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New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co: The Supreme Court Clarifies Erisa Preemption

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NOTES

NEW YORK STATE CONFERENCE OF BLUE CROSS & BLUE SHIELD PLANS v. TRAVELERS INSURANCE CO.: THE SUPREME COURT CLARIFIES ERISA PREEMPTION

The Employee Retirement Income Security Act of 1974 (ERISA)[1] regulates the administration of pension[2] and welfare benefit plans[3] offered by private employers to their employees.[4] In an effort to protect employ-

1. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified at 29 U.S.C. § 1001 (1994)) [hereinafter ERISA].

2. Pension benefit plans provide retirement income to employees and often result in a deferral of income. *See* ERISA § 3(2)(A), 29 U.S.C. § 1002(2) (1994) (defining "employee pension benefit plan" and "pension plan"). Pension benefit plans are subject to complex vesting, participation, and funding requirements. *See* ERISA §§ 201-308, 29 U.S.C. §§ 1051-1086 (1994) (setting forth the standards for participation, vesting and funding). Benefits usually are measured by the length of employment and the employee's compensation. VIRGINIA L. BRIGGS ET AL., EMPLOYEE BENEFITS DICTIONARY 131 (1992). Neither the amount of benefits received by an employee nor an employer's contribution to a retirement benefits fund depend on the employer's profits. *Id.*

3. Generally, a welfare benefit plan provides medical or other health benefits through the purchase of insurance. ERISA § 3(1), 29 U.S.C. § 1002(1) (1994). Unlike pension benefit plans, welfare benefit plans are not subject to the stringent vesting, participation, and minimum funding requirements imposed upon pension plans. *See* ERISA §§ 201, 301, 29 U.S.C. §§ 1051, 1081 (1994) (stating that the participation, vesting, and minimum funding standards do not apply to welfare benefit plans); *see generally* Serrato v. John Hancock Life Ins. Co., 31 F.3d 882, 884 (9th Cir. 1994) (holding that ERISA preempted California's vesting law and that under ERISA, employee welfare benefits do not vest, meaning that an "'employer may modify or withdraw these benefits at any time, provided the changes are made in compliance with . . . the terms of the plan'") (quoting Doe v. Group Hosp. & Medical Servs., 3 F.3d 80, 84 (4th Cir. 1993)); Wulf v. Quantum Chem. Corp., 26 F.3d 1368, 1377 (6th Cir.) (noting that employee benefits "do not vest as a matter of law under ERISA"), *cert. denied*, 115 S. Ct. 667 (1994); United Paperworkers Int'l Union v. Jefferson Smurfit Corp., 961 F.2d 1384, 1385 (8th Cir. 1992) (stating that under ERISA, welfare benefit plans are not subject to the vesting, participation and minimum funding requirements imposed upon pension plans); Young v. Standard Oil, 849 F.2d 1039, 1045 (7th Cir.) (holding that under ERISA severance benefits were welfare benefits and could therefore be amended or eliminated), *cert. denied*, 488 U.S. 981 (1988).

4. ERISA comprises four titles. Title I protects the interests of employees by imposing reporting and disclosure requirements, participation and vesting requirements, minimum funding standards, fiduciary responsibilities, and administration and enforcement

ees' rights,[5] ERISA regulates various aspects of pension and welfare benefit plans,[6] including reporting and disclosure,[7] participation and

procedures. ERISA §§ 2-609, 29 U.S.C. §§ 1001-1169 (1994); *see also infra* notes 7-10 (discussing these requirements in more detail).

Title II sets forth tax implications. ERISA, Pub. L. No. 93-406, 88 Stat. 829, 898 (codified as amended in scattered sections of 26 U.S.C.).

Title III outlines the jurisdiction of federal agencies. ERISA §§ 3001-3043, 29 U.S.C. §§ 1201-1242 (1994). The Departments of Treasury and Labor share the jurisdiction, administration, and enforcement of ERISA. 29 U.S.C. §§ 1202-1204 (1994).

Title IV establishes a plan termination insurance program to be administered by the Pension Benefit Guaranty Corporation [hereinafter PBGC]. ERISA §§ 4001-4402, 29 U.S.C. §§ 1301-1461 (1994). The PBGC is an independent non-profit corporation established within the Department of Labor. 29 U.S.C. § 1302 (1994). The role of the PBGC is to encourage employers to establish and maintain pension plans, "to provide for the timely and uninterrupted payment of pension benefits," and to maintain and collect premiums to finance its operations. 29 U.S.C. § 1302(a) (1994). Ultimately, the PBGC acts as a guarantor of pension benefits. 29 U.S.C. § 1322(a) (1994). Unfortunately, the PBGC suffers from a billion dollar deficit and faces an uncertain future. *See* Jonathan Peterson, *Promise of U.S. Pension Agency Dims*, L.A. TIMES, June 8, 1986, § 4 (Business), at 1.

5. According to the House Education and Labor Committee, the purpose of ERISA is to "assure American workers that they may look forward, with anticipation, to a retirement with financial security and dignity, and without fear that this period of life will be lacking in the necessities to sustain them as human beings within our society." H.R. REP. No. 533, 93d Cong., 2d Sess. 3 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4646.

6. Thomas W. Jennings, *Introduction*, *in* ERISA: A COMPREHENSIVE GUIDE 1, 6-8 (Martin Wald & David E. Kenty eds., 1991) (discussing the ways in which ERISA reformed employee benefit and pension plan law in the United States); *see also* Daniel W. Sherrick, *ERISA Preemption: An Introduction*, 64 MICH. B. J. 1074, 1074-75 (1985) (providing a short, insightful explanation of ERISA's preemption clause).

7. ERISA §§ 101-111, 29 U.S.C. §§ 1021-1030 (1994). ERISA requires ERISA plan providers to file reports with the federal government and disclose information regarding the plan to all participants. *Id.*; *see* Robert J. Drapikoski, *Reporting and Disclosure Requirements for Plans Covered by ERISA*, *in* ERISA: A COMPREHENSIVE GUIDE, 13, 13-26 (Martin Wald & David E. Kenty eds., 1991) (providing a thorough, updated discussion of ERISA reporting and disclosure requirements). The reporting and disclosure requirements are designed to protect the interests of plan participants. *Id.* at 13; *see* Rucker v. Pacific FM, Inc., 806 F. Supp. 1453, 1459 (N.D. Cal. 1992) (noting that Congress enacted the reporting and disclosure requirements of ERISA to inform participants of their rights and obligations). Extensive reporting and disclosure requirements make monitoring and enforcing the lengthy and complex provisions more manageable. Drapikoski, *supra* at 13-14.

vesting,[8] minimum funding standards,[9] and the fiduciary responsibilities of plan administrators.[10] It does not mandate particular benefits.[11]

In an attempt to oversee effectively the complex administration of employee plans, Congress included a preemption clause within ERISA.[12]

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8. ERISA §§ 201-211, 29 U.S.C. §§ 1051-1060 (1994). Vesting is a "process whereby accrued benefits under a plan become *nonforfeitable* to the participant." BRIGGS ET AL., *supra* note 2, at 187; *see also* Smith v. Rochester Tel. Business Mktg. Corp., 786 F. Supp. 293, 300-01 (W.D.N.Y. 1992) (holding that a pre-pension leave plan was subject to ERISA's nonforfeitability provisions and that employer could not terminate those benefits based on the fact that the employee began working for a competitor before he officially retired), *aff'd*, 40 F.3d 1236 (2d Cir. 1994). Participation rules regulate the point at which an employee becomes a participant, i.e. eligible to receive a benefit. BRIGGS ET AL., *supra* note 2, at 128. Participation and vesting standards were adopted to ensure that plans benefit a larger number of employees. *See generally*, Jennings, *supra* note 6, at 6-7 (providing a general introduction to ERISA).

9. ERISA §§ 301-308, 29 U.S.C. §§ 1082-1086 (1994). ERISA sets statutory minimums and maximums on the amounts that an employer may contribute annually to certain types of benefit plans. ERISA § 302, 29 U.S.C. § 1082 (1994) (minimum funding standards); ERISA § 305, 29 U.S.C. § 1085 (1994) (alternative minimum funding standard). Minimums help ensure that the fund has enough assets to cover its operating costs and liabilities. BRIGGS ET AL., *supra* note 2, at 112; *see generally*, Michael A. Archer, *Minimum Funding Requirements*, *in* ERISA: A COMPREHENSIVE GUIDE, 119, 119-151 (Martin Wald & David E. Kenty eds., 1991) (providing a detailed explanation of ERISA's minimum funding requirements). Maximum funding requirements protect against the abuse of the tax advantages of ERISA. *See* Regina T. Jefferson, *Defined Benefit Plan Funding: How Much Is Too Much?*, 44 CASE W. RES. L. REV. 1, 2 (1993) (providing an in-depth analysis of ERISA's maximum funding limitations).

10. ERISA §§ 401-414, 29 U.S.C. §§ 1101-1114 (1994). In addition to requiring the pension plan to list "named fiduciaries," who always owe fiduciary duties, ERISA also provides standards governing fiduciary conduct. ERISA provides a functional definition of the term "fiduciary." Whether a person is a fiduciary depends upon his authority and responsibility with respect to the plan. *See* ERISA § 3(21), 29 U.S.C. § 1002 (21) (1994); Cassandra G. Sasso, *Liability of Fiduciaries Under ERISA*, 21 COLO. LAW. 197, 197-98 (1992) (distinguishing between named and functional fiduciaries and providing a general discussion of the liability of fiduciaries under ERISA); *see generally* Jacqueline M. Kraeutler & Charles Lerner, *ERISA's Fiduciary Responsibility Provisions*, *in* ERISA: A COMPREHENSIVE GUIDE, 153, 153-189 (Martin Wald & David E. Kenty eds., 1991) (providing a thorough and updated discussion of the role of fiduciaries under ERISA).

11. New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671, 1674 (1995) (noting that ERISA's regulation of the administration of pension and welfare benefit plans does not provide a "set of minimum benefits"); Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 91 (1983) (noting that although ERISA imposes various regulatory burdens on pension plans, and sets standards for pension and welfare plans, it does not require employers to provide specific benefits).

12. ERISA § 514(a), 29 U.S.C. § 1144(a) (1994). The preemption clause states:

> (a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.

Id.

The purpose of the preemption clause is to ensure national uniformity of pension benefit protections.[13] National uniformity in employee benefit regulations protects both employees and employers.[14] By preventing inefficiency and avoiding administrative complexities, a national standard can reduce the costs of maintaining plans and safeguard benefits for participants.[15]

As this nation continues to debate the merits of health care reform and the need for employer-provided health benefit plans,[16] federal preemption of state law has become an increasingly important issue within the

13. H.R. REP. NO. 533, 93d Cong., 1d Sess. 1 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4650. Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 11-12 (1987) (holding that § 514(a) of ERISA did not preempt a state statute requiring employers to provide severance pay because it concerned a benefit, as opposed to a plan); Moore v. Philip Morris Cos., Inc., 8 F.3d 335, 341 (6th Cir. 1993) (holding that ERISA preempted a state statute providing that an adulterous spouse who leaves home would forfeit his or her right to the property and estate of the other spouse and noting Congress's intent to provide national uniformity in enacting ERISA's preemption clause).

14. *See infra* notes 59-68 and accompanying text (discussing the importance of maintaining nationally uniform laws regarding employee benefits).

15. *Id.*

16. There have been numerous health care reform plans recently introduced in Congress including the Health Security Act of 1993, H.R. 3600, 103d Cong., 1st Sess. (1993) (the Clinton health plan); American Health Security Act of 1993, H.R. 1200, 103d Cong., 1st Sess. (1993) (the Wellston-McDermott plan); Health Plan Purchasing Cooperative Act of 1993, H.R. 3652, 103d Cong., 1st Sess. (1993) (the Chafee-Dole plan); Affordable Health Care Now Act of 1993, H.R. 3080, 103d Cong., 1st Sess. (1993) (House Republican plan). *See generally* John Harwood, *Rival Plans Gain Strength But None Claim Majority*, WALL ST. J., Oct. 28, 1993, at A18 (summarizing each of the proposed acts); *Hearings on Health Care Reform: Hearings Before the Subcomm. on Labor-Management Relations of the House Comm. on Education & Labor*, 103d Cong., 2d Sess. 450-52 (1994) (testimony of Carolyn B. Robinowitz, M.D.) (providing a brief synopsis of various health care legislation).

The following articles provide detailed discussion regarding the interplay between ERISA and health care: Mary A. Bobinski, *Unhealthy Federalism: Barriers to Increasing Health Care Access for the Uninsured*, 24 U.C. DAVIS L. REV. 255 (1990) (arguing that unless Congress amends ERISA to allow for state experimentation in health care reform, a federal solution offers the best hope for comprehensive coverage); Jeffrey A. Brauch, *Health Care Providers Meet ERISA: Are Provider Claims for Misrepresentation of Coverage Preempted?*, 20 PEPP. L. REV. 497, 498 (1993) (concluding that ERISA should not preempt health care provider misrepresentation claims because the claims have too tenuous a relationship to ERISA plans to warrant preemption); Margaret M. Keefe, *Three States Focus on Reform at Home*, 48 EMPLOYEE BENEFIT PLAN REV. 38 (1993) (discussing state health care reform proposals in Vermont, Minnesota, and Colorado); James B. Kenny & Sean Sullivan, *Health Care Reform: National, State and Local Directions*, 18 EMPLOYEE BENEFITS J. 41 (1993) (noting that ERISA acts as an obstacle to local and state health care reform); *Bill Would Authorize Implementation of Health Care Reform at the State Level*, 47 EMPLOYEE BENEFIT PLAN REV. 52 (1992) (discussing the State Care Act of 1992, which would enable states to proceed with health care reform by amending ERISA to curtail its preemptive effect); Robert S. McDonough, Note, *ERISA Preemption of State Mandated-Provider Laws*, 1985 DUKE L.J. 1194, 1216 (concluding that "mandated-provider laws

field of employee benefits.[17] Many Americans obtain health insurance through their employers, and, as a result, are affected indirectly by ERISA's regulation of employee benefit plans.[18] By ensuring that states cannot interfere with the federal government's efforts to require nondis-

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should be preempted as applied to insurance policies purchased by employee benefit plans regulated by ERISA").

17. *See, e.g.*, Devon P. Groves, *ERISA Waivers and State Health Care Reform*, 28 COLUM. J.L. & SOC. PROBS. 609, 609-10 (1995) (discussing the impact of ERISA on state health care reform and congressional proposals to grant states a waiver to ERISA's preemptive effect); James E. Holloway, *ERISA, Preemption and Comprehensive Federal Health Care: A Call for "Cooperative Federalism" to Preserve the States' Role in Formulating Health Care Policy*, 16 CAMPBELL L. REV. 405, 408 (1994) (warning that the preemptive effects of exclusive federal employee benefits regulation could be damaging to states' ability to promote state health care policy and develop innovative health care systems); James D. Hutchinson & David M. Ifshin, *Federal Preemption of State Law Under the Employee Retirement Income Security Act of 1974*, 46 U. CHI. L. REV. 23, 24 (1978) (discussing generally ERISA's preemption of state law); Leon E. Irish & Harrison J. Cohen, *ERISA Preemption: Judicial Flexibility and Statutory Rigidity*, 19 U. MICH. J.L. REF. 109, 156-63 (1985) (criticizing ERISA's preemption clause and explaining that courts have had difficulty interpreting its scope); Jeffrey G. Lenhart, *ERISA Preemption: The Effect of Stop-Loss Insurance on Self-Insured Health Plans*, 14 VA. TAX REV. 615 (1995) (providing a comprehensive summary of judicial interpretation of the scope of ERISA's preemption clause as related to self-insured welfare benefit plans utilizing stop-loss coverage and calling for guidance for the Supreme Court); Michael S. Ackerman, Note, *ERISA: Preemption of State Health Care Laws and Worker Well-Being*, 1981 U. ILL. L. REV. 825, 847-52 (1981) (reporting that ERISA's preemption clause has undermined states' efforts at addressing the need for health-care solutions at the state level); Gary A. Francesconi, Note, *ERISA Preemption of "Any Willing Provider" Laws - An Essential Step Toward National Health Care Reform*, 73 WASH. U. L.Q. 227, 243-61 (1995) (discussing the role of ERISA preemption of "Any-Willing Provider" laws in the movement toward national health care reform); Jolee A. Hancock, Comment, *Diseased Federalism: State Health Care Laws Fall Prey to ERISA Preemption*, 25 CUMB. L. REV. 383 (1994-1995) (discussing the "disastrous" effect of ERISA on state health care reform); Lizzette Palmer, Comment, *ERISA Preemption and its Effects on Capping the Health Benefits of Individuals with AIDS: A Demonstration of why the United States Health and Insurance Systems Require Substantial Reform*, 30 HOUS. L. REV. 1347 (1993) (discussing ERISA's effect on welfare benefits as it relates to employers' ability to cap the health benefits of people with AIDS).

18. Travelers Ins. Co. v. Cuomo, 14 F.3d 708, 711 (2d Cir. 1993) (noting that as many as "[e]ighty-eight percent of non-elderly Americans have private health care insurance through their employee welfare benefit plans"), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995); *see also* Groves, *supra* note 17, at 617 n.40 (noting that an estimated 150 million Americans obtain health insurance through an ERISA plan).

criminatory[19] and adequately funded[20] employee benefit programs, ERISA's preemption clause plays a vital role in the administration of these employee benefit plans.[21]

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19. *See* JOHN H. LANGBEIN & BRUCE A. WOLK, PENSION & EMPLOYEE BENEFIT LAW 199 (2d ed. 1995). ERISA includes rules to ensure that employers do not establish and maintain plans for the sole benefit of highly compensated employees by denying favorable tax treatment to plans that discriminate in favor of highly compensated employees. *Id.* To prevent discrimination, ERISA imposes minimum coverage and participation requirements. *Id.* ERISA also regulates the degree to which contributions or benefits may vary from participant to participant. *Id.* at 199-200; *see also* BRIGGS ET AL., *supra* note 2, at 46-47 (providing a definition and an example of "discrimination" within the context of employee benefit plans); Bruce Wolk, *Discrimination Rules for Qualified Retirement Plans: Good Intentions Confront Economic Reality*, 70 VA. L. REV. 419, 463 (1984) (concluding that ERISA's non-discrimination provisions will not achieve wide-spread coverage for lower paid employees).

20. *See supra* note 9 and accompanying text (discussing funding requirements).

21. For scholarship endorsing the expansiveness of ERISA's preemption clause, see generally David Gregory, *The Scope of ERISA Preemption of State Law: A Study in Effective Federalism*, 48 U. PITT. L. REV. 427, 429 (1987) (tracing the evolution of ERISA's "broad preemption of state law" and discussing the relationship between federal and state regulation of employee pension and welfare benefit plans); Hutchinson & Ifshin, *supra* note 17, at 23-24, 38-43 (arguing that ERISA's preemption clause should be applied as broadly as possible to further Congress's purpose of promoting national uniformity in the regulation of employee benefit and welfare plans); Daly D. Temchine & Marcia S. Handler, *U.S. Supreme Court's Travelers Decision Preserves ERISA Preemption*, 22 Pens. Rep. (BNA) No. 32, at 1837 (Aug. 7, 1995) [hereinafter *Decision*] (stating that the *Travelers* decision can be interpreted as preserving the scope of ERISA's preemption clause, rather than reducing it).

For articles discussing the negative effects of expansively interpreting ERISA's preemption clause, see generally Groves, *supra* note 17 (discussing the negative impact of ERISA on state health care reform and examining congressional proposals to grant state waivers to ERISA's preemptive effect); Holloway, *supra* note 17 (discussing the negative effects of ERISA preemption on states' ability to reform health care); Irish & Cohen, *supra* note 17 (criticizing ERISA's preemption clause and explaining why courts have had difficulty interpreting its scope); William J. Kilberg & Catherine L. Heron, *The Preemption of State Law Under ERISA*, 1979 DUKE L.J. 383, 394-420 (concluding that Congress should amend ERISA to exempt specific state alimony and child support laws from federal preemption and that courts interpret ERISA's preemption clause unnecessarily broadly because Congress chose to preempt state laws "relating to" employee benefit plans, rather than subjects covered by the Act); William J. Kilberg & Paul D. Inman, *Preemption of State Laws Relating to Employee Benefit Plans: An Analysis of ERISA Section 514*, 62 TEX. L. REV. 1313, 1327-38 (1984) (suggesting an alternative approach to interpreting ERISA's preemption clause); Peter H. Turza & Lorraine Halloway, *Preemption of State Laws Under the Employee Retirement Security Act of 1974*, 28 CATH. U. L. REV. 163, 212-25 (1979) (discussing the potential positive and negative effects of amending ERISA's preemption clause to restrict its scope and recommending that Congress should wait to see how the courts interpret the clause); *ERISA Preemption Encourages Innovation in Health Care System*, 22 Pens. Rep. (BNA) No. 12, at 712 (March 20, 1995) [hereinafter *Innovation*] (discussing the effect of ERISA's preemptive provision on employers' ability to initiate health care reforms in the marketplace because of their ability to operate plans across state lines in a consistent manner); Hancock, *supra* note 17, at 383 (discussing the "disastrous" effect of ERISA on state health care reform).

Despite the significance of ERISA's powerful preemption clause, its scope remains somewhat undefined, making it difficult for courts to determine whether ERISA preempts a state law.[22] The method of analysis for determining whether a state law triggers ERISA's preemption clause greatly affects the regulation of health care plans.[23] Specifically, the method of analysis impacts the ability of states to be involved actively in

22. The scope of ERISA's preemption clause has been heavily litigated within the federal courts of appeals and district courts. According to Justice Stevens, "[a] recent LEXIS search indicates that there are now over 2,800 judicial opinions addressing ERISA preemption." District of Columbia v. Greater Wash. Bd. of Trade, 506 U.S. 125, 135 n.3 (1992) (Stevens, J., dissenting). Different circuits have employed different methods of analyzing whether state laws trigger ERISA's preemption clause. *Compare* Travelers Ins. Co. v. Cuomo, 14 F.3d 708, 719 (2d Cir. 1993) (applying an expansive interpretation of ERISA's preemption clause to hold that hospital surcharge provisions had a sufficient "connection with" an ERISA plan to trigger preemption), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995) *with* United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1195 (3rd Cir.) (rejecting an expansive interpretation of the ERISA preemption clause, consequently finding that a state law did not "relate to" an ERISA plan because it did not have a sufficient "connection with" or impact on an ERISA plan to trigger preemption), *cert. denied sub nom.*, NYSA-ILA Welfare Fund v. Dunston, 510 U.S. 944 (1993). *See* Jay Conison, *ERISA and the Language of Preemption*, 72 WASH. U. L.Q. 619, 620 (1994) (noting that "[u]ncertainty as to what principles, policies, and considerations courts should rely on generates rampant disagreement over even simple questions").

For examples of circuit courts relying on either the Supreme Court's broad interpretation of the preemption clause, or the multi-factor approach, see *infra* note 85. For an explanation of the differences between the Supreme Courts's traditional approach to interpreting ERISA's preemption clause and the multi-factor approach, see *infra* notes 74-77 and accompanying text.

23. *See* Hancock, *supra* note 17, at 383 (arguing that ERISA's expansive preemption clause has had a "disastrous" effect on states' abilities to reform health care); Jerry L. Mashaw & Theodore R. Marmor, *The Case for Federalism and Health Care Reform*, 28 CONN. L. REV. 115, 116 (1995) (arguing that a Federalist approach offers the best solution to reforming our country's health care system). However, the authors note that certain constituencies are satisfied with ERISA preemption. *Id.* at 125. *But see* K. Peter Schmidt, *Problems with Health Care Federalism*, 28 CONN. L. REV. 147, 147-48 (1995) (arguing that in a society where large national and regional corporations provide health coverage to their employees, preemption plays an important role in reducing administrative burdens and preventing the creation of a "crazy quilt of inconsistent state laws").

health care reform.[24] Thus, the preemption clause of ERISA clearly plays a significant, albeit indirect, role in the lives of many Americans.[25]

The preemption doctrine is based on the Supremacy Clause of the United States Constitution[26] and evolved out of the seminal Supreme Court case *Gibbons v. Ogden*.[27] Preemption may be triggered by an express provision within a statute,[28] by implication through the presence of a federal scheme of regulation,[29] or by a direct conflict between state and

24. Holloway, *supra* note 17, at 422 (discussing the negative impact of ERISA on states' health care reform efforts). ERISA severely restrains the ability of states to reform health care. *Id.* More specifically, "[s]tates are finding that the broad interpretation of the ERISA preemption clause . . . stymie[s] efforts to provide access to and pay for health care." *Id.*; *see also U.S. Supreme Court Rejects Challenge to State Surcharges on Hospital Bills*, 22 Pens. Rep. (BNA) No. 18, at 1129 (May 1, 1995) [hereinafter *Surcharges*] (reporting that representatives of state health plans were enthusiastic about the Supreme Court's decision in *Travelers*, believing that it allowed states more control over reforming their health care systems). *But see ERISA Preemption Brings Uniformity to Benefit Plan Regulation, ERIC Says*, 20 Pens. Rptr. (BNA) No. 9, at 534 (Mar. 1, 1993) [hereinafter *Uniformity*] (stating that "[i]nconsistent state regulation would make it harder to administer a multi-state health plan and would make it more expensive for a plan to offer the same coverage to all employees"). According to the President of the ERISA Industry Committee [ERIC], allowing states to regulate health plans will result in a "'crazy quilt of laws against health plans, [harming] employees and employers.'" *Id.*

25. *See Legislation Needed to Remove Ambiguity From ERISA, Witnesses Tell Labor Panel*, 22 Pens. Rep. (BNA) No. 31, at 1772 (July 31, 1995). When testifying before the Senate Labor Panel, Mark Nadel, associate director for national & public issues for the General Accounting Office, stated that, "[e]mployers . . . maintain that ERISA has been integral to their ability to control benefit costs and tailor plans to reflect their employees' needs, because they are subject to one federal law rather than a patchwork of 50 state laws." *Id.*

26. *See* U.S. CONST. art. VI, cl. 2. "This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land." *Id. See also* New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671, 1676 (1995) (noting that the Supremacy Clause allows federal law to preempt state law).

27. 22 U.S. (9 Wheat.) 1, 211 (1824) (stating that federal law preempts state law where state laws "interfere with or are contrary to the laws of Congress"); *see generally* JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 9.1, at 319 (5th ed. 1995) (discussing generally federal preemption of state law).

28. *See, e.g.*, Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977) (noting that Congress may preempt state law by including express language in a federal law to prohibit state regulation of an area).

29. *See* Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) (explaining that Congress may preempt state law by implication where a "scheme of federal regulation [is] . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it" or "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject"); *see also* NOWAK & ROTUNDA, *supra* note 27, at 319 (explaining that Congress may expressly or impliedly "occupy the field," thereby causing preemption). Because Congress usually does not occupy expressly an area of regulation, preemption cases often focus on the issue of Congressional intent. *Id.*

federal law that precludes compliance with both.[30] Section 514 of ERISA[31] expressly mandates that ERISA shall "supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan."[32] Because of its broad, general language, section 514 caused confusion regarding the scope of ERISA's preemptive effect.[33] In fact, the language of section 514 does not clarify what is required to demonstrate that a state law "relates to" an employee benefit plan.[34]

In *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*,[35] the Supreme Court clarified the methodology for determining whether a state law falls within the scope of ERISA's preemption clause.[36] The state law at issue in *Travelers* required hospitals to collect surcharges from patients covered by commercial insurance companies, but not from patients covered by Blue Cross and Blue

30. *See* Pacific Gas & Elec. Co. v. Energy Resources Conservation & Dev. Comm'n, 461 U.S. 190, 204 (1983) (stating that state law is preempted to the extent it conflicts with federal law, such as in situations "when 'compliance with both federal and state regulations is a physical impossibility' . . . or where state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" (citations omitted); Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 211 (1824) (stating that where state laws "interfere with, or are contrary to" federal law, they are preempted).

31. ERISA § 514(a), 29 U.S.C. § 1144(a) (1994).

32. 29 U.S.C. § 1144(a) (1994); *see supra* note 12 (reproducing the complete text of § 514(a)).

33. Leon Irish and Harrison Cohen described the confusion surrounding ERISA's preemptive effect, noting that "[s]ection 514(a) has unavoidably . . . called for unreasonable and impractical results" and has "also created unnecessary problems for . . . the judiciary." Irish & Cohen, *supra* note 17, at 110. The extremely broad wording of § 514 has contributed to a "collection of decisions notable for their diverse rationales and their diverse levels of rationality." *Id.* at 111.

In *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*, 115 S. Ct. 1671 (1995), the Court held that to determine whether a state law "relates to" an ERISA plan, one "must go beyond the unhelpful text [of § 514(a)] and the frustrating difficulty of defining its key term ["relate to"] and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." *Id.* at 1677.

34. *See* Conison, *supra* note 22, at 620 (commenting on the "rampant disagreement" regarding the issue of ERISA preemption and noting that even twenty years after the enactment of ERISA, the issue of preemption is plagued by uncertainty); Hutchinson & Ifshin, *supra* note 17, at 23 (explaining that disagreement about the scope of ERISA's preemption clause reveals the larger problem regarding the status of the American federalist system and the relationship between state and federal law); Kilberg & Heron, *supra* note 21, at 385 (stating that "[a]lthough the broad language of section 514, ERISA's preemption provision, may appear quite clear upon superficial examination, the law concerning the extent of ERISA's preemption of state law remains unsettled").

35. 115 S. Ct. 1671 (1995).

36. *Id.* at 1676-80 (examining the text of ERISA's preemption clause, the intent behind Congress's enactment of the provision, the purpose of the state law at issue, the effect of the state law on ERISA plans, and deciding whether the subject of the state law has been historically a matter of local concern).

Shield.[37] Hospitals retained these surcharges to control costs and to increase hospitalization coverage of uninsured patients.[38] In response to the surcharge statute, several commercial insurers sued the state of New York, claiming that ERISA preempted the state statute.[39]

The United States District Court for the Southern District of New York granted the commercial insurers' motion for summary judgment with respect to the preemption issue.[40] Relying on Supreme Court precedent,[41] the United States Court of Appeals for the Second Circuit affirmed the District Court's holding that ERISA preempted the surcharge law.[42] The Supreme Court reversed the Second Circuit's decision[43] and held that the New York statute's surcharge provisions did not "relate to" employee benefit plans in such a way as to trigger preemption.[44] In determining that ERISA did not preempt the New York statute, the Court departed from its tendency to rule in favor of preemption based on the "broad common-sense meaning" of the phrase "relate to."[45] Instead, it utilized a more practical method of determining whether a state law falls within the

37. N.Y. PUB. HEALTH LAW § 2807-c(1)(b) (McKinney 1993). *See* Travelers Ins. Co. v. Cuomo, 14 F.3d 708, 719 (2d Cir. 1993) (noting that the "surcharges are designed to increase hospital costs for patients covered by health plans other than the Blues, and thus make these competing plans less attractive"), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995). Blue Cross and Blue Shield are not considered commercial insurers. *See Travelers*, 115 S. Ct. at 1673-74 (noting that the New York statute requires hospitals to collect surcharges from patients with commercial health insurance but not from patients covered by Blue Cross and Blue Shield). Through surcharges, commercial insurers subsidize the costs of uninsured patients. *See also Experts Divided Over Impact of U.S. Supreme Court ERISA Decision*, 22 Pens. Rep. (BNA) No. 23, at 1348 (June 5, 1995) [hereinafter *Experts Divided*] (describing the New York statute).

38. *Travelers*, 14 F.3d at 712.

39. *See* Travelers Ins. Co. v. Cuomo, 813 F. Supp. 996, 999 (S.D.N.Y.), *aff'd*, 14 F.3d 708 (2d Cir. 1993), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995). Blue Cross and Blue Shield and the Hospital Association of New York State intervened as defendants. *Id.*

40. *Id.* at 1012.

41. *Travelers*, 14 F.3d at 717-21; *see also supra* notes 88-108 and accompanying text (discussing the Supreme Court's expansive application of § 514 to determine whether ERISA preempts a state law).

42. *Travelers*, 14 F.3d at 725.

43. *Travelers*, 115 S. Ct. at 1683.

44. *Id.* at 1680.

45. *Id.* at 1677. The Court noted that "prior attempt[s] to construe the phrase 'relate to'" in terms of the normal sense of the phrase did not provide any real guidance in this instance. *Id.* Prior to *Travelers*, the Supreme Court applied the phrase "relate to" in its "broad common-sense meaning." Pilot Life Ins. v. Dedeaux, 481 U.S. 41, 47 (1987) (citing Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 97 (1983) and Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985)).

scope of ERISA's preemption clause.[46] The Court recognized that its expansive interpretation of the phrase "relate to" did not function as a helpful guide for determining the scope of ERISA's preemption clause.[47]

This Note begins with an analysis of ERISA's preemption clause prior to the *Travelers* decision and describes the conflicting methods of determining whether a state law triggers section 514's preemption. This analysis includes a summary of Supreme Court jurisprudence regarding the proper method for determining whether a state law falls within the scope of ERISA's preemption clause. This Note also describes the two methods of analysis that developed within the circuit courts prior to the *Travelers* decision. Next, this Note examines the Court's clarification of section 514 preemption analysis and concludes that the Court effectively restricted the scope of ERISA's preemption clause. Finally, this Note comments on the *Travelers* decision's impact on the states' role in health care administration and reform.

I. DETERMINING WHETHER A STATE LAW FALLS WITHIN THE SCOPE OF ERISA'S PREEMPTION CLAUSE PRIOR TO *TRAVELERS*: THE "SARGASSO SEA OF OBFUSCATION"

Employer-provided pension and welfare benefit plans have an extensive history in the United States.[48] Pension plans developed in this country as early as 1875,[49] and, unfortunately, have been abused since their

46. *Travelers*, 115 S. Ct. 1671, 1677-80 (1995) (focusing on Congressional intent and the purpose and effect of the state law at issue); *see also Experts Divided*, *supra* note 37, at 1348 (stating that ERISA had previously been interpreted expansively, but that this decision represented a "backing away from some of the logic of its previous decisions" toward a more pragmatic approach).

47. *Travelers*, 115 S. Ct. at 1677; *see also Experts Divided*, *supra* note 37, at 1348 (describing the Court's change in logic).

48. *See generally* Michael S. Gordon, *Overview: Why was ERISA Enacted? The ERISA of 1974: The First Decade, an Informational Paper of the U.S. Senate Special Committee on Aging*, 98th Cong., 2d Sess. 3 (Sen. Print 1984); WILLIAM C. GREENOUGH & FRANCIS P. KING, PENSION PLANS AND PUBLIC POLICY (1976) (examining the history and public policy behind pension plans); LANGBEIN & WOLK, *supra* note 19, at 2-16 (discussing the origins of the pension system); MURRAY W. LATIMER, 2 INDUSTRIAL PENSION SYSTEMS IN THE UNITED STATES AND CANADA (1933) (providing an in-depth study of American pension plans); JOSEPH J. MELONE & EVERETT T. ALLEN, JR., PENSION PLANNING: PENSIONS, PROFIT SHARING, AND OTHER DEFERRED COMPENSATION PLANS 1, 1-19 (rev. ed. 1972) (providing an overview of the development of private pension plans in the United States); Gregory, *supra* note 21, at 437-49 (providing an overview of ERISA's history, purpose and policies); Jennings, *supra* note 6, 2-6 (providing a detailed discussion on the evolution of employee benefits programs in the United States); Turza & Halloway, *supra* note 21, at 169-74 (discussing federal and state regulation of pension and welfare benefit plans prior to ERISA).

49. Jennings, *supra* note 6, at 2 (noting that one of the earliest private pension plans in the United States was established by the American Express Company in 1875).

creation.[50] While many hoped that pension plans would provide immediate security for workers, the economic turmoil of the Great Depression proved otherwise.[51]

After the stock market crash of 1929, retirement security became a virtual illusion.[52] Employers inadequately financed and fraudulently administered many plans.[53] For example, employers often used workers' contributions to pension plans to fund union activities unrelated to retirement.[54] In many cases, plans limited coverage to a very small number of employees and benefitted only high ranking employees.[55] These problems became painfully clear in 1963, when the Studebaker Automobile Company closed its doors and left 4,400 employees without their vested pensions.[56]

Discovery of rampant abuse of employee benefit plans encouraged state regulation.[57] State regulation, however, resulted in a troublesome

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50. *Id.* at 2-5; *see also* Gregory, *supra* note 21, at 443 (explaining how pension plan abuses led to enactment of ERISA).

51. Jennings, *supra* note 6, at 2-3.

52. *Id.*

53. *Id.* at 2. Today, the problem of inadequate funding continues. *See* Peterson, *supra* note 4, at 1 (describing the financial and political problems facing the federal agency that guarantees private pension plans). In 1985, the Wheeling-Pittsburgh Steel Corporation terminated seven pension plans when faced with financial trouble. *Id.* Pension plans are a popular target for abuse due to their enormous amounts of assets. *See* William S. Cohen, *Gambling With The Future*, N.Y. TIMES, Aug. 12, 1986, at A25. According to William Cohen, a former United States Senator from Maine, a financial scandal is likely. *Id.* Cohen predicted that by the end of the century, pension plans may own half of all publically traded corporate stock. *Id.* He further noted that these assets are handled by only 25 investment management firms. *Id.* Cohen warned that due to the pressures of the market place, pension plan managers may find it difficult to adhere to their fiduciary duty to work for the sole benefit of plan participants. *Id.*

54. Jennings, *supra* note 6, at 2.

55. *Id.* at 2-3.

56. *Id.* at 4-5. For a brief synopsis of the Studebaker incident, see LANGBEIN & WOLK, *supra* note 19, at 62-66. Studebaker was the fourth largest auto manufacturer at one time in its 111 year history. Casey Bukro, *Studebaker left automotive legacy that rides throughout time*, CHI. TRIB., July 19, 1989, at C8. Prior to its closing, the Studebaker Company occupied an important place in the community of South Bend, Indiana, in which its plants were located. *Id.* Workers generally remembered the Studebaker Company's generosity to workers and the community. *Id.* This image changed when the Studebaker plant moved to Canada in 1964, forcing its workers to search for jobs elsewhere and depriving them of their pensions and medical benefits. Laurie Goering, *Workers who lost their pensions decades ago seek relief in bill*, CHI. TRIB., Oct. 20, 1991, at C13. One former Studebaker employee was forced to take a 50% pay cut at another plant following the closing of the Studebaker plant. *Id.* Incidents such as this prompted Congress to enact ERISA. *Id.*

57. Jennings, *supra* note 6, at 2-8 (discussing the abuses of pension plans and the rise in regulations regarding such plans).

lack of uniformity among benefit plans throughout the nation.[58] Ultimately, the desire for a uniform national system of regulating employee benefit plans prompted the enactment of ERISA in 1974.[59] Accordingly, Congress included a broad preemption clause in ERISA[60] to allow a single set of regulations to govern the administration of benefit plans.[61]

Preemption was necessary to ensure that plans would operate consistently across state lines,[62] especially where plans covered employees in more than one state.[63] Without ERISA's preemption clause, employee

58. *See* Gregory, *supra* note 21, at 443 (discussing the abuse of pension plans in general and the failure of state regulations as either remedial or enforcement instruments); Jennings, *supra* note 6, at 2-6 (discussing pension plan abuses prompting the enactment of ERISA). These abuses continued to be a concern even after states began regulating benefits and were among the concerns addressed in ERISA. *See id.*

59. Kurt R. Anderson, *Current Issues in ERISA Preemption, in* ERISA: A COMPREHENSIVE GUIDE 249-50 (Martin Wald & David E. Kenty eds., 1991). ERISA's statutory language recites the congressional findings and declaration of policy upon which ERISA is based. *See* 29 U.S.C. § 1001 (1994). The House Committee on Education and Labor predicted that ERISA's "most important purpose will be to assure American workers that they may look forward, with anticipation, to a retirement with financial security and dignity, and without fear that this period of life will be lacking in the necessities to sustain them as human beings within our society." H.R. REP. No. 533, 93d Cong., 2d Sess. 3 (1974) *reprinted in* 1974 U.S.C.C.A.N. 4639, 4646; *see also supra* notes 1-12 and accompanying text (discussing generally the composition of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified at 29 U.S.C. §§ 1001 et seq. (1994))). For ERISA's legislative history, see generally BUREAU OF NATIONAL AFFAIRS, ERISA: SELECTIVE LEGISLATIVE HISTORY, 1974-1991 (Paul Albergo ed., 1992); BUREAU OF NATIONAL AFFAIRS, ERISA: THE LAW AND THE CODE (Michael G. Kushner & Dana J. Domone eds., 1995).

60. ERISA § 514(a), 29 U.S.C. § 1144(a) (1994). Section 514(a) states that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." *Id.*; *see also* Anderson, *supra* note 59, at 250-52 (discussing how Congress intended ERISA's preemption clause to ensure uniformity among pension plans).

61. Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1, 11 (1987). In implementing ERISA, Congress relied on its broad power under the Commerce Clause to preempt state law. H.R. REP. No. 533, 93d Cong., 2d Sess. 3 (1974) *reprinted in* 1974 U.S.C.C.A.N. 4639, 4646; *see also*, Francesconi, *supra* note 17, at 235.

62. *See* New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671, 1677-78 (1995) (finding that "[t]he basic thrust of the preemption clause, then, was to avoid a multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans"); *see also* McDonough, *supra* note 16, at 1194 (arguing that state mandated-provider laws affect the insurance policies purchased by ERISA plans and therefore should be preempted by ERISA); *Innovation*, *supra* note 21, at 712 (reporting that a paper released by the Corporate Health Care Coalition found that preemption enables employers to operate plans across state lines consistently).

63. Large multi-state employers benefit from national uniformity. *See Uniformity*, *supra* note 24, at 534 (reporting that multi-state health plans would face increased costs in the absence of national uniformity). Large corporations are not the only beneficiaries of national uniformity; even small employers located near state borders benefit from national uniformity. *See Innovation*, *supra* note 21, at 712. "At least 46 [sic] cities in the United

benefit plans could be subjected to fifty different sets of state law,[64] resulting in unreasonable administrative costs[65] that might discourage employers from providing employee benefits.[66] Ironically, laws enacted to protect plan participants could discourage employers from establishing and maintaining plans, thereby undermining the purpose of the regulations.[67] The existence of ERISA's preemption clause reduces this dilemma and helps to ensure nationwide uniformity so that employers are not burdened by complex regulations that make offering employee benefit plans administratively unfeasible.[68]

States border another state and as a result have 'substantial trans-border health care markets.'" *Id.* (quoting Kristin Bass, co-author of the paper released by the corporate Healthcare Coalition); *see also* Alessi v. Raybestos Manhattan, Inc., 451 U.S. 504, 525-26 (1981) (striking down a state law because the law's effect forced the employer to structure all benefit payments in accordance with New Jersey law, or alternatively to adopt different payment formulae for employees inside and outside the state).

The Washington, D.C., Philadelphia, Pennsylvania, and New York City metro areas offer prime examples of cities that employ individuals from more than one state. In Washington, D.C., workers travel from Virginia, Maryland, and West Virginia. In Philadelphia, employees travel to work from other parts of Pennsylvania, New Jersey, and Delaware. New York City attracts workers from Connecticut, Pennsylvania, and New Jersey. ERISA preemption sought to avoid the evil of requiring an employer to "accommodate conflicting regulatory schemes in devising and operating a system for processing claims and paying benefits." Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 10 (1987).

64. Anderson, *supra* note 59, at 250; *Innovation*, *supra* note 21, at 712.

65. *Innovation*, *supra* note 21, at 712. For example, subjecting a small employer in Philadelphia who employed individuals from Pennsylvania, New Jersey, and Delaware to three different sets of regulations regarding employee health benefits would render establishing and maintaining a health plan extremely cumbersome and time-consuming. Multistate employers with offices scattered throughout the nation would face the same dilemma. *Id.*; *see also Uniformity*, *supra* note 24, at 534 (reporting that according to the president of the ERISA Industry Committee, "[i]nconsistent state regulation would make it harder to administer a multi-state health plan and would make it more expensive for a plan to offer the same coverage to all employees"); *Innovation*, *supra* note 21, at 712 (noting that the health care marketplace "'expand[s] across state lines'") (quoting Kristin Bass, co-author of paper released March 14, 1995 by the Corporate Health Care Coalition).

66. *Innovation*, *supra* note 21, at 712.

67. *See* Airparts Co., Inc. v. Custom Benefit Servs. of Austin, Inc., 828 F. Supp. 870, 873 (D. Kan. 1993) (finding that Congress intended ERISA preemption to ensure national uniformity within benefits law, "thereby preventing inefficiencies working to the detriment of plan beneficiaries"), *rev'd on other grounds*, 28 F.3d 1062 (10th Cir. 1994).

68. *See id.* at 873 (noting that national uniformity protects participants from the evils of inefficiently administered plans); DiPietro-Kay Corp. v. Interactive Benefits Corp., 825 F. Supp. 459, 461 (D. Conn. 1993) (holding that a state common law claim for misrepresentation in the sale of an insurance policy is not related to an ERISA plan for the purposes of ERISA preemption and noting that "[p]reemption was created because benefit plans entail a myriad of administrative activities that would be difficult to coordinate if plans were subject to different regulations in different states") (citing Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 11 (1987)).

Generally, a state law triggers ERISA's preemption clause when the law "relate[s] to" a plan covered by ERISA.[69] Unfortunately, ERISA itself provides no insight as to the meaning of the phrase "relate to."[70] As a result, the scope of ERISA's preemption clause is unclear,[71] making it difficult to determine whether a state law is preempted.[72] The uncertainty of the meaning of the phrase "relate to" has confused lower courts attempting to determine whether ERISA preempts state laws and regulations.[73]

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69. ERISA § 514(a), 29 U.S.C. 1144(a) (1994); *see, e.g.*, Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987) (attempting to provide guidance as to the meaning of the phrase "relate to"); Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985) (same); Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983) (same); *see also* Anderson, *supra* note 59, at 252 (discussing generally the broad scope of ERISA preemption); Conison, *supra* note 22 at 669 (providing an excellent analysis of the language of § 514 and the difficulty of interpreting the phrase "relate to").

70. ERISA § 514(a), 29 U.S.C. § 1144(a) (1994) (containing no definitions of the phrase "relate to").

71. Although Congress included an expansive preemptive provision within ERISA, it provided some explicit exceptions to preemption, as set forth in a section commonly referred to as the "savings clause." *See* ERISA § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A) (1994). State laws regulating "insurance, banking, or securities," are saved from preemption. *Id.*; *see* Anderson, *supra* note 59, at 258-69 (discussing generally the savings clause). Despite the fact that these exceptions appear very straightforward, courts frequently are faced with state laws that arguably could be considered "health laws" rather than insurance laws. *See* Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 741 (1985) (rejecting the argument that a state law requiring minimum mental health care benefits is a health law rather than an insurance law).

For example, "mandated-provider" laws require insurance companies to pay for services covered under a policy regardless of what type of physician provided the service. McDonough, *supra* note 16, at 1199. Thus, insurance companies must pay for the service of an eye exam, whether provided by an optometrist or opthamologist. *Id.* To escape preemption, these laws may be characterized as insurance regulatory laws rather than health laws. *Id.* at 1198-99. When categorized as an insurance law, the state law will not be preempted. *See id.* at 1199 (explaining that although mandated-provider laws relate to an employee benefit plan because they impact the terms of the insurance plans purchased by employers, they will not be preempted if the court determines that the laws are meant to regulate insurance). This type of health care/insurance law is widespread. *Id.* at 1194 n.8 (explaining that "[m]andated provider laws . . . have been adopted in nearly every state").

72. *See generally* Irish & Cohen, *supra* note 17 (discussing the difficulty of interpreting the scope of § 514); McDonough, *supra* note 16, at 1216 (noting that "mandated-provider laws do not regulate insurance," yet arguing that mandated-provider laws should be preempted, insofar as they relate to insurance policies purchased by ERISA plans).

73. *See* discussion *infra* Parts I.A - I.C (discussing the broad and narrow approaches to determining whether a state law has triggered ERISA preemption). Various circuits have adopted different methods of determining whether a state law falls within the scope of § 514. *See* Travelers Ins. Co. v. Cuomo, 14 F.3d 708, 721 n.3 (2d Cir. 1993) (noting that its decision directly conflicted with the Third Circuit), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995); *see also* Anderson, *supra* note 59, at 94-100 (cum. supp. 1995). Some courts have taken an expansive approach, while others have been less quick to provide ERISA's preemptive

In an effort to resolve the uncertainty surrounding the phrase "relate[s] to," courts applied either the "connection with" analysis resulting in an expansive interpretation of the scope of ERISA's preemption,[74] or a multi-factor analysis, which limited the scope of section 514(a).[75] Courts based the "connection with" analysis on the Supreme Court's insistence that the words "relate to" be given their literal, common sense meaning.[76] In contrast, the multi-factor analysis focused on specific factors to determine whether ERISA preempts a state law, rather than trying to determine whether a law has a "connection with" an ERISA plan.[77]

Because ERISA regulates employer-provided health care benefits, the method of analysis used to determine whether a state law triggers section 514 directly affects the ability of states to enact legislation regarding health care.[78] When courts apply the more predictable multi-factor analysis, state legislatures can determine more easily whether a state law will

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clause with such a broad scope. *See infra* note 88 (providing a lengthy list of cases regarding the scope of ERISA's preemption clause).

74. *See* First Nat'l Life Ins. Co. v. Sunshine-Jr. Food Stores, Inc., 960 F.2d 1546, 1549 (11th Cir. 1992) (stating that "[t]he Supreme Court has consistently recognized the expansive sweep of the preemption clause"), *cert. denied*, 506 U.S. 1079 (1993); Pomeroy v. Johns Hopkins Medical Servs., Inc., 868 F. Supp. 110, 112 (D. Md. 1994) (applying the "connection with" standard to determine that ERISA may preempt laws which have only an indirect impact on employee benefit plans). This expansive method of analysis is based on Supreme Court precedent. *See infra* notes 88-108 and accompanying text (discussing Supreme Court decisions analyzing whether a state law triggers § 514 prior to *Travelers*).

75. The multi-factor analysis limits the scope of ERISA preemption in that it rejects the more malleable "connection with" method of analysis. When courts apply the factor based test for preemption, there is less judicial discretion to determine that a state law relates to an ERISA plan. *See infra* notes 126-51 and accompanying text (discussing the more narrow multi-factor analysis).

76. *See, e.g.*, FMC Corp. v. Holliday, 498 U.S. 52, 56-58 (1990) (explaining that a state law having a "connection with" an ERISA plan "relate[s] to" an ERISA plan, thereby triggering § 514 preemption); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47 (1987) (same); Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983) (same); *see also* Conison, *supra* note 22, at 634 (discussing in detail the "semantics" of the language in § 514).

77. *See* Arkansas Blue Cross & Blue Shield v. St. Mary's Hosp., Inc., 947 F.2d 1341, 1344-45 (8th Cir. 1991) (specifying seven factors to be examined in determining whether ERISA preempts a state law), *cert. denied*, 504 U.S. 957 (1992); *see infra* notes 126-51 and accompanying text (discussing the multi-factor analysis).

78. Holloway, *supra* note 17, at 422 (arguing that a "broad interpretation of the ERISA preemption clause . . . stymie[s] efforts to provide access to and pay for health care"); Hancock, *supra* note 17, at 383 (discussing the "disastrous" effect of ERISA preemption on state health care reform). *See generally Surcharges*, *supra* note 24, at 1129 (reporting that the Supreme Court's recognition of the inadequacy of the "connection with" analysis was "great news for hospitals and their patients" because New York can continue to reform its health care system) (quoting Daniel Sisto, President of the Healthcare Association of New York State); Groves, *supra* note 17, at 612 (noting that "ERISA preemption affects the funding of state health care plans" and that most state induced reforms will be challenged on the basis of ERISA's preemption clause).

be preempted.[79] As a result, states are better able to enact laws that will not be preempted.[80] Conversely, when courts apply the liberal, indiscriminate "connection with" method of analysis, state laws are more likely to be preempted.[81] Because almost any provision could be construed as bearing a relation to an ERISA plan under the expansive "connection with" analysis, this analysis effectively forces legislators to impact

79. Theoretically, legislators could check state statutes against the various factors examined to determine whether the law would trigger preemption. *See infra* notes 126-51 and accompanying text (describing the factors courts apply to determine whether a state law is preempted). Compared to the task of ascertaining whether a proposed state law has a "connection with" an ERISA plan sufficient to cause preemption, the factors provide more concrete guidance. *See* Conison, *supra* note 22, at 669 (concluding that a preemption analysis taking "interest and factors" into account would result in the "development of a more principled," albeit fact-specific, body of law).

80. *Experts Divided*, *supra* note 37, at 1348 (quoting Frank McArdle, manager of Hewitt Associates, as stating that the *Travelers* decision is "an open invitation to states to become more creative" in financing health care costs); *Surcharges*, *supra* note 24, at 1129 (commenting that the *Travelers* decision provides for more state regulation).

A narrow interpretation of ERISA's preemption clause results in less preemption of state law. *See* United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1193 (3rd Cir. 1993), *cert. denied sub nom.*, NYSA-ILA Welfare Fund v. Dunston, 510 U.S. 944 (1993). The court held that a state law "relates to an ERISA plan if it is specifically designed to affect employee benefit plans, if it singles out such plans for special treatment, or if the rights or restrictions it creates are predicated on the existence of such a plan." *Id.* (citations omitted). In addition, the court held that a state law may also be preempted if its "effect is to dictate or restrict the choices of ERISA plans with regard to their benefits, structure, reporting and administration, or if allowing states to have such rules would impair the ability of a plan to function simultaneously in a number of states." *Id.* at 1193 (citations omitted). When the risk of preemption is reduced, states can take a more active role in regulating health care. *See* Hancock, *supra* note 17, at 405-07 (encouraging states to follow New York and New Jersey in their attempts to reform health care and endorsing *United Wire* in which the Third Circuit refrained from invalidating a surcharge provision on the basis of preemption). In fact, less preemption will promote the much needed reform of our country's health care system. *See id.* at 407 (concluding that ERISA preemption is frustrating state health care reform efforts and that the Supreme Court should restrict the reach of ERISA's preemption so that states can find methods of financing health care for the indigent and uninsured). Bobinski, *supra* note 16, at 348 (concluding that in the absence of an amendment to restrict the scope of preemption, a federal solution represents the most promising answer to the problem of providing universal coverage to the indigent).

81. When courts interpret ERISA's preemption provision broadly, the result is a greater likelihood that state laws regarding health care will be preempted. *See* Hancock, *supra* note 17, at 405-06 (arguing that any state health care law will be preempted by ERISA and that either the Supreme Court or Congress should restrict the reach of ERISA's preemption); *Experts Divided*, *supra* note 37, at 1348 (reporting that, in *Travelers*, the Court's concerns regarding public policy resulted in a departure from the logic used in previous decisions interpreting § 514 broadly).

According to one scholar, "states are realizing that their ability to develop a public policy with respect to health care is severely restrained by ERISA." Holloway, *supra* note 17, at 422. Holloway also claims that the "exclusivity of federal employee benefit regulation" is threatening "to interfere with state power to develop innovative health care." *Id.* at 405.

health care indirectly by regulating insurance, which section 514 excludes from the scope of the preemption clause.[82]

With respect to section 514(a) preemption, courts have reached conflicting conclusions regarding state laws concerning health care and hospital charges.[83] For instance, in similar factual situations, a single jurisdiction applied a narrow, multi-factor analysis to determine whether a state law triggered section 514 in one case, and the broad, more indiscriminate "connection with" method of analysis in another.[84] Likewise, various circuit courts have applied different analyses to determine the scope of ERISA's preemption clause.[85] In 1985, ten years after the

82. *See supra* note 71 (explaining that ERISA § 514(b)(2)(A) provides an exemption from preemption for state laws regulating insurance); Holloway, *supra* note 17, at 422 (explaining that "states are forced to indirectly mandate health care benefits by imposing benefit-related obligations on insurance companies"); *see generally* McDonough, *supra* note 16 (discussing the preemption of mandated-provider laws and the role of the insurance exception to preemption).

83. Holloway, *supra* note 17, at 425-26 (discussing hospital surcharge statutes in New Jersey, New York, and Minnesota, along with the response of federal and state courts).

84. In one case, the United States Court of Appeals for the Second Circuit interpreted the scope of § 514 narrowly. Rebaldo v. Cuomo, 749 F.2d 133, 139 (2d Cir. 1984) (holding that a state law regarding the setting of hospital rates was not preempted by ERISA, since an "indirect economic impact as may result from State control over hospital rates does not run counter to ERISA's aim of national uniformity in plan regulation"), *cert. denied*, 472 U.S. 1008 (1985). In a subsequent case, the Second Circuit applied the broad interpretation of § 514 based on its reading of subsequent Supreme Court decisions. Travelers Ins. Co. v. Cuomo, 14 F.3d 708, 721 (2d Cir. 1993) (holding that ERISA preempted a state law regarding surcharges on hospital rates due to the fact that the surcharges "impose a significant economic burden on commercial insurers. [T]herefore [they] have an impermissible impact on ERISA plan structure and administration"), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995); *see also supra* notes 74-77 and accompanying text (discussing broad and narrow methods of analyzing whether ERISA's preemption clause has been triggered).

85. For example, when the Second Circuit decided *Travelers v. Cuomo*, the Court acknowledged that its decision conflicted with the Third Circuit's decision in *United Wire*. *Travelers*, 14 F.3d at 721 n.3. In *United Wire*, the court found that a state law did not relate to an ERISA plan since it did not have any of three impacts which could trigger preemption. United Wire Metal & Mach. Health & Welfare Fund, 995 F.2d 1179, 1190-91 (3d Cir.), *cert. denied sub nom.*, NYSA-ILA Welfare Fund v. Dunston, 114 S. Ct. 382 (1993).

For examples of courts applying the broad "connection with" method of analysis, see *Travelers*, 14 F.3d 708, 718-19 (2d Cir. 1993) (relying on the "broad common-sense meaning" of the phrase "relate to" in finding that ERISA's preemption clause does not target merely those state laws which "purport to regulate" the terms and conditions of plans or which have only a "peripheral impact" on plans); First Nat'l Life Ins. Co. v. Sunshine-Jr. Food Stores, Inc., 960 F.2d 1546, 1549-50 (11th Cir. 1992) (stating that "Congress used the words 'relates to' in their broad sense and did not mean to preempt only state laws specifically designed to affect employee benefit plans" and that the language of § 514 is "'deliberately expansive'") (quoting Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 46 (1987)), *cert. denied*, 506 U.S. 1079 (1993); Sturgis v. Herman Miller, Inc., 943 F.2d 1127, 1129 (9th Cir. 1991) (stating that when a state law has a "connection with" an ERISA plan, the state law "relate[s] to" an ERISA plan regardless of the state law's underlying intent); Powell v.

enactment of ERISA, the Supreme Court acknowledged that section 514 is "not a model of legislative drafting."[86] The Second Circuit shared this sentiment, as evidenced by its reference to section 514 as "a veritable Sargasso Sea of obfuscation."[87] The Supreme Court's most recent deci-

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Chesapeake & Potomac Tel. Co. of Va., 780 F.2d 419, 421 (4th Cir. 1985) (finding that ERISA preempts a state law claim which concerns the administration of an ERISA plan even though the claim arises from a general state law which has no impact on employee benefits), *cert. denied*, 476 U.S. 1170 (1986); Pomeroy v. Johns Hopkins Medical Servs., Inc., 868 F. Supp. 110, 112 (D. Md. 1994) (stating that state's laws "which themselves have no impact on employee benefit plans, fall within the scope of ERISA preemption" due to the breadth of the meaning of the phrase "relate to").

For examples of courts adopting the narrower multi-factor method of determining whether a state law falls within the scope of § 514, see Hook v. Morrison Milling Co., 38 F.3d 776, 781-84 (5th Cir. 1995) (declaring that "ERISA's preemptive scope . . . has its limits" and applying a two-prong test to assist in "narrowing [the] preemption inquiry" to conclude that "ERISA's preemptive scope may be broad but it does not reach claims that do not involve the administration of plans"); Airparts Co., Inc. v. Custom Benefit Servs. of Austin, Inc., 28 F.3d 1062, 1065 (10th Cir. 1994) (applying a multi-factor analysis to determine whether ERISA preempted a state law because the scope of ERISA's preemption is not "unlimited"); *United Wire*, 995 F.2d 1179, 1190-91 (3d Cir. 1993) (finding that a state law did not relate to an ERISA plan as it did not have any of three effects which could trigger preemption); Van Camp v. AT & T Info. Sys., 963 F.2d 119, 123-24 (6th Cir.) (considering three factors when determining whether a state claim falls within the scope of ERISA's preemption clause), *cert. denied*, 506 U.S. 934 (1992); Pohl v. National Benefits Consultants, Inc., 956 F.2d 126, 128 (7th Cir. 1992) (recognizing that it was "[n]ot the semantics of the word 'relate,' but the policy of the statute" that determined whether preemption was triggered); Arkansas Blue Cross & Blue Shield v. St. Mary's Hosp., Inc., 947 F.2d 1341, 1344-45 (8th Cir. 1991) (noting that courts have relied on a "variety of factors when determining whether a state statute . . . 'relates to' ERISA plans" and using the multi-factor analysis to hold that an assignment statute "relates to" an ERISA plan), *cert. denied*, 504 U.S. 957 (1992); Aetna Life Ins. Co. v. Borges, 869 F.2d 142, 147 (2d Cir.) (ruling that "Connecticut's escheat law on ERISA benefit plans is too tenuous, remote, and peripheral to require preemption under section 514(a)"), *cert. denied*, 493 U.S. 811 (1989); Sommers Drug Stores Co. Employees Profit Sharing Trust v. Corrigan Enters., 793 F.2d 1456, 1470 (5th Cir. 1986) (holding that ERISA did not preempt a state law fiduciary claim affecting the relationship between a director and a shareholder), *cert. denied*, 479 U.S. 1034 (1987); *Rebaldo*, 749 F.2d at 139 (holding that ERISA did not preempt a state law regarding the setting of hospital rates, since an "indirect economic impact as may result from State control over hospital rates does not run counter to ERISA's aim of national uniformity in plan regulation"); Barnes Hosp. v. Sanus Passport/Preferred Servs., Inc., 809 F. Supp. 725, 727 (E.D. Mo. 1992) (stating that the Eighth Circuit "considers a variety of factors when determining whether a state law is preempted by ERISA").

86. Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S 724, 739 (1985).

87. Travelers Ins. Co. v. Cuomo, 14 F.3d 708, 717 (2d Cir. 1993), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995).

Sargasso weed is a "wild vine . . . a mass of floating vegetation consisting chiefly of sargasso." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2015 (1986). The Sargasso Sea is a "calm area of water located in the N[orth] Atlantic, [northeast] of the West Indies." THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1703 (2d ed. 1987). Historically, ships would become trapped in the Sargasso Sea due to the combined effects of a lack of wind and heavy vegetation. Similarly, the language of § 514 lacks the

sion regarding section 514, however, clarifies the preemption analysis by moving away from the expansive "connection with" standard used in previous Supreme Court opinions, toward a more narrow multi-factor approach.

A. The Supreme Court's Decisions Regarding ERISA Preemption Prior to Travelers

The confusion within the circuits as to what will trigger preemption is ironic given the Supreme Court's numerous recent attempts to clarify the scope of ERISA's preemption clause.[88] However, previous attempts to construe the phrase "relate to" proved futile and ineffective as tools for determining whether ERISA preempted a state law.[89] Perhaps the most important aspect of *Travelers* is the Court's recognition of the ineffectiveness of previous decisions in providing guidance regarding ERISA preemption analysis.[90]

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guidance necessary to navigate through the seemingly simple language of ERISA's preemptive provision.

88. Since 1981, the Supreme Court has rendered a substantial number of opinions regarding ERISA's preemption of state law. *See, e.g.*, *Travelers*, 115 S. Ct. at 1680 (holding that ERISA did not preempt a state law imposing surcharges on commercial insurers); District of Columbia v. Greater Wash. Bd. of Trade, 506 U.S. 125, 127 (1992) (holding that a District of Columbia law regarding health benefits for injured employees eligible for workers compensation is preempted by ERISA); FMC Corp. v. Holliday, 498 U.S. 52, 65 (1990) (holding that ERISA preempted a state law regarding subrogation rights of a health care plan); Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 145 (1990) (holding that ERISA preempted a state common law claim that an employer wrongfully discharged an employee to prevent him from receiving benefits from an ERISA plan); Massachusetts v. Morash, 490 U.S. 107, 120-21 (1989) (concluding that ERISA did not preempt a criminal statute prohibiting employers from withholding accrued vacation pay upon an employee's discharge where vacation pay was to be withdrawn from the employers general assets); Mackey v. Lanier Collection Agency & Serv., Inc., 486 U.S. 825, 841 (1988) (holding that ERISA preempted Georgia's antigarnishment law); Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 19 (1987) (holding that ERISA did not preempt Maine's severance pay statute); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 57 (1987) (concluding that ERISA preempted a state common law suit for improper processing of benefits claims from an ERISA plan); *Metropolitan Life*, 471 U.S. at 744 (holding that ERISA did not preempt a Massachusetts state law requiring minimum mental health-care benefits because the law regulated insurance); Shaw v. Delta Air Lines Inc., 463 U.S. 85, 96-97, 109 (1983) (concluding that ERISA preempted a state law prohibiting discrimination in employee benefits plans on the basis of pregnancy); Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 526 (1981) (holding that ERISA preempted a New Jersey state law regarding worker's compensation because the law interfered with the calculation of pension benefits).

89. *Travelers*, 115 S. Ct. at 1677.

90. *Id.* Rather than continuing to struggle with the abstract meaning of the words of § 514, the Court focused on the objectives of ERISA and the scope of the state law at issue. *Id.*

Prior to *Travelers*, the Court applied a liberal, sweeping analysis to determine whether ERISA preempted a state regulation.[91] Generally, the Court began its analysis by reiterating its opinion that the phrase "relate to" should be accorded "its broad common sense meaning."[92] Such an interpretation, the Court noted, accords with ERISA's legislative history and gives "effect to the 'deliberately expansive' language chosen by Congress."[93] According to the Court, the common-sense meaning of the phrase "relate to" conveyed the idea that if a state law has a "connection with" an ERISA plan, the state law "relate[s] to" an ERISA plan.[94] As a result, ERISA preempted state laws that had a "connection with" an ER-

91. Baxter v. Lynn, 886 F.2d 182, 184 (8th Cir. 1989); Aetna Life Ins. Co. v. Borges, 869 F.2d 142, 144 (2d Cir.) *cert. denied*, 493 U.S. 811 (1989); Firestone Tire & Rubber Co. v. Neusser, 810 F.2d 550, 553 (6th Cir. 1987); United Food & Commercial Workers & Employers Arizona Health & Welfare Trust v. Pacyga, 801 F.2d 1157, 1160 (9th Cir. 1986); *Experts Divided*, *supra* note 37, at 1348.

92. *Pilot Life*, 481 U.S. at 47; *see also Shaw*, 463 U.S. at 96-97.

93. District of Columbia v. Greater Washington Bd. of Trade, 506 U.S. 125, 192 (1992) (quoting *Pilot Life*, 481 U.S. at 46); *see also* Shaw v. Delta Airlines Inc., 463 U.S. 85, 98 (1983) (stating that § 514's "pre-emptive scope [is] . . . as broad as its language").

The Court often relied on ERISA's legislative history for assistance in determining what constitutes a "connection with" an ERISA plan. *See, e.g.*, *Travelers*, 115 S. Ct. at 1677-78; Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 45-46 (1987); Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 740 (1985); *Shaw*, 463 U.S. at 96-97. According to the Supreme Court's interpretation of ERISA's legislative history, ERISA's preemptive provision is "deliberately expansive." *See Pilot Life*, 481 U.S. at 46; *See also Metropolitan Life*, 471 U.S. at 744 (describing ERISA's preemptive provision as clearly expansive).

Initially, however, the scope of ERISA's preemption was more limited. *Shaw*, 463 U.S. at 98 (stating that "[t]he bill that became ERISA originally contained a limited pre-emption clause, applicable to only state laws relating to specific subjects covered by ERISA"); Gregory, *supra* note 21 at 454-55 (explaining that ERISA would have preempted only state laws that "directly conflicted with or were identical to ERISA"). The House of Representatives' version of ERISA limited preemption to matters "expressly covered by the federal law, such as reporting, disclosure, fiduciary and funding duties, and vesting and nonforfeitability provisions." *Id.* at 454 (citing H.R. 2, 93d Cong., 1st Sess. § 7 (1974); and H.R. REP. NO. 533, 93d Cong., 2d Sess. 17 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4639, 4655).

The Senate opted for the broader version of preemption and provided for preemption of "state laws relating to employee benefit plans only if the state laws directly conflicted with or were identical to ERISA." *Id.* at 454-55 (citing H.R. 4200, 93d Cong., 1st Sess. § 699 (1973), *reprinted in* 120 CONG. REC. 5002 (1974)).

The limited scope of § 514 prompted debate in Congress. *Shaw*, 463 U.S. at 98 (citing H.R. CONF. REP. NO. 1280, 93d Cong., 2d Sess. 383 (1974); S. CONF. REP. NO. 1090, 93d Cong., 2d Sess. 383 (1974), *reprinted in* 1974 U.S.C.C.A.N. 4639). Following a joint conference regarding the House and Senate versions of ERISA, the preemption clause emerged as a much broader provision than either side previously had proposed. Gregory, *supra* note 21, at 455. The current § 514 resulted, including the notorious phrase "relate to," which would cause courts to struggle over the true scope of ERISA's preemptive provision for years to come. *Id.*

94. *Pilot*, 481 U.S. at 47 (citing *Metropolitan Life*, 471 U.S. at 739 (quoting *Shaw*, 463 U.S. at 97)).

ISA plan.[95] Under the extraordinarily malleable "connection with" analysis, almost any health care reform could have a "connection with" or "relate to" an ERISA health benefit plan, thereby making preemption a near certainty.[96]

The Supreme Court's sweeping preemption analysis severely restricted the ability of states to enact legislation on a variety of issues.[97] For instance, in *Mackey v. Lanier Collection Agency & Service, Inc.*,[98] the Court found a state garnishing statute that merely referenced ERISA plans was preempted,[99] even though the state enacted the statute to effectuate the underlying purposes of ERISA.[100] Because of the breadth of the Court's liberal preemption analysis, a state law consistent with the substantive requirements of ERISA could be preempted.[101] Similarly, the Supreme Court found ERISA preempted state laws where those laws affected ER-

95. *See* Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 140 (1990) (concluding that a wrongful discharge claim, brought under state common law, related to an ERISA plan and thus was preempted).

96. Anderson, *supra* note 59, at 249 (stating that "the interpretation of th[e] phrase ["relate to"] has provided sufficient latitude . . . to persuade courts to create the results they want"). Hancock, *supra* note 17, at 405 (explaining that "any health care reform . . . will have an economic impact on insurers operating in the state").

97. Courts have found that ERISA preempts a wide variety of state laws and common-law claims. *See, e.g.*, Metropolitan Life Ins. Co. v. Hanslip, 939 F.2d 904, 907 (10th Cir. 1991) (regarding life insurance); Blau v. Del Monte Corp., 748 F.2d 1348, 1356 (9th Cir. 1984) (regarding suits based on common-law breach of contract and estoppel by conduct, fraud, and deceit), *cert. denied*, 474 U.S. 865 (1985); Jacobs v. Blue Cross & Blue Shield, 835 F. Supp. 1378, 1381 (M.D. Fla. 1993) (regarding a breach of contract claim); Charlton Memorial Hosp. v. Foxboro Co., 818 F. Supp. 456, 461 (D. Mass. 1993) (regarding consumer protection); Provience v. Valley Clerks Trust Fund, 509 F. Supp. 388, 392 (E.D. Cal. 1981)(regarding state consumer protection and unfair business practices statute); Rhodes v. Aetna Life Ins. Co., 356 N.W.2d 247, 250 (Mich. Ct. App. 1984) (regarding disability insurance); *see generally* Holloway, *supra* note 17, at 406-07 (discussing the impact of ERISA on the ability of states to enact legislation); Kilberg & Heron, *supra* note 21, at 385-86 (discussing ERISA's impact on state laws regarding alimony and child support); Hutchinson & Ifshin, *supra* note 17, at 23 (noting that problems inherent in ERISA preemption implicate larger issues regarding the proper relationship between federal and state law in general); Gabrielle Lessard, Comment, *Conflicting Demands Meet Conflict of Laws: ERISA Preemption of Wisconsin's Family and Medical Leave Act*, 1992 WIS. L. REV. 809, 812 (arguing that ERISA should be amended to exempt state family and medical leave statutes from preemption).

98. 486 U.S. 825 (1988).

99. *Id.* at 830. In *Mackey*, the Court examined a state law regarding garnishment which expressly exempted ERISA benefit plans from garnishment orders. *Id.* at 828. "The state statute's express reference to ERISA plans suffices to bring it within the federal law's preemptive reach." *Id.* at 830.

100. *Id.* at 829. The court stated that "[l]egislative 'good intentions' do not save a state law within the broad pre-emptive scope of § 514(a)." *Id.* at 830. Georgia's garnishment law protected employee benefits from being garnished. *Id.* at 828.

101. *E.g.*, Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1983) (citing Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 98-99 (1983)).

ISA plans only indirectly.[102] While the Court acknowledged that some state laws "may affect employee benefit plans in too tenuous, remote, or peripheral a manner to warrant a finding that the law 'relate[s] to' the plan,"[103] it never upheld a state law under this standard in the face of an ERISA preemption challenge.[104]

The Supreme Court's expansive preemption analysis[105] served as the basis for many lower court decisions finding state laws preempted.[106]

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102. *E.g.*, Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 47-48 (1987); *see also* Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 525 (1981) (holding that ERISA preempted a workers compensation law, despite the fact that the law merely indirectly related to ERISA plans).

103. Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 100 n.21 (1983).

104. Nevertheless, in two cases prior to *Travelers* the Supreme Court held that ERISA did not preempt the state law at issue. *See Mackey*, 486 U.S. at 834 (holding that ERISA did not preempt a generally applicable garnishment law allowing for the garnishment of ERISA welfare benefits because of the existence of § 502(d)); Fort Halifax Packing Co., Inc. v. Coyne, 482 U.S. 1, 11-12 (1987) (holding that a state law requiring lump-sum severance payments upon closing of a plant was not preempted because the state law did not mandate the establishment of a plan).

In *Mackey*, the Court noted that § 502(d) allows a plan to sue and to be sued as an entity. *Mackey*, 486 U.S. at 833 n.7. The Court, however, also recognized that the plan provided no mechanism for executing a judgment. *Id.* at 833. Because the garnishment law in *Mackey* provided a method of enforcement, the Court did not find ERISA's preemption applicable. *Id.* at 834.

Although the Supreme Court has never used the "tenuous and remote" analysis, at least one circuit court has found a state statute exempt from ERISA preemption under the analysis. *See* Aetna Life Ins. Co. v. Borges, 869 F.2d 142, 147 (2d Cir.) (holding that Connecticut's escheat law on ERISA benefit plans is "too tenuous, remote, and peripheral to require preemption under section 514(a)"), *cert. denied*, 493 U.S. 811 (1989).

105. District of Columbia v. Greater Wash. Bd. of Trade, 506 U.S. 125, 127 (1992) (holding that ERISA preempts a District of Columbia law regarding health benefits for injured employees eligible for workers compensation); Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 140 (1990) (holding that a state common law claim that an employee was wrongfully discharged to prevent him from receiving benefits from an ERISA plan was preempted); *Pilot Life*, 481 U.S. at 57 (concluding that ERISA preempted a state common law suit for improper processing of benefits claims from an ERISA plan); *Shaw*, 463 U.S. at 108 (holding that ERISA preempted a state law prohibiting discrimination in employee benefits plans on the basis of pregnancy).

106. *See, e.g.*, Travelers Ins. Co. v. Cuomo, 14 F.3d 708, 721 (2d Cir. 1993) (holding that ERISA preempted a state law regarding surcharges on hospital rates because the surcharges "impose a significant economic burden on commercial insurers and . . . therefore have an impermissible impact on ERISA plan structure and administration"), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995); First Nat'l Life Ins. Co. v. Sunshine-Jr. Food Stores, Inc., 960 F.2d 1546, 1550 (11th Cir. 1992) (finding that a state law claim that an employer mishandled benefit payments was preempted by ERISA), *cert. denied*, 506 U.S. 1079 (1993); Sturgis v. Herman Miller, Inc., 943 F.2d 1127, 1130 (9th Cir. 1991) (holding that a state law mechanics lien claim to collect unpaid benefit contributions was preempted by ERISA); Pomeroy v. Johns Hopkins Medical Servs., Inc., 868 F. Supp. 110, 116 (D. Md. 1994) (concluding that state law claims against a plan administrator were preempted even though

While most lower courts relied upon Supreme Court precedent, they had difficulty applying the "connection with" method of analysis prescribed by the Court.[107] As a result, some circuits utilized a narrower multi-factor analysis for determining when state law triggered section 514 preemption.[108]

B. The "Connection With" Method of Analysis: Providing ERISA's Preemption Clause a Broad Scope

Various circuits have applied the literal "connection with" preemption analysis to strike down state laws.[109] This broad interpretation was ap-

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they involved claims of medical malpractice, negligence, and intentional infliction of emotional distress).

107. Stephen R. Snodgrass, Note, *ERISA Preemption of State Law: The Meaning of "Relate To" in Section 514*, 58 WASH. U. L.Q. 143, 145 (1980) (recognizing that the ERISA preemption provision has engendered confusion and litigation).

108. Instead of trying to work with amorphous phrases such as "relate to" and "connection with," courts looked at specific factors to determine whether a state law should be preempted under § 514. *See generally* Hook v. Morrison Milling Co., 38 F.3d 776, 781-84 (5th Cir. 1994) (applying a two-prong test to conclude that "ERISA's preemptive scope may be broad but it does not reach claims that do not involve the administration of plans"); Minnesota Chapter of Associated Builders & Contractors, Inc. v. Minnesota Dept. of Labor & Indus., 866 F. Supp. 1244, 1246 (D. Minn. 1993) (considering "whether the state law 1) negates an ERISA plan provision, 2) affects relations between ERISA entities, 3) alters the structure of ERISA plans, 4) affects the administration of ERISA plans, 5) has an economic impact on ERISA plans, 6) exercises traditional state power, and 7) may be preempted consistent with other provisions of ERISA" in determining whether a state law "relates to" an ERISA plan), *aff'd*, 47 F.3d 975 (8th Cir. 1995); *see also* Arkansas Blue Cross & Blue Shield v. St. Mary's Hosp., Inc., 947 F.2d 1341, 1344 (8th Cir. 1991) (finding that courts "have relied on a variety of factors when determining whether a state statute of general application 'relates to' ERISA plans"), *cert. denied*, 504 U.S. 957 (1992); Sommers Drug Stores Co. Employees Profit Sharing Trust v. Corrigan Enters., 793 F.2d 1456, 1467 (5th Cir. 1986) (using a multi-factor analysis in holding that ERISA did not preempt a state law fiduciary claim affecting the relationship between a director and a shareholder), *cert. denied*, 479 U.S. 1034 (1987); Rebaldo v. Cuomo, 749 F.2d 133, 139 (2d Cir. 1984) (holding that an "indirect economic impact . . . does not run counter to ERISA's aim of national uniformity in plan regulation"), *cert. denied*, 472 U.S. 1008 (1985).

The Third Circuit has held that "[a] rule of law relates to an ERISA plan if it is specifically designed to affect employee benefit plans, if it singles out such plans for special treatment, or if the rights and restrictions it creates are predicated on the existence of such a plan." United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1192 (3rd Cir.) (internal citations omitted), *cert. denied*, 114 S. Ct. 382 (1993). The court noted that if state law's "effect is to dictate or restrict the choices of ERISA plans with regard to their benefits, structure, reporting, and administration, or if . . . such rules would impair the ability of a plan to function simultaneously in a number of states." *Id.* at 1193.

109. *See generally*, *Travelers*, 14 F.3d at 721 (holding that a state law regarding surcharges on hospital rates was preempted by ERISA due to the fact that the surcharges "impose a significant economic burden on commercial insurers and . . . therefore have an impermissible impact on ERISA plan structure and administration"); *Sunshine*, 960 F.2d at 1550 (holding that ERISA preempted a state law cause of action based on breach of con-

plied by four circuits.[110] These courts relied on Supreme Court jurisprudence in determining whether a particular state law is preempted by ERISA,[111] accepting the Supreme Court's interpretation that a law "relate[s] to" an ERISA plan "if it has a connection with or reference to such a plan."[112]

The "connection with" method of analysis afforded section 514 a broad scope.[113] Applying the Supreme Court's expansive analysis helped maintain national uniformity among laws affecting the regulation of employee benefit plans.[114] However, the courts' sweeping interpretation of section

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tract and breach of duty of care); *Sturgis*, 943 F.2d at 1130 (finding that ERISA preempted a state lien statute); *Pomeroy*, 868 F. Supp. at 116 (holding that ERISA preempted state law tort claims involving medical malpractice, negligence, and intentional infliction of emotional distress).

110. *See Travelers*, 14 F.3d at 724-25; Smith v. Dunham-Bush, Inc., 959 F.2d 6 (2d Cir. 1992); *Sunshine*, 960 F.2d at 1553-54; *Sturgis*, 943 F.2d 1127 (9th Cir. 1991); *Powell*, 780 F.2d at 425; *Pomeroy*, 868 F. Supp. at 116-17.

111. *See, e.g., Smith*, 959 F.2d at 9 (noting the Supreme Court's broad reading and consistent expansion of ERISA's preemption provision); Sturgis v. Herman Miller, Inc., 943 F.2d 1127, 1128-29 (9th Cir. 1991) (citing the Supreme Court's *Mackey* and *Shaw* decisions and noting that if a state law has a connection with an ERISA plan it will be preempted); Hewlett Packard Co. v. Barnes, 425 F. Supp. 1294, 1298 (N.D. Cal. 1977) (noting the "sweeping and precise language of Section 514" was intended to be broad).

112. Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 97 (1983); *see supra* notes 88-108 and accompanying text (discussing the Supreme Court's decisions regarding the scope of ERISA's preemption clause and how to determine whether a state law is preempted).

113. *See Shaw*, 463 U.S. at 98 (recognizing the expansive scope of § 514); Sunshine First Nat'l Life Ins. Co. v. Sunshine-Jr. Food Stores, Inc., 960 F.2d 1546, 1549 (11th Cir. 1992) (explaining that Congress used the phrase "relates to" in its broadest sense and that the language of § 514 is "deliberately expansive"); *see also* Holloway, *supra* note 17, at 417 (stating that "[t]he United States Supreme Court has consistently given a broad interpretation to ERISA's preemption clause").

114. *See* United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1192 (3d Cir.) (noting that preemption ensures that employee benefit plans will be subject to only one set of regulations regarding their administration), *cert. denied*, 510 U.S. 944 (1993); *Uniformity*, *supra* note 24, at 534 (discussing the importance of national uniformity regarding the administration of employee benefit plans and its positive impact on employers and employees); *Innovation*, *supra* note 21, at 712 (noting that Congress intentionally used a broad preemption clause in an effort to promote national uniformity of administrative regulations for employee benefit plans).

Uniformity is important because it reduces the administrative burdens and practical difficulties of overseeing a plan that covers participants in more than one state. Without uniformity a plan could be subject to multiple sets of laws (possibly conflicting laws) regarding the regulation of the employer's multi-state plan, thereby increasing the administrative costs of the plan. *See United Wire*, 995 F.2d at 1192 (explaining that "[a] patch-work scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them"); *supra* notes 62-68 and accompanying text (discussing the advantages of uniformity for employers who cover workers from more than one state).

514 also acted as a roadblock to various state legislation, including health care reform.[115]

Shortly after ERISA's enactment, the impact of the broad application of section 514 became evident. In *Hewlett-Packard Co. v. Barnes*,[116] the district court found that ERISA preempted the California Knox-Keene Health Care Services Plan Act of 1975.[117] The court rejected the argument that the language of section 514 was ambiguous and commented that "Congress could [not] have chosen any more precise language to express its intent to preempt a state statute."[118] The California statute at issue regulated the funding, disclosure, sales practices, and quality of health care service plans.[119] In determining that ERISA preempted the California state law, the court noted that conference committee reports indicated Congress's intent to give section 514 a sweeping application.[120]

Similarly, in *Travelers Insurance Co. v. Cuomo*,[121] the United States Court of Appeals for the Second Circuit applied the "connection with" analysis to conclude that ERISA preempted a statute imposing surcharges on patients covered by commercial insurance plans.[122] The court refused to apply the narrower multi-factor analysis used in its

115. MAKING HEALTH REFORM WORK: THE VIEW FROM THE STATES 155 (John J. Dilulio, Jr. & Richard R. Nathan eds., 1994). When ERISA's preemptive provision is interpreted broadly, the result is a greater likelihood that state laws regarding health care will be preempted. *See* Hancock, *supra* note 17, at 405 (noting that ERISA has had a disastrous effect on state attempts to improve access to health care); *Experts Divided*, *supra* note 37, at 1348 (same). Increased risk of preemption may discourage state experimentation with health care reform. Holloway, *supra* note 17, at 422 (explaining that ERISA severely restrains the ability of states to address the issue of health care). During the recent health care debate, testimony before the United States Congress demonstrated the concern that ERISA preemption discourages state involvement in health care reform. *See, e.g.*, *Oversight Hearings on the Administration's Health Care Proposal: Hearings Before the Subcomm. on Labor-Management Relations of the House Comm. on Educ. & Labor*, 103d Cong., 1st Sess. 178 (1993) (statement of Alan Weil, Health Policy Advisor of Colorado Governor Roy Romer); *States' View of Health Care Reform: Hearings Before the Senate Comm. on Finance*, 103d Cong., 2d Sess. 56 (1994) (statement of South Carolina Governor Carroll A. Campbell, Jr.). *But cf. H.R. 3600: The Health Security Act: Hearings Before the Subcomm. on Labor-Management Relations of the House Comm. on Educ. & Labor*, 103d Cong., 1st Sess. 399 (1993) (statement of the Association of Private Pension and Welfare Plans) (arguing in favor of a nationally uniform set of rules regulating health systems).

116. 425 F. Supp. 1294 (N.D. Cal. 1977).

117. *Id.* at 1297.

118. *Id.*

119. *Id.*

120. *Id.* at 1298-1300.

121. 14 F.3d 708 (2d Cir. 1993), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995).

122. *Id.* at 721.

Rebaldo v. Cuomo decision nine years earlier.[123] Instead, the Second Circuit explained that the *Rebaldo* rationale, which limited ERISA's preemptive scope, had been expressly rejected by the Supreme Court.[124]

C. *"ERISA Was Not Meant to Consume Everything in its Path"; Applying a Multi-factor Analysis to Determine Whether a State Law Falls Within the Scope of Section 514*

As noted by the United States Court of Appeals for the Eighth Circuit in *Arkansas Blue Cross & Blue Shield v. St. Mary's Hospital, Inc.*,[125] the Supreme Court's preemption analysis "does not, and was not intended to, provide courts with a foolproof method for determining on which side of the preemption line a specific state statute falls."[126] Consequently, courts began to stray from the literal "connection with" preemption analysis, instead relying on a variety of factors to determine whether a state statute "relate[s] to" ERISA plans.[127] Thus, while the courts continued to recognize the Supreme Court's definition of the phrase "relate[s] to," their preemption analyses began to focus upon various factors.[128]

123. *Id.* at 721 n.3. In *Rebaldo*, the Second Circuit stated that a law must "purport[ ] to regulate" the terms or conditions of a plan in order to trigger preemption. Rebaldo v. Cuomo, 749 F.2d 133, 137 (2d Cir. 1984), *cert. denied*, 472 U.S. 1008 (1985).

124. *Travelers*, 14 F.3d at 719 (stating that "in *Ingersoll-Rand* [*Co. v. McClendon*], 498 U.S. [133], 141 [1990], . . . the Supreme Court expressly rejected the notion that Congress intended to limit ERISA's preemptive effect to state laws *purporting* to regulate plan terms and conditions.") (emphasis in original); *see also* Smith v. Dunham-Bush, Inc., 959 F.2d 6, 9 (2d Cir. 1992) (holding that a "state law of general application, with only an indirect effect on a pension plan, may nevertheless be considered to 'relate to' that plan for preemption purposes").

125. 947 F.2d 1341 (8th Cir.), *cert. denied*, 504 U.S. 957 (1992).

126. *Id.* at 1344.

127. *Id.*

128. *See* Hook v. Morrison Milling Co., 38 F.3d 776, 781 (5th Cir. 1994) (declaring that "ERISA's preemptive scope . . . has its limits" and applying a two-prong test to assist in "narrowing [the] preemption inquiry" to conclude that "ERISA's preemptive scope may be broad but it does not reach claims that do not involve the administration of plans . . . . "); United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1192 (3rd Cir.) (focusing on three factors to determine whether a state law was preempted: (1) whether the state law was specifically designed to affect ERISA plans, (2) whether the state law singles out ERISA plans for special treatment, and (3) whether the right created by the state law was predicated on the existence of an ERISA plan), *cert. denied*, 510 U.S. 944 (1993); Van Camp v. AT & T Info. Sys., 963 F.2d 119, 122-23 (6th Cir.) (considering three factors when determining whether a state claim falls within the scope of ERISA's preemption clause), *cert. denied*, 506 U.S. 934 (1992); Arkansas Blue Cross & Blue Shield v. St. Mary's Hosp., Inc., 947 F.2d 1341, 1344 (8th Cir. 1991) using the multi-factor analysis to hold that an assignment statute "relates to" an ERISA plan); Aetna Life Ins. Co. v. Borges, 869 F.2d 142, 147 (2d Cir.) (holding that Connecticut's escheat law on ERISA benefit plans is "too tenuous, remote, and peripheral to require preemption under Section 514(a)"), *cert. denied*, 493 U.S. 811 (1989); Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enters., 793 F.2d 1456, 1470 (5th Cir. 1986) (holding that a

Rather than utilizing the abstract "connection with" analysis to determine whether section 514 preempted a state law, several courts devised a multi-factor analysis to determine whether ERISA preempted a state regulation.[129] This multi-factor analysis determined whether a state law "relate[s] to" an ERISA plan by examining the ways in which the state law at issue may affect an ERISA plan.[130] Where the relationship is tangential[131] or indirect[132] and "does not affect the structure, the administration, or the type of benefits provided by an ERISA plan,"[133] the state statute would not be preempted.[134] The more narrow multi-factor method of determining whether a state law fell within ERISA's preemptive provision was applied in several circuits.[135]

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state law fiduciary claim affecting the relationship between a director and a shareholder was not preempted by ERISA), *cert. denied*, 479 U.S. 1034 (1987); Barnes Hosp. v. Sanus Passport/Preferred Servs., Inc., 809 F. Supp. 725, 727 (E.D. Mo. 1992) (stating that the Eighth Circuit "considers a variety of factors when determining whether a state law is preempted by ERISA").

129. *See supra* note 128 (providing cases).

130. *See Arkansas Blue Cross*, 947 F.2d at 1344-45 (agreeing that factors such as whether the state law (1) invalidates a plan provision, (2) affects the structure of a plan, (3) affects the administration of a plan, (4) has an economic impact on a plan, (5) is a traditional state power, and (6) whether preemption would be generally consistent with ERISA, are relevant to preemption analysis).

131. Firestone Tire & Rubber Co. v. Neusser, 810 F.2d 550, 555 (6th Cir. 1987); *see* Rebaldo v. Cuomo, 749 F.2d 133, 138 (2d Cir. 1984) (holding that ERISA did not preempt state regulation of hospital rates which increased the cost of doing business, because the relationship between the state law and an ERISA plan was too tangential), *cert. denied*, 472 U.S. 1008 (1985).

132. *Borges*, 869 F.2d at 146 (stating that where a state law represents a traditional exercise of state power and has only an indirect impact on a plan, ERISA should not preempt the state law).

133. *Rebaldo*, 749 F.2d at 139.

134. United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1192 (3d Cir.) (holding that a "rule of law relates to an ERISA plan if it is specifically designed to affect employee benefit plans, if it singles out such plans for special treatment, or if the rights or restrictions it creates are predicated on the existence of such a plan" or if the state law's effect is to dictate or restrict the choices of ERISA plans with regard to their benefits, structure, reporting, and administration, or if such rules would impair the ability of a plan to function simultaneously in a number of states) (citations omitted), *cert. denied*, 510 U.S. 944 (1993); Aetna Life Ins. Co. v. Borges, 869 F.2d 142, 146 (2d Cir. 1989) (finding that ERISA did not preempt a state escheat law on ERISA benefit plans because the relationship between the state law and an ERISA plan was "too tenuous, remote, and peripheral to require preemption under Section 514(a)"); *Rebaldo*, 749 F.2d at 139 (holding that an "indirect economic impact . . . does not run counter to ERISA's aim of national uniformity in plan regulation").

135. *See* Hook v. Morrison Milling Co., 38 F.3d 776, 786 (5th Cir. 1994) (applying a two-prong test to assist in narrowing ERISA's preemptive sweep); Airports Co., Inc. v. Custom Benefit Servs., Inc., 28 F.3d 1062, 1065 (10th Cir. 1994) (examining three factors to determine whether state claims of fraud and negligence were preempted); *United Wire*, 995 F.2d at 1192-93 (examining four factors to determine whether a hospital surcharge provision was preempted by ERISA); Van Camp v. AT & T Info. Sys., 963 F.2d 119, 122-23 (6th

The circuits using the multi-factor analysis modified the Supreme Court's "connection with" method of analysis and adopted a more restrictive approach in determining whether section 514 preemption has been triggered.[136] According to the United States Court of Appeals for the Sixth Circuit, the additional factors provided guidance by reflecting the concerns that prompted Congress to enact the preemption clause of ERISA.[137] Although the factors varied from circuit to circuit,[138] most courts asked whether the state law covered an area of traditional state authority, whether the effect on ERISA plans was incidental, and whether the state law impacted the structure and administration of ER-

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Cir.) (relying on three factors to determine whether ERISA will preempt a state law), *cert. denied*, 506 U.S. 934 (1992); Arkansas Blue Cross & Blue Shield v. St. Mary's Hosp. Inc., 947 F.2d 1341, 1344-45 (8th Cir. 1991) (finding that other courts have utilized the multi-factor analysis and applying the multi-factor analysis to hold that an assignment statute "relate[s] to" an ERISA plan), *cert. denied*, 504 U.S. 957 (1992); *Borges*, 869 F.2d at 146 (holding that state laws concerning a traditional exercise of state power should not be preempted where the effect on an ERISA plan is only indirect); Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enters., 793 F.2d 1456, 1467 (5th Cir.) (focusing on the impact of a state law as it "affects relations among principal ERISA entities"), *cert. denied*, 479 U.S. 1034, *and cert. denied*, 479 U.S. 1089 (1987); Firestone Tire & Rubber Co. v. Neusser, 810 F.2d 550, 555-56 (6th Cir. 1987) (looking at whether the state law represents a traditional exercise of state authority, affects relations among principal ERISA entities, or has an incidental affect on ERISA plans to determine whether the sate law is preempted); United Food & Commercial Workers Trust v. Pacyga, 801 F.2d 1157, 1160 (9th Cir. 1986) (explaining that a state law must "purport to regulate" an ERISA plan to trigger preemption); Minnesota Chapter of Associated Builders v. Minnesota Dept. of Labor & Indus., 866 F. Supp. 1244, 1246 (D. Minn. 1993) (relying on seven factors to assist in determining whether a state law "relates to" an ERISA plan), *aff'd*, 47 F.3d 975 (8th Cir. 1995); Barnes Hosp. v. Sanus Passport/Preferred Servs., Inc., 809 F. Supp. 725, 727 (E.D. Mo. 1992) (relying on a "variety of factors when determining whether a state law is preempted by ERISA").

136. *See* Holloway, *supra* note 17, at 418 n.66 (noting that some federal courts have applied a multi-factor test to determine whether a state law is preempted by ERISA).

137. *Van Camp*, 963 F.2d at 123.

138. For instance, in *Arkansas Blue Cross*, the Eighth Circuit explicitly recognized seven factors to be examined when determining whether the state law is preempted. *Arkansas Blue Cross*, 947 F.2d at 1344-45. The factors included:

> [W]hether the state law negates an ERISA plan provision, . . . whether the state law affects relations between primary ERISA entities, . . .whether the state law impacts the administration of ERISA plans . . . whether the state law has an economic impact on ERISA plans, . . .whether the preemption of state law is consistent with other ERISA provisions, . . . and whether the state law is an exercise of traditional state power.

Id. (citations omitted).

Alternatively, in *Firestone Tire & Rubber Co. v. Neusser*, the Sixth Circuit examined only three factors. *Firestone*, 810 F.2d at 555-556. The factors included: (1) "whether the state law represents a traditional exercise of state authority," (2) whether the state law "affects [the] relations among the principal ERISA entities," and (3) "the incidental nature of any possible effect of the state law on an ERISA plan." *Id.*

ISA plans.[139] As noted by the Court of Appeals for the Eighth Circuit, however, the factors applied in a multi-factor analysis are not exhaustive and no single factor is dispositive.[140]

The use of the multi-factor analysis led to a more restrictive interpretation of ERISA's preemption clause.[141] In *United Wire, Metal & Machine Health & Welfare Fund v. Morristown Memorial Hospital*,[142] the Third Circuit held that a New Jersey law setting hospital rates did not "relate to" ERISA plans in a way that triggered preemption.[143] The *United Wire* court examined the intent of the state law, whether the state law targeted ERISA plans for special treatment, whether the state law influenced the structure of ERISA plans, whether the state law affected an ERISA plan's ability to operate across state lines, and whether the state law effectively regulated the way an ERISA plan is operated.[144]

Previously, the Second Circuit reached a similar conclusion in *Rebaldo v. Cuomo*,[145] holding that a state law regulating hospital rates had an "indirect economic impact" on ERISA plans and did not trigger preemption.[146] In *Rebaldo*, the Second Circuit stated that "a state law must 'purport[ ] to regulate . . . the terms and conditions of employee benefit plans' to fall within the preemptive provision."[147] Although the Second Circuit subsequently overturned the *Rebaldo* decision when it adopted a broad

139. *Van Camp*, 963 F.2d at 123; *Arkansas Blue Cross*, 947 F.2d at 1344-45; Aetna Life Ins. Co. v. Borges, 869 F.2d 142, 146, 148 (2d Cir. 1989); *Sommers*, 793 F.2d at 1466; *Firestone*, 810 F.2d at 555; *Pacyga*, 801 F.2d at 1160-61; *Barnes*, 809 F. Supp. at 727.

140. Firestone Tire & Rubber Co. v. Neusser, 810 F.2d 550, 556 (6th Cir. 1989); Arkansas Blue Cross & Blue Shield v. St. Mary's Hosp. Inc., 947 F.2d 1341, 1345 (8th Cir. 1991).

141. *See* United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179 (3rd Cir.) (applying a multi-factor analysis to protect a state law from preemption, while noting that a similar law was held preempted by the Second circuit where the traditional preemption analysis was used), *cert. denied*, 510 U.S. 944 (1993); *see also* Hancock, *supra* note 17, at 396-97 (discussing the Third Circuit's refusal to extend preemption while applying a multi-factor approach).

142. 995 F.2d 1179 (3rd Cir.), *cert. denied*, 510 U.S. 944 (1993).

143. *Id.* at 1196 (stating that "we are unwilling to attribute to Congress and § 514 an intent to frustrate the efforts of a state, under its police power, to regulate health care costs.").

144. *Id.* at 1195.

145. 749 F.2d 133 (2d Cir. 1984), *cert. denied*, 472 U.S. 1008 (1985).

146. *Id.* at 139 (holding that a state law regarding the setting of hospital rates was not preempted by ERISA, because an "indirect economic impact as may result from State control over hospital rates does not run counter to ERISA's aim of national uniformity in plan regulation").

147. *Id.* at 137 (quoting in part 29 U.S.C. § 1144(c)(2) (1994)).

approach to ERISA preemption in its *Travelers* decision,[148] the Third Circuit adopted *Rebaldo*.[149]

When the Supreme Court granted certiorari to *Travelers*, the courts of appeals were divided as to the appropriate method of ascertaining the scope of ERISA's preemptive provision.[150] *Travelers* provided the Supreme Court with an opportunity to clarify the proper method of determining whether ERISA preempted a state law. In *Travelers*, the Supreme Court recognized that "ERISA was not meant to consume everything in its path."[151]

II. Recognizing Past Failures: The Supreme Court Clarifies Section 514(a) Analysis

In a unanimous decision written by Justice Souter, the Supreme Court adopted a narrower method of determining when a state law triggers section 514 preemption.[152] By no longer focusing on the literal "connection with" analysis of section 514, the Court effectively restricted the scope of

148. Travelers Ins. Co. v. Cuomo, 14 F.3d 708, 719 (2d Cir. 1993), *rev'd sub nom.*, New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671 (1995).

149. United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1193-95 (3rd Cir.), *cert. denied*, 510 U.S. 944 (1993).

150. The Second, Fourth, Ninth, and Eleventh Circuits have adhered to the Supreme Court's language and the "connection with" method of analysis in determining whether § 514 preemption has been triggered. *See, e.g.*, *Travelers*, 14 F.3d at 718; First Nat'l Life Ins. Co. v. Sunshine-Jr. Food Stores, Inc., 960 F.2d 1546, 1549-50 (11th Cir. 1992), *cert. denied*, 506 U.S. 1079 (1993); Sturgis v. Herman Miller, Inc., 943 F. 2d 1127, 1129 (9th Cir. 1991); Powell v. Chesapeake & Potomac Tel. Co., 780 F.2d 419, 421 (4th Cir. 1985), *cert. denied*, 476 U.S. 1170 (1986); *see also supra* notes 91-96 and accompanying text (explaining the Supreme Court's "connection with" method of analysis) or 106-24 (explaining the application of "connection with" analysis by various circuit courts).

The Second, Third, Fifth, Sixth, Seventh, Eighth, and Tenth circuits adopted a more restrictive approach than the Supreme Court, applying a multi-factor test to determine whether ERISA preempts state law. *See, e.g.*, Airports Co., Inc. v. Custom Benefit Servs., Inc., 28 F.3d 1062, 1065 (10th Cir. 1994) (applying a multi-factor analysis to determine whether a state law was preempted); *United Wire*, 995 F.2d at 1195 (examining state laws for four factors that trigger ERISA preemption); Van Camp v. AT & T Info. Sys., 963 F.2d 119, 122-23 (6th Cir.) (considering three factors when determining whether a state claim falls within the scope of ERISA's preemption clause), *cert. denied*, 506 U.S. 934 (1992); Pohl v. National Benefits Consultants, Inc., 956 F.2d 126, 128 (7th Cir. 1992) (recognizing that it is "[n]ot the semantics of the word 'relate,' but the policy of the statute" that determines whether preemption will be triggered); Arkansas Blue Cross & Blue Shield v. St. Mary's Hosp., Inc., 947 F.2d 1341, 1344-45 (8th Cir. 1991) (applying a lengthy, multi-factor analysis), *cert. denied*, 504 U.S. 957 (1992); Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enters., 793 F.2d 1456, 1467-68 (5th Cir.) (applying a multi-factor analysis), *cert. denied*, 479 U.S. 1034, *and cert. denied*, 479 U.S. 1089 (1987).

151. Hook v. Morrison Milling Co., 38 F.3d 776, 786 (5th Cir. 1994).

152. New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671, 1677 (1995). *See also Experts Divided*, *supra* note 37, at 1348 (report-

ERISA's preemption.[153] In *Travelers*, the Court concluded that ERISA did not preempt a New York state law.[154] The Court held that the statute's indirect effect upon the choices made by plan administrators when purchasing insurance did not invoke section 514's preemption clause.[155]

Initially, *Travelers* appeared to follow the Court's usual ERISA preemption analysis.[156] The Court recognized that generally a presumption exists against preemption,[157] but noted that ERISA contains an express provision mandating federal preemption of state law.[158] The Court acknowledged that while Congress explicitly provided for preemption,[159] Congress left the scope of preemption unclear.[160] Unfortunately, a mere reading of the statute provided no guidance.[161] For guidance, the Court turned to the legislative history to ascertain Congress's intent in enacting section 514.[162]

After noting the legislative intent behind ERISA's preemption clause,[163] the Supreme Court tried to resolve the ambiguity of section 514

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ing that "'the court is drawing a line and backing away from some of the logic of its previous decisions'") (quoting Frank McArdle, manager of Hewitt Associates).

153. *See Travelers*, 115 S. Ct. at 1683 (rejecting its prior decisions favoring the "connection with" analysis).

154. *Id.* (stating that because the surcharge provisions have only an indirect impact on the price of insurance, Congress could not have intended to preempt the state surcharge law).

155. *Id.* at 1680.

156. *Id.* at 1676-77 (discussing the doctrine of preemption and Congressional intent).

157. *Id.* at 1676 (citing Maryland v. Louisiana, 451 U.S. 725, 746 (1981)).

158. *Id.* at 1677.

159. *Id.* (noting that the "governing text of ERISA is clearly expansive").

160. *Id.* As the Court observed, "one might be excused for wondering, at first blush, whether the words of limitation ('insofar as they . . . relate') do much limiting. . . . [W]e have to recognize that our prior attempt to construe the phrase 'relate to' does not give us much help drawing the line here." *Id.*

161. *Id.* The court noted that, "[i]f 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes preemption would never run its course for '[r]eally, universally, relations stop nowhere . . .'" *Id.* (quoting H. JAMES, RODERICK HUDSON xli (New York ed. 1980)).

162. *Id.* at 1676-78 (examining ERISA's legislative history and finding that it was Congress's intent to make the regulation of employee benefits an exclusively federal concern to "avoid multiplicity of regulation in order to permit the nationally uniform administration of employee benefit plans"). *But see*, Conison, *supra* note 22, at 646 (stating that the legislative history of ERISA provides no guidance in ascertaining the meaning of the phrase "relates to").

163. The court noted that Congress's intent in providing § 514 with broad language was to establish the regulation of employee benefit plans "'as exclusively a federal concern.'" *Travelers*, 115 S. Ct. at 1677 (quoting Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 523 (1981)). The Court explained that the basic purpose of the preemption clause was to promote a nationally uniform set of regulations regarding employee benefit plans. *Id.* at 1677-78.

by focusing on the phrase "relate to."[164] Quoting its widely recognized explanation from *Shaw v. Delta Airlines, Inc.*, the Court stated that, "'[a] law 'relate[s] to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan.'"[165] When an analysis of the scope of ERISA's preemption begins with this definition, a court must first determine whether the state law at issue either has a "connection with" or makes "reference to" an ERISA plan.[166] In *Travelers*, the Court recognized the difficulty and impracticability of applying the literal "connection with" method of analysis.[167]

The state law at issue in *Travelers* did not refer to an ERISA plan. Thus, the Court analyzed whether the law had a "connection with" an ERISA plan,[168] and attempted to answer the question of what constitutes a "connection with."[169] The Court unanimously decided to break with its traditional "connection with" analysis because "[f]or the same reason that infinite relations cannot be the measure of preemption, neither can infinite connections."[170] This pronouncement freed the Court from the difficulties of employing a literal/semantical interpretation, rather than a functional interpretation, of the phrase "relate to."[171] The Court emphasized that the focus of determining the scope of section 514 lies not in the literal interpretation of words such as "connection with" or "relate to," but in the examination of the practical effects of the state law upon an ERISA plan.[172] By rejecting a preemption analysis based on semantical

164. *Id.* at 1677 (discussing the difficulty ascertaining the true meaning of the phrase "relate to"). *Id.* at 1676-78. Despite the fact that defining the scope of § 514 has been problematic, at least one court has held that the section is not unconstitutionally vague and ambiguous. Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294, 1297-98 (N.D. Cal. 1977), *aff'd*, 571 F.2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978).

165. *Travelers*, 115 S. Ct. at 1677 (quoting Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 96-97 (1983)).

166. *Id.* The Court recognized that the question of whether a state law has a "connection with" an ERISA plan was no more helpful than determining whether the law "relates to" an ERISA plan. *Id.*

167. *Id.* The result was a departure from its literal "connection with" method of analysis and acceptance of a multi-factor analysis; *see supra* notes 125-151 and accompanying text (regarding the circuit courts adoption of the multi-factor analysis).

168. *Id.*

169. *Id.* The Court noted that the phrase "connection with" was "an uncritical literalism" and was as helpful as the phrase "relates to" when trying to determine whether a state law is preempted. *Id.*

170. *Id.*

171. The Court noted that "[w]e simply must go beyond the unhelpful text and the frustrating difficulty of defining its key term, and look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive." *Id.*

172. *See id.* at 1678-79 (taking note of the "purpose and the effects" of the state surcharge statute).

interpretations of phrases, the Court effectively adopted the multi-factor analysis that had been applied in the various circuits.[173]

The Court's multi-factor analysis was less explicit than that of the Third, Sixth and Eighth Circuits. First, the Court examined the purpose and effects of the New York surcharge statute.[174] The Court found that the state law did not affect the administration of ERISA plans.[175] Specifically, the Court tried to determine whether the New York state law would encroach upon ERISA's promotion of national uniformity within employee benefit plan administration.[176] Second, the Court considered whether the law concerned a matter that the states traditionally regulated.[177] The Court noted that health care regulation historically has been a matter of local concern.[178] The Court concluded that Congress did not intend to preempt state health care regulations.[179]

After considering these factors in light of the policies behind section 514, the Court found that the New York statute did not have the effect of regulating ERISA plans and therefore was not subject to preemption.[180] While the Court recognized that the statute would indirectly impact ERISA plans, it held that the state law did not "relate to" an ERISA plan within the meaning of section 514.[181]

Determining whether a state law "relate[s] to" an ERISA plan is no longer an exercise in semantics. Rather, courts may look for specific factors indicating that section 514 should be triggered. For instance, where a state law effectively regulates benefit structures, plan administration, or enforcement mechanisms, the Court will find that the state law sufficiently "relate[s] to" an ERISA plan to trigger preemption.[182]

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173. *See supra* notes 125-151 and accompanying text (regarding the multi-factor analysis and its application within the circuit courts).

174. *Travelers*, 115 S. Ct. at 1678-79.

175. *Id.*

176. *Id.*

177. *Id.* at 1680.

178. *Id.* (citing Hillsborough County v. Automated Medical Labs., Inc., 471 U.S. 707 (1985)).

179. *Id.* "In sum, cost-uniformity was almost certainly not an object of pre-emption . . . [and is] a far cry from those 'conflicting directives' from which Congress meant to insulate ERISA plans." *Id.*

180. *See id.* Specifically, the Court held that cost uniformity was not an intended object of preemption and that such state laws do not have a sufficient "connection with" ERISA plans to trigger preemption. *Id.*

181. *See id.* (finding that an insufficient nexus existed to trigger ERISA preemption).

182. *See id.* at 1678. The Court was careful to distinguish the surcharge provision from other state laws that previously were determined to have a sufficient "connection with" an ERISA plan to trigger preemption. *Id.* It pointed out that the state laws preempted by § 514 involved impacts on plan structure, administration and enforcement mechanisms. *Id.*

The Supreme Court's decision in *Travelers* marks a turning point in the evolution of ERISA preemption. Prior to *Travelers*, the scope of ERISA's preemption clause was considered broad.[183] It generally was accepted that when states enacted legislation concerning health care, they ran a high risk of being preempted.[184] The *Travelers* decision changes this trend.[185]

183. Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 97-98 (1983) (stating that "§ 514's preemptive scope [is] as broad as its language"); *see also* American Progressive Life & Health Ins. Co. v. Corcoran, 715 F.2d 784, 786 (2d Cir. 1983) (commenting that § 514 has a sweeping effect and that exceptions to preemption are meant to be narrow); Francis v. United Technologies Corp., 458 F. Supp. 84, 86 (N.D. Cal. 1978) (noting that Congress intended § 514 to effect the broadest possible preemption of state law).

184. When courts interpret broadly ERISA's preemptive provision, the result is a greater likelihood that state laws regarding health care will be preempted. *See, e.g.*, Hancock, *supra* note 17, at 406 (arguing that Congress should reexamine ERISA's preemption clause in light of its impact on health care laws and noting that, in the absence of federal health care reform, states have attempted to enact their own reforms, only to have their laws fall prey to ERISA); *Experts Divided*, *supra* note 37, at 1348 (noting that in decisions prior to *Travelers*, the Court broadly interpreted § 514). Increased risk of preemption may discourage state experimentation with health care reform. *Id.*; *see also* Holloway, *supra* note 17, at 422 (recognizing that a broad interpretation of ERISA's preemption clause restricts the ability of states to respond to the plight of the uninsured).

For example, in *Shaw v. Delta Air Lines, Inc.*, the Supreme Court held that ERISA preempts a state law prohibiting discrimination in employee benefit plans on the basis of pregnancy, since the state law relates to an ERISA plan. *Shaw*, 463 U.S. at 96-97. In *Shaw* the Court interpreted the phrase "relate to" by turning to Black's Law Dictionary and concluded that "[a] law 'relates to' an employee benefit plan . . . if it has a connection with or reference to such a plan." *Id.* at 96-97 & n.16.

185. *Experts Divided*, *supra* note 37, at 1348 (quoting Joy Johnson Wilson, director of the health committee, National Conference of State Legislatures, regarding the Supreme Court's new standard pronounced in *Travelers*, that a new state law must have "an acute economic impact" to be impermissible).

Reactions to the decision have been mixed. "'This is great news for hospitals and their patients,' said Daniel Sisto, president of the Healthcare Association of New York State." *Surcharges*, *supra* note 24, at 1129. "'This means that states . . . can continue to reform their health care delivery systems to meet the needs of all persons.'" *Id.* Proponents of ERISA preemption, however, fear that the decision will result in "intrusive state regulation." *Id.* The Association of Private Pension and Welfare Plans was "deeply concerned" that the *Travelers* opinion would lead to the enactment of state laws that will impose "cost burdens on plan sponsors." *Id.*

ERISA's preemptive provision has been viewed as an obstacle to enacting health care legislation. Where states serve as "a laboratory of [health care] reform" ERISA may be considered a "roadblock" to health care reform initiatives. *Innovation*, *supra* note 21, at 712; *see also* Hancock, *supra* note 17, at 403-404 (discussing the disastrous effect of ERISA preemption on state health care reform efforts).

III. The Impact of the Court's Acceptance of the Multi-factor Analysis

In *Travelers*, the Court departed from its traditional, literal "connection with" analysis and applied a new, practical multi-factor analysis.[186] In doing so, the Supreme Court restricted the scope of the section 514 preemption clause.[187] The adoption of the multi-factor analysis makes it easier for courts to determine when section 514 preemption is triggered.[188] Furthermore, the predictability of the multi-factor analysis helps promote state involvement in health care reform.[189] By indirectly promoting state involvement in resolving the health care crisis, the Court supports the current policy of diminishing federal involvement in national issues and encourages states to find their own creative solutions.[190]

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186. *Travelers*, 115 S.Ct. at 1680. "What is most interesting about this ruling is the new, higher standard regarding the level of economic impact a state law must have to be preempted by ERISA." *Surcharges*, *supra* note 24, at 1130 (quoting Mark Lutes).

187. *See Experts Divided*, *supra* note 37, at 1348 (citing one expert who interpreted the decision as withdrawing from previous decisions giving ERISA §5 (A) broad, preemptive power).

188. Rather than being forced to deal with abstract ideas such as "connections" and "relationships," courts may evaluate a state law on the basis of specific factors and how those factors intrude upon the purposes of ERISA preemption. *See supra* notes 125-151 an accompanying text (discussing the multi-factor analysis).

189. *Surcharges*, *supra* note 24, at 1130. One attorney has stated that the Court's new rationale will make it more difficult to argue for preemption in some cases. *Id.* "'The decision . . . maintains New York state's flexibility in redesigning our reimbursement system to achieve our objectives of expanding access to high quality medical services at an affordable cost.'" *Id.* (quoting Barbara A. DeBuono, New York State Health Commissioner).

190. *See* Nina Bernstein, *An Accountability Issue: As States Gain Political Power, a Ruling Seems to Free Them of Some Legal Reins*, N.Y. Times, Apr. 1, 1996, at A1 (reporting on the Supreme Court's decision in the case of *Seminole Tribe v. Florida* and commenting that the decision is another example of the current trend which shifts political power from the federal government to state governments); Joan Biskupic, *Justices Shift Federal-State Power Balance: Rehnquist-Led Majority Determined to Restrict Washington's Authority*, Wash. Post, Mar. 29, 1996, at A1 (reporting that the Court has "been working to curtail the powers of Congress and enhance that of the states" and noting that this shift of power mirrors Congress's trend of shifting responsibility for social programs from the federal government to the states). *See also* Seminole Tribe v. Florida, 116 S. Ct. 1114, 1131 (1996) (holding that the Commerce Clause did not enable Congress to intrude upon the States' Eleventh Amendment immunity); U.S. v. Lopez, 115 S. Ct. 1624, 1631, 1634 (1995) (refusing to extend the Commerce Clause to allow the federal government to regulate the carrying of handguns within a specified proximity of schools and holding that the Gun-Free School Zones Act of 1990 exceeded Congress's Commerce Clause authority).

A. A New Analysis for Determining Whether a State Law Falls Within the Scope of ERISA's Preemption Clause

Applying the Supreme Court's literal "connection with" analysis forced courts to deal with abstract ideas such as the sufficiency of a relationship between a state law and ERISA, without providing a concrete analytical framework.[191] Courts and practitioners often struggled with what constituted a sufficient "connection with" an ERISA plan to trigger preemption.[192] Given the confusion within the courts below, the "connection with" method of analysis obviously failed to provide sufficient guidance in determining whether ERISA preempted a state law.[193] Perhaps this failure prompted the Supreme Court to break with long-standing precedent in favor of a less expansive interpretation of the preemption clause.

In *Travelers*, the Court asked whether the state law has the practical effect of regulating ERISA plans and whether the law would preclude uniform administrative practice or the provision of a uniform interstate benefit package.[194] The Supreme Court seems to have accepted the circuit courts' practice of examining various factors to determine whether a state law falls within the scope of section 514.[195] In short, the Court looked to the legislative history of ERISA and took a functional approach to determine whether Congress would have intended to preempt the state law at issue.[196]

The functional, multi-factor approach applies tangible factors that produce a more ascertainable result than the literal, yet abstract, "connection with" approach.[197] In *Travelers*, the Court looked to the purpose and effects of the surcharge statute.[198] Specifically, the Court noted that setting hospital rate differentials represented a common health care regula-

191. *See* New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins., Co., 115 S. Ct. 1671, 1677 (1995).

192. *See infra* notes 198-205 and accompanying text (discussing the impracticabilities of the "connection with" standard); *see also* Snodgrass, *supra* note 107, at 145 (recognizing that § 514 has caused confusion); Hancock, *supra* note 17, at 395-96 (noting that courts have had difficulty defining the scope of ERISA's preemption clause and characterizing the preemption issue as "thorny").

193. *See supra* notes 88-108 and accompanying text (discussing the confusion within the lower courts prior to the *Travelers* decision).

194. *Travelers*, 115 S. Ct. at 1679.

195. *Id.* at 1677.

196. *Id.* at 1677-78.

197. *See* Conison, *supra* note 22, at 669 (concluding that preemption analysis should be conducted on a case by case basis taking "interests and factors" into account and arguing that such an analysis would permit the "development of a more principled, even if particularistic, body of law").

198. *Travelers*, 115 S. Ct. at 1678.

tion and a matter of local concern.[199] It also discussed the indirect economic influence that the state law may have on ERISA plans.[200] Indeed, the Court noted that the "indirect influence of the surcharges [do not] preclude uniform administrative practice or the provision of a uniform interstate benefit package."[201]

When confronted with the issue of ERISA preemption, courts and practitioners are no longer forced to grapple with the philosophical question of what constitutes "connection with" an ERISA plan.[202] Instead, they can look to a variety of factors, such as whether the state law negates an ERISA plan provision, alters the structure of an ERISA plan, impacts the administration of a plan, or exercises a traditional state power[203] to determine whether section 514 has been triggered.[204] Accordingly, this approach enables practitioners and legislators alike to predict whether ERISA will preempt the state law at issue.

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199. *Id.* at 1680. In other words, statutes setting hospital rate differentials are an exercise of traditional state power. *Id.* (citing Hillsborough County v. Automated Medical Labs., Inc., 471 U.S. 707 (1985)).

200. *Id.* at 1679.

201. *Id.*

202. *See* Pohl v. National Benefits Consultants, Inc., 956 F.2d 126, 128 (7th Cir. 1992) (stating that "[n]ot the semantics of the word 'relate,' but the policy of the statute, requires preemption"). Rather than struggling with ascertaining the practical meanings of phrases such as "relates to" and "connection with" courts may now look to specific factors; *see supra* note 108 (identifying decisions where courts have applied the multi-factor analysis and examples of the types of factors used).

203. *Travelers*, 115 S. Ct. at 1680 (applying a mutli-factor analysis including the factor of whether the state law exercises a traditional state power); Arkansas Blue Cross & Blue Shield v. St. Mary's Hosp. Inc., 947 F.2d 1341, 1344 (8th Cir. 1991), *cert. denied*, 504 U.S. 957 (1992) (examining a state law to determine whether any of seven factors trigger preemption); Firestone Tire & Rubber Co. v. Neusser, 810 F.2d 550, 555 (6th Cir. 1987) (utilizing a multi-factor analysis that included the factor of whether the state law exercised a traditional state power); Minnesota Chapter of Associated Builders v. Minnesota Dept. of Labor & Indus., 866 F. Supp. 1244, 1246 (D. Minn. 1993) (applying a multi-factor test and examining whether the state law negates an ERISA provision, alters the structure of an ERISA plan, affects the administration of a plan, or involves a traditional state power), *aff'd*, 47 F.3d 975 (8th Cir. 1995).

204. *See* United Wire, Metal & Mach. Health & Welfare Fund v. Morristown Memorial Hosp., 995 F.2d 1179, 1192 (3rd Cir.) (noting that a law "relates to an ERISA plan if it is specifically designed to affect employee plans, if it singles out such plans for special treatment, or if the rights or restrictions it creates are predicated on the existence of such a plan"), *cert. denied*, 510 U.S. 944 (1993); *Arkansas Blue Cross*, 947 F.2d at 1344-45 (providing a comprehensive list of factors employed by the circuits to determine whether a state statute "relates to" ERISA).

B. The Court's New Section 514 Analysis Promotes State Involvement in the Resolution of the Health Care Crisis

In *Travelers*, the Court substantially narrowed the reach of ERISA's preemption clause.[205] By refocusing preemption analysis away from the literal "connection with" standard, the expansive scope of ERISA's preemption clause has been curtailed[206] and made more predictable.[207] Additionally, the multi-factor analysis honors the traditional state role in protecting the health of its citizens through the exercise of police powers.[208]

The Court's new method of analysis carefully examines the practical effects that a state law may have upon an ERISA plan to determine whether federal law preempts the state law.[209] Under this approach, the purpose and effect of a state law determines whether the law will be preempted by ERISA.[210] Thus, state laws can be scrutinized to determine whether they will interfere with the uniform administration of ERISA plans or the ability to provide uniform interstate benefit packages.[211]

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205. *Experts Divided*, *supra* note 37, at 1348 (explaining that the court is receding from its expansive interpretation of ERISA preemption because of public policy concerns).

206. *See id.* (discussing the new freedom given to states to finance health care reform due to the Court's more restrictive reading of ERISA's scope of preemption); Groves, *supra* note 17, at 651 (recognizing that the *Travelers* decision adopted a less stringent approach to ERISA preemption). *But see*, *Decision*, *supra* note 21, at 1837 (asserting that the *Travelers* decision can be viewed as preserving the scope of ERISA's preemption clause rather than limiting it).

207. In circuit court cases considering similar state laws, courts have narrowed the scope of ERISA preemption. *See United Wire*, 995 F.2d at 1196 (holding that ERISA did not preempt state laws regarding the setting of hospital rates); Rebaldo v. Cuomo, 749 F.2d 133, 140 (2d Cir. 1984) (holding that ERISA did not preempt a New York law regulating hospital rates), *cert. denied*, 472 U.S. 1008 (1985); *see also* United Food & Commercial Workers & Employers Arizona Health & Welfare Trust v. Pacyga, 801 F.2d 1157, 1161 (9th Cir. 1986) (applying the multi-factor analysis to find that ERISA did not preempt state subrogation laws).

208. *See* Hancock, *supra* note 17, at 398 n.118 (citing Boyle v. Anderson, 849 F. Supp. 1307 (D. Minn. 1994))(asserting that Congress never intended to frustrate state efforts to regulate health care).

209. Practitioners must look to a variety of factors to determine whether a state law should fall within the scope of § 514(a) preemption. *See supra* notes 127-150 and accompanying text. These factors include, but are not limited to, the legislative intent behind ERISA's preemption clause, the purpose of the state law, whether the state law would have a "tenuous, remote or peripheral" impact on plans covered by ERISA, and whether the state law could lead to "conflicting directives." New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 115 S. Ct. 1671, 1677-80 (1995). For a list of cases applying multi-factor analyses, see *supra* note 135.

210. *Travelers*, 115 S.Ct. at 1678.

211. *See id.* at 1679 (considering whether the state statute at issue precluded "uniform administrative practice or the provision of a uniform interstate benefit package"); *United Wire*, 995 F.2d at 1192 (noting that the purpose of pre-emption is to ensure uniformity in the administrative practices of ERISA plans).

Providing a concrete analytical framework makes ERISA preemption more predictable.

It is likely that the Supreme Court's more restrictive and predictable approach to determining whether a state law triggers preemption will result in increased state experimentation with health care reform.[212] States can now apply a multi-factor preemption analysis to test their legislation for any effects that may trigger preemption prior to enacting legislation. Armed with the ability to foresee whether a law will be preempted, state legislatures may take a more active role in health care reform.[213] The Court's new interpretation of ERISA preemption appears to be in accord with the current trend of states seeking to assert more control and receiving less interference from the federal government.[214]

C. *The* Travelers *Decision Supports the Trend of Providing States the Opportunity to Find Creative Solutions to National Problems*

The *Travelers* decision is very timely given the current trend toward providing states more latitude to deal with issues of national concern.[215] The *Travelers* decision can be seen as a manifestation of federalism, shifting power from the federal government to the states.[216] Federalism is central to the structure of the government of the United States.[217]

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212. *Surcharges*, *supra* note 24, at 1129; *see* Hancock, *supra* note 17, at 407 (concluding that the Supreme Court should adopt the "enlightened" approach taken by the Court of Appeals for the Third Circuit in *United Wire* and restrict the scope of § 514 so that states may enact legislation to finance health care for indigent and uninsured patients).

213. *Experts Divided*, *supra* note 37, at 1348 (quoting Joy Johnson Wilson, director of the health committee, National Conference of State Legislatures, "[c]ertainly we know we can [impose taxes on health providers] now without fearing litigation on ERISA"); *see also* Hancock, *supra* note 17, at 398 (noting that the more restrictive approach adopted in *United Wire* allows states to actively pursue health care reform).

214. *See Hancock*, *supra* note 17, at 398. States have been long involved in attempting to reform health care. Michael S. Dukakis, *The States And Health Care Reform*, 327 NEW ENG. J. MED. 1090 (1992); TIMOTHY CURLEY, ET AL., STATE PROGRESS IN HEALTH CARE REFORM, 1992 (National Governors' Association 1993).

215. Hancock, *supra* note 17, at 403 (noting that the burden of reforming health care has shifted to the states since the federal government abandoned its reform efforts); Groves, *supra* note 17, at 609 (explaining that Congress's failure to reform health care has focused attention on state efforts at reform); *id.* at 610 n.6 (noting that forty states were actively involved in health care reform as of 1993).

216. JAY M. SHAFRITZ, THE HARPERCOLLINS DICTIONARY OF AMERICAN GOVERNMENT AND POLITICS, 226 (Harper 1992) (describing federalism as "[a] system of governance in which a national, overarching government shares power with . . . state governments").

217. THE FEDERAL, passim Rule 15.7(b) (commenting on the United States Constitution and the theories behind it).

The following books provide insightful discussion regarding federalism and its role in American society: WALTER H. BENNETT, AMERICAN THEORIES OF FEDERALISM (1964)

Whether or not the health care crisis should be resolved by employing a federalist approach is currently under debate.[218] The federalist approach to health care suggests that states should be encouraged to find creative solutions to the national health care problem.[219] However, in order for states to take a more active role, they must overcome the obstacle of ERISA's preemption clause.[220]

Throughout the health care debate and during the innumerable Congressional hearings on health care reform, the issue of ERISA preemption was a common concern. Those in favor of a national resolution to the health care crisis favored a strong preemption clause and a nationally uniform set of regulations.[221] Conversely, those in favor of allowing states to take an active role in resolving the health care dilemma proposed amending ERISA to curtail the preemptive effect of section 514.[222]

(arguing that despite the twentieth century trend toward national solutions to national problems, states still hold substantial power to advance their local interests); RAOUL BERGER, FEDERALISM: THE FOUNDERS' DESIGN (1987) (providing a historical perspective regarding federalism in the United States); THOMAS M. COOLEY, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS WHICH REST UPON THE LEGISLATIVE POWER OF THE STATES OF THE AMERICAN UNION ch. XVI (Boston Little, Brown Co. 1890) (providing a comprehensive overview of the police power of the states); Patrick E. Higginbotham, *Federalism in the Future*, *in* FEDERALISM: THE SHIFTING BALANCE (Janice C. Griffith ed., 1989) (providing an analysis of the future of federalism in the United States); ROSCOE C. MARTIN, THE CITIES AND THE FEDERAL SYSTEM (1965) (arguing that cities have become key players in the United States federal system); WALTER THOMPSON, FEDERAL CENTRALIZATION: A STUDY AND CRITICISM OF THE EXPANDING SCOPE OF CONGRESSIONAL LEGISLATION (1923) (providing a comprehensive analysis of the expanding role of the federal government and noting its efforts to promote public health via the Commerce Clause).

218. *See* Mashaw & Marmor, *supra* note 23 at 116-19 (suggesting a federalist, state-based solution to the health care crisis); Schmidt, *supra* note 23, at 147 (criticizing Mashaw & Marmor's proposed federalist solution to health care and arguing that a federalist approach would result in a "crazy quilt of varying state regulation").

219. *See generally* Mashaw & Marmor, *supra* note 23, at 117 (arguing that it is unlikely that one system will suffice for the entire nation).

220. *See id.* at 117-18, 125-26 (arguing that ERISA should be amended to allow states more discretion, but noting that an amendment is unlikely due to the influence of powerful interest groups such as corporations and unions). For an in-depth discussion of the negative effects of ERISA on the federalist approach to health care, see Hancock, *supra* note 17, at 383 (arguing that ERISA has had a disastrous effect on state health care reform); Holloway, *supra* note 17, at 454 (concluding that ERISA has a negative impact on state health care reforms and arguing that subjecting the states to almost total dependence on federal regulation signals a decline in federalism); *cf.* Gregory, *supra* note 21, at 490 (arguing that ERISA may be tailored to accommodate the "evolving dynamics of federalism").

221. *See H.R. 3600: The Health Security Act: Hearings Before the Subcomm. on Labor-Management Relations of the House Comm. on Educ. & Labor*, 103d Cong., 1st Sess. 335 (1993) (statement of the Association of Private Pension and Welfare Plans) (arguing in favor of ERISA preemption and the promotion of a nationally uniform set of rules regulating health systems).

222. *See* CURLEY ET AL., *supra* note 214.

Pro-state advocates also encouraged the use of "exemptions" or "waivers" from ERISA preemption.[223]

Therefore, as the Supreme Court limits the expansive sweep of ERISA's preemption clause, it limits the role of the federal government in health care reform and promotes state experimentation. According to the Pension and Benefits Reporter, the *Travelers* decision amounts to "an open invitation for states to become creative in using different kinds of assessments to pay for health care."[224] Perhaps this opportunity for experimentation with creative health care alternatives will be the most impressive result of the *Travelers* decision.

IV. Conclusion

In *Travelers*, the Supreme Court signaled an end to its previously ever-expanding application of ERISA's preemption clause. Practitioners, students, and courts no longer will be confronted with the philosophical questions of what constitutes a literal "connection with" an ERISA plan or whether state law sufficiently "relate[s] to" an ERISA plan. Instead, more ascertainable factors such as economic impact, conflicts between the state law and ERISA, and effects upon administration of ERISA plans will be the focus of preemption analysis. By focusing on specific factors, the Court has created two consequences. First, the Court substantially narrowed the scope of ERISA preemption. Second, the Court effectively invited states to play a more active role in resolving the health care crisis.

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223. *Id.* (reviewing state efforts in health care reform). Hawaii has been able to actively pursue health care reform at the state level due to its exemption from ERISA preemption. *See* Mashaw & Marmor, *supra* note 23, at 124 (discussing Hawaii's success in providing almost universal health care coverage); *see also* ERISA § 514(b)(5), 29 U.S.C. § 1144(b)(5) (1994).

224. *Experts Divided*, *supra* note 37, at 1348; *see* Groves, *supra* note 17, at 620 n.65 (noting that with the *Travelers* decision, the Supreme Court "signaled that its ever-expanding view of the ERISA preemption clauses [sic] may be at an end"). According to Groves, there are two ways in which states may enact laws to reform health care without being preempted. One is to enact legislation that escapes the "relate[s] to" clause. *Id.* at 624. He notes, however, that to utilize this approach would require that courts more narrowly interpret the scope of § 514. *Id.* Based on a reading of the *Travelers* case, Groves concludes that state laws utilizing cost-shifting schemes to subsidize medicare or Blue Cross/Blue Shield will not be preempted. *Id.* Also, laws of general applicability will be preempted if they significantly burden employee benefit plans. *Id.* at 624-25.