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OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: VERA M. ENGLISH, Petitioner
V. GENERAL ELECTRIC COMPANY
CASE NO: 89-152
PLACE: Washington, D.C.
DATE: April 25, 1990
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IN THE SUPREME COURT OF THE UNITED STATES

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VERA M. ENGLISH, :
Petitioner :
V. : No. 89-152
GENERAL ELECTRIC CORPORATION :

-----x

Washington, D.C.
Wednesday, April 25, 1990

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 10:01 a.m.

APPEARANCES:

M. TRAVIS PAYNE, ESQ., Raleigh, North Carolina; on behalf of the Petitioner.

CHRISTOPHER J. WRIGHT, ESQ., Assistant to the Solicitor General, Department of Justice, Washington, D.C.; as amicus curiae, supporting the Petitioner.

CARTER G. PHILLIPS, ESQ., Washington, D.C.; on behalf of the Respondent.

C O N T E N T S

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ORAL ARGUMENT OF

PAGE

M. TRAVIS PAYNE, ESQ.

On behalf of the Petitioner

3

CHRISTOPHER J. WRIGHT, ESQ.

As amicus curiae, supporting the Petitioner

10

CARTER G. PHILLIPS, ESQ.

On behalf of the Respondent

22

REBUTTAL ARGUMENT OF

M. TRAVIS PAYNE, ESQ.

On behalf of the Petitioner

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1 discharged from her employment with General Electric.

2 We have alleged, and for purposes of this appeal
3 it must be accepted as true, that the actions taken against
4 Mrs. English were indeed taken in retaliation for her
5 reports. In fact, the Department of Labor Administrative
6 Law Judge found that she was the victim of retaliation. He
7 also found that GE's witnesses were just not believable in
8 attributing the actions against to concerns that she might
9 endanger other employees.

10 But I want to make it clear that we are not here
11 relitigating the Section 210 action under a state law
12 theory. This is an intentional infliction of emotional
13 distress case, and the issues that will be before a jury at
14 a trial of this matter are significantly different from
15 those considered under a Section 210 action.

16 Under North Carolina law, we must first establish
17 that the conduct directed towards Mrs. English was extreme
18 and outrageous. As set forth quite thoroughly in the
19 National Conference of State Legislators' brief, that is a
20 very, very high standard, and only the most egregious
21 situations will meet it. It requires considerably more than
22 merely a retaliatory discharge.

23 QUESTION: Mr. Payne, what -- what was the finding
24 of the district court and of the court of appeals as to
25 whether you had stated a claim under North Carolina law?

1 MR. PAYNE: Both of those courts found in response
2 to the 12(b)(6) motion that we had in fact asserted all of
3 the elements of such a claim.

4 QUESTION: And that that did -- your -- your
5 pleadings, therefore, did state a claim under North Carolina
6 law?

7 MR. PAYNE: Yes. There's no question about that.
8 That's a -- a specific finding in Judge Dupree's ruling in
9 the district court and clearly affirmed at the court of
10 appeal.

11 QUESTION: Was the retaliatory discharge one of
12 the elements that you included in alleging intentional
13 infliction of emotional distress?

14 MR. PAYNE: No, Your Honor. What we are alleging
15 is a period of some four and a half months. What happened
16 in this case, and what we assert, is that rather than merely
17 giving Mrs. English a pink slip and escorting her off the
18 plant on March 15th, they instead harassed and humiliated
19 her --

20 QUESTION: Well, but I mean, I take it your
21 position is the same if we -- if you excise from your
22 complaint or if you excise from the trial of the case the
23 fact of the discharge, I take it you still can proceed with
24 your cause of action?

25 MR. PAYNE: There's absolutely no question about

1 that. In fact, the discharge is a minor point. It -- it
2 is a whole series of elements going over a period of some
3 four and a half months culminating in the discharge. But
4 absent the discharge, 95 percent or more of our case is
5 still there.

6 QUESTION: Now, wait -- wait. The -- the
7 discharge as a -- as an act may not be essential, but --
8 but wasn't -- wasn't an essential part of your case the fact
9 that knowing that they planned to discharge her all the
10 time, they made her go through all of these things?

11 If they didn't really plan to discharge her at
12 all, wouldn't that make your case a lot weaker? I mean, it
13 -- it -- it may not be a separate humiliation --

14 MR. PAYNE: Yes. Yes.

15 QUESTION: -- a relatively minor humiliation, but
16 all the rest are only -- only terrible humiliations because
17 the company knew it was going to fire her all along.

18 MR. PAYNE: That -- that is certainly --

19 QUESTION: So in that sense, it's important to
20 your case.

21 MR. PAYNE: -- part of it, Justice Scalia.

22 QUESTION: Sure.

23 MR. PAYNE. In fact, it is our contention that
24 rather than just fire her, if GE had the kinds of concerns
25 it's tried to raise about safety, about legitimate

1 disciplinary action, they would have fired Mrs. English.
2 It is our contention that rather than do that, they made an
3 example out of her.

4 They chose -- and this is in fact another aspect
5 of the intentional infliction -- they chose basically to
6 engage in a psychological assault against Vera English, a
7 woman that they knew was particularly susceptible to that
8 form of attack.

9 Before the Administrative Judge, one of the
10 primary defenses of the company was that Mrs. English was
11 a highly excitable, nervous woman. That is the woman that
12 they chose to subject to an extended period of humiliation
13 and harassment. We submit that they in fact knew that the
14 result would be essentially driving Mrs. English to the
15 brink of a complete emotional breakdown.

16 Now that -- that in fact is a second element in
17 the claim. We must show intent. We must show not only
18 outrageous conduct, but we must show that the company had
19 the actual intent to inflict emotional distress on Mrs.
20 English. That, again, is a fairly heavy burden that we have
21 to carry at trial.

22 QUESTION: That may be, but do you think that --
23 that there will be a remedy for this under the Federal act?
24 I am not suggesting that would -- if you answer yes, I'm not
25 saying you'll lose your case at all. But wasn't there an

1 action for this same course of conduct under the Federal
2 law?

3 MR. PAYNE: Under Section 210 -- and I'll say that
4 on the remand, which there is the separate case and that
5 Department of Labor case has been appealed to the Fourth
6 Circuit, the holding of the Administrative Judge was
7 reversed on timeliness, and it was remanded. And this may
8 be what Justice White is referring to -- I don't know,
9 correct me if I'm wrong -- that there was some indication
10 that perhaps prolonged harassment was actionable.

11 QUESTION: I beg your pardon. I'm just asking
12 for your view under -- is there a remedy for this course of
13 conduct under the Federal statute?

14 MR. PAYNE: I don't think there is an adequate
15 remedy. No, Your Honor.

16 QUESTION: I didn't ask that. Is there a remedy
17 for it?

18 MR. PAYNE: There is somewhat of a remedy under
19 Section 210. There are compensatory damages. Interesting
20 point about that, it appears to me under Section 210 that
21 in an appropriate case the Secretary might be able to award
22 consequential damages for a mere retaliatory discharge.
23 Consequential damages perhaps in the form of stress and
24 humiliation. And in that case, the retaliatory discharge
25 itself might not rise to the level of outrageous conduct

1 intended to inflict serious emotional distress.

2 So it -- you might possibly in the Section 210
3 action get a small amount of damages, where if you tried to
4 bring the state tort that we're here before you on, you
5 would not be able to meet the elements. So it's kind of a
6 mixed situation. I would say that a remedy under Section
7 210 for these types of claims is just not adequate though.

8 QUESTION: He can impose punitive damages, too,
9 can't he, under 210?

10 MR. PAYNE: No.

11 QUESTION: No?

12 MR. PAYNE: The punitive damages only come into
13 play under Section 210 if the employer refuses to abide by
14 the Secretary's order, and if the Secretary must then seek
15 enforcement in the district court, and at that level only
16 would punitive damages be available.

17 And it's really, to my way of thinking, not clear
18 who gets those punitive damages, the Secretary that's
19 seeking them. They are not, as an initial matter, available
20 to the complainant in a Section 210 action.

21 QUESTION: (Inaudible).

22 MR. PAYNE: Punitive damages are well-recognized
23 in North Carolina. It's a claim that's been there for
24 years. They've been recognized in intentional infliction
25 of emotional distress damages. There's no question.

1 QUESTION: (Inaudible) your statement?

2 MR. PAYNE: Justice White, there is no statutory
3 limit. I will tell you that our courts are fairly hostile
4 to those form of damages so there's a real world limit.
5 But in terms of statutory of law --

6 QUESTION: (Inaudible).

7 MR. PAYNE: I'm sorry.

8 QUESTION: The juries aren't?

9 MR. PAYNE: Right. This Court recognized in
10 Farmer -- Farmer v. the Carpenters Union -- that when
11 employment actions are carried out in an -- a particularly
12 abusive fashion, the fundamental interests of the states in
13 maintaining order and preventing abusive conduct is not
14 preempted by Federal employment law.

15 I submit to that Mrs. English's case presents just
16 such an example of abusive conduct and falls well within the
17 doctrine annunciated by this Court in Farmer. For that
18 reason, I submit that the decisions of the lower courts
19 should be reversed.

20 And I would like to reserve my remaining time.

21 Thank you.

22 QUESTION: Very well, Mr. Payne.

23 Mr. Wright.

24 ORAL ARGUMENT OF CHRISTOPHER J. WRIGHT

25 ON BEHALF OF THE UNITED STATES AS AMICUS CURIAE

1 SUPPORTING THE PETITIONER

2 MR. WRIGHT: Mr. Chief Justice, and may it please
3 the Court:

4 I will first address GE's contention that
5 Petitioner's claim intrudes on the Federal nuclear safety
6 field and then turn to GE's contention that it conflicts
7 with specific provisions of Section 210.

8 As this Court stated in Pacific Gas & Electric,
9 Congress has decided that the Federal Government, and not
10 the states, should regulate the radiological safety aspects
11 involved in the construction and operation of a nuclear
12 plant. I want to make clear that the Federal Government
13 believes that such regulation is solely a Federal matter.

14 However, like the courts below, we do not think
15 that Petitioner's claim intrudes on the Federal field.
16 Nothing about her claim is dependent on the fact that she
17 worked at a nuclear facility, and GE needs change no aspect
18 of its nuclear program in order to avoid suits such as
19 Petitioner's. It need only change its labor practices.

20 As the district court said in this case, with
21 respect to the field preemption issue, nuclear safety is
22 only tangential to this case.

23 QUESTION: Mr. Wright, should we read -- should
24 we view Section 210 as just providing an additional Federal
25 remedy for circumstances such as in this case?

1 MR. WRIGHT: That's right. We think that it
2 supplements rather than supplants.

3 QUESTION: You suggested in the government's brief
4 -- or the government's brief suggested, anyway, that somehow
5 there might be some kind of Federal preemption of certain
6 defenses by virtue of Section 210.

7 MR. WRIGHT: Yes.

8 QUESTION: I must say, I don't understand that.
9 Can there be selective preemption for certain aspects of
10 the state suit?

11 MR. WRIGHT: Let -- let -- let me try to explain
12 that. That's really a conflict preemption problem, and I'm
13 not sure that it wouldn't --

14 QUESTION: What?

15 MR. WRIGHT: A conflict preemption matter as
16 opposed to a field preemption matter. For instance, one
17 could suppose a state law action in which reinstatement was
18 a possible remedy. One could also suppose that in a Section
19 210 action, or in a proceeding before the Nuclear Regulatory
20 Commission, it had been determined that the particular
21 employee had committed safety violations.

22 Now, in that situation, we would contend there
23 would be an actual conflict between a state remedy of
24 reinstatement, for instance, and the Federal interest in
25 protecting the field of nuclear safety. We would be on the

1 other side in such a case.

2 But that is not this case, and the difference,
3 let me reiterate, because --

4 QUESTION: Does the -- does 210 require discharge
5 of an employee who's violated a safety regulation?

6 MR. WRIGHT: No, Justice Kennedy.

7 QUESTION: Well, then there's not really a square
8 conflict in the case you suppose so the state ordered
9 reinstatement.

10 MR. WRIGHT: That's why I say I'm not sure it
11 really depends on Section 210. Even before Section 210 had
12 been enacted 24 years after the Atomic Energy Act was
13 enacted, I am confident that we would argue that conflict
14 preemption principles barred reinstatement of a -- of a
15 serious violator of nuclear safety rules under state law.
16 That --

17 QUESTION: That is a state concern, isn't it?

18 MR. WRIGHT: Yes, and in that case there's a real
19 conflict between -- would be a real conflict between the
20 state law and Federal law --

21 QUESTION: Well, not only that but that's --
22 there's just -- there's just safety preemption under the
23 Atomic Energy Act.

24 MR. WRIGHT: Yes, that's right. The field
25 Congress has occupied is the -- is the nuclear safety field

1 I've used as a shorthand --

2 QUESTION: While I've got you interrupted, is the
3 -- is a plaintiff free just to ignore the administrative
4 process before going to state court?

5 MR. WRIGHT: We don't think that there is any sort
6 of exhaustion requirement or anything. Perhaps your
7 question --

8 QUESTION: Well, that -- that certainly is there
9 for a purpose, I suppose. And it's there for a safety
10 purpose, isn't it?

11 MR. WRIGHT: That is true and, as GE has pointed
12 out, it is the case that the filing of a whistleblower claim
13 will in some circumstances alert the NRC to a safety
14 violation.

15 QUESTION: It always will.

16 MR. WRIGHT: Well, of course, in this case it
17 didn't because she'd already complained to the NRC. And -
18 - and of course, in most whistleblower cases the employee
19 has already blown the whistle so that it's only in the sort
20 preemptive retaliation cases, if you will, that the NRC
21 wouldn't already know about the underlying violation.

22 In those cases, we -- we have stated --

23 QUESTION: But that issue isn't here, is it?

24 MR. WRIGHT: Well, it's -- no, it's not involved
25 in this case, as I say, because Mrs. English had complained

1 to the NRC already. In short, we -- we -- we see a problem
2 there. We think GE greatly overstates the extent of that
3 problem.

4 GE's argument with respect to field preemption
5 runs as follows. Section 210 has some relationship to the
6 field of nuclear safety, and her claim overlaps to some
7 extent with the Section 210 claim. But that overlap does
8 not establish intrusion on the Federal field because Section
9 210, as I indicated briefly in response to Justice
10 O'Connor's question, is, in our view, primarily an employee
11 protection statute, as its title states.

12 Before it was enacted, the NRC already prohibited
13 nuclear employers from retaliating against whistleblowers.
14 Section 210 just added a remedy. And in some cases, as in
15 this case, no wrongful discharge action would have been
16 available under state law. So a supplemental remedy was
17 needed, at least in some states.

18 In addition, Section 210 is administered by the
19 Department of Labor, not by the NRC, which we think
20 emphasizes the fact that it's primarily an employee
21 protection statute and -- and not a nuclear safety statute.

22 QUESTION: It is an employment protection statute
23 that is designed to make sure that the agency is doing its
24 job or the, in this case, the utility is doing its job
25 properly.

1 MR. WRIGHT: Yes. There's no question.

2 QUESTION: That's right.

3 MR. WRIGHT: There's no question that it has
4 nuclear safety aspects as well.

5 QUESTION: I -- I don't find that line you're
6 trying to draw between labor protection and safety a clear
7 one. I --

8 MR. WRIGHT: It is --

9 QUESTION: I think that that's how we have to
10 decide these -- these matters, to decide whether this is a
11 labor provision or a safety provision.

12 MR. WRIGHT: We don't think you have to decide
13 whether Section 210 is a labor provision or a safety
14 provision. We think you have to decide whether Petitioner's
15 claim intrudes on the Federal nuclear safety field. GE --
16 GE's argument is simply that because her claim overlaps to
17 some extent with Section 210, which in turn overlaps to some
18 extent with nuclear safety matters, it's preempted.

19 But, you're right. I'd like to return -- the real
20 question is whether her claim intrudes onto the nuclear
21 safety field. The Federal Government does not think that
22 it does.

23 QUESTION: Although you acknowledge it does have
24 safety aspects.

25 MR. WRIGHT: Yes, and I would return to the

1 district court's characterization of the -- of the nuclear
2 safety issue in this case as being only tangential or in
3 the background.

4 I think GE's concession with respect to the
5 battery hypothetical that Mrs. English raised in her -- in
6 her brief is instructive in this respect. They concede that
7 she would not be barred from going forward with a battery
8 claim if they had physically assaulted her. Now, it's true
9 that a battery claim doesn't overlap with a Section 210
10 claim.

11 However, with respect to their effect on the
12 nuclear field, there's no difference. Both would arise out
13 of retaliation for making a nuclear safety complaint, and
14 both could result in extensive damages being levied against
15 the operator of a nuclear facility. But in our view,
16 neither intrudes on the Federal field to the extent that
17 preemption is warranted.

18 QUESTION: This is a -- this hypothetical is a
19 battery committed by the corporation?

20 MR. WRIGHT: Yes. If instead of, as they allege,
21 psychologically harassing her for four and a half months,
22 they had instead, or in addition, had someone beat her up.

23 In our view, this is an easier case than both
24 Pacific Gas & Electric and --

25 QUESTION: Excuse me. Are you saying if this was

1 real preemption, a battery would be preempted as well? Is
2 that your point?

3 MR. WRIGHT: Well, I --

4 QUESTION: I mean suppose -- suppose a state has
5 a -- has a law that says you can't break somebody's legs in
6 order to make him commit an unsafe practice in a nuclear
7 facility. Would that be preempted?

8 MR. WRIGHT: That hypothetical is, of course,
9 quite troubling because --

10 QUESTION: I know it's troubling.

11 MR. WRIGHT: -- you had it framed exactly --

12 QUESTION: It's right in the heart of nuclear
13 safety, isn't it?

14 MR. WRIGHT: You've -- you've established a
15 special rule for nuclear facilities.

16 QUESTION: Regardless.

17 MR. WRIGHT: We might well have some trouble with
18 that.

19 QUESTION: Regardless, would that state law be
20 precluded because it's squarely in the field of nuclear
21 safety?

22 MR. WRIGHT: I think we would say it would --

23 QUESTION: Wow.

24 MR. WRIGHT: -- since it's aimed at that field.

25 R. WRIGHT: But, of course, a regular battery action, is

1 not. Just as a regular intentional infliction of emotional
2 distress --

3 QUESTION: Well, this one -- this one isn't aimed
4 particularly at this field either.

5 MR. WRIGHT: The intentional infliction of
6 emotional distress wasn't?

7 QUESTION: Yeah. Right.

8 MR. WRIGHT: And that's why we say it's not
9 preempted, or that's one of the reason we say --

10 QUESTION: Any general law is not preempted even
11 if it's in the -- directly in the safety field?

12 MR. WRIGHT: Unless it has an effect and except
13 to the extent that it actually intrudes on the Federal
14 field. If, for example, as I hypothesized, a nuclear safety
15 violator was ordered to be -- excuse me -- reinstated, we
16 would argue for preemption in such a case. There would be
17 a real conflict there.

18 QUESTION: (Inaudible) called field preemption
19 and conflict? Don't you -- aren't you ultimately coming
20 back to a conflict all the time?

21 MR. WRIGHT: No. No, Justice Scalia. If -- if--
22 if a state passed a law that really involved a nuclear field
23 and was supportive of the Federal goal, a whistleblower
24 statute -- well, not a whistleblower statute -- a regulation
25 designed solely to make nuclear plants safer -- it is, of

1 course, part of the NRC's purpose to make nuclear plants
2 safer. But because that's a Federal field, a state law,
3 even one that doesn't conflict, even one that promotes the
4 Federal goal --

5 QUESTION: What you are saying is that it is not
6 the purpose of the Federal law to make them any safer than
7 it made them. There is a tradeoff between how safe you want
8 to get and what the costs of improved safety are, and the
9 Federal law said we want them this safe and no safer.

10 MR. WRIGHT: Well --

11 QUESTION: And to make them safer than that is to
12 create a conflict.

13 MR. WRIGHT: I'll -- I'll concede that if you look
14 at it that way, you could always find field preemption to
15 be a conflict.

16 QUESTION: Yes, I would say that there's field
17 preemption if the -- if the state purported to give an
18 additional remedy for a violation of a Federal safety rule.

19 MR. WRIGHT: If it was aimed at nuclear safety,
20 of course.

21 QUESTION: Well, they just -- they say here's
22 another remedy, an additional remedy, for violating a
23 Federal safety rule.

24 MR. WRIGHT: Well, I stress that -- the nuclear
25 safety because in the -- in the Goodyear Atomic case this

1 Court upheld an additional remedy under a Worker's
2 Compensation statute --

3 QUESTION: Well, I --

4 MR. WRIGHT: -- that was -- that was on account
5 of violation of a safety regulation. So I'd say we would
6 -- we would say, of course, if it was a nuclear -- if a
7 state did something particularly aimed at the nuclear field,
8 yes, --

9 QUESTION: Yes?

10 MR. WRIGHT: -- we would argue for preemption in
11 that case.

12 With respect to Pacific Gas & Electric, GE argues
13 that that case is distinguishable because the state was
14 regulating economic matters rather than -- than labor
15 matters. We think what is most significant in that case
16 was that the state was not regulating nuclear safety
17 matters. It says that Silkwood is distinguishable because
18 there was some legislative history indicating that Congress
19 assumed that the persons who had been injured by exposure
20 to radiation could pursue state remedies.

21 We agree with the First Circuit in the Norris v.
22 Lumbermen's case that it's reasonable to suppose that
23 Congress intended to supplement remedies to allow
24 whistleblowers, as well as those injured by exposure to
25 radiation, to pursue claims such as Petitioner's as well.

1 Let me make just one point with respect to -- or
2 further point with respect to conflict preemption. The
3 Court should keep in mind that all three of the subparts of
4 Section 210 that GE focuses on in -- in that part of its
5 brief are virtually identical to provisions in six other
6 environmental statutes where state regulation is
7 specifically contemplated by the Federal statute.

8 Thus, none of the three statutes -- none of the
9 three subparts, either individually or in combination,
10 inherently conflicts with concurrent state regulation.

11 If there are no more questions, I have nothing
12 further.

13 QUESTION: Thank you, Mr. Wright.

14 Mr. Phillips, we'll hear now from you.

15 ORAL ARGUMENT OF CARTER G. PHILLIPS

16 ON BEHALF OF THE RESPONDENT

17 MR. PHILLIPS: Thank you, Mr. Chief Justice, and
18 may it please the Court:

19 Contrary to what certainly Mr. Payne has said,
20 and to a certain extent to what the Solicitor General's
21 office has argued, this is a case about nuclear safety.
22 Section 210 of the Energy Reorganization Act is a statute
23 that protects whistleblowers at nuclear facilities from
24 retaliation by their employers for the purpose of ensuring
25 that those facilities are operated consistent with public

1 health and safety.

2 The enforcement mechanisms and procedures and
3 remedies provided by Section 210 are an integral part of
4 the field of safety that the Congress and this Court have
5 long recognized to be an exclusive matter of Federal
6 concern.

7 There is frankly no room for an alternative
8 mechanism or procedure under state tort law for activity
9 plainly covered under Section 210. And, therefore,
10 Petitioner's efforts to obtain additional relief in the form
11 of a \$1.3 million request for compensatory damages and a
12 \$2.3 billion request for punitive damages for a claim that
13 she describes in her own complaint as one arising for
14 reprisals with respect to her terms and conditions of
15 employment for disclosing to the Nuclear Regulatory
16 Commission noncompliance with law by General Electric, must
17 fail.

18 Because safety in the operation of a nuclear
19 facility is directly implicated in this case, it must
20 properly be analyzed under the field preemption doctrines
21 that this Court applied in Pacific Gas & Electric and in
22 Silkwood. In those cases, the Court made absolutely clear
23 that the Federal Government has occupied the entire field
24 of nuclear safety concerns.

25 Accordingly, the appropriate legal standard for

1 analyzing the preemption in this case is the standard the
2 Court announced initially in Rice and reaffirmed in PG&E,
3 and the question is whether the matter on the which the
4 state asserts the right to act is in any way regulated by
5 the Federal act.

6 In order to evaluate that, then, we must begin by
7 examining what it is that the Federal statute regulates in
8 this case. Clearly, the Federal scheme regulates
9 retaliation in the work place for reporting violations of
10 safety requirements and threats that such retaliation --
11 excuse me -- and treats such retaliation as itself a serious
12 safety concern.

13 What the Solicitor General ignores and what the
14 Petitioner plainly ignores is the fact that these kinds of
15 reprisals and retaliations have been recognized by the
16 Nuclear Regulatory Commission since 1973 as a serious matter
17 of safety vel non. That is, that the fact of retaliation
18 is itself a significant risk to the safety of the nuclear
19 facility, and the NRC has explicit and specific authority
20 not only to condition a license but to revoke a license
21 solely as a consequence of an employer retaliating against
22 an employee for actually presenting the NRC, or even the
23 employer, with a concern with respect to safety.

24 Thus, this is not peripheral concern to the NRC.
25 This is at the core of how the NRC ensures both technical

1 safety in the facilities, management concern for safety in
2 the facilities and assures that other employees are not
3 deterred from bringing forth either to the NRC or to the
4 employers the kinds of concerns about safety that they may
5 have.

6 In addition, I think it's pretty clear by looking
7 at the elements of Section 210 that it is -- that it is
8 designed ultimately to promote safety as its ultimate goal.
9 While it does, of course, provide specific remedies for the
10 employees, its discrete elements also reflect that the
11 ultimate purpose of this legislation is to ensure nuclear
12 safety at every facility.

13 First, Section 210 does have a short limitations
14 period, which is unquestionably going to encourage problems
15 with safety to be reported quickly to the Secretary of
16 Labor. Second, the provision directly contemplates a close
17 interrelationship between the Secretary of Labor and the
18 Nuclear Regulatory Commission so the Commission can act
19 immediately upon being informed of a problem with the
20 Secretary of Labor --

21 QUESTION: A -- there's not going to be much of
22 a chance for retaliation unless somebody's already reported
23 something. So --

24 MR. PHILLIPS: But the question is to whom they
25 have reported the violation. The majority of circuits hold

1 that a report to the employer which has not made it to the
2 NRC is itself protected activity under Section 210 and,
3 therefore, retaliation for those reports are compensable.
4 The NRC would never have learned about that kind of conduct
5 but --

6 QUESTION: But that --

7 MR. PHILLIPS: -- for the fact of a filing with
8 Section 210.

9 QUESTION: That isn't so with this case, is it?

10 MR. PHILLIPS: That is not so in this case. But
11 the second part that Section 210 worries about as a safety
12 concern is the fact of retaliation. The fact, if proved,
13 that Mrs. English was subjected to a course of harassment
14 in the four months before her final layoff is a concern to
15 the Nuclear Regulatory Commission by itself and, therefore,
16 you need to have Section 210 in order to promote that
17 secondary but very vital safety concern embodied in this
18 statute.

19 In addition, Section 210 provides full
20 compensatory relief. There's an opportunity for back pay
21 and reinstatement and compensation for injuries.

22 QUESTION: In a field occupation what kind of a
23 remedy there is is irrelevant, isn't it?

24 MR. PHILLIPS: No, because the value of knowing
25 the nature of the remedy is that the legal test under Rice

1 is, is this a matter in anyway regulated by the Federal
2 Government? If the Federal Government is providing you a
3 specific remedy for the precise claims you bring as a matter
4 of state law, then it's absolutely clear that the action on
5 which the state is operating is precisely the same as the
6 Federal Government, and if you are in an area of Federal
7 preemption, then the state action must be set aside.

8 QUESTION: Well, I -- but that certainly doesn't
9 depend on how adequate the Federal remedy is.

10 MR. PHILLIPS: Oh, no, that's true, Justice White.
11 I would be here arguing today just as strenuously if Section
12 210 did not exist because of the Nuclear Regulatory
13 Commission's regulation that recognizes the
14 discrimination --

15 QUESTION: That's right.

16 MR. PHILLIPS -- in terms and conditions. But, as
17 this Court recognized in Silkwood, it felt at least some
18 uneasiness with the inadequacy of the remedy that otherwise
19 would exist. To the extent that was any concern in
20 Silkwood, it is clearly not a concern in this specific case.

21 With respect to the last two elements of Section
22 210, it only permits the Secretary to obtain punitive
23 damages, not the employee, and the reason for that is to
24 insure against over-deterrence from employer's who have
25 reason to respond to employee problems which themselves can

1 be a serious safety concern.

2 And finally, Section 210 precludes relief when an
3 employee deliberately violates Section 210(a). And I think
4 in that respect it's important to I think get a little more
5 mileage out of Section 210(g) than perhaps we did in our
6 brief because if you read 210(g), it accepts a remedy under
7 Section 210(a) itself, which the Solicitor General pointed
8 out in his brief.

9 But that suggests to me that Congress must have
10 anticipated that Section 210(a) is the only appropriate
11 relief for these kinds of work place problems because it is
12 inconceivable that Congress would have said, no, we
13 absolutely don't want you to get any recovery, including
14 reinstatement, under Section 210(a), but we have no concerns
15 whatsoever that you can go to state court on a wrongful
16 discharge action and be placed right back in.

17 That's not the way Congress would have operated.
18 I think the limitations in Section 210(g) clearly reflect
19 Congress' expectation that state law was not going to be
20 available to an individual in Mrs. English's position.
21 Accordingly, the elements of Section 210 operate in tandem
22 with the general preemption of the field of nuclear safety
23 in a way that makes Mrs. English's claim unquestionably
24 preempted.

25 One other element that I suggest aids us with

1 respect to the preemption question is the kind of analysis
2 the Court employed in Schneidewind, where it said when
3 you're dealing with occupation of the field problems what
4 you need to worry about is whether there is an imminent
5 threat of conflict between the way the state operates --
6 the state law operates and the way the Federal concerns are
7 being employed.

8 And in -- and in this case, it's clear to me that
9 if you give someone the opportunity to seek punitive
10 damages, \$2.3 billion, they are going to go to state court
11 and they are not going to go to the Secretary of Labor, and
12 a lot of important safety concerns are not going to be
13 brought timely and promptly to the Nuclear Regulatory
14 Commission in a way that is completely inconsistent with the
15 way the scheme operates and completely inconsistent with
16 notions of field preemption.

17 QUESTION: What is the \$2.3 billion figure, Mr.
18 Phillips?

19 MR. PHILLIPS: That is a calculation at the time,
20 at least of the complaint, of 5 percent of the -- I think
21 gross -- of the assets of GE, and it was a calculation the
22 district court made in this case as to what -- as to what
23 was asked for.

24 Notwithstanding in my mind the clear field
25 preemption argument that applies in this case and ousts Mrs.

1 English's claim, Petitioner and her amici offer three
2 rationales for holding that the claim is not preempted.

3 First, Petitioner's primary answer in her reply
4 brief is that Section 210(g) -- excuse me -- Section 210 is
5 not itself a serious safety statute in the nuclear field.
6 It may concern safety, but it is -- it has antecedents in
7 non-nuclear areas and, therefore, is beside the point for
8 purposes of nuclear safety.

9 I submit to you that that is an incredible
10 interpretation of a statute that is clearly part of the
11 nuclear field that has been occupied by the Federal
12 Government for the last 25 years and is an incredible
13 assessment of how Congress operates when it enacts
14 legislation, and that there's simply no basis for ignoring
15 the safety concerns underlying Section 210 that exist in
16 this case.

17 Second, Petitioner and her amici argue, I think
18 somewhat more strenuously, but with no greater effect, that
19 field preemption doctrine in the nuclear area ought to be
20 turned on its head. That is, that in this area alone -- in
21 the area of nuclear safety, which I submit is probably as
22 important and one that requires a uniform Federal role as
23 any area of law that I can imagine, the Federal Government
24 comes to the Court and says in this one area what you need
25 is a good purpose.

1 That is, if you have a non-safety purpose in your
2 state law for what you're doing, that you are free to walk
3 through the Federal field that's otherwise preempted by the
4 Federal Government. That is not what this Court held in
5 Silkwood.

6 In fact, it is manifestly inconsistent with what
7 the Court said in Pacific Gas & Electricity, where it held
8 it would be clearly impermissible for California to regulate
9 the construction and operation of a nuclear facility for
10 such regulation, even if enacted out of a non-safety
11 concern, would nevertheless directly conflict with the NRC's
12 authority over plant construction and operation.

13 The government turns the issue of state purpose
14 on its head in this case. The purpose inquiry in that case
15 was, if you're in an area ceded to the state and you have
16 nevertheless a purpose to interfere with nuclear safety or
17 you're operating for nuclear safety reasons, you are
18 nevertheless preempted even though it's an area that
19 Congress had ceded to the states.

20 It in no way supports the argument that if you
21 are in the area of operations of a nuclear facility that if
22 your purpose happens to be not to interfere with nuclear
23 safety in anyway, that that nevertheless is somehow exempt
24 from field preemption analysis.

25 QUESTION: What do you do -- what do you do about

1 the general criminal law examples that the government gives?
2 You know, the company hires somebody to -- to murder an
3 individual who makes a safety complain.

4 MR. PHILLIPS: Our argument is --

5 QUESTION: I assume that state law would be
6 applicable.

7 MR. PHILLIPS: Absolutely. No question about
8 that, Justice Scalia. I conceded essentially as much in
9 our brief. The point here is that the scope of the field
10 that Congress has preempted in this case is defined by
11 Section 210.

12 210 says that the Federal Government's safety
13 concerns are regulated -- and that's important -- regulated,
14 not just a matter of some concern to the Federal Government,
15 but are regulated -- then what you're talking about is
16 retaliation for reporting safety violations.

17 When you're in that sphere, the Federal Government
18 regulates it, and if you purport to act through state law,
19 no matter what label you want to place on the state tort
20 action, you are nevertheless preempted under any kind of
21 conventional theory of field preemption law.

22 If you go beyond that field, that is, does -- does
23 the Nuclear Regulatory Commission regulate murder or battery
24 as part of the discrimination in terms and condition of
25 employment --

1 QUESTION: Well, I --

2 MR. PHILLIPS: -- the answer is clearly no.

3 QUESTION: Yeah, but, my -- my hypothetical was
4 the reason for the murder was to punish the person for
5 reporting the safety violation and to prevent further safety
6 violations. That was the reason for the murder.

7 MR. PHILLIPS: I see what you're saying. Well --
8 I mean, I -- fortunately, I don't have to defend the
9 argument that would nevertheless be preempted, although I
10 think you could read the majority opinion in Pacific Gas &
11 Electric as suggesting that if you have an impermissible
12 purpose, even though you're dealing in an area ceded to the
13 states, that that may be preempted.

14 But the Court in that case held that that wasn't
15 a problem because that wasn't the purpose of the law. And
16 my guess is that most instances, since you are talking about
17 a general criminal statute, that's not going to be any kind
18 of a problem because it's clear that -- what the purpose of
19 the murder statute will be.

20 QUESTION: But if you say the -- the criminal law
21 is not preempted because that's not the kind of thing the
22 Nuclear Regulatory Commission is interested in, couldn't
23 you say the same thing about the intentional infliction of
24 emotional distress that the -- that 210 doesn't purport to
25 deal with that, just as it doesn't purport to deal with

1 battery?

2 MR. PHILLIPS: But in -- in field preemption areas
3 this Court has never said we look at labels for what the
4 state is doing. In the field preemption area you have to
5 look at the specifics of what's at issue and what is the
6 matter that the state purports to regulate.

7 And the matter that the state purports to regulate
8 under Mrs. English's own complaint is retaliation in the
9 work place arising out of -- out of reporting of safety
10 violations. And that's -- that's what her claim is.

11 And if she goes further and says not only should
12 have received recompense for wrongful discharge, but there
13 were some additional injury imposed upon me of an emotional
14 character. But the district court went through each one of
15 those elements and concluded that all five of the elements
16 of her complaint are clearly compensable under Section 210.

17 And if you excise out all that's compensable under
18 Section 210, what remains of Mrs. English's complaint is
19 wholly inadequate to stay a cause of action for intentional
20 infliction of emotional distress as a matter of North
21 Carolina tort law.

22 QUESTION: I think the way you -- you've
23 distinguished the murder case and the battery case
24 ultimately is that -- is that you say that all that 210
25 deals with is, as you just phrased it, retaliation in the

1 work place -- retaliation through dismissal.

2 MR. PHILLIPS: Or other terms and conditions of
3 employment.

4 QUESTION: Or other terms and conditions of
5 employment. So it would be only general state laws relating
6 to that very narrow area.

7 MR. PHILLIPS: That's correct.

8 QUESTION: Yeah, but that -- but that seems so
9 irrational that the -- the Federal Government doesn't care
10 how much you -- you tinker with whistleblowing and -- and
11 how much you -- you alter the balance between -- that
12 delicate balance that you point out between how much
13 incentive and disincentive you want to whistleblowing.

14 We don't care what -- how you do it through other
15 laws, just don't do it through laws that relate narrowly to
16 retaliation through dismissal or other terms and conditions
17 of employment. I mean, gee, there are a lot of other ways
18 to -- to dispute --

19 MR. PHILLIPS: I agree that -- that --

20 QUESTION: -- which is not persuasive. Right?

21 MR. PHILLIPS: Well, the distinction, though, is
22 the one Congress made. And I'm sure the reason it made the
23 distinction is that the most likely response in an
24 employment setting to a -- a report of a safety violation
25 is that you're going to retaliate in terms and conditions

1 of employment. It is not rational to assume that your basic
2 nuclear licensee is going to go out and hire thugs and start
3 shooting people.

4 And Congress responded to what it perceived to be
5 the most general and likely problem by saying that's a
6 serious safety problem that we need to regulate on a day-
7 to-day basis.

8 For the -- for the once in a lifetime -- hopefully
9 never in a lifetime -- situation where the kind of general
10 laws you're talking about might come into play, it seems
11 quite rational to me for Congress to say we're content to
12 allow the states to respond to that problem, that is a
13 matter of serious concern to them, it doesn't affect us in
14 a regular way that requires us to have the NRC and the
15 Secretary of Labor jointly regulating to further the
16 ultimate ends of safety in a nuclear facility.

17 QUESTION: Mr. Phillips has -- does 210 reach any
18 whistleblowing that relates to anything other than safety?

19 MR. PHILLIPS: No. It's -- it is retaliation for
20 violations of the NRC's rules and requirements.

21 QUESTION: Well, there are a lot of rules and
22 requirements that aren't dealing with safety.

23 MR. PHILLIPS: Well, the vast majority of the
24 rules and requirements are designed to promote safety in
25 one sense or another.

1 QUESTION: But there are some that aren't safety
2 related, aren't there?

3 MR. PHILLIPS: But -- but, see, I -- I would still
4 say that the --

5 QUESTION: Isn't that true?

6 MR. PHILLIPS: That is true, Justice White, but --

7 QUESTION: So -- so there would be protection
8 under 210 for a whistleblower who reported something that
9 isn't related to safety. Now, I don't suppose you would
10 say there's field preemption there.

11 MR. PHILLIPS: Well, I think the way the statute
12 is designed, there would be field preemption there because,
13 again, I think that what -- what the basic judgment under
14 Section 210 is, is that any time you have a situation where
15 management is defying requirements of the Nuclear Regulatory
16 Commission, that is in itself a serious safety concern.

17 Now, it may not be that the specific problem is
18 safety related, but that kind of defiance is something the
19 NRC needs to know for purposes of providing -- of deciding
20 whether or not this is somebody who should retain the
21 privilege of a license to operate a nuclear facility.

22 Let me turn just quickly to the point that I think
23 is terribly important in this case, and that is the scope
24 of the preemption that General Electric urges in this case.

25 We're not saying that all whistleblowing statutes

1 preempt all state law. Section 210 was enacted against a
2 backdrop of a very specialized concern of nuclear safety.
3 The history of nuclear regulation in this country, as
4 outlined in the Pacific Gas & Electric case, makes that
5 clear, and I think Congress knew that when it enacted this
6 statute and had reached the conclusion that it did, that
7 this is the appropriate way to proceed.

8 And that's -- and so that if the Court holds that
9 Section 210 is preemptive, to my mind that says nothing
10 about preemption elsewhere.

11 In addition, we do not urge the Court to hold that
12 all kinds of state tort actions or all state criminal laws
13 are preempted in this setting. Our -- our position is that
14 what is preempted is that which the Federal regulates and
15 that's changes in terms and conditions of employment.

16 Thus, our claim here is a relatively narrow, and
17 one that I think --

18 QUESTION: But her -- her claim isn't -- isn't
19 for simply a wrongful discharge under state law, as I
20 understand it.

21 MR. PHILLIPS: No, but the rest of her claim, the
22 harassment parts of her claim, are still covered by Section
23 210. She can get full recompense under Section 210 for
24 everything that's alleged in her complaint with the possible
25 exception -- this is not clear to me -- but with the

1 possible exception of being escorted out under armed guard.
2 Everything else is -- is covered because Section
3 210 not only deals with sort of technical and formal
4 altering of the terms and conditions of employment, but,
5 like Title VII in the Meritor analysis the Court employed
6 a couple of terms ago, it also responds to the problems of
7 general reprisals and an atmosphere of harassment.

8 And all of her claims fall squarely into that and
9 all of those claims have been upheld as stating a claim
10 under Section 210 by the Fourth Circuit with respect to Mrs.
11 English herself.

12 So, the opportunity for recompense for everything
13 she's alleged is still there, with one exception, and that
14 exception the district court specifically found as a matter
15 of state law is not enough to state a claim for intentional
16 infliction of emotional distress in this case.

17 QUESTION: So your theory is that she may not rely
18 on any element for which she could get compensation under
19 Section 210 in trying to state a claim under state law?

20 MR. PHILLIPS: That is precisely my position,
21 Justice Rehnquist, and I would rely on Rice for that point,
22 which is that you have to look at the matter the state
23 purports to regulate and determine whether or not that is
24 a subject matter regulated by the Federal Government.

25 And I don't know what can more clearly demonstrate

1 regulation by the Federal Government than that the Federal
2 Government accepts a claim for that and provides complete
3 recompense for the claim that you bring forward.

4 In sum, the rule proposed by General Electric is
5 not designed to be all or nothing. Our position is that
6 the Federal Government's expressly preempted occupied field
7 of nuclear safety should be respected by this Court and the
8 role -- the vital role that Section 210 plays in that ought
9 to be recognized by the Court and the scope of preemption
10 defined by reference to the specific provisions of Section
11 210.

12 Outside of that field, it's clear to me that the
13 state's retain all of the authority they otherwise would
14 have to regulate nuclear facilities.

15 QUESTION: It seems to me, however, that once you
16 -- you do narrow your argument like that and say, all we're
17 talking about is providing recompense for the very same
18 things, namely, employment related retaliation and no other
19 types of retaliation -- it seems to me that once you narrow
20 your argument that way you've abandoned the field preemption
21 argument and you're arguing conflict.

22 MR. PHILLIPS: No. It's very important to
23 understand, and --

24 QUESTION: Well, if --

25 MR. PHILLIPS: -- if I didn't make this point

1 clearly --

2 QUESTION: If you're arguing field preemption,
3 you're saying anything that -- that affects safety
4 regulations.

5 MR. PHILLIPS: Well, the question is how do you
6 define the field, and the field -- and if Section 210 is in
7 the field, it is part of the definition of the field. And
8 if what you purport to regulate as a matter of state law is
9 precisely what the Federal Government regulates under
10 Section 210, you are in the field of nuclear safety, and the
11 states are not permitted to be there, regardless of what
12 their purpose in being there.

13 QUESTION: Be in the field if it were not
14 precisely the same thing, but were some other aspect of
15 safety regulation.

16 MR. PHILLIPS: Well, there's no question that
17 there might be a broader theory. But I am content, frankly,
18 to win on the theory that this is precisely the same thing
19 that Section 210 provides for, and that, to me at least
20 without any question in my mind, has to be part of the field
21 preemption analysis.

22 Whether it could go further is certainly there,
23 and we make some arguments in the briefs that might reflect
24 that. But I think the basic -- easiest basis for deciding
25 this case is to say what is the relationship between the 210

1 recovery and what she seeks from state law, and there's a
2 complete correspondence on that point, and what is leftover,
3 to the extent that there is not a complete correspondence,
4 is insufficient to permit her to go forward as a matter of
5 state law.

6 Let me conclude by what I started. This is a case
7 about nuclear safety, and it is clear to me that
8 Petitioner's complaint predominantly intrudes into the area
9 of exclusive Federal concern and what is left of her claim
10 is simply insufficient as a matter of law. Accordingly, the
11 judgment of the court of appeals dismissing her complaint
12 should be affirmed.

13 If there are no further questions, I waive the
14 balance of my time, Mr. Chief Justice.

15 QUESTION: Thank you, Mr. Phillips.

16 Mr. Payne.

17 REBUTTAL ARGUMENT OF M. TRAVIS PAYNE

18 ON BEHALF OF THE PETITIONER

19 MR. PAYNE: Thank you.

20 Without conceding it, I will say to you that even
21 if you determine that Section 210 is a statute affecting
22 nuclear safety, that that is its predominant role -- even
23 if you conclude that, we still win in the following ways.

24 This Court has spoken the premier field -- premier
25 examples of field preemption are the issues dealt with in

1 Sections VII and VIII of the National Labor Relations Act.
2 Yet this Court has addressed those issues and the issue of
3 state court preemption in two very different ways.

4 They have in fact -- this Court has in fact
5 applied the field preemption. Anything that the states do
6 is preempted in the situation where the states have enacted
7 a specific narrow state statute dealing with the specific
8 matter of collective bargaining. Garner v. Teamsters way
9 back when, a more recent version of that, Gould v.
10 Wisconsin.

11 But then there are the NLRA cases where the state
12 law at issue is a state law that has nothing to do with
13 labor relations, is in fact one of general concerns of the
14 state, such as intentional infliction of emotional distress.

15 When this Court has confronted a state law of
16 general application, a state law that applies separate and
17 apart from the field of labor relations, it has in fact
18 applied the conflict preemption.

19 I think, Justice Scalia, your point is well taken.
20 We look at United Auto Workers v. Russell. We look at, in
21 fact, Farmer v. The Carpenters.

22 QUESTION: How -- how about Allis Chalmers against
23 Luick that we decided two -- two or three ago? There the
24 state law, as I recall it, did not deal just with labor
25 relations and yet we held it preempted.

1 MR. PAYNE: Justice Rehnquist, you're going to
2 have help me. As I recall Luick, that was a matter alleging
3 bad faith and it was covered under the collective bargaining
4 agreement. Is that -- is that the case?

5 QUESTION: Well, that the Court said if the -- if
6 the state law requires getting into any sort of
7 interpretation of the collective bargaining agreement, it's
8 preempted. But there, the state law was a general law.

9 MR. PAYNE: Your Honor, I think that that
10 particular state law is -- is not a state law grounded in
11 the same history of things like the violence considered by
12 this Court in the UAW v. Russell --

13 QUESTION: Then it depends --

14 MR. PAYNE: -- of the intentional infliction of
15 emotional distress.

16 QUESTION: -- on what history the state law is
17 grounded in whether or not it's preempted?

18 MR. PAYNE: I think to some extent this Court has
19 in fact made almost those sort of balancing determinations
20 when it looks at -- there is -- and, in fact, Rice, which
21 the Respondent relies significantly, sets forth that when
22 it is a matter that has been historically covered by the
23 states, there's a very, very heavy burden to preempt.

24 We submit that burden exists here and we submit
25 it has not been met. The case of Farmer in fact was never

1 addressed by Respondent in its argument. We submit,
2 contrary to the finding of the district court, contrary to
3 the argument of Respondent, that all of the actions against
4 Mrs. English are not just terms and conditions.

5 Farmer clearly said that even if many of the
6 elements of the intentional infliction of emotional distress
7 claim are terms and conditions, if they are carried out in
8 a particularly abusive manner -- that's the language of the
9 Farmer decision, particularly abusive manner -- they are
10 still actionable under the state law theory. We have here
11 and we have alleged a particularly abusive manner.

12 The proposal put forward by General Electric to
13 you, I submit, has an absurd result. Employees who come
14 forward with information about possible problems at a plant,
15 the very employees who were doing what is socially
16 responsible, doing the right thing, indeed, the very
17 employees that Congress was trying to encourage to come
18 forward, those employees when they do that are now
19 penalized. They don't have the remedies available to them.

20 I submit to you that that result makes not sense
21 and --

22 QUESTION: Yes, it does. I mean, what -- the
23 theory that General Electric is -- is propounding is that
24 Congress was not only concerned that -- that people should
25 be able to be whistleblowers. It was also concerned that

1 people should be able to be fired, and that an -- and that
2 an employer should not be so overwhelmingly intimidated by
3 -- by the prospect of a -- of a massive damages suit that
4 he won't get rid of somebody who should be gotten rid of.

5 I mean, that's their theory. So -- so Congress
6 established this law which -- which provides for both ends
7 of it. Whistleblowing, plus you can fire.

8 MR. PAYNE: Two things, Justice Scalia. We have
9 all been talking about what Congress did. There is
10 absolutely -- and Respondent did this a lot -- there is
11 absolutely nothing anywhere to show that Congress made any
12 affirmative decisions about Section 210 other than to pass
13 it. All of the elements were in --

14 QUESTION: Your time has expired -- your time has
15 expired, Mr. Payne.

16 MR. PAYNE: Thank you, Your Honor.

17 CHIEF JUSTICE REHNQUIST: The case is submitted.

18 (Whereupon, at 10:55 a.m., the case in the above-
19 entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

No. 89-152 - VERNA M. ENGLISH, Petitioner V. GENERAL ELECTRIC COMPANY

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