Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

FRANCONIA ASSOCIATES ET AL. *v.* UNITED STATES

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

No. 01–455. Argued April 15, 2002—Decided June 10, 2002*

Under §§515 and 521 of the Housing Act of 1949, the Farmers Home Administration (FmHA) makes direct loans to private, nonprofit entities to develop and/or construct rural housing for the elderly and low- or middle-income individuals and families. Petitioners are property owners who entered into such loans before December 21, 1979. The promissory notes petitioners executed authorized "[p]repaymen[t] of scheduled installments, or any portion thereof, . . . at any time at the option of Borrower." On February 5, 1988, concerned about the dwindling supply of low- and middle-income rural housing in the face of increasing prepayments of mortgages by §515 borrowers, Congress enacted the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA), which amended the Housing Act of 1949 to impose permanent restrictions upon prepayment of §515 mortgages entered into before December 21, 1979. On May 30, 1997, the *Franconia* petitioners filed suit under the Tucker Act, 28 U. S. C. §1491, charging that ELIHPA abridged the absolute prepayment right set forth in their promissory notes and thereby effected, *inter alia,* a repudiation of their contracts. In dismissing petitioners' contract claims as untimely under §2501—which provides that a claim "shall be barred unless the petition thereon is filed within six years after such claim first accrues"—the Court of Federal Claims concluded that the claims first accrued on the ELIHPA regulations' effective date. In affirming on statute of limitations grounds, the Federal Circuit ruled that, if the Government's continuing duty to allow petitioners to prepay their

---

*Together with *Grass Valley Terrace et al.* v. *United States* (see this Court's Rule 12.4), also on certiorari to the same court.

loans was breached, the breach occurred immediately upon ELIHPA's enactment date, over nine years before petitioners filed their suit. The court rejected petitioners' argument that ELIHPA's passage qualified as a repudiation, so that their suit would be timely if filed within six years of either the date performance fell due (the date they tendered prepayment) or the date on which they elected to treat the repudiation as a present breach. On September 16, 1998, the *Grass Valley* petitioners filed an action that was virtually identical to the *Franconia* suit. The Court of Federal Claims dismissed for the reasons it had dismissed the *Franconia* claims, and the Federal Circuit affirmed without opinion.

Held: Because ELIHPA's enactment qualified as a repudiation of the parties' bargain, not a present breach of the loan agreements, breach would occur, and the six-year limitations period would commence to run, when a borrower tenders prepayment and the Government then dishonors its obligation to accept the tender and release its control over use of the property securing the loan. Pp. 10–19.

(a) Resolution of two threshold matters narrows the scope of the controversy. First, the requirement that the Government unequivocally waive its sovereign immunity is satisfied here because, once the United States waives immunity and does business with its citizens, it does so much as a party never cloaked with immunity. Cf. *Clearfield Trust Co.* v. *United States,* 318 U. S. 363, 369. Second, the Court, like the Government, accepts for purposes of this decision that the loan contracts guaranteed the absolute prepayment right petitioners allege. P. 10.

(b) Under applicable general contract law principles, whether petitioners' claims were filed "within six years after [they] first accrue[d]," §2501, depends upon when the Government breached the prepayment undertaking stated in the promissory notes. In declaring ELIHPA a present breach of petitioners' loan contracts, the Federal Circuit reasoned that the Government had but one obligation under those agreements: to continue to allow borrowers the unfettered right to prepay their loans at any time. If that continuing duty was breached, the court maintained, the breach occurred *immediately*, totally and definitively, when ELIHPA took away the borrowers' unfettered right to prepay. In so ruling, the court incorrectly characterized the performance allegedly due from the Government under the promissory notes. The Government's pledged performance is properly comprehended as an obligation to accept prepayment. Once the Government's obligation is thus correctly characterized, the decisions below lose force. A promisor's failure to perform at the time indicated for performance in the contract establishes an immediate breach. But the promisor's renunciation of a contractual duty *before*

the time fixed in the contract for performance is a repudiation, which ripens into a breach prior to the time for performance only if the promisee elects to treat it as such, see *Roehm* v. *Horst,* 178 U. S. 1, 13. Viewed in this light, ELIHPA effected a repudiation of the FmHA loan contracts, not an immediate breach. ELIHPA conveyed the Government's announcement that it would not perform as represented in the promissory notes if and when, at some point in the future, petitioners attempted to prepay their mortgages. Unless petitioners treated ELIHPA as a present breach by filing suit prior to the date indicated for performance, breach would occur when a borrower attempted to prepay, for only then would the Government's responsive performance become due. Pp. 10–13.

(c) The first of the Government's arguments to the contrary is unpersuasive. The Government contends that §2501's "first accrues" qualification is meant to ensure that suits against the United States are filed on the earliest possible date, thereby providing the Government with reasonably prompt notice of the fiscal implications of past enactments. However, §2501's text is unexceptional: A number of contemporaneous state statutes of limitations applicable to suits between private parties also tie the commencement of the limitations period to the date a claim "first accrues." Equally telling, in its many years of applying and interpreting §2501, the Court of Federal Claims has never attributed to the words "first accrues" the meaning the Government now proposes. Instead, in other settings, that court has adopted the repudiation doctrine in its traditional form when evaluating the timeliness of suits governed by §2501. Two practical considerations reinforce the Court's conclusion. First, reading §2501 as the Government proposes would seriously distort the repudiation doctrine in Tucker Act suits because a party aggrieved by the Government's renunciation of a contractual obligation anticipating future performance would be compelled by the looming limitations bar to forgo the usual option of awaiting the time performance is due before filing suit for breach. Second, putting prospective plaintiffs to the choice of either bringing suit soon after the Government's repudiation or forever relinquishing their claims would surely proliferate litigation, forcing the Government to defend against highly speculative damages claims in a profusion of suits, most of which would never have been brought under a less novel interpretation of §2501. Pp. 13–17.

(d) The Court also rejects the premise, and therefore the conclusion, of the Government's second argument against application of the repudiation doctrine. The Government contends that a congressional enactment like ELIHPA that precludes the Government from honoring a contractual obligation anticipating future performance always

constitutes a present breach because the agency or official responsible for administering the contract is not free to change its mind and render the requisite performance without violating binding federal law. However, just as Congress may announce the Government's intent to dishonor an obligation to perform in the future through a duly enacted law, so may it retract that renouncement prior to the time for performance, thereby enabling the agency or contracting official to perform as promised. Indeed, Congress changed its mind in just this manner before it enacted ELIHPA. In 1979 amendments to the National Housing Act, Congress repudiated the promissory notes at issue here by conditioning prepayment of all §515 loans on the borrower's agreement to maintain the low-income use of its property for a specified period. One year later, Congress removed those conditions on pre-1979 loans, thereby retracting the repudiation. Hence, the fact that the Government's repudiation in this case rested upon the enactment of a new statute makes no significant difference. *Mobil Oil Exploration & Producing Southeast, Inc.* v. *United States,* 530 U. S. 604, 619, 620. Pp. 17–18.

240 F. 3d 1358; 7 Fed. Appx. 928, reversed and remanded.

GINSBURG, J., delivered the opinion for a unanimous Court.