Nos. 90-5040-5049; 90-5051; 90-5053; 90-5055-5059; 90-5062-5067

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

IVAN A. ANIXTER, et. al.,
Plaintiffs-Appellees,

v.

HOME-STAKE PRODUCTION COMPANY, et al.,
Defendants,

WYNEMA ANNA CROSS, Executrix of the Estate of
Norman C. Cross, Jr., et al.,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES AS INTERVENOR AND THE SECURITIES AND EXCHANGE COMMISSION AS AMICUS CURIAE

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PRELIMINARY STATEMENT

The defendants in this private securities class action have challenged the constitutionality of Section 27A of the Securities Exchange Act of 1934. The United States has exercised its right of intervention under 28 U.S.C. § 2403 to defend the constitutionality of Section 27A. The Securities and Exchange Commission joins in this brief as amicus curiae.

STATEMENT OF THE CASE

This securities class action was filed in March 1973 against Home-Stake Production Company on behalf of those who had

purchased interests in Home-Stake's annual oil and gas development programs. In 1976, the suit was certified as a class action on behalf of nine separate classes, respectively comprising investors in each of Home-Stake's annual programs from 1964 through 1972. In re Home-Stake Production Co. Securities Litigation, 76 F.R.D. 351 (N.D. Okla. 1977). Following a five-week jury trial in the summer of 1988, the jury found the defendants liable, inter alia, for violations of Section 10(b) of the Securities Exchange Act of 1934 ("1934 Act"), 48 Stat. 891, 15 U.S.C. § 78j(b), and Securities and Exchange Commission Rule 10b-5, 17 C.F.R. § 240.10b-5, promulgated thereunder (collectively, "Section 10(b)"). Based upon the jury's answers to special interrogatories, the district court ruled that the Section 10(b) claims were not barred by the then-applicable statute of limitations.

This Court reversed. During the eighteen years from 1973 to 1991 that this suit was pending, this Court's practice had been to borrow the applicable limitations period for private actions under Section 10(b) from relevant state law. See, e.g., Hackbart v. Holmes, 675 F.2d 1114, 1120 (10th Cir. 1982); Bath v. Bushkin, Gaims, Gaines and Jonas, 913 F.2d 817 (10th Cir. 1990). In this case, the applicable state statute was Oklahoma's two-year statute of limitations for Section 10(b) actions. See Dzenits v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 494 F.2d 168, 171 (10th Cir. 1974). However, on June 20, 1991, the Supreme Court had held in Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson, 111 S. Ct. 2773, reh'g denied, 112 S. Ct. 27 (1991),

that private Section 10(b) actions are subject to a uniform federal limitations period. Lampf adopted a "1-and-3" limitations period, under which a suit may not be brought more than 1 year after the fraud is discovered or 3 years after the fraud occurs.

On the same day that Lampf was decided, in James B. Beam Distilling Co. v. Georgia, 111 S. Ct. 2439 (1991), the Supreme Court disallowed the use in civil litigation of "selective prospectivity" -- the practice of applying a new judicial interpretation of the law in the case in which it is announced but not applying it to other pending suits.

Applying Lampf and Beam, this Court held that the 1-and-3 rule should be applied to this case.[1] Accordingly, this Court directed the court below to dismiss the Section 10(b) claims as time-barred under the 1-and-3 rule. Before plaintiffs' time to seek certiorari had run, however, legislation was enacted adding Section 27A to the 1934 Act. Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, § 476, 105 Stat. 2387. The effect of Section 27A was to reinstate the statute of limitations that had applied prior to Lampf in cases pending when Lampf was decided. Id. In this case, Section 27A reinstated the two-year Oklahoma limitations period.

In light of Section 27A, the plaintiffs moved this Court to recall its mandate and reinstate their Section 10(b) claims. That motion was denied. The Supreme Court granted plaintiffs'

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[1] Other courts of appeals have reached the same conclusion. See, e.g., Welch v. Cadre Capital, 946 F.2d 185 (2d Cir. 1991).

timely petition for a writ of certiorari and remanded the case to this Court "for further consideration in light of Section 27A." On remand, the defendants have challenged the constitutionality of Section 27A.

SUMMARY OF ARGUMENT

By adopting a restrictive limitations period for private Section 10(b) actions, the Supreme Court's decision in Lampf placed countless plaintiffs in jeopardy of forfeiting legitimate securities claims through no fault of their own. Section 27A was enacted to protect these plaintiffs by reinstating the limitations periods applicable at the time Lampf was decided. Section 27A vindicates the legitimate reliance interests of these plaintiffs, and it does so in the only way possible, by restoring the status quo ante.

Section 27A accords fully with the constitutional allocation of powers between Congress and the federal courts, pursuant to which Congress specifies rules of law and the courts decide cases according to those rules. Congress has undoubted power to fix the limitations period for causes of action it creates. It also has power to change those periods, and to make its changes in the law applicable in cases that are pending when the change is adopted. See United States v. The Schooner Peggy, 5 U.S. (1 Cranch) 102, 110 (1801); see also Robertson v. Seattle Audubon Soc., 112 S. Ct. 1407, 1414 (1992). That is what Congress has done in Section 27A. It has left to the courts their constitutional mission of deciding actual cases pursuant to the

applicable law -- in this case, the limitations period set by Section 27A.

The statute thus involves a straightforward application of Congress's power to apply a new rule of law to pending cases. It does not, as defendants suggest, represent a congressional attempt to exercise the judicial power of the sort disapproved in United States v. Klein, 80 U.S. (13 Wall.) 128 (1871). Rather, Section 27A sets forth one of the rules of law to be applied in a specified group of cases, leaving the application of that rule and, more importantly, the ultimate resolution of the merits of the case, to the courts. The statute in Klein, by contrast, stated that in certain cases a specified judgment on the merits was to be entered. The issues that concerned the Court in Klein are not present here.

The Supreme Court's decision in Beam does not require a contrary result; because, contrary to defendant's suggestions, Beam is wholly inapposite to this case. Beam addressed the application of the Court's precedents to cases pending when those precedents are announced. 111 S. Ct. at 2444-45. None of the Justices in the majority in Beam suggested that the decision there rested on a general principle involving the application of "new law" to pending cases. The case is thus limited to the effect of the Supreme Court's precedents, not Congress's statutes, and all of the Justices in the majority rested their conclusions on considerations unique to the judiciary. The power of Congress to apply statutory changes to pending cases was

recognized in The Schooner Peggy and was recently reaffirmed by the Court in Robertson.

Finally, Section 27A, which produces different limitations periods in different states, accords with equal protection principles. The result of varying limitations periods is not constitutionally offensive; rather, it is a familiar result in cases in which the federal courts borrow state-law limitations periods in applying a federal statute.

ARGUMENT

SECTION 27A IS CONSTITUTIONAL

A. Section 27A Does Not Violate Article III of the Constitution

Section 27A responds to the decision in Lampf by changing the statute of limitations with respect to private actions under Section 10(b) that were brought before Lampf was decided. At stake in this case is subsection (a), which states:

> EFFECT ON PENDING CAUSES OF ACTION.--The limitation period for any private civil action implied under Section 10(b) of this Act that was commenced on or before June 19, 1991, shall be the limitation period provided by the laws applicable in the jurisdiction, including principles of retroactivity, as such laws existed on June 19, 1991.[2]

It thus prescribes a new rule of limitations that expressly applies to cases pending prior to Lampf.

Defendants do not question Congress's power to determine the limitations period for federal causes of action, or to do so by

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[2] Section 27A(b) provides for the revival of claims dismissed as a result of Lampf that would have survived under the applicable pre-Lampf limitation periods. Subsection (b) does not apply in this case because this suit was "pending" when Section 27A was enacted; the time for seeking certiorari from this Court's decision had not run. Thus, although defendants persist in trying to interject the issue of whether subsection (b) is constitutional, the Court need not address it.

incorporating rules by reference. Nor can there be any question concerning Congress's power, when it changes a rule of law, to make that change applicable in cases that are pending when the change is made. As Chief Justice Marshall explained in United States v. The Schooner Peggy, 5 U.S. (1 Cranch) 103, 110 (1801):

> [I]f subsequent to the judgment and before the decision of an appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied. If the law be constitutional . . . I know of no court which can contest its obligation.

See also United States v. Sperry Corp., 493 U.S. 52, 64 (1989); Pension Benefit Guaranty Corp. v. R.A. Gray & Co., 467 U.S. 717, 728-31 (1984); P. Bator, P. Mishkin, D. Meltzer & D. Shapiro, Hart & Wechsler's The Federal Courts and The Federal System 369 n.4 (3d ed. 1988).[3]

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[3] The truth of the general proposition that acts of Congress may have retrospective effect is established in the few provisions of the Constitution in which the Framers chose to restrict the power to legislate retrospectively in particular cases. For example, the Ex Post Facto Clause provides that Congress may not enact a law that imposes punishment retroactively, e.g., Miller v. Florida, 482 U.S. 423 (1987); Weaver v. Graham, 450 U.S. 24 (1981), and the Bill of Attainder Clause provides that Congress may not legislatively determine guilt and inflict punishment upon an identifiable individual without the protection of a judicial trial. E.g., Nixon v. Administrator of General Services, 433 U.S. 425 (1977). There is of course, no suggestion that these clauses are implicated in this case.

Although the Due Process Clause has been held to require that the application of new law in a pending case be rationally related to a legitimate government purpose, e.g., United States v. Sperry Corp., 493 U.S. 52, 64 (1989), the Supreme Court has repeatedly rejected due process challenges to the constitutionality of newly-enacted statutes of limitations with effect on pending litigation between private parties. See, e.g., Chase Securities Corp. v. Donaldson, 325 U.S. 304 (1945); Electrical Workers v. Robbins & Myers, Inc., 429 U.S. 229, 241-44 (1976).

Chief Justice Marshall's conclusion accords with the division of powers between Congress and the courts. In all cases involving federal statutes, the courts apply Congress's enactments to the facts before them. When Congress changes the law, and makes that change applicable in pending cases, it is the role of the courts to apply the new law. See, e.g., Pennsylvania v. Wheeling and Belmont Bridge Co., 59 U.S. (18 How.) 421, 432 (1855) (where the right underlying a decree is eliminated by Congress during the adjudication, "it is quite plain the decree of the court cannot be enforced."). Whether a case is pending or brought after enactment of a new law, in both situations the courts must apply relevant law to the case before it. That is what this Court is called upon to do here: to decide this case according to the applicable law on limitations contained in Section 27A(a).

Defendants do not contest the authority of The Schooner Peggy and the many subsequent cases that have applied its principles. Accordingly, it is not disputed that Congress could have adopted the rule of limitations contained in Section 27A and applied it to all cases under Section 10(b), including cases that were before the courts when the statute was adopted. Instead, defendants contend that, although Congress may, in a manner consistent with Article III, enact a new law that applies to pending and future cases, it may not enact a new law that applies only to pending cases.[4] Defendants, however, do not suggest how

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[4] Defendants base their argument on this point solely on Article III. They do not suggest that Congress's decision to

(continued...)

any congressional interference with the judicial power is cured if that interference is combined with an exercise of Congress's power to prescribe the rule for cases yet to arise.

No such distinction is possible. For example, it might be suggested that it is improper for Congress to legislate concerning pending cases because Congress is or could be aware of the identity of the parties to those cases and that this particular knowledge somehow transforms a legislative action into a judicial one in violation of Article III. But such knowledge is possible whenever a new rule is applied in pending cases. Similarly, in certain circumstances the new rule may make the outcome in a pending case so plain that Congress's action might seem to resemble a judgment rather than a law. Once again, however, that can be true whether or not Congress also applies its new rule to cases yet to be brought. In short, defendants' position cannot be reconciled with Congress's undoubted power to

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[4](...continued)
adopt different rules for pending cases and cases yet to be brought was arbitrary or invidious and hence in violation of the Due Process Clause of the Fifth Amendment. In fact, the distinction that Section 27A draws between cases filed before and after Lampf, which the defendants disparage as "selecting" cases for "special treatment," Supplemental Brief of Defendants at 9 (quoting Bank of Denver v. Southeastern Capital Group, Inc., __ F. Supp. __ (D. Colo., March 20, 1992) (1992 WL 59024)), serves the rational goal of protecting the reliance interests of those who expended time and money on a lawsuit prior to Lampf. The creation of such distinctions is an unavoidable aspect of the legislative process. See Lyng, 485 U.S. 360, 370 (1988). Defendants make a different claim under the equal protection component of the Due Process Clause; we discuss that claim below.

prescribe new rules of law that are to be applied in all cases after they are adopted.[5]

Rather than confront the authority of The Schooner Peggy, defendants seek to describe Section 27A as a congressional exercise of the judicial power in violation of Article III as interpreted in United States v. Klein, 80 U.S. (13 Wall.) 128 (1871). In Klein the Court declined to follow a statute purporting to determine the effect of a presidential pardon in a certain class of lawsuits. Congress had enacted a statute allowing loyal citizens to recover for property abandoned and taken by the Federal government during the Civil War. Id. at 131. President Johnson thereafter issued a general pardon allowing former Confederates to make claims under this statute. Id. at 141. Congress then passed a second statute providing, inter alia, that the pardon could not be considered by the courts in support of any claim against the United States and that, by contrast, proof of a claimant's acceptance of the pardon would be conclusive evidence of his disloyalty and cause his suit to be dismissed. Id. at 143-44. Thus, Congress left in place the

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[5] Apparently, defendants would prefer that Congress, when it changes a legal rule, ensure that the new rule not apply to pending cases. That result, which is open to Congress but which The Schooner Peggy makes clear is not required, results in one rule in pending cases and another for cases yet to be brought. Defendants, then, cannot argue that no such distinction is permissible.

Because Congress explicitly described the class of cases to which Section 27A(a) applies, this Court need not address the interpretive presumptions to be employed when Congress changes the law without making explicit provision for the treatment of pending cases. See generally Kaiser Aluminum & Chem. Corp. v. Bonjorno, 494 U.S. 827, 836-37 (1990) (reviewing Court's cases that bear on application of statutory changes in pending suits).

underlying law that only loyal citizens could recover, but removed from the courts the adjudicatory function of determining whether the person involved was loyal. Congress thus directed the outcome of such cases on the merits by mandating that a judgment be entered against the person.

The Court stated that this statute was an unconstitutional interference with the power of the Judiciary because it "prescribe[d] a rule for the decision of a cause in a particular way." Id. at 146.[6] The Court carefully distinguished its earlier holding in Wheeling Bridge, 59 U.S. (18 How.) 421, in which the Court had enjoined a certain bridge across the Ohio River as a nuisance but refused to enforce the decree after a statute declared lawful the operation of the bridge. 80 U.S. (13 Wall.) at 146. The Klein court reasoned that in Wheeling Bridge Congress had not directly prescribed the outcome of the case. Rather, "the court was left to apply its ordinary rules to the new circumstances created by the act." Id. at 147. In Klein, by contrast, Congress had purported to force the courts to reach a certain result on the merits by preempting the exercise of the adjudicative function. See United States v. Sioux Nation of Indians, 448 U.S. 371, 392 (1980); see also Robertson, 112 S. Ct. 1407 (there is no invasion of judicial power where Congress amends law without directing particular applications).

Section 27A presents a situation like Wheeling Bridge and Robertson, not Klein. It does not instruct the courts to decide

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[6] In addition, the Klein court held that the statute was unconstitutional because it impermissibly interfered with the President's power to pardon. 80 U.S. (13 Wall.) at 147.

cases in a particular way. This Court, not Congress, will ascertain if Section 27A applies to this case, whether the plaintiffs' Section 10(b) claim is timely under Section 27A, and what will be the ultimate disposition of the claim on the merits. See Sioux Nation, 448 U.S. at 392. Thus, this Court has been "left to apply its ordinary rules to the new circumstances created by [Section 27A]." Klein, 80 U.S. (13 Wall.) at 147. Section 27A "in no way attempt[s] to prescribe the outcome of [this litigation]," Sioux Nation, 448 U.S. at 407, nor does it leave the courts with "no adjudicatory function to perform," id. at 392.

Defendants attempt to portray Section 27A as an intrusion into the judicial power barred by Klein. They suggest that the provision directs the federal courts in "a discrete category of federal cases . . . to ignore the Supreme Court's binding interpretation of § 10(b) set out in Lampf." Supplemental Brief of Defendants ("Supplemental Brief") at 8 (quoting Bank of Denver). The fact that Congress's new rule applies to an identifiable group of cases is irrelevant under Article III. The suggestion that Congress has instructed the lower courts to ignore the Supreme Court's interpretation is utterly misconceived. Congress has changed the law. The Supreme Court's interpretation of the prior law is now irrelevant in certain cases. Should the Supreme Court have occasion to interpret Section 27A, any interpretation it announces will of course be authoritative for the lower federal courts, unless and until

Congress announces a new rule, to be applied to pending cases or not as Congress prefers.

Similarly, defendants assert that Section 27A "intrudes on the adjudicative process by . . . reversing [the Supreme Court's Lampf judgment] . . . without changing the governing law," id. at 9.[7] Contrary to defendants' mistaken assertion, Congress did change the applicable law. Even assuming the cogency of the distinction between statutes that alter the law and those that do not,[8] Section 27A clearly is one that does. It prescribes a rule of limitations for a stated class of cases. To say that it has not altered the underlying law is to engage in a game with words. After the enactment of Section 27A, it and no other law prescribes the limitations period in the covered cases. Congress need not accomplish the change by specifically amending some preexisting provision -- which would have been impossible here, because there was no explicit limitations period. See Lampf, 111 S. Ct. at 2779-80.

Section 27A may profitably be compared to the statute recently upheld by the Supreme Court in Robertson, 112 S. Ct. 1407. In Robertson, Congress passed special legislation to resolve two pending environmental suits concerning timber programs in the Pacific Northwest. The statute "determine[d] and

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[7] Defendants make a similar point elsewhere, suggesting that under Klein and related cases Congress may prescribe rules for cases only by altering the "underlying substantive or procedural law." Supplemental Brief at 7.

[8] In Robertson, the Supreme Court reserved the question of whether Klein forbids Congress from "direct[ing] decisions in pending cases without amending any law." Robertson, 112 S. Ct. at 1414.

direct[ed]" that specified government actions must be deemed to satisfy the environmental laws at issue in the two pending cases, which the statute identified by name and docket number. Id. at 1411. The Ninth Circuit had struck down this provision under Klein on the ground that it "does not, by its plain language, repeal or amend the environmental laws underlying this litigation," but rather "directs the court to reach a specific result and make certain factual findings under existing law in connection with two [pending] cases." Seattle Audubon Soc. v. Robertson, 914 F.2d 1311, 1316 (9th Cir. 1990).

The Supreme Court unanimously reversed, concluding that the provision at issue "compelled changes in law, not findings or results under old law," by modifying the environmental statutes that formed the basis for the pending suits. 112 S. Ct. at 1413. The Court found it immaterial under Klein that the challenged statute identified, by name and caption number, the pending cases that would be affected. Id. at 1414. And the Court further found that "to the extent that [the new provision] affected the adjudication of the [pending] cases, it did so by effectively modifying the provisions at issue in those cases." Id.

Section 27A is far more general in its operation than the statute at issue in Robertson, and it explicitly creates a new legal rule, while the statute in Robertson on its face specifically "determine[d] and direct[ed]" that identified conduct would be deemed to have certain legal consequences. the statute in Robertson "changed the underlying law" sufficiently to pass muster under Klein, as the Supreme

unanimously held, Section 27A necessarily satisfies Klein as well.

Klein is inapplicable to Section 27A for another, independent reason: the Supreme Court has made clear that Klein does not affect the validity of statutes like Section 27A that merely withdraw a procedural defense without attempting to dictate the outcome of a case on the merits, regardless of whether such statutes can be characterized as "changing the underlying law." The inapplicability of Klein to such statutes was settled by Sioux Nation, 448 U.S. 371, in which the Supreme Court upheld the constitutionality of a federal statute that expressly eliminated a res judicata defense in a pending Indian treaty controversy. The Court expressly rejected an argument that the statute was unconstitutional under Klein. See 448 U.S. at 402-407. The Court distinguished Klein in the following terms:

> [T]he [statutory] proviso at issue in Klein had attempted "to prescribe a rule for the decision of a cause in a particular way." 13 Wall., at 146. The amendment at issue in the present case, . . . waived the defense of res judicata so that a legal claim could be resolved on the merits. Congress made no effort . . . to control the Court of Claims' ultimate decision of that claim. . . . [Because] Congress in no way attempted to prescribe the outcome [of the litigation], . . . this amendment clearly is distinguishable from the proviso to this Court's appellate jurisdiction held unconstitutional in Klein. [Emphasis added.]

Id. at 405, 407.

This case is distinguishable from Klein for precisely the same reason. Here, just as in Sioux Nation, Congress has "in no way attempted to prescribe the outcome" of litigation. Section 27A does not tell the courts how to decide the merits of this case or any other pending case brought under Section 10(b);

it simply establishes the applicable limitations period. The ultimate outcome of any particular case to which Section 27A applies may depend on a court's determination of any number of issues other than the statute of limitations. And even as to the limitations issue, a court will apply the relevant limitations period to the circumstances of the case; the court, not Congress, will determine whether a particular claim is timely under Section 27A.[9]

B. Section 27A Does Not Conflict With the Supreme Court's Decision in Beam

Defendants also argue that the Supreme Court's decision in Beam, which bars courts from according "selective prospectivity" to new judicial interpretations of the law, see 111 S. Ct. at 2448, prevents Congress from enacting legislation that changes the rule applicable to pending cases. Beam addresses a completely different issue from that presented in this case: the applicability of judicial decisions to pending cases. On that issue, a majority of the Justices held that a new interpretation announced by the Supreme Court and applied in that case must be

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[9] The Supreme Court also distinguished Klein on the ground that "Congress [there] was attempting to decide the controversy at issue in the Government's own favor." 448 U.S. at 405. Section 27A is distinguishable from Klein on the same basis. Section 27A does not attempt to resolve any controversy in the government's favor, because Section 27A by its terms applies only to private suits.

Defendants argue that the reasoning of Sioux Nation applies only when the United States is the defendant and Congress is ceding the federal government's own procedural rights. Supplemental Brief at 9. The Supreme Court's opinion in Sioux Nation, however, is precise about identifying the Court's grounds for distinguishing Klein, and the fact that the rights of the United States were being ceded was not one of the grounds identified by the Court. See 448 U.S. at 405.

applied in pending cases. Even if Beam were viewed as resting on constitutional grounds,[10] the Court's decision there turns on the limits of judicial power under Article III to apply judicial precedents to pending cases and has nothing to do with the power of Congress under Article I to enact statutes changing the law in pending cases.[11]

C. Section 27A's Incorporation By Reference of Varying State Limitations Periods Does Not Violate the Fifth Amendment

Finally, defendants contend that Section 27A violates the equal protection component of the Fifth Amendment's Due Process Clause because it is irrational to subject litigants in different jurisdictions to differing statutes of limitations. Supplemental Brief at 13-15. Congressional classifications, except those that rest on a suspect or quasi-suspect basis of distinction or that impinge on a fundamental right, need only be rationally related to a legitimate governmental interest to pass constitutional muster. Lyng v. Automobile Workers, 485 U.S. 360, 370 (1988).[12]

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[10] Three of the Justices in the Beam majority -- Justices Souter, Stevens, and White -- described the selective prospectivity issue strictly as a "choice-of-law question" for the courts. Id. at 2443 (Stevens and Souter, JJ.); id. at 2448 (White, J., concurring in judgment). The three dissenting Justices found no barrier to selective prospectivity, constitutional or otherwise. See id. at 2451-56 (Rehnquist, C.J., and O'Connor & Kennedy, JJ., dissenting). Consequently, only three Justices in Beam rested on constitutional grounds. See footnote 10, infra.

[11] Three Justices in the majority rested their conclusion on the limited judicial power under Article III, which "is the power 'to say what the law is,' not the power to change it." 111 S. Ct. at 2451 (Scalia, J., joined by Blackmun and Marshall, JJ., concurring in judgment).

[12] Defendants confuse the standard of scrutiny issue by quoting (Supplemental Brief at 15) language from Mills v.

(continued...)

In enacting Section 27A, Congress may reasonably be supposed to have sought to recognize the reliance interests of those pre-Lampf plaintiffs whose causes of action had been rendered time barred by Lampf. Such a purpose is plainly tied to a legitimate governmental interest.

Defendants point to no authority for the proposition that Congress must impose uniform nationwide limitations periods for federal causes of action, and we are aware of none. So to hold would be impossible to reconcile with established Supreme Court jurisprudence that calls for federal courts sometimes to borrow local statutes of limitations when Congress has not provided one. See, e.g., Del Costello v. International Brotherhood of Teamsters, 462 U.S. 151, 158-60 (1983). The Lampf court itself expressly reiterated the validity of this practice and found that there was a uniform federal statute of limitations for Section 10(b) on grounds having nothing to do with equal protection concerns. 111 S. Ct. at 2778, 2789-81; see also id. at 2784 (Stevens, J., concurring in judgment).[13]

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[12](...continued)
Habluetzel, 456 U.S. 91, 99 (1982) stating that classifications must bear a "substantial" relationship to a "legitimate legislative interest." Mills dealt with a classification that involved illegitimacy. As the Supreme Court subsequently explained more clearly, legitimacy is a quasi-suspect basis of classification, and classifications that take it into account are subject to intermediate scrutiny, which requires that they be "substantially related to an important governmental objective." Clark v. Jeter, 486 U.S. 456, 461 (1988). "Minimum scrutiny," such as applies in this case, requires that the classification be "rationally related to a legitimate governmental purpose." Id.

[13] Defendants also make the curious assertion that Section 27A, a congressional enactment that adopts by reference certain state-law limitations rules, violates the Supremacy Clause by
(continued...)

CONCLUSION

For the foregoing reasons, Section 27A of the Securities Exchange Act of 1934 is constitutional.[13] The United States urges the Court to hear oral argument because of the gravity of the matter under consideration. As an intervenor, the United States wishes to participate in such argument in order to defend the constitutionality of this Act of Congress.

Respectfully submitted,

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[13](...continued)
elevating state over federal law. Supplemental Brief at 13. The statement contains its own refutation.

[14] We express no views on any other issue in this case nor on its ultimate outcome.

ADDENDUM

The United States is aware of the following district court decisions that have addressed the constitutionality of Section 27A as of June 4, 1992.

Decisions Upholding Constitutionality of Section 27A:

Adler v. Berg Harmon Associates, 89 Civ. 8114 (S.D.N.Y. April 27, 1992)

Alpha Group Consultants, Ltd. v. Weintraub, No. 91-0143-H(M) (S.D. Cal. Feb. 20 and 24, 1992)

Axel Johnson, Inc. v. Arthur Andersen & Co., No. 89 Civ. 6490 (S.D.N.Y. April 25, 1992)

Ayers v. Sutliffe, No. C-1-90-650 (S.D. Ohio Feb. 11, 1992)

Bancroft v. Kneipper, No. CA3-90-2754-D (N.D. Tex. April 30, 1992)

Bankard v. First Carolina Communications, Inc., 1992 WL 3694 (N.D. Ill. Jan. 6, 1992)

Brown v. The Hutton Group, No. 89 Civ. 611 (S.D.N.Y. April 27, 1992)

Cortes v. Gratkowski, No. 90 C 2904 (N.D. Ill. May 15, 1992)

Diaz v. Century Pacific Investment Corporation, No. CV-1329 WMB (C.D. Cal. March 16, 1992) (bench ruling)

First v. Prudential Bache Securities, Inc., No. CV 91-0047 (S.D. Cal. March 24, 1992)

Hastie v. American Agri-Corp., Civ. No. SACV 89-433-GLT (C.D. Cal. Apr. 20, 1992)

Hindler v. Telequest, Civ. No. 89-0847 (S.D. Cal. Apr. 3, 1992)

In re American Continental Corporation/Lincoln Savings & Loan Securities Litigation, MDL No. 834 (D. Ariz. Feb. 7, 1992)

In re Melridge, Inc. Securities Litigation, Master File No. 87-1426 (D. Or. March 20, 1992)

In re Taxable Municipal Bond Securities Litigation, MDL No. 863 (E.D. La. May 20, 1992)

Sims v. Shearson Lehman Brothers, Civ. No. CA3-90-2052-P (N.D. Tex. Jan. 29, 1992)

Southwest Realty, Ltd. v. Daseke, No. CA3-89-3055-D (N.D. Tex. May 21, 1992)

TBG Inc. v. Bendis, No. 89-2423-0 (D. Kan. March 5, 1992)

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Wegbreit v. Marley Orchards Corp., No. CS-91-191-FVS (E.D. Wash. May 11, 1992)

Decisions Denying Constitutionality of Section 27A:

Bank of Denver v. Southeastern Capital Group, Civ. No. 90-B-1551 (D. Colo. March 20, 1992)

Gray v. First Winthrop Corp., No. C-90-2600-JPV (N.D. Cal. May 6, 1992) (appeal pending)

In re Brichard Securities Litigation, No. C-87-2987-CAL (N.D. Cal. March 27, 1992) (appeal pending)

In re Rospatch Securities Litigation, Nos. 1:90-CV-805, 1:90-CV-806, 1:91-CV-85 (W.D. Mich. May 7, 1992)

Johnston v. CIGNA Corporation, Civ. No. 90-B-177 (D. Colo. March 20, 1992)

Plaut v. Spendthrift Farm, Civ. No. 87-438 (E.D. Ky. Apr. 13, 1992) (appeal pending)

TGX v. Simmons, Civ. No. 87-5298 (E.D. La. March 18 and May 21, 1992) (appeal pending)

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 1992, I served the foregoing BRIEF FOR THE UNITED STATES AS INTERVENOR AND THE SECURITIES AND EXCHANGE COMMISSION AS AMICUS CURIAE on the other parties to this appeal by causing copies to be mailed, first-class postage prepaid, to:

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