, 1028 (CA Fed. 1992) (Plager, J., dissenting) (emphasis deleted). It is only reasonable to assume that the "jurisdiction" §1500 takes away is the same as the "jurisdiction" surrounding Code provisions bestow: the jurisdiction to enter judgment.

The text of §1500 simply provides that the Court of Federal Claims "`shall not have jurisdiction' over a claim `. . . which' the plaintiff . . . `*has pending*' in any other court . . . ." *Ante*, at 6 (emphasis added). Accordingly, so long as a plaintiff has pending another suit in another court, the Court of Federal Claims may not adjudicate the plaintiff's claim, even though its subject matter would otherwise bring it within the court's jurisdiction. The Government may invoke this exception by putting such a plaintiff to his choice: either "leave the other courts," n. 1, *supra*, or forgo further proceedings in the Court of Federal

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(quoting 81 Cong. Globe, 40th Cong., 2d Sess., 2769 (1868).

[2]Sections immediately following §1500 use similar language with respect to other types of claims. See 28 U. S. C. §§1503, 1508.

Claims. If the plaintiff declines to leave the other courts, then the Court of Federal Claims is without jurisdiction to proceed with case before it, though it may retain the case on its docket pending disposition of the other action. *Hossein* v. *United States*, 218 Ct. Cl. 727 (1978). But if the plaintiff does dismiss his other action, then the Court of Federal Claims is free to decide his case. Section 1500 was so construed over a quarter of a century ago, see *Brown* v. *United States*, 175 Ct. Cl. 343, 358 F. 2d 1002 (1966),[3] and I see no reason to interpret it now as a broader prohibition on pretrial proceedings.

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[3]"At the present time, therefore, the only claim for just compensation pending in a court is that stated in the plaintiffs' petition in this court. "In these circumstances we grant the motions for rehearing, vacate our prior order dismissing the petition, and now deny the defendant's motion to dismiss. Our earlier order of dismissal was predicated on the fact that the other `claim remains pending in the said District Court.' That is no longer true, and the claim is no longer `pending in any other court.' In this situation, we do not believe that 28 U. S. C. §1500 requires us to deprive plaintiffs of the only forum they have in which to test their demand for just compensation." *Brown*, 175 Ct. Cl., at 348, 358 F. 2d, at 1004.

See also *Boston Five Cents Savings Bank* v. *United States*, 864 F. 2d 137, 139 (CA Fed. 1988) (staying Court of Federal Claims action while district court action pending); *Prillman* v. *United States*, 220 Ct. Cl. 677, 679 (1979) (same).

It is true that an earlier version of §1500 provided that a claimant may not "file or prosecute" an action in the Court of Federal Claims while another action is pending. *Ante*, at 8. That original text, however, did not prescribe the consequences of a prohibited filing. In view of the fact that the text did not then mention the word "jurisdiction," there is nothing to suggest that pendency of another action would have to be treated as a defect warranting automatic dismissal.[4] Instead, given the plain statement of the legislation's sponsor that he intended to force an election of remedies before trial, see n. 1, *supra*, this earlier language is fairly construed as giving the Government the right to avoid duplicative litigation, by having the Court of Claims action dismissed if the plaintiff chose not to abandon the claim pending elsewhere.

In any event, when the text of §1500 was revised in 1948, Congress removed the prohibition on filing. The Court nevertheless assumes that the section should be construed as originally drafted, because Congress did not intend the 1948 revisions of the Judicial Code to make substantive changes in the law. See *ante*, at 8. In fact, the 1948 revision did work a significant substantive change, by enlarging the class of suits subject to dismissal to include suits against the United States, as well as suits against its agents. See *ante*, at 11, n. 6; *Matson Navigation Co.* v. *United States*, 284 U. S. 352, 355–356 (1932); see also Schwartz, Section 1500 of the Judicial Code and

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[4]As Justice Holmes pointed out, in a similar context, "no one would say that the words of the Mississippi statute of frauds, `An action shall not be brought whereby to charge a defendant,' go to the jurisdiction of the court. Of course it could be argued that logically they had that scope, but common sense would revolt." *Fauntleroy* v. *Lum*, 210 U. S. 230, 235 (1908) (internal citation omitted).

Duplicate Suits Against the Government and Its Agents, 55 Geo. L. J. 573, 579–580 (1967). But even if it were the case that Congress intended no substantive change in 1948, that would mean only that the present text is the best evidence of what the law has always meant, and that the language of the prior version cannot be relied upon to support a different reading.

In my judgment, the Court of Claims properly construed §1500 in 1966 when it held that the provision merely requires claimants to choose between alternative pending claims before proceeding to trial. See *Brown*, 175 Ct. Cl., at 348, 358 F. 2d, at 1004. The statute limits the power of the Court of Federal Claims to render judgments, and thus the ability of a plaintiff to prosecute simultaneous actions against the Government, but it does not prevent the Court of Federal Claims from allowing a case to remain on its docket until the claimant has made the required election. Even if I did not agree with this interpretation of §1500, however, I would nevertheless endorse it here, as litigants have a right to rely on a long-standing and reasoned judicial construction of an important statute that Congress has not seen fit to alter. See *McNally* v. *United States*, 483 U. S. 350, 376–377 (1987) (STEVENS, J., dissenting) (citing cases). Whether or not "novelty is always fatal in the construction of an old statute," *ante*, at 13, the overruling of a consistent line of precedent raises equitable concerns that should not be disregarded.[5]

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[5]The Court seeks to minimize these concerns by suggesting that the *Brown* line of cases on which petitioner relies would not in any event apply here, because petitioner's district court action was not dismissed on the grounds that it fell within the exclusive jurisdiction of the Court of Federal Claims. *Ante*, at 16. In my view, *Brown*, and cases like it, do

Admittedly, this is a badly drafted statute. Viewed against a legal landscape that has changed dramatically since the days of the cotton claimants, see *ante*, at 5–6, it does not lend itself easily to sensible construction. Moreover, the Court's interpretation of §1500 today may have the salutary effect of hastening its repeal or amendment. Nevertheless, a reading that is faithful not only to the statutory text but also to the statute's stated purpose is surely preferable to the harsh result the Court endorses here. Accordingly, I respectfully dissent.

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not warrant such a narrow reading, but stand instead for the broader proposition that a former district court action, once dismissed, no longer bars adjudication in the Court of Federal Claims. See n. 2, *supra; National Steel & Shipbuilding Co.* v. *United States*, 8 Cl. Ct. 274, 275–276 (1985) (in case of concurrent jurisdiction, providing for automatic reinstatement of Court of Federal Claims action upon dismissal of district court suit). That the Court of Appeals felt it necessary to overrule *Brown* on the facts of this case, see *UNR Industries*, 962 F. 2d, at 1022, suggests a similar understanding of *Brown*'s scope.