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Mackey v. Lanier Collections Agency & Serv., Inc.: The Supreme Court Diminishes ERISA Preemption Protection for Welfare Benefit Plans

Richard F. Armknecht III

Mackey v. Lanier Collections Agency & Serv., Inc.: The Supreme Court Diminishes ERISA Preemption Protection for Welfare Benefit Plans

I. INTRODUCTION

The Employee Retirement Income Security Act ("ERISA") provides a comprehensive legal structure for the establishment and administration of both pension and welfare benefit plans.[1] Section 514(a) of ERISA mandates federal preemption of all state actions which would interfere with either of these types of plans.[2] In *Mackey v. Lanier Collections Agency & Serv., Inc.*,[3] the United States Supreme Court unanimously held that ERISA preempted a Georgia law prohibiting the garnishment of employee welfare benefits.[4] However, by a majority of five justices to four,[5] the Court upheld the use of Georgia's general garnishment statute[6] as a means by which creditors may garnish contri-

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1. As defined in ERISA section 3(1):

> The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which [has been] established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services . . . .

29 U.S.C. § 1002(1)(1982).

2. ERISA section 514(a) states in pertinent part: "[t]he provisions of this title [Title I—Protection of Employee Benefit Rights] . . . shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan [which is covered by ERISA]." 29 U.S.C. § 1144(a)(1982).

3. 108 S. Ct. 2182 (1988).

4. *Id.* at 2185 citing GA. CODE ANN. § 18-4-22.1 (1982) which provides, in relevant part:

> Funds or benefits of a pension, retirement, or employee benefit plan or program subject to the provisions of the federal Employee Retirement Income Security Act of 1974, as amended, shall not be subject to the process of garnishment . . . unless such garnishment is based upon a judgment for alimony or for child support . . . .

Id.

5. Justice White delivered the opinion of the Court in which Chief Justice Rehnquist and Justices Brennan, Marshall and Stevens joined. Justice Kennedy filed a dissenting opinion in which Justices Blackmun, O'Connor and Scalia joined. *Mackey*, 108 S. Ct. at 2184.

6. GA. CODE ANN. § 18-4-20(c)(1982) provides in relevant part:

> All property, money, or effects of the defendant in the possession or control of the garnishee at the time of service of the summons of garnishment upon the garnishee to the date of the garnishee's answer shall be subject to process of garnishment except, in the case of collateral securities in the hands of a creditor, such securities shall not be

butions made to a welfare benefit plan by plan participants.[7]

This note first evaluates an apparent inconsistency presented by the *Mackey* decision between judicial interpretation of the language of ERISA's section 514(a) and congressional intent concerning that section. It then discusses the decision's foreseeable effect on welfare benefit plans and proposes a possible solution to provide equal preemptive protection to both pensions and welfare benefits.

II. THE *Mackey* CASE

A. *Background*

In 1974, Congress enacted ERISA after " 'almost a decade of studying the Nation's private pension plans' and other employee benefit plans."[8] Through that long deliberation, "Congress found that there had been a 'rapid and substantial' growth in the 'size, scope and numbers' of employee benefit plans and that 'the continued well-being and security of millions of employees and their dependents are directly affected by these plans.' "[9] Overall, ERISA has three major purposes: 1) "assuring the equitable character of [employee benefit] plans," 2) assuring the "financial soundness [of employee benefit plans]" and 3) fostering and protecting the growth of such plans.[10] ERISA controls two types of employee benefit plans: (1) pension benefit plans which provide retirement income[11] and (2) welfare benefit plans which provide health, legal, vacation or training benefits.[12] ERISA preempts state laws relating to either of these two types of benefit plans. Section 514 of ERISA states that the Act "supersede[s] any and all State laws insofar as they may now or hereafter relate to any [qualified] employee benefit plan."[13]

The preemptive power of ERISA's section 514 is very broad.[14]

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subject to garnishment so long as there is an amount owed on the debt for which the securities were given as collateral.

Id.

7. *Mackey*, 108 S. Ct. at 2191.

8. Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc., 472 U.S. 559, 569 (1985)(quoting Nachman Corp. v. Pension Benefit Guaranty Corp., 446 U.S. 359, 361 (1980)).

9. *Id.*

10. Kilberg & Herron, *The Preemption of State Law Under ERISA*, 1979 DUKE L.J. 383, 386 (citing 29 U.S.C. §§ 1001(a) and 1144 (1976) and statements of Congressman Ullman and Senator Javits (120 CONG. REC. 29198 and 29942 (1974))).

11. 29 U.S.C. § 1002(2)(1982).

12. *Id.*

13. 29 U.S.C. § 1144 (1982).

14. A narrow preemption provision was originally proposed and rejected. A sponsor of the bill, Representative Dent, noted that "to many the crowning achievement of this legislation [is] the

Section 514 plays a critical role in the fulfillment of ERISA's purpose of fostering and protecting the growth of private employee pension and welfare plans.[15] By preempting state laws which deal with employee benefits, section 514 relieves plan administrators and multi-state employers of the burden of keeping abreast of, and complying with, a wide variety of state laws.[16] The relative convenience of uniform federal regulation which preemption provides encourages the growth of employee benefit plans.[17]

In the landmark case of *Franchise Tax Bd. of California v. Construction Laborers Vacation Trust for Southern California*[18] *("FTB II"),* the Supreme Court examined the scope of ERISA's preemption provision as it relates to the preemption of state laws affecting employee welfare benefit plans. In *FTB II,* the Court held that a state's tax claim against a welfare benefit trust was not removable to federal court on the basis of the question of whether section 514(a) of ERISA preempted the state's power to levy on funds held in trust.[19] Thus, the case was vacated and remanded leaving the substantive question unresolved. Subsequent Supreme Court decisions have reinforced and broadened the strength and reach of preemption with regard to welfare benefit plans,[20] but the scope of federal preemption of state laws affecting employee welfare benefit plans, the substantive issue of *FTB II,* has remained unsettled. In *Mackey,* the Court has addressed the issue of federal preemption in this context.

B. The Facts of the Case

The South Atlantic ILA/Employers Vacation and Holiday Fund ("Fund") provides vacation and holiday benefits to longshoremen in several southeastern states[21] and is an "employee welfare benefit plan"

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reservation to Federal authority the sole authority to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation." 120 CONG REC. 29197 (1974).

15. Kilberg and Herron, *supra* note 10, at 388.

16. *Id.*

17. *Id.*

18. 463 U.S. 1 (1983).

19. *Id.*

20. *See, e.g.,* Pilot Life Ins. Co. v. Dedeaux, 107 S. Ct. 1549 (1987)(a law "relates to" an ERISA regulated plan "if it has a connection with or reference to [an employee benefit] plan."); Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983)(to "affect" ERISA plans, a law need only "relate to" plans and need not be designed to affect a plan).

21. The employers are located in North Carolina, South Carolina, Georgia and Florida. Brief for the United States as Amicus Curiae Supporting Petitioners at 2 n.1, Mackey v. Lanier Collections Agency & Service, Inc. 108 S. Ct. 2182 (1988).

as defined by ERISA.[22] Mackey and the other petitioners are trustees of the Fund.[23] Lanier Collections Agency & Service, Inc. ("Lanier") is a collection agency which sought and obtained money judgments against twenty-three plan participants who owed money to Lanier's clients.[24] Lanier instituted an action in a Georgia trial court seeking to garnish the participants' plan benefits. The trial court granted the garnishment request.[25] The Georgia Court of Appeals reversed,[26] holding that a Georgia statute exempted plan benefits from garnishment.[27]

The Georgia Supreme Court reversed the court of appeals,[28] holding that the Georgia law prohibiting garnishment of employee welfare benefits was preempted by ERISA because it conflicted with the federal scheme.[29] In the U.S. Supreme Court, the trustees of the Fund challenged Georgia's general garnishment statute on preemption grounds pursuant to ERISA section 514(a) as well as defending the anti-garnishment statute from preemption.

C. *The Majority Reasoning of the Supreme Court*

By simply adhering to strong precedent, the Court found no difficulty in unanimously striking down the Georgia statute which gave special protection to ERISA plans. The preemption of the general garnishment statute proved to be a more divisive issue and the applicability of that statute was upheld by a five to four majority.[30] The majority upheld the garnishment of ERISA plans as consistent with ERISA section 502. Furthermore, the majority contended that its narrow interpretation of section 514(a) was more consistent with congressional intent than a broad reading of the statute.

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22. *See* 29 U.S.C. §§ 1002(1) and 1003 (1982).

23. The board of trustees is composed of twelve members, six are appointed by employers and six are appointed by the union. The Fund:

> is a type of forced savings plan, or spendthrift trust, designed to insure that the employee participants do not dissipate the vacation benefits they are eligible to receive through the Fund until they actually receive each year's lump sum payment. To that end, the Trust Agreement expressly provides that the "Fund shall not be liable for or subject to the debts, contracts or liabilities of the . . . employees [or] beneficiaries."

Brief for the United States at 3 n.2, *Mackey,* 108 S. Ct 2182 (quoting Trust Agreement at 17).

24. *Mackey,* 108 S. Ct. at 2184.

25. *Id.*

26. *Id.*

27. *Id.* (citing GA. CODE ANN. § 18-4-22.1 (1982)).

28. Mackey v. Lanier Collections Agency & Service, Inc., 256 Ga. 499, 350 S.E.2d 439 (1986).

29. *Mackey,* 108 S. Ct. at 2184.

30. *See supra* note 5.

1. *Georgia's anti-garnishment statute*

The Supreme Court's decision reinforced ERISA's preemption power in cases where the state statute makes direct reference to ERISA. The Court's unanimous decision on this issue reiterated its interpretation of section 514(a)'s language which provides for the preemption of state statutes which "relate to" employee benefit plans. The Court relied on two recent cases: *Shaw v. Delta Air Lines, Inc.*,[31] and *Pilot Life Insurance Co. v. Dedeaux.*[32]

In *Shaw,* the Court held that the ERISA preemption provision, section 514, preempted state laws which "affected" employee benefits because such laws "relate to" ERISA. They also held that a law affecting employee benefits is preempted even if the law was not specifically designed to affect employee benefits.[33] *Pilot Life* reaffirmed that a state law which "related to" an employee benefit plan was preempted by ERISA "if it has a connection with or reference to such a plan."[34] Thus, the Georgia statute prohibiting the garnishment of ERISA plans could have been preempted due to either its having an "affect" on ERISA plans or its "reference to" ERISA plans by mentioning them with particularity.[35]

2. *Georgia's general garnishment statute*

Although the Court unanimously found preemption of Georgia's law regarding the prohibition of garnishing welfare benefits, the Court held that the Georgia general garnishment statute was not preempted by ERISA. The Court conceded that "ERISA itself offers no express answer as to whether welfare benefit plan trustees must comply with garnishment orders."[36] Because ERISA does not explicitly address this issue, the Court sought to determine congressional intent via an examination of two aspects of the Act. The Court examined both the subjection of ERISA benefit plans to lawsuits for the garnishment of beneficiaries' funds and the supposed redundancy of section 206(d)(1), given

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31. 463 U.S. 85 (1983).

32. 481 U.S. 41 (1987).

33. "To interpret [section] 514(a) to preempt only state laws specifically designed to affect employee benefit plans would be to ignore the remainder of [section] 514." *Shaw,* 463 U.S. at 98.

34. Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987)(quoting Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985)).

35. The Court also noted that the state law would be preempted even if it "was enacted by the Georgia legislature to help effectuate ERISA's underlying purposes" as "[t]he pre-emption provision [of section 514(a)] . . . displace[s] all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements." *Mackey,* 108 S. Ct. at 2185 (citing Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985)).

36. *Mackey,* 108 S. Ct. at 2186.

a broad interpretation of section 514(a).

The Court noted that Congress intended to subject ERISA benefit plans to suit under certain circumstances. Section 502(d)(1) provides that "[a]n employee benefit plan may sue or be sued . . . "[37] by particular persons who seek specific relief, including the recovery of plan benefits.[38] Plans can also be sued "for run-of-the-mill state-law claims such as unpaid rent, failure to pay creditors, or even torts committed by an ERISA plan."[39] Since plans can be sued, it should follow that there must be a way of collecting the judgments, but ERISA provides no enforcement mechanism. Federal Rule of Civil Procedure 69(a) defers to state law to provide methods for collecting judgments. Therefore, state-law methods of enforcing judgments, including garnishment, must remain undisturbed. The majority concluded that section 514 provides no distinction between a plan and its participants in terms of their amenability to state-law attachment proceedings.

The majority contended that preemption of the Georgia general garnishment statute by section 514(a) would render section 206(d)(1) redundant. Section 206(d)(1) expressly requires all pension plans to "provide that benefits provided under the plan not be assigned or alienated."[40] Therefore, the Court reasoned, "[i]f we were to give ERISA [section] 514(a) the meaning which petitioners and the Solicitor General attribute to it—barring garnishment of all ERISA plan benefits—we would render [section] 206(d)(1) substantially redundant with [section] 514(a)."[41] The Court implied that if Congress had intended welfare benefits to be protected from garnishment, it would have passed such a law.

The Court chose to disregard the obvious redundancy which arises in a comparison of their narrow, non-preempting interpretation of section 514(a) and a plain reading of section 514(b)(7). Section 514(b)(7) was added through the Retirement Equity Act ("REA").[42] In 1984, the REA amended ERISA to permit the garnishment of both pensions and welfare benefits to satisfy a qualified domestic relations order.[43] The REA amendment indicates that Congress considered section 514 as

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37. *Id.* at 2187 (quoting 29 U.S.C. § 1132 (1982)).

38. *Id.* at 2186-87.

39. *Id.* at 2187.

40. 29 U.S.C. § 1056(d)(1)(1982).

41. *Mackey,* 108 S. Ct. at 2189.

42. Codified at 29 U.S.C. § 1144(b)(7)(Supp. II 1984).

43. Qualified domestic relations orders are those judgments, orders and decrees which "relate to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and is made pursuant to a State domestic relations law," which is specific regarding the amount and number of payments to be made and which do not increase the plan's obligation to the participant. *Id.*

originally written in 1974 to prohibit the garnishment of employee welfare benefit plans. Nevertheless, the Supreme Court held that the intent of the amending Congress is immaterial in determining the meaning of section 514(a) because "[i]t is the intent of the Congress that enacted [the section] that controls."[44] Because the 1974 Congress enacted section 514(a), not the 1984 Congress, the Court determined that the legislative history of the REA was irrelevant.

III. ANALYSIS

Section 514(a) should preempt the Georgia general garnishment statute because that statute "relates to" ERISA. However, the Supreme Court held that section 514(a) did not preempt Georgia's general garnishment statute by: 1) mistakenly equating *plans* with *plan participants' contributions* for the purpose of applying ERISA section 502; and 2) improperly appraising congressional intent, by ignoring clear manifestations of recent congressional intent and, instead, relying on a plausible, but not indisputable, interpretation of the intent of the Congress which enacted the original ERISA legislation. As a result, even the broad intent of ERISA as originally envisioned when passed by the 1974 Congress has been thwarted by the *Mackey* decision.

A. *The Applicability of Section 514(a)*

Section 514(a) applies to the general garnishment law because it indisputably "relates to" the plans themselves. By its terms, ERISA section 514(a) only preempts state laws that "relate to" employee benefit plans. Justice Kennedy, dissenting in *Mackey,* stated that "state garnishment laws necessarily relate to employee benefit plans to the extent they require such plans to act as garnishees, which is a substantial and onerous obligation."[45] In the majority opinion, Justice White identified

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44. *Mackey,* 108 S. Ct. at 2191 (quoting Teamsters v. United States, 431 U.S. 324, 354 n.39 (1977)).

45. *Id.* at 2192 (Kennedy, J., dissenting).

Justice Kennedy enumerated the additional administrative costs inherent in garnishment:

> [The plan trustees] are required to confirm the identity of each of the 23 plan participants who owe money to [the collection agency], calculate the participant's maximum entitlement from the fund for the period between the service date and the reply date of the summons of garnishment, determine the amount that each participant owes to the [collection agency], and make payments into state court of the lesser of the amount owed to [the collection agency] and the participant's entitlement. [The trustees] must also make decisions concerning the validity and priority of garnishments and, if necessary, bear the costs of litigating these issues. Further, as trustees of a multi-employer plan covering participants in several States, petitioners are potentially subject to multiple garnishment orders under varying or conflicting state laws.

Id.

a cost affecting employee benefit plans due to an obligation to garnish—the legal burden of representing the beneficiary-debtor.[46] A conclusion that garnishment laws which impose such administrative costs "relate to" employee welfare benefit plans is not surprising, given the common sense standard that has been established for the determination of whether a law "relates to" ERISA.[47] Furthermore, the burden of administering the garnishment of employee benefits is likely to be considerably greater for multi-state funds, such as South Atlantic, due to the differences in garnishment laws among the states. Therefore, Georgia's general garnishment law should be preempted because it "relates to" the Fund by reason of the burden placed on the Fund.

The five member majority did not touch upon the extent to which plans will be burdened with these additional costs. This was a serious oversight. The majority conceded that "plan trustees are served with a garnishment summons, become parties to a suit, and must respond and deposit the demanded funds due the beneficiary-debtor—funds that otherwise they are required to hold and pay out to those beneficiaries."[48] The majority, however, did not address the dissent's contention that the Georgia general garnishment law "relates to" ERISA, by imposing upon employee welfare benefit plans costs which "are not tenuous, remote or peripheral,"[49] thus triggering section 514 as a pertinent statute. To reach its decision, the majority merely relied upon "indicat[ions] that Congress did not intend to forbid the use of state-law mechanisms of executing judgments against ERISA welfare benefit *plans*, even when those mechanisms prevent plan participants from receiving their benefits."[50] However, these indications concern section 502, not section 514.

B. Logical Inconsistencies in Mackey

1. An over-reaching interpretation of section 502

The Court perceived an indication of congressional intent in the language of ERISA's section 502. The majority noted that section 502 "provides that civil enforcement actions may be brought by particular persons against ERISA *plans,* to secure specified relief."[51] From this

46. *Id.* at 2186.

47. *See Shaw,* 463 U.S. 85, 96-97 (Both the Human Rights Law prohibiting employers from discriminating on the basis of pregnancy through an employee benefit plan and the Disability Benefits Law, requiring employers to pay specific benefits "clearly 'relate to' benefit plans.")

48. *Mackey,* 108 S. Ct. at 2186.

49. *Id.* at 2192 (Kennedy, J., dissenting).

50. *Id.* at 2186 (emphasis added).

51. *Id.* at 2186-2187 (emphasis added).

mere statement of fact, the majority inferred congressional intent that the funds of plan participants are also subject to creditors' claims through a state's general garnishment laws. However, section 502 merely provides an exception to the rule that plan funds may not be sued: it does not specifically authorize creditors to reach the funds of individual fund participants. Such an exception should be narrowly construed.[52] In *Mackey,* the exception was inferred to include a right to reach participants' funds in addition to plan funds and the exception has begun to swallow the rule.

The Court interpreted the laws concerning the collection of judgments from *plans* as also pertaining to the individual accounts of the *participants* in plans. The Court adopted the logic of the *amicus* brief for the respondent that "there is simply no logical way to construe the English language so that garnishment or attachment laws 'relate to' benefit plans when they are invoked by creditors of the beneficiaries, but not when they are invoked by beneficiaries or creditors of the [plan] itself."[53] In making this assertion, the *amicus* brief ignored the language of ERISA section 502 which refers to suing a *plan* and not a *beneficiary* and the mere fact that a plan has been entrusted with an account does not make that account the plan's money. An analogy can be drawn which illustrates the difference: if a savings bank can be sued, it does not logically follow that all of the bank's depositors may be sued to the full extent of their deposits. Moreover, section 502(d)(2) dictates that judgments are "enforceable *only* against the plan as an entity."[54] This language indicates that individual plan participants cannot be sued because the individuals are not "the plan as an entity."

2. *Congressional intent misinterpreted*

Although the Supreme Court did not address the precedent, it has held that the intent of an amending Congress is entitled to great weight. In *International Brotherhood of Teamsters v. Daniel,*[55] the Court held that the Congress' purpose for enacting ERISA in 1974 determined the scope of the coverage of the Securities Act of 1933. In *Western Pacific Railroad Corp. v. Western Pacific Railroad Co.,*[56] the notes of a revis-

52. Strict construction is particularly appropriate where the statute in question is in derogation of common-law rules. Checkright Petroleum, Inc. v. Amoco Oil Co., 678 F.2d 5 (2nd Cir. 1982), *cert. denied,* 459 U.S. 833 (1982). Congress intended common law rights and responsibilities to apply to ERISA. Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc., 472 U.S. 559, 569-72 (1985).

53. *Mackey,* 108 S. Ct. at 2188.

54. 29 U.S.C. § 1132 (1982)(emphasis added).

55. 439 U.S. 551, 569-70 (1979).

56. 345 U.S. 247, 255 (1953).

ing body were "entitled to great weight" in determining Congress' understanding of the statute.[57]

When the intent of an amending Congress is not clearly expressed, however, the intent of the enacting Congress is conclusive. A lack of the clear expression of an amending Congress' intent is manifested by: 1) Congress not actually passing a statute;[58] 2) the amending Congress not stating views which concern the section at issue;[59] 3) the amending Congress not clearly stating its views concerning existing law;[60] or 4) an unmistakable record of the intent of the enacting Congress.[61] The *Mackey* Court cited cases exemplifying each of these situations in support of its conclusion that the REA legislative history was not entitled to any weight.[62]

In applying the four preceding propositions to *Mackey,* the Supreme Court overlooked the facts of the case before it. The legislative history relevant to *Mackey* differs significantly from the cases relied upon by the Court. In the legislative history at issue, Congress passed an actual amendment to the section in question (section 514(b)(7))—an amendment to section 514 of ERISA which is undeniably redundant under the Court's interpretation of section 514(a). In passing the amendment, the House Committee Report stated, "[T]he Committee reasserts that a state tax levy on employee welfare benefit plans is preempted by ERISA (see the holding of the 9th Circuit in *Franchise Tax Board* . . .)."[63] The House Report also stated that:

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57. *Id.* at 254-55 (citing *Ex parte* Collett, 337 U.S. 55, 68-71 (1949)).

58. United Air Lines v. McMann, 434 U.S. 192 (1977). The Court chose to disregard mere legislative observations, unaccompanied by any amendment. Interestingly, Justice Brennan predicted that "[t]he mischief the Court fashion[ed] may be short lived." *McMann,* 434 U.S. at 458 (Brennan, J., dissenting). His prediction came true when Congress passed legislation which amended the Age Discrimination in Employment Act of 1967 to include retirement plans established before 1967. *See* 29 U.S.C. § 623(f)(2)(1982)(originally enacted as Act of April 6, 1978, § 2(b), 92 Stat. 189).

59. International Brotherhood of Teamsters v. United States, 431 U.S. 324 (1977). "The views of members of a later Congress, concerning *different sections* of Title VII, enacted after this litigation was commenced, are entitled to little if any weight. It is the intent of the Congress that enacted [the original statute], *unmistakable in this case,* that controls." *Id.* at 354 n.39 (emphasis added).

60. United States v. Price, 361 U.S. 304 (1960). The legislative history of an amendment "contain[ed] no clear statement as to Congress' view of then existing law." *Id.* at 312.

61. *Teamsters v. United States*, 431 U.S. at 354 n.39.

62. *Mackey,* 108 S. Ct. at 2189-91.

63. *Id.* at 2191. (quoting *H.R.Rep. No.* 655, 98th Cong., 2d Sess., pt. 1 at 42 (1984)). It is particularly interesting that Congress considered the Ninth Circuit's *FTB I* decision to be the controlling law in the issue before the Court. *Id.* The *Mackey* majority dismissed that decision as an aberration, stating that "our reading of [section] 514(a) . . . is the reading given it by every other court that has considered the issue in this context (save the Ninth Circuit in a decision that was vacated by this Court)." *Mackey,* 108 S. Ct. at 2191.

> the Committee emphasizes that, except as expressly provided, nothing in the bill is intended to limit or otherwise change the original broad intent behind ERISA's rule of preemption. *That intent has always been to preempt state or local government laws or actions of any type which directly or indirectly relate to any employee benefit plan.*[64]

Thus, actual legislation was passed, the amending Congress stated views which concerned the same section as that at issue, the intent of the enacting Congress was unclear and the amending Congress' perception of existing law was clear. However, the *Mackey* Court chose to ignore this clear expression of congressional intent. The Court reached for a way around Congress' clearest and most recent intent and, instead, grasped upon a less likely understanding of the intent of a chronologically more distant Congress. In sum, "[t]he Court, which not infrequently calls upon Congress to manifest its intent more clearly, [disregarded] a clear answer given by Congress in a valid enactment."[65]

In a footnote, the *Mackey* Court made an interesting distinction: "[T]he suggestion that Congress intentionally adopted, at a single time, two separate provisions having the same meaning . . . calls a particular statutory interpretation into question."[66] In other words, the Court is very unsettled by an interpretation of a complex statutory scheme like ERISA which renders "*substantially* redundant"[67] one of two simultaneously adopted sections (514(a) and 206(d)(1)). The Court adopted an interpretation which renders a subsequently enacted piece of legislation *in the same section* (section 514(b)(7)) *totally* redundant to previously enacted legislation (section 514(a)). It is more likely that a congressional oversight could result in a partial (or "substantial") redundancy in distant sections than it is for an oversight to result in a total redundancy within a particular section of legislation. Because sections 514(a) and 514(b)(7) are in the same section, any redundancy between them is

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64. *H.R.Rep. No.* 655, 98th Cong., 2d Sess., pt. 1 at 42 (1984)(emphasis added).

65. *Mackey,* 108 S. Ct. at 2192 (Kennedy, J., dissenting).

66. *Id.* at 2190 n.14.

67. *Id.* at 2189 (emphasis added). Section 206(d)(1) requires pension plans to "provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). However, if § 514(a) preempted garnishment laws, § 206(d)(1) could still be given effect; it is in a part of ERISA (Subtitle B, Part 2) that describes the required provisions for pension plans. There is no comparable part of ERISA that describes required provisions for welfare benefit plans. As a requirement for the drafting of a plan, § 206(d)(1) could merely be a way of ensuring that plan participants are given notice of § 514(a)'s prohibition on garnishment. This interpretation of § 206(d)(1) is plausible because a plan participant is considerably more likely to read her pension plan than ERISA in its entirety, and notice of protection provided under ERISA may be useful to the plan participants. If § 206(d)(1) is read as not conferring additional protection to pension plans but, rather, as imposing an obligation on pension plan drafters to provide notice of a protection which is established elsewhere in ERISA (in § 514(a)), *any* redundant interpretation among the sections (§§ 206(d)(1), 514(a) and 514(b)(7)) can be completely avoided.

more incongruous than a redundancy between sections located in different parts of a statute, such as sections 514(a) and 206(d)(1). This standard for considering redundancy between sections in different parts of a statute is especially important where the statute is large, complex and therefore more prone to congressional oversights. Thus, congressional intent and congressional understanding of the meaning of section 514(a) at the time of the REA should be given effect.

C. *Unanticipated Problems*

As noted, no member of the Court suggested that subjecting participants' contributions to garnishment is an insignificant burden on employee welfare benefit plans.[68] In light of the purpose of ERISA, such a burden is inconsistent with congressional intent.

1. *Defeat of the fund's purpose*

The purpose of a vacation trust fund is to establish a forced savings account for participants which will eventually provide them with enough money to take a vacation.[69] By permitting garnishment of participants' savings, a major feature of the fund is voided because the financially undisciplined will not be protected. Taken to its logical conclusion, permitting garnishment also permits assignment; a plan participant could contract for a loan using the vacation trust account as collateral. Most likely, a plan participant who makes such a contract is the same individual (one lacking financial discipline) who most needs the protection of ERISA's preemption. Allowing contractual or *de facto* assignment of fund savings by plan participants defeats the purpose of the fund. The participants could just as easily save individually for their vacations under such circumstances. Also, a creditor would necessarily charge a premium for loans due to the additional costs of garnishment, thus making individual savings preferable. Another problem with the *Mackey* decision is that the trustees could be forced to discriminate against insolvent, or nearly insolvent, plan participants. When a plan participant defaults on a debt, his creditors garnish the account and the plan as an entity must bear additional administrative costs. Trustees could be required to determine which employees are likely to go into debt and thus incur garnishment. If the trustees do not make such a determination and terminate the participation of high risk participants, they could be mismanaging the funds of other participants

68. *See supra* notes 45-48 and accompanying text.
69. *See supra* note 23.

and could be in breach of their fiduciary duty.[70]

2. *Effects beyond vacation trusts*

Under ERISA, all employee welfare benefit plans are given equal protection. Consequently, precedent is now established under *Mackey* for the garnishment of all forms of employee welfare benefit plans. For this reason, it is unfortunate that *Mackey* involved a vacation trust fund. It has, quite rightly, been noted that "[i]n real world terms, the loss of one's pension is far more catastrophic than the loss of funds devoted to financing an annual vacation."[71] The same cannot be said of health benefits, which are another form of employee welfare benefit. It is hard to imagine a court diminishing important protection of employee welfare benefits in a case where the plan provides vital health care benefits instead of less critical vacation funds.

Indeed, there are some important and recurring situations in which a pension is of very limited value compared with health benefits. A plan participant diagnosed with an advancing or terminal form of cancer or one who has tested positive for the AIDS virus is unlikely to be as interested in a pension as he would be in health care. *Mackey,* however, did not involve debtors whose dependence on the plan benefits would arouse much compassion. The Court had to determine whether to allow debtors to go on a vacation while those whom they owed were left uncompensated (or were forced to collect plan money after it was distributed). Given these options, the end that the Court reached seems entirely proper. However, the means used to reach that end, a means which places a burden on all welfare benefit plans, is inartfully done and goes too far.

D. *A Possible Solution*

The problems now presented by *Mackey* would be most properly solved by congressional action. Congress should pass a law which unambiguously preempts state laws that allow garnishment of benefits in an employee welfare benefit plan. However, if Congress is compelled to provide a different level of protection to vacation trusts than to pen-

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70. Marshall v. Davis, 517 F.Supp. 551 (W.D. Mich. 1981) (vacation and holiday fund trustees held liable for dilution of plan assets for economic loss which was borne equally by participants who had acquiesced and those who had not acquiesced to a transaction).

71. Arizona Laborers, Teamsters, and Cement Masons, Local 395 Pension Trust Fund v. Nevarez ("ALTCM"), 661 F. Supp 365, 370 (D. Ariz. 1987)(quoting Franchise Tax Board of California v. Construction Laborers Vacation Trust for Southern California ("*FTB I*"), 679 F.2d 1307, 1311 (1982)(Tang, J., dissenting)).

sion plans, a preference expressed by some judges,[72] it could make a distinction between what could be termed "vital" and "non-vital" welfare benefits.[73] Any aversion to shielding vacation funds from garnishment can be satisfied by removing the preemption protection of section 514(a) from "non-vital" welfare benefit plans (or not extending such protection to them) and by reaffirming or extending the preemption protection to cover "vital" welfare benefit plans.

IV. CONCLUSION

Although *Mackey* reaffirmed the power of federal preemption of statutes which specifically "refer to" ERISA, it retreated from the broad scope of federal preemption of state laws which "relate to" ERISA. This retreat will further burden employee welfare benefit plans with additional administrative requirements and will provide preferential treatment for pension plans compared with plans which provide equally vital welfare benefits. In reaching this decision, the Court expanded its ability to choose which congressional intent to consider in reaching its desired result. Congressional action will be required to put both types of plans and the interests which they protect on a level playing field, or the Court will need to exercise some self-restraint and take less liberty with important statutory protection.

Richard F. Armknecht III

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72. *FTB I*, 679 F.2d at 1311 (Tang, J. dissenting); *ALTCM*, 661 F. Supp at 370.

73. Vital welfare benefits should be those which are provided to the poor through federal entitlement programs and would include health and education benefits. Non-vital benefits would, therefore, encompass those benefits not provided through entitlement programs such as vacation benefits. Further guidance may be available from the Consumer Credit Protection Act, 15 U.S.C. §§ 1671-77 (1982), which "Congress enacted . . . for the purpose of limiting the total amount of wages which could be garnished [and] permitted garnishment of vacation pay to the same extent as other wages." Brief of Amicus Curiae in Support of the Judgment Below at 6, Mackey v. Lanier Collections Agency & Service, Inc., 108 S. Ct. 2182 (1988).