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ERISA Preemption of State Law: The Meaning of "Relate to" in Section 514

Stephen R. Snodgrass
Washington University School of Law

ERISA PREEMPTION OF STATE LAW: THE MEANING OF "RELATE TO" IN SECTION 514

In response to a growing national concern about the loss of private pension benefits resulting from financial difficulties of employers and job mobility of employees,[1] Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA).[2] The Act governs two types of "employee benefit plans"[3]: (1) "employee pension benefit plans," which provide retirement or deferred income to employees;[4] and (2) "employee welfare benefit plans," which provide fringe benefits such as medical and life insurance to plan participants.[5]

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1. In 1962 President Kennedy created a task force to study the effect of loss of employee pension benefits on employees in the private sector and on the nation's economy generally. 120 CONG. REC. 29934 (1974) (remarks of Sen. Javits); S. REP. No. 93-127, 93d Cong., 2d Sess., *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4838, 4843. *See generally* M. BERNSTEIN, THE FUTURE OF PRIVATE PENSIONS 5-8, 51-140 (1964) (detailed analysis of private pension plans' inadequacies). The task force recommended federal legislation requiring minimum vesting standards and fiduciary safeguards. 120 CONG. REC. 29934 (1974), *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4838, 4843. No legislative action resulted immediately, but in 1967 Senator Javits introduced a private pension reform bill. 120 CONG. REC. 29934 (1974). Other senators and congressmen followed with their own proposals.

The Senate approved its version of ERISA on September 19, 1973, and the House passed its version on February 28, 1974. 119 CONG. REC. 30428 (1973); 120 CONG. REC. 4782 (1974). A conference committee resolved discrepancies and both houses accepted the conferees' report by August 22, 1974. 120 CONG. REC. 29216, 29963 (1974). President Ford signed the Act into law on September 2, 1974.

2. Pub. L. No. 93-406, 88 Stat. 829 (1974) (nontax provisions codified at 29 U.S.C. §§ 1001-1381 (1975); provisions defining qualified plans eligible for favorable tax treatment codified principally at I.R.C. §§ 401-415).

3. "The term 'employee benefit plan' or 'plan' means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan." ERISA § 3(3), 29 U.S.C. § 1002(3) (1975).

4. [An employee pension benefit plan] is any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program (A) provides retirement income to employees, or (B) results in a deferral of income by employees for periods extending to termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

ERISA § 3(2), 29 U.S.C. § 1002(2) (1975).

5. The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries through the purchase of insurance or otherwise,

(A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness,

ERISA does not require employers to adopt either benefit plan or grant specific benefits or benefit levels for plans they do adopt.[6] Rather, the Act seeks to insure that employees do not lose benefits they have earned through service to their employer by requiring disclosure and reports from plan managers,[7] establishing participation and vesting standards,[8] setting minimum funding standards[9] and fiduciary guidelines for the management of plan funds,[10] and providing plan insur-

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accident, disability, death, or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or

(B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

ERISA § 3(1), 29 U.S.C. § 1002(1) (1975).

6. Because Congress chose to retain a voluntary, private approach to the problem, it could not impose costly minimum benefit standards without discouraging employers from adopting or maintaining plans. H.R. REP. NO. 93-533, 93d Cong., 2d Sess., *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4639, 4639, 4643; Comment, *The Employee Retirement Income Security Act of 1974: Policies and Problems*, 26 SYRACUSE L. REV. 539, 555-57 (1975).

7. ERISA §§ 101-111, 29 U.S.C. §§ 1021-1031 (1975). These requirements apply to both pension benefit plans and welfare benefit plans. Plan Administrators must furnish a plan description and annual report to plan participants, beneficiaries, and the Secretary of Labor. *See* Comment, *supra* note 6, at 660-67.

8. ERISA §§ 201-211, 29 U.S.C. §§ 1051-1061 (1975). These standards apply to most pension benefit plans. *Id.* § 201, 29 U.S.C. § 1051. The minimum participation standards generally require that a pension plan include any employee who is twenty-five years of age and who has completed one year of service. *Id.* § 202(a)(1)(A), 29 U.S.C. § 1052(a)(1)(A). These standards also prohibit rejection of employees for being too old, except under certain specified plans. *Id.* § 202(a)(2), 29 U.S.C. § 1052(a)(2).

The Act also provides three alternative vesting formulas. The first possibility allows for a graded schedule under which the participant becomes twenty-five percent vested after five years and receives an additional five-percent interest for each of the next five years and an additional ten percent for each of the remaining five years. *Id.* § 203(a)(2)(B), 29 U.S.C. § 1053(a)(2)(B). The second alternative offers a ten-year vesting schedule by which the participant is fully vested after ten years of service. *Id.* § 203(a)(2)(A), 29 U.S.C. § 1053(a)(2)(A). The third alternative, known as the "rule of 45," provides that a worker with at least five years of service must become fifty percent vested when the sum of his age and years of service equals forty-five, after which an additional ten percent must become vested for each of the next five years. *Id.* § 203(a)(2)(C), 29 U.S.C. § 1053(a)(2)(C).

Finally, the Act limits forfeiture of accrued benefits deriving from employer contributions, *id.* § 206(c), 29 U.S.C. § 1056(c), and assignment and alienation of benefits, *id.* § 206(d), 29 U.S.C. § 1056(d). *See* text accompanying note 17 *infra*.

9. ERISA §§ 301-306, 29 U.S.C. §§ 1081-1086 (1975). Past service liabilities must be amortized over a thirty-year period, and experience losses must be amortized over a fifteen-year period. *Id.* §§ 302(b)(2)(B)(ii),(iv), 29 U.S.C. §§ 1082(b)(2)(B)(ii),(iv). Past service liabilities and experienced losses of multi-employer plans may be amortized over forty years and twenty years, respectively. *Id.*

10. *Id.* §§ 401-414, 29 U.S.C. §§ 1101-1114. These guidelines, which apply to both pension and welfare benefit plans, include: a standard of conduct for plan trustees, *id.* § 404(a)(1)(B), 29

ance through the Pension Benefit Guaranty Corporation.[11]

To eliminate state interference with the accomplishment of ERISA's goals, Congress included in the Act a general[12] preemption provision—section 514—which states that ERISA "shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan."[13] Section 514 has spawned considerable confusion and litigation over the scope of preemption Congress intended in using the phrase "relate to" in the section.[14] Courts have encountered this issue most often in relation to state laws concerning insurance,[15] domestic

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U.S.C. § 1104(a)(1)(B); a list of prohibited transactions, *id.* § 406, 29 U.S.C. § 1106; and an investment diversification requirement, *id.* § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C).

11. *Id.* §§ 4001-4082, 29 U.S.C. §§ 1301-1381.

12. The section is general, as opposed to § 206(d), which specifically preempts assignment and alienation of plan rights otherwise permissible under state property law. The Act does not mention the connection between § 514 and § 206, but in Francis v. United Technologies Corp., 458 F. Supp. 84 (N.D. Cal. 1978), the court recognized one in concluding that ERISA preemption is virtually total and that "[m]ore specifically" ERISA provides for the restriction of alienation and assignment in § 206(d). *Id.* at 86.

13. ERISA § 514(a), 29 U.S.C. § 1144(a) (1975). *But see id.* § 514(b), 29 U.S.C. § 1144(b), which contains specific exceptions for state regulation of insurance, banking, and securities businesses and for state criminal law. *See also* text accompanying notes 24-27 *infra*. *See generally* Brummond, *Federal Preemption of State Insurance Regulation under ERISA*, 62 IOWA L. REV. 57 (1976); Okin, *Preemption of State Insurance Regulation by ERISA*, 13 FORUM 652 (1978).

14. *See generally* Hutchison & Ifshin, *Federal Preemption of State Law Under the Employee Retirement Income Security Act of 1974*, 46 U. CHI. L. REV. 23 (1978); Comment, *Attachment of Pension Benefits Under ERISA*, 74 NW. U. L. REV. 255 (1979); 78 COLUM. L. REV. 1536 (1978).

Although the courts have focused on the statutory interpretation aspects of the issue, they also have dealt summarily with constitutional challenges to preemption under § 514.

Preemption opponents argue that if courts interpret the scope of preemption broadly, ERISA will encroach on constitutional rights of the states or of the individuals harmed by preemption, despite the supremacy clause of the United States Constitution. In making this argument, preemption opponents raise various constitutional issues: protection of residual state sovereignty under the tenth amendment, *see* Standard Oil Co. v. Agsalud, 442 F. Supp. 695 (N.D. Cal. 1977); Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294 (N.D. Cal. 1977), *aff'd*, 571 F.2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978); Insurers' Action Council, Inc. v. Heaton, 423 F. Supp. 921 (D. Minn. 1976); denial of fifth amendment due process, *see* Standard Oil Co. v. Agsalud, 442 F. Supp. 695 (N.D. Cal. 1977) and Insurers' Action Council, Inc. v. Heaton, 423 F. Supp. 921 (D. Minn. 1976); unconstitutional vagueness of the phrase "relate to," *see* Insurer's Action Council, Inc. v. Heaton, 423 F. Supp. 921 (D. Minn. 1976); denial of equal protection, *see id.*; impairment of contract, *see id.*; taking without compensation, *see* Reppy, *Community and Separate Interests in Pensions and Social Security Benefits after Marriage of* Brown *and ERISA*, 25 U.C.L.A. L. REV. 417 (1978); and extension of federal power beyond the scope of the commerce clause, *see* Standard Oil Co. v. Agsalud, 442 F. Supp. 695 (N.D. Cal. 1977); Insurers' Action Council, Inc. v. Heaton, 423 F. Supp. 921 (D. Minn. 1976). None of the decisions found a constitutional violation in § 514 or related sections. *See generally* Okin, *supra* note 13.

15. For insurance cases supporting a broad interpretation of "relate to," see Wadsworth v. Whaland, 562 F.2d 70 (1st Cir. 1977), *cert. denied*, 435 U.S. 980 (1978); Standard Oil Co. v. Ag-

relations,[16] and civil rights,[17] but occasionally the question has arisen in other contexts such as debtor-creditor relations,[18] taxation,[19] workers' compensation,[20] professional licensing and regulation,[21] and restitution.[22]

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salud, 442 F. Supp. 695 (N.D. Cal. 1977); Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294 (N.D. Cal. 1977), *aff'd*, 571 F.2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978). For a narrower interpretation, see Insurers' Action Council, Inc. v. Heaton, 423 F. Supp. 921 (D. Minn. 1976).

16. For domestic relations cases deciding against preemption on the basis of a relatively narrow interpretation of "relate to," see A.T. & T. v. Merry, 592 F.2d 118 (2d Cir. 1979); Senco, Inc. v. Clark, 473 F. Supp. 902 (M.D. Fla. 1979); Carpenters Pension Trust v. Kronschnabel, 460 F. Supp. 978 (C.D. Cal. 1978); Cartledge v. Miller, 457 F. Supp. 1146 (S.D.N.Y. 1978); Stone v. Stone, 450 F. Supp. 919 (N.D. Cal. 1978); *In re* Marriage of Pardee, 408 F. Supp. 666 (C.D. Cal. 1976); *In re* Marriage of Campa, 89 Cal. App. 3d 113, 152 Cal. Rptr. 362 (1979), *appeal docketed*, 48 U.S.L.W. 3051 (U.S. June 19, 1979) (No. 78-1881); *In re* Marriage of Johnston, 85 Cal. App. 3d 900, 149 Cal. Rptr. 798 (1978), *petition for cert. filed*, 48 U.S.L.W. 3086 (U.S. Mar. 19, 1979) (No. 79-1445); Biles v. Biles, 163 N.J. Super. 49, 394 A.2d 153 (Super. Ct. 1978); *In re* M.H. v. J.H., 93 Misc. 2d 1016, 403 N.Y.S.2d 411 (Fam. Ct. 1978). Two other cases have held for preemption. General Motors Corp. v. Townsend, 468 F. Supp. 466 (E.D. Mich. 1976) (on basis of § 206); Francis v. United Technologies Corp., 458 F. Supp. 84 (N.D. Cal. 1978) (on basis of broad interpretation of § 514). The following domestic relations cases hold against preemption, but provide little clarification of the meaning of "relate to": Johns v. Retirement Fund Trust, 85 Cal. App. 3d 511, 149 Cal. Rptr. 551 (1978); Western Elec. Co. v. Traphagen, 166 N.J. Super. 418, 400 A.2d 66 (App. Div. 1979); Ellis v. Lionikis, 162 N.J. Super. 579, 394 A.2d 116 (App. Div. 1978); Magrini v. Magrini, — Pa. Super. Ct. —, 398 A.2d 179 (1979).

17. For cases deciding against preemption on the basis of a relatively narrow interpretation of "relate to," see Bucyrus-Erie Co. v. Department of Indus., 599 F.2d 205 (7th Cir. 1979), *petition for cert. filed*, 48 U.S.L.W. 3181 (U.S. Aug. 16, 1979) (No. 79-258); Brown Co. v. Wisconsin Dep't of Indus., Labor, and Human Relations, No. 77-C-29, slip op. (W.D. Wis. Sept. 14, 1979); Illinois Bell Tel. Co. v. Fair Employment Practice Comm'n, 68 Ill. App. 3d 829, 386 N.E.2d 599 (1979); Liberty Mut. Ins. Co. v. State Div. of Human Rights, 61 A.D.2d 822, 402 N.Y.S.2d 218 (1978); Westinghouse Elec. Corp. v. State Human Rights App. Bd., 60 A.D.2d 943, 401 N.Y.S.2d 597 (1978); Gast v. Stevenson, 36 Or. App. 441, 585 P.2d 12 (1978); Goodyear Tire & Rubber Co. v. Department of Indus., Labor, and Human Relations, 87 Wis. 2d 56, 273 N.W.2d 786 (Ct. App. 1978); Time Ins. Co. v. Wisconsin Dep't of Indus., Labor, and Human Relations, 46 U.S.L.W. 2369 (Wis. Cir. Ct. 1978). For a broader interpretation, see Perval Indus., Inc. v. Connecticut Comm'n on Human Rights & Opportunities, 468 F. Supp. 490 (D. Conn. 1978), *aff'd*, 603 F.2d 214 (2d Cir. 1979); Mountain States Tel. & Tel. Co. v. Commissioner of Labor & Indus., [1975-1979 Transfer Binder] PENS. PLAN GUIDE (CCH) ¶ 22,622 (D. Mont. Aug. 14, 1978).

18. *In re* Parker, 473 F. Supp. 746 (W.D.N.Y. 1979); Electrical Workers Local 1 Credit Union v. IBEW-NECA Holiday Trust Fund, 583 S.W.2d 154 (Mo. 1979) (en banc); National Bank of N. Am. v. Local 3, IBEW, 93 Misc. 2d 590, 400 N.Y.S.2d 482 (Sup. Ct. 1977).

19. National Carriers' Conference Comm. v. Heffernan, 454 F. Supp. 914 (D. Conn. 1978).

20. Buczynski v. General Motors Corp., 456 F. Supp. 867, *aff'd on rehearing*, 464 F. Supp. 133 (D.N.J. 1978).

21. Suffolk County Bar Ass'n v. Law Research Serv., Inc., [1975-1979 Transfer Binder] PENS. PLAN GUIDE (CCH) ¶ 22,756 (N.Y. Sup. Ct. Jan. 13, 1978).

22. Martin v. Hamil, No. 78-C-2643, slip op. (N.D. Ill. Mar. 13, 1979); Bacon v. Wong, 445 F. Supp. 1189 (N.D. Cal. 1978).

This Note analyzes the inconsistent judicial interpretations of section 514, proposes a guideline that is sufficiently flexible to reconcile the cases' conflicting outcomes on the scope of ERISA's preemption of state law, and examines proposed amendments to section 514 designed to alleviate some of the problems raised by the preemption decisions.

I. ERISA's General Preemption Provision: Section 514

Section 514 generally provides that ERISA shall supersede any state law that relates to an employee benefit plan.[23] Section 514 limits the scope of preemption,[24] however, by exempting[25] state laws that regulate

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23. (a) Supersedure; effective date

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. This section shall take effect January 1, 1975.

(b) Construction and application

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law or any State purporting to regulate insurance companies, insurance contract, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) of this section shall not apply to any generally applicable criminal law of a State.

(c) Definitions

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered by this subchapter.

(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in section 1031 and 1137 (b) of this title) or any rule or regulation issued under any such law.

ERISA § 514, 29 U.S.C. § 1144 (1975).

24. *Id.* § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A). The following subsection, the "deemer

the insurance, banking, and securities businesses[26] and state criminal laws.[27]

Section 514 was the result of a conference committee's resolution of

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clause," cautions that legitimate employee benefit plans are not deemed to be engaged in the insurance, banking, or investment businesses. *Id.* § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)(B).

25. *Id.* § 514(b)(4), 29 U.S.C. § 1144(b)(4).

26. Congress may have been concerned about impinging on state sovereignty when it specified these exceptions. *See* note 14 *supra*. The legislative history does not explain these exemptions; the conference committee report merely paraphrases the provision. H. CON. REP. No. 93-1280, 93d Cong., 2d Sess. 383 (1974), *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 5038, 5162. Yet the problems created by preemption in these areas must have been obvious to Congress. State criminal law is an important complement to ERISA in protecting plan assets from fraud or misappropriation. Furthermore, preemption of state laws regulating businesses that deal with benefit plans (*i.e.*, by selling them insurance or by handling their investments) would create a void ERISA cannot fill.

The insurance business provides a concrete example of this problem. After ERISA became effective, a number of organizations that were actually fronts for insurance businesses purported to be benefit plans to avoid state regulation; the courts decided, however, that these organizations were within the insurance business exception. Wayne Chem., Inc. v. Columbus Agency, 567 F.2d 692 (7th Cir. 1977); Business Conf. Employee Benefit Ass'n v. Anderson, 451 F. Supp. 458 (S.D. Iowa 1977); Bell v. Employee Security Benefit Ass'n, 437 F. Supp. 382 (D. Kan. 1977); Hamberlin v. VIP Ins. Trust, 434 F. Supp. 1196 (D. Ariz. 1977). The courts distinguished insurance businesses from ERISA plans primarily on three grounds: (1) whether the organization in question was profit-making; (2) whether it offered coverage indiscriminately, without regard to employer or type of employment; and (3) whether it came into existence through the efforts of someone other than covered employees or their employers. *See generally* Note, *Insurance Regulation—Employee Benefit Plans*, 28 ARK. L. REV. 515 (1975).

By exempting state insurance law, Congress also followed a longstanding national policy of state primacy in insurance business regulation. The Supreme Court initially did not consider an insurance policy to be interstate commerce subject to federal regulation. Paul v. Virginia, 75 U.S. (8 Wall.) 168 (1869). In 1944, however, the Court held that the insurance business operates in interstate commerce. United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533 (1944). To avoid judicial attack on insurance regulation as a burden on interstate commerce, Congress passed the McCarran-Ferguson Act the following year. Pub. L. No. 79-15, 59 Stat. 34 (1945). *See* Brummond, *supra* note 13, at 79-80.

27. Laws relating to plans that ERISA does not cover, of course, also are exempt. ERISA § 514(a), 29 U.S.C. § 1144(a) (1975). ERISA's general coverage sections provides:

> (a) Except as provided in subsection (b) of this section and in section 1051, 1081, and 1101 of this title, this subchapter shall apply to any employee benefit plan if it is established or maintained—
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> (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or
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> (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or
>
> (3) by both;

discrepancies between earlier House and Senate versions.[28] The House proposal[29] limited the scope of preemption to state regulation of areas expressly covered by the bill: reporting, disclosure, fiduciary duties, funding, financing, vesting, and forfeitability. The Senate proposal[30] defined the scope of preemption in more general terms to encompass laws relating to subject matters governed by the bill or the Welfare and Pension Plans Disclosure Act.[31] In both earlier versions, state laws that related to benefit plans were to be invalid only to the extent they conflicted with or duplicated ERISA. The conference version abandoned "relationship to the Act" as the standard of preemption in favor of a

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(b) The provisions of this subchapter shall not apply to any employee benefit plan if—
(1) such plan is a governmental plan (as defined in section 1002(32) of this title);
(2) such plan is a church plan (as defined in section 1002(33) of this title) with respect to which no election has been made under section 410(d) of Title 26;
(3) such plan is maintained solely for the purpose of complying with applicable workmen's compensation or disability insurance laws;
(4) such plan is maintained outside of the United States primarily for the benefit of persons substantially all of whom are nonresident aliens; or
(5) such plan is an excess benefit plan (as defined in section 1002(36) of this title) and is unfunded.

Id. § 4, 29 U.S.C. § 1003.

28. *See* note 1 *supra*.

29. H.R. 2, 93d Cong., 1st Sess. 7 (1974):

(a) It is hereby declared to be the express intent of Congress that, except for actions authorized by section 503(e)(1)(B) of this Act and except as provided in subsection (b) of this section the provisions of part 1 of this subtitle shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the reporting and disclosure responsibilites and fiduciary responsibilities, of persons acting on behalf of any employee benefit plan to which part 1 applies.

. . . .

(c) It is hereby declared to be the express intent of Congress that the provisions of parts 2, 3, and 4 of this subtitle shall supersede any and all laws of the States and of political subdivsions thereof insofar as they may now or hereafter relate to the nonforfeitability of participant's benefits in employee benefit plans described in section 201(a) or 301(a), the funding requirement for such plans, the adequacy of financing such plans, portability requirements for such plans, or the insurance of pension benefits under such plans.

120 CONG. REC. 4742 (1974). *See also* HOUSE COMM. ON EDUC. & LAB. REP. NO. 93-533, 93d Cong., 1st Sess., *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 4639, 4655.

30. S. 4200, 93d Cong., 1st Sess. (1973):

(a) PRE-EMPTION OF STATE LAWS—It is hereby declared to be the express intent of Congress that, except for actions authorized by section 694 of this title, the provisions of this Act or the Welfare and Pension Plans Disclosure Act shall supersede any and all laws of the States and of political subdivisions thereof insofar as they may now or hereafter relate to the subject matters regulated by this Act, or the Welfare and Pension Plans Disclosure Act . . . .

120 CONG. REC. 5002 (1974).

31. ERISA §§ 2-514, 29 U.S.C. §§ 1001-1144 (1975) repealed and replaces the Welfare and Pension Plans Disclosure Act, Pub. L. 85-836, 72 Stat. 997 (1958). *See* R. BILDERSEE, PENSION REGULATION MANUAL: ANALYSIS, FORMS, AND PROCEDURES 1 (1975).

"relationship to the plan" test.[32]

Although the conference committee report on section 514 merely paraphrased the statute,[33] several sponsors of ERISA, including Senators Jacob Javits and Harrison Williams and Representative John Dent, indicated in their comments on the bill that the more sweeping preemption provision was designed to cope with: (1) variations in state regulation from state to state; (2) conflicts between federal and state regulations; and (3) burdensome litigation over the precise scope of ERISA's preemption concerning the issue of relationship of state law.[34] It is likely that Congress believed that these problems, in the absence of

32. *See* H. CONF. REP. No. 93-1280, 93d Cong., 2d Sess. 383 (1974), *reprinted in* [1974] U.S. CODE CONG. & AD. NEWS 5038, 5162.

33. *Id.*

34. Senator Javits commented:

> Both House and Senate bills provided for preemption, but—with one major exception appearing in the House bill—defined the perimeters of preemption in relation to the areas regulated by the bill. Such formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.
>
> Although the desirability of further regulation—at either the State or Federal level—undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required—but for certain exceptions—the displacement of State action in the field of private employee benefit programs.

120 CONG. REC. 29942 (1974).

Senator Williams stated:

> It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law.

120 CONG. REC. 29933 (1974).

Representative Dent noted:

> Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation. . . .
>
> The conferees, with the narrow exceptions specifically enumerated, applied this principle in its broadest sense to foreclose any non-Federal Regulation or employee benefit plans. Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State, subdivision thereof or any agency or instrumentality thereof—including any professional society or association operating under color of law—which would affect any employee benefit plan as described in section 4(a) and not exempt under section 4(b).

120 CONG. REC. 29197 (1974).

a strong preemption provision, would discourage employers from adopting or maintaining employee benefit plans.[35]

II. Four Theories of the Meaning of "Relate to"

The courts have endorsed four distinct theories of the phrase "relate to" in defining the scope of preemption under section 514: (1) the plain meaning theory; (2) the legislative purpose theory; (3) the proximity theory; and (4) the specific conflict theory.[36] The scope of preemption associated with each theory varies considerably—from broadest under the plain meaning theory to narrowest under the specific conflict theory.

The plain meaning theory[37] advances a literal and unqualified interpretation of the phrase "relate to." This approach has considerable facial validity. Congress' specific exemption in section 514 of state regulation of insurance, banking, and securities businesses and state criminal laws[38] suggests that it may have intended no more exceptions.[39] In addition, this interpretation is consistent with the legislative history of the preemption provision. In adopting the conference version of section 514, Congress rejected the narrower language of the House[40] and Senate[41] versions, both of which expressed preemption in terms of the state law's relationship to ERISA rather than to the benefit plan.

At the other extreme, the specific conflict theory[42] limits preemption

35. *See* note 6 *supra*.

36. Two of these theories, the plain meaning and legislative purpose theories, derive from application of standard methods of statutory interpretation. *See* R. Dickerson, The Interpretation and Application of Statutes 95, 109 (1975). The two other theories, the proximity and specific conflict theories, are glosses on the phrase "relate to" and are specific to the context of § 514.

37. *See* Wadsworth v. Whaland, 562 F.2d 70 (1st Cir. 1977), *cert. denied*, 435 U.S. 980 (1978); Francis v. United Technologies Corp., 458 F. Supp. 84 (N.D. Cal. 1978); National Carriers' Conf. Comm. v. Heffernan, 454 F. Supp. 914 (D. Conn. 1978); Standard Oil Co. v. Agsalud, 442 F. Supp. 695 (N.D. Cal. 1977); Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294 (N.D. Cal. 1977), *aff'd*, 571 F.2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978).

38. *See* notes 24-25 *supra* and accompanying text.

39. The maxim is *expressio unius est exclusio alterius. See* R. Dickerson, The Interpretation and Application of Statutes 47 (1975).

40. *See* note 29 *supra*.

41. *See* note 30 *supra*.

42. *See* Insurers' Action Council v. Heaton, 423 F. Supp. 921 (D. Minn. 1976); *In re* Marriage of Pardee, 408 F. Supp. 666 (C.D. Cal. 1976); *In re* M.H. v. J.H., 93 Misc. 2d 1016, 403 N.Y.S.2d 411 (Fam. Ct. 1978); Gast v. Stevenson, 36 Or. App. 441, 585 P.2d 12 (1978).

to state laws that either duplicate or conflict with specific provisions of ERISA. Because ERISA generally provides protection to operating employee benefit plans but does not require employers to provide specific benefits,[43] the Act, under this theory, would not preempt state laws requiring such benefits.[44] The specific conflict theory, however, is at odds with the plain meaning of the language of section 514, which supersedes any state law that relates to a benefit plan, not to a specific ERISA provision.[45] In fact, the theory is consistent with the narrower House version that the congressional conferees rejected.[46]

The legislative purpose and proximity theories fall between these two extremes. The legislative purpose theory[47] goes beyond a literal interpretation of section 514 by limiting the phrase "relate to" to relationships that Congress would likely find consistent with the policy of ERISA or even other federal legislation.[48] Several versions of the legislative purpose theory are evident in these decisions, each corresponding to a different legislative policy.

Like the specific conflict theory, the legislative purpose theory focuses on the relationship between the state law and ERISA rather than on the relationship between the state law and the benefit plan. Because the legislative purpose theory considers broader policy concerns and not only specific ERISA provisions, however, it allows a somewhat broader scope of preemption than the specific conflict theory.

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43. *See* note 6 *supra*.

44. California, Hawaii, New Hampshire, and Minnesota have passed health insurance laws that required such benefits. *See* notes 58, 66, 71, 77 *infra*.

45. *See* note 23 *supra*.

46. *See* note 29 *supra*. The passage in the Senate version—"subject matters regulated by this Act or the Welfare and Pension Plans Disclosure Act," 120 CONG. REC. 5002 (1974)—is ambiguous. If it refers to specific provisions of those statutes rather than to their general policy, then the Senate version also would be consistent with the specific conflict theory.

47. Bucyrus-Erie Co. v. Dep't of Indus., 599 F.2d 205 (7th Cir. 1979), *petition for cert. filed*, 48 U.S.L.W. 3181 (U.S. Aug. 16, 1979) (No. 79-258); Cartledge v. Miller, 457 F. Supp. 1146 (S.D.N.Y. 1978); Stone v. Stone, 450 F. Supp. 919 (N.D. Cal. 1978); Liberty Mut. Ins. Co. v. State Div. of Human Rights, 61 A.D.2d 822, 402 N.Y.S.2d 218 (1978); National Bank of N. Am. v. Local 3, IBEW, 93 Misc. 2d 590, 400 N.Y.S.2d 482 (Sup. Ct. 1977).

48. Legislative purpose differs from legislative intent. Any attempt to interpret a statute involves an inference of intent. Congress could have intended the literal meaning of § 514 or a meaning consistent with one of the other theories. Legislative purpose, as used here, refers to the general policy concerns of Congress against which specific passages are interpreted to avoid a literal reading. Thus, an alleged legislative policy behind the plain meaning theory of encouraging employers to adopt and maintain benefit plans, *see* note 6 *supra*, is not an example of a "legislative purpose" under the legislative purpose theory as defined.

The proximity theory[49] interprets the phrase "relate to" to implicitly exclude tenuous, indirect relationships. This approach, in effect, qualifies the phrase with the adverb "directly." The language of section 514 does not support this qualification. In fact, the definition of "State" in section 514(c) includes "a State, any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, *directly or indirectly*, the terms and conditions of employee benefit plans covered by this sub-chapter."[50]

Some courts have adopted, in addition to the above theories, a rule of statutory interpretation that creates a presumption that Congress does not intend to preempt state law in areas of important and traditional state interest without specifically stating or otherwise clearly indicating the law to be preempted.[51] One problem with this presumption is that, except for an occasional provision like section 206, Congress did not specify in ERISA any state law for preemption.[52] In section 514 Congress merely stated that ERISA supersedes "any and all State laws"[53] that relate to a benefit plan.

Although each theory has found some support in the preemption cases, adoption of different theories does not necessarily yield different decisions on preemption in any given case. Decisions to preempt state law under either the legislative purpose or the proximity theory would be the same as those under the broader plain meaning theory; similarly, decisions to preempt under the narrow specific conflict theory would be identical to those under any of the other theories.

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49. A.T. & T. v. Merry, 592 F.2d 118 (2d Cir. 1979); Buczynski v. General Motors Corp., 456 F. Supp. 867, *aff'd on rehearing*, 464 F. Supp. 133 (D.N.J. 1978); *In re* Marriage of Johnston, 85 Cal. App. 3d 900, 149 Cal. Rptr. 798 (Ct. App. 1978).

50. ERISA § 514(c)(2), 29 U.S.C. § 1144(c)(2) (1975) (emphasis added).

51. Cartledge v. Miller, 457 F. Supp. 1146 (S.D.N.Y. 1978); Buczynski v. General Motors Corp., 456 F. Supp. 867, *aff'd on rehearing*, 464 F. Supp. 133 (D.N.J. 1978); Bucyrus-Erie Co. v. Dep't of Indus., 453 F. Supp. 75 (E.D. Wis. 1978), *aff'd*, 599 F.2d 205 (7th Cir. 1979); Stone v. Stone, 450 F. Supp. 919 (N.D. Cal. 1978); Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294 (N.D. Cal. 1977), *aff'd*, 571 F.2d 502 (9th Cir.), *cert. denied*, 439 U.S. 831 (1978); *In re* Marriage of Johnston, 85 Cal. App. 3d 900, 149 Cal. Rptr. 798 (1978), *petition for cert. filed*, 48 U.S.L.W. 3086 (U.S. Mar. 19, 1979) (No. 79-1445). This rule recognizes the constitutional implications of federal preemption of state sovereignty. *See* note 14 *supra*. Perhaps it is reasonable to treat this rule as a variant of the legislative purpose theory, *i.e.*, the congressional policy is protection of state sovereignty. *See* note 48 *supra*. Because this treatment of the rule would be applicable to any preemption of state law by federal law, it is preferable to consider it to be a rule of statutory interpretation.

52. *See* note 13 *supra* and accompanying text.

53. ERISA § 514(a), 29 U.S.C. § 1144(a) (1975).

III. INSURANCE REGULATION CASES

The first step in analyzing the insurance law cases is to identify the point at which a state law comes into contact with the plan.[54] Some bona fide employee benefit plans self-insure, but many plans purchase insurance to provide the agreed-upon benefits. Thus, any state law that regulates the insurance business regulates, at least indirectly, a plan that purchases insurance,[55] and any law that regulates a self-insured plan regulates that plan directly. Furthermore, a self-insured plan is not the same as an insurance business; thus, it may not qualify for an insurance exemption.[56]

The two insurance regulation decisions holding that ERISA preempted a state law concerned direct regulation of benefit plans. Both cases adopted a plain meaning theory of the phrase "relate to." In *Standard Oil Co. v. Agsalud*[57] the court invalidated the 1974 Hawaii Prepaid Health Care Act,[58] which differed from ERISA in certain administrative details such as reporting[59] and in its mandate that all workers be covered by a prepaid health care plan.[60] Standard Oil's self-insured health care plan for its employees met ERISA standards, but did not satisfy the Hawaii reporting requirements or cover alcohol and drug abuse as the Hawaii law demanded.

The court rejected a specific conflict theory of section 514[61] in favor of a plain meaning theory, finding support for that choice in Congress' rejection of the two narrower versions of section 514.[62] Additionally,

54. *See* note 26 *supra*.

55. *See* Wadsworth v. Whaland, 562 F.2d 70 (1st Cir. 1977), *cert. denied*, 435 U.S. 980 (1978).

56. *See* note 26 *supra*.

57. 442 F. Supp. 695 (N.D. Cal. 1977).

58. HAWAII REV. STAT. §§ 393-1 to 396-15 (1976).

59. 442 F. Supp. at 696.

60. *Id.*

61. Insofar as the Hawaii Act does not regulate matters covered by ERISA (basically reporting, disclosure, funding, vesting, and fiduciary duties), it would not, under this interpretation, be superseded because it does not relate to employee benefit plans in any of the ways that ERISA relates to employee benefit plans. ERISA and the Hawaii Act would be complementary, each occupying part of a field not occupied by the other. Under this interpretation, Hawaiian workers would obtain the protection of both the Hawaii Act, which regulates benefits but not administration, and ERISA, which regulates administration but not benefits.

Id. at 706-07 (footnote omitted).

62. At one point the court said, "In any normal meaning, the Hawaii Act relates to employee benefit plans. . . . When Congress says 'any and all State laws,' courts cannot conclude that Congress really meant to say 'some but not all State laws.' " 442 F. Supp. at 707. The court also concluded that the legislative history indicates § 514 "mean[s] what it says" and "forecloses any

the court concluded that Congress might have had good reason to avoid imposing on employers substantive benefits beyond the administrative safeguards included in ERISA.[63] Under ERISA the provision of substantive benefits is to remain voluntary—a matter between employers and employees; thus, Congress might wish to preempt any state additions to the federal requirements that would discourage the adoption of benefit plans.[64]

In *Hewlett-Packard Co. v. Barnes*[65] the court held that ERISA preempted California's Knox-Keene Act,[66] a statute regulating the delivery of health care services to state residents who participate in health care service plans. The Knox-Keene Act governed entities that directly deliver health care services or furnish insurance-type protection, including the self-funded ERISA plans offered by plaintiffs. The California Act regulated such areas as funding, disclosure, sales practice, and quality of service, and required that any plan be licensed by the State Commissioner of Corporations. Thus, the Act directly affected benefit plans.

In deciding the preemption issue, the court favored the plain meaning theory, arguing that the language of section 514[67] and its legislative history (rejection of the earlier House and Senate versions)[68] indicated an intention to broadly preempt state laws such as Knox-Keene. The decision did not explicitly reject the three other theories, but the court by implication rejected the specific conflict theory by noting the conference committee's rejection of the House version of section 514, which corresponded to that theory.[69]

Two insurance regulation decisions have held against preemption and in favor of the validity of state law. One of these cases, *Wadsworth*

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interpretation which would narrow its scope beyond its plain language." *Id.* at 707. For the legislative history of § 514, see notes 29-30 *supra*.

63. The process of using policy argument to justify a plain meaning theory is different from the adoption of a legislative purpose theory. The legislative purpose theory, as defined, involves use of a policy that is capable of justifying departures from a literal interpretation where appropriate. *See* note 48 *supra*.

64. *See* note 6 *supra*. Thus, § 514 prevents states from requiring more "liberal" protection for plan beneficiaries than that required by Congress.

65. 425 F. Supp. 1294 (N.D. Cal. 1977).

66. CAL. HEALTH & SAFETY CODE §§ 1340-1399.64 (Deering Supp. 1979).

67. 425 F. Supp. at 1297.

68. "The Conference Committee Report indicates that the committee intended preemption just as broad as the statutory language suggests . . . ." *Id.* at 1298. *See also id.* at 1299-1300.

69. *Id.* at 1300.

v. Whaland,[70] also adopted the plain meaning theory, despite the difference in outcomes. The *Wadsworth* case, however, is distinguishable from the previous cases. The pertinent New Hampshire statute[71] regulated group accident and health insurance plans available for purchase by those employee benefit plans which are not self-insuring. Thus the state law in this case, unlike the Hawaii and California laws, regulated employee benefit plans only indirectly. An argument against preemption under a proximity theory would have been appropriate, but the decision adopted the plain meaning theory[72] and held that the New Hampshire Act related to benefit plans within the meaning of section 514.[73] The court explicitly rejected the specific conflict theory[74] and implicitly ruled out the proximity theory by concluding that the indirectness of the relationship does not by itself preclude preemption. The New Hampshire statute escaped preemption because of the insurance business exception; although the statute related to benefit plans, it constituted a permissible regulation of the insurance industry.[75]

In *Insurers' Action Council, Inc. v. Heaton*[76] the court considered preemption of the Minnesota Comprehensive Insurance Act of 1976.[77] That Act required employers who offered health-care plans to make available to employees a certain type of qualified policy that provided specific benefits or their actuarial equivalent. The Act thus impinged directly on welfare benefit plans and imposed substantive benefit requirements on employers.

In rejecting the preemption argument, the court endorsed the specific conflict theory of preemption rejected in the three other insurance regulation cases.[78] The court also reasoned that section 514(d)[79] provides that ERISA shall not be construed to supersede any law of the United

70. 562 F.2d 70 (1st Cir. 1977), *cert. denied*, 435 U.S. 980 (1978).

71. N.H. REV. STAT. ANN. §§ 415: 18-a(1), 419: 5-a, 420: 5-a (Supp. 1977).

72. "The argument that the plans would be detrimentally affected and might face bankruptcy or extinction cannot change the plain meaning of ERISA." 562 F.2d at 78.

73. *Id.* at 77.

74. "Congress, therefore, clearly rejected a concept of preemption limited to conflicting or duplicate state law, in favor of applying the principle in its 'broadest sense.'" *Id.*

75. *Id.* at 77-78.

76. 423 F. Supp. 921 (D. Minn. 1976).

77. 1976 Minn. Laws, ch. 296.

78. In the first place, [§ 514] provides that with a very narrow exception, ERISA should not be construed to relieve any person from any state law regulating insurance, banking, or securities. Thus, the conflict between the challenged state insurance law and ERISA has to be very clear in order to trigger the preemption provision. The only substantive parts of ERISA which relate to health and accident insurance are the reporting and

States and that preemption of the Minnesota Act would violate the McCarran-Ferguson Act principle of state primacy in regulation of the insurance business.[80] This approach, however, ignores the conference committee's abandonment of the House version of preemption, which was consistent with the specific conflict theory.[81] More importantly, the reasoning based on McCarran-Ferguson also blurs the distinction between the insurance business and employee benefit plans.[82] If state regulation that impinges directly on these nonprofit plans is considered regulation of the insurance business merely because the plans purchase insurance or self-insure, then the deemer clause of section 514[83] is functionless and the preemption provision becomes powerless to preempt any state regulation of benefit plans.

Thus, with the exception of *Insurers' Action Council*,[84] the insurance decisions favor preemption when the state law directly affects benefit plans and explicitly endorse the plain meaning theory of the meaning of "relate to."

IV. Domestic Relations Cases

A. *General Pattern*

In the domestic relations cases, most of which came after the insurance decisions, the courts generally have found that ERISA does not preempt state property law.[85] Some of these decisions examined the meaning of "relate to" in both the general terms of section 514 and the more specific language of section 206;[86] others relied on an interpretation of section 206 without discussing section 514.[87] All the cases discussing section 514, however, have retreated from the plain meaning

disclosure provisions. These requirements have nothing to do with the substance of the insurance plans which employers must offer their employees.

423 F. Supp. at 926.

79. 29 U.S.C. § 1144(d) (1975).

80. 423 F. Supp. at 926. *See also* note 26 *supra*.

81. *See* note 29 *supra*.

82. *See* note 26 *supra* and accompanying text.

83. ERISA § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)(B) (1975). *See* note 24 *supra*.

84. 423 F. Supp. 921 (D. Minn. 1976).

85. *See* note 16 *supra*.

86. *See* note 16 *supra*.

87. *See* Operating Eng'rs Local 428 v. Zamborsky, 470 F. Supp. 1174 (D. Ariz. 1979); Cody v. Riecker, 454 F. Supp. 22 (E.D.N.Y. 1978), *aff'd*, 594 F.2d 314 (2d Cir. 1979); Cogollos v. Cogollos, 93 Misc. 2d 406, 402 N.Y.S.2d 929 (Sup. Ct. 1978); Wanamaker v. Wanamaker, 93 Misc. 2d 784, 401 N.Y.S.2d 702 (Fam. Ct. 1978). *See generally* Comment, *supra* note 14.

theory that justified the *Standard Oil* and *Hewlett-Packard* decisions and have endorsed one of the three other theories.

B. *Community Property Jurisdictions*

In community property jurisdictions, the general issue is whether ERISA preempts community property division of pension rights either because of the general preemption provision of section 514 or because of the more specific limitation on alienation and assignment in section 206. Most of the community property cases have arisen in California.[88]

In re Marriage of Pardee,[89] an early case, suggested in dicta that Congress intended section 514 to preempt state law only in "matters involving the safeguards necessary to secure equitable administration."[90] Through this language, the court seemingly embraced the specific conflict theory.

The leading case holding against preemption in the community property area is *Stone v. Stone*,[91] in which a federal district court[92] adopted a form of the legislative purpose theory[93] and concluded that state community property law does not relate to benefit plans within the meaning of section 514.[94] The court advanced four policy arguments to support its interpretation. First, state regulation of domestic relations is a better-established tradition than state regulation of benefit plans; therefore, Congress presumably did not intend to impinge so

88. California property law treats pension rights, whether vested or not, as a property interest subject to division as community property on dissolution of the marriage to the extent that such rights derive from employment during coverture. *In re* Marriage of Brown, 15 Cal. 3d 838, 544 P.2d 561, 126 Cal. Rptr. 633 (1976). *Brown* overruled thirty-five years of California law. Prior cases had held that nonvested pension rights were mere expectancies. *See generally* Reppy, *supra* note 22.

89. 408 F. Supp. 666 (C.D. Cal. 1976).

90. *Id.* at 669 n.4.

91. 450 F. Supp. 919 (N.D. Cal. 1978).

92. Judge Renfrew, who also wrote the *Hewlett-Packard* and *Standard Oil* decisions, abandoned the plain meaning theory of these earlier cases.

93. The decision also suggested the proximity theory by asserting that Congress did not mean to preempt a body of state law with only "the most tangential relation to ERISA." 450 F. Supp. at 932.

94. *Id.* at 933. *Stone* also examined the possibility of specific preemption of community property law by § 206 and concluded that "alienation" and "assignment" do not refer to the division of community property under state law. *Id.* at 926. Judge Renfrew found these terms and the legislative history ambiguous. *Id.* at 925. He based his decision that § 206 does not apply to community property law primarily on a presumed congressional desire that ERISA protect the dependents of employees. *Id.* at 931.

heavily on traditional state sovereignty by preempting community property law.[95] Second, in the event of preemption, nonemployee spouses would have no alternative to state law as a means of acquiring their share of the benefits.[96] Third, preemption of community property law is inconsistent with the congressional goal of insuring benefits for the dependents of employees as well as for the employees themselves.[97] Last, dependent spouses, unlike business creditors, cannot protect their interest by limiting the amount they will invest in the relationship.[98]

Francis v. United Technologies Corp.[99] disregarded *Stone v. Stone*,

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95. The Court cannot find in § 514(a) the clear evidence of congressional intent to preempt state community property laws insofar as they relate to benefit plans that is necessary for a finding of preemption of state domestic relations laws. . . . Regulation of benefit plans is an exercise of the police powers of states, but state regulation of benefit plans is not nearly as well established as state regulation of community property. To preclude state regulation of this latter area would involve a much more radical disturbance of "the federal-state balance" . . . than preclusion of state regulation of benefit plans. Accordingly, the presumption against preemption in the area of community property is correspondingly stronger.

Id. at 932 (citation omitted). *See also* note 51 *supra* and accompanying text.

96. A second basis for distinguishing *Standard Oil* involves the effect of preemption on individuals whom the state seeks to protect. Preemption of the Hawaii health insurance law does not prevent Hawaiian workers from bargaining for the benefits which the state statute sought to guarantee. Although part of the reason for the statute may have been to ensure that workers with little bargaining power would obtain those benefits, the intended beneficiaries of the statute were not rendered incapable of achieving the protection. The intended beneficiaries of the California community property laws would be placed at a significantly greater disadvantage by preemption. Preemption would deprive nonemployee spouses of the share in marital assets which they indirectly helped to acquire, and it would leave them without effective remedies against their husbands . . . .

450 F. Supp. at 932-33.

97. Congress was concerned not only about the workers themselves whose employment entitles them to benefits. Congress was also concerned about the families of those workers who depend to the same degree on the actual availability of those benefits. It would be ironic indeed if a provision designed in part to ensure that an employee spouse would be able to meet his obligations to family after retirement were interpreted to permit him to evade them with impunity after divorce.

Id. at 926.

98. A second reason to conclude that ERISA treats community property interests differently from other claims against benefits is that the nonemployee spouse cannot minimize her losses if her husband fails to honor his obligations to her. The insulation by ERISA of a substantial community asset from her community property claims if the marriage ends in divorce should not lead the nonemployee spouse to anticipate (and perhaps precipitate) that event by limiting her contributions to the marital partnership. . . .

This unavoidable vulnerability of nonemployee spouses contrasts with the position of business creditors. Depriving business creditors of recourse against this kind of asset is fair, because they have "only themselves to blame for extending credit to a person whose interest under the [benefit plan] had been put beyond their reach" without first ascertaining the extent and character of the debtor's resources.

Id. at 926-27.

99. 458 F. Supp. 84 (N.D. Cal. 1978).

which had been decided in the same district, and apparently adopted the plain meaning theory of relatedness.[100] A California Court of Appeals, in *In re Marriage of Johnston*,[101] on the other hand, selected *Stone*'s approach over *Francis*' on the basis of the proximity theory.[102]

C. *Common-Law Jurisdictions*

In a common-law property state, the preemption issue is whether a court can invoke state law to garnish a pension payment as a means of compelling court-ordered support of spouse or children. The courts in all cases but one[103] have answered the question affirmatively, despite the possibility of preemption under sections 514 and 206.

In the leading case of *A.T.& T. v. Merry*,[104] the Second Circuit relied on the proximity theory in rejecting a literal interpretation of "relate to" and allowing garnishment of the pension of a husband delinquent in his support payments.[105] The court concluded that a literal construction of section 514 "would necessarily lead to the unreasonable conclusion that Congress intended to preempt even those state laws that only in the most remote and peripheral manner touch upon pension plans."[106]

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100. "This language was intended to effect the broadest possible preemption of state law. The inclusion of all state laws which 'relate to' any ERISA plan was an attempt to make this preemption cover laws which were not specifically directed at this subject area, but which still affected it." *Id.* at 86.

101. 85 Cal. App. 3d 900, 149 Cal. Rptr. 798 (1978).

102. The argument is that California community property law, unlike the Knox-Keene Act, does not affect the administration or regulation of ERISA plans, but only the "distribution of the pension benefits after a right thereto has been established under federal law." *Id.* at 910, 149 Cal. Rptr. at 804.

103. General Motors Corp. v. Townsend, 468 F. Supp. 466 (E.D. Mich. 1976).

104. 592 F.2d 118 (2d Cir. 1979). *Accord,* Senco, Inc. v. Clark, 473 F. Supp. 902 (M.D. Fla. 1979).

105. The court also suggested that garnishment is not a voluntary transfer and therefore is not covered by § 206. 592 F.2d at 121 n.8.

106. *Id.* at 121. A number of other cases did not discuss § 514, but relied entirely on an interpretation of § 206. These cases overwhelmingly support the pattern of holdings that ERISA does not preempt state law of garnishment and attachment in the domestic relations area, when the courts apply these procedures to ERISA benefit plans. The cases are not particularly helpful, however, in interpreting the meaning of "relate to" in § 514.

In Cody v. Riecker, 454 F. Supp. 22 (E.D.N.Y. 1978), *aff'd*, 594 F.2d 314 (2d Cir. 1979), a federal district court characterized the garnishment as an assignment, but assumed that Congress did not intend in ERISA to interfere with the enforceability of New York state domestic relations law. In Wanamaker v. Wanamaker, 93 Misc. 2d 784, 401 N.Y.S.2d 702 (Fam. Ct. 1978), a New York family court concluded that treatment of a spouse as a creditor barred from a state remedy by § 206 would be inconsistent with the purpose of ERISA to protect the rights of dependents and

In *Cartledge v. Miller*[107] a federal district court held that courts should not preempt statutes enacted under the state's police powers unless preemption was clearly the intent of Congress.[108] Treating section 206 as a specific instance of preemption, the court embraced the legislative purpose theory by concluding that the purpose of ERISA includes protection of the rights of spouses and children to employee benefits.[109] The court noted as evidence of that purpose provisions of ERISA that mention employee dependents[110] or employee beneficiaries.[111]

In *In re J.H. v. M.H.*[112] a New York family court used a variant of the specific conflict theory. The court treated section 206 as a specific example of section 514 preemption and interpreted section 206 as referring to voluntary transfers, not involuntary seizures under domestic relations law. Because garnishment of a pension fund did not violate section 206, the court found that ERISA did not preempt the garnishment.[113]

V. Civil Rights Cases

The specific issue in these cases has been the preemption of state laws prohibiting, as sex discrimination, the lack of disability coverage for pregnancy. Most cases have held against preemption,[114] but the courts have not provided an unambiguous interpretation of the meaning of the phrase "relate to."

Bucyrus-Erie Co. v. Department of Industry, Labor, & Human Relations[115] illustrates the confusion. The Seventh Circuit held that section 514(d), which provides that ERISA shall not "be construed to alter,

would not be in the public interest. 93 Misc. 2d at 787-88, 401 N.Y.S.2d at 704-05. Operating Eng'rs Local 428 v. Zamborsky, 470 F. Supp. 1174 (D. Ariz. 1979) adopted the same arguments. Similarly, in Cogollos v. Cogollos, 93 Misc. 2d 406, 402 N.Y.S.2d 929 (Sup. Ct. 1978), a New York supreme court held against preemption in this situation as "fully consistent with logic, fair play, common sense, and manifest intent in terms of the overall federal objective." *Id.* at 408, 402 N.Y.S.2d at 930. In contrast, a federal district court in Michigan simply held, on the basis of the supremacy clause, that § 206 precludes garnishment. General Motors Corp. v. Townsend, 468 F. Supp. 466 (E.D. Mich. 1976).

107. 457 F. Supp. 1146 (S.D.N.Y. 1978).

108. *Id.* at 1154.

109. *Id.* at 1156.

110. *Id.*; ERISA § 2(a), 29 U.S.C. § 1001(a) (1975).

111. ERISA § 2(c), 29 U.S.C. § 1001(c) (1975).

112. 93 Misc. 2d 1016, 403 N.Y.S.2d 411 (Fam. Ct. 1978).

113. *Id.* at 1022, 403 N.Y.S.2d at 415-16.

114. *See* note 17 *supra*.

115. 599 F.2d 205 (7th Cir. 1979).

amend, modify, invalidate, impair or supersede any law of the United States,"[116] precludes preemption of the Wisconsin disability statute. The court interpreted section 514(d) to exempt a state law if its preemption would affect federal law, and concluded that preemption of the Wisconsin statute would alter and probably impair congressional incorporation of state fair employment law into federal civil rights law.[117]

Before deciding that section 514(d) explicitly exempted state civil rights laws, the court concluded that these laws relate to plans within the intended meaning of section 514.[118] The court did not endorse a theory of the meaning of the phrase "relate to," but rejected the specific conflict theory[119] and the proximity theory[120] and suggested that the legislative purpose theory applied in the domestic relations cases[121] was appropriate to the circumstances of those cases.[122]

In contrast, the district court in *Perval Industries, Inc. v. Connecticut Commission on Human Rights & Opportunities*[123] held that ERISA preempts state civil rights law. The court rejected the argument for an exemption, based on 514(d),[124] that the *Bucyrus-Erie* court adopted. In

116. ERISA § 514(d), 29 U.S.C. § 1144(d) (1975).

117. 599 F.2d at 210-11.

118. *Id.* at 209-10.

119. "Therefore we do not think the section can properly be limited to preempt only those state laws which are specifically related to employee benefit plans or which only relate to these plans by imposing requirements inconsistent with ERISA." *Id.* at 209.

120. *Id.* at 209-10.

121. The court focused on A.T. & T. v. Merry, 592 F.2d 118 (2d Cir. 1979), and Stone v. Stone, 450 F. Supp. 919 (N.D. Cal. 1978).

122. 599 F.2d at 209-10 & n.8.

123. 468 F. Supp. 490 (D. Conn. 1978), *aff'd*, 603 F.2d 214 (2d Cir. 1979). *Accord,* Mountain States Tel. & Tel. v. Commissioner of Labor & Indus., [1975-1979 Transfer Binder] PENS. PLAN GUIDE (CCH) ¶ 22,622 (D. Mont. Aug. 14, 1978).

124. Defendants also contend that § 514 does not accomplish preemption of Connecticut's anti-discrimination law because of the interaction of § 514(d) and provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Section 514(d), 29 U.S.C. § 1144(d), provides: "Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States. . . ." Section 708 of Title VII, 42 U.S.C. § 2000e-7 provides: "Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State . . . ." The argument is that ERISA does not supersede any federal law, Title VII preserves state anti-discrimination laws from preemption by Title VII, and "therefore" ERISA does not preempt state anti-discrimination laws. . . .

This Court does not accept the reasoning of this double savings clause contention. Section 514(d) of ERISA preserves *federal* law. Connecticut's anti-discrimination law does not become a federal law simply because Title VII preserves its validity as against a claim of preemption by Title VII. Nor is the textual argument significantly enhanced by focusing on § 514(b)'s requirement that ERISA should not be construed to "impair" any

deciding that the state antidiscrimination law related to ERISA plans, the court clearly rejected the specific conflict theory[125] and appeared to endorse the plain meaning theory.[126]

Passage of a federal requirement of pregnancy coverage in disability payments[127] probably has mooted this specific issue for cases arising after the requirement takes effect.[128] Section 514 clearly does not preempt a federal sex discrimination statute. The issue will persist, however, in cases involving other forms of sex discrimination when a state's

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law of the United States. Preemption of Conn. Gen. Stat. § 31-126(g) by ERISA does not impair any federal law. Title VII did not create new authority for state anti-discrimination laws; it simply left them where they were before the enactment of Title VII. Whatever is prohibited by Title VII remains prohibited under ERISA, but exclusion of disability benefits for pregnancy does not violate Title VII, *Gilbert v. General Electric Corp.*, 429 U.S. 125, 97 S. Ct. 401, 50 L.Ed.2d 343 (1976).

468 F. Supp. at 492-93.

125. Nor is there merit in defendants' contention that ERISA preempts only those state laws that deal with the specific subjects covered by subchapter I of ERISA. This claim is refuted by the provisions of § 514(b)(4), explicitly excepting from preemption "any generally applicable criminal law of a State." If Congress had thought that only state laws specifically dealing with the subjects covered by subchapter I of ERISA were to be preempted by § 514(a), it would not have had to preserve generally applicable criminal laws, since they would not have been preempted in the first place. The exception to preemption for generally applicable criminal laws becomes necessary only when it is understood that, without such an exception, § 514(a) preempts all state laws that relate to covered plans, whether the relation arises because a state law is specifically designed to affect such plans or because, as in this case, a state law of general application includes covered plans within its sweep.

Id. at 492.

126. Plainly Connecticut's anti-discrimination law, legislating specifically on the subject of disability benefits, is a law that relates to an employee benefit plan. This Court therefore disagrees with the conclusion reached in *Bucyrus-Erie Co. v. Department of Industry, Labor and Human Relations*, 453 F. Supp. 75 (E.D. Wis. 1978), that preemption of state anti-discrimination laws has not occurred because ERISA did not expressly provide that state fair employment laws are superseded. While preemption by implication is not favored, *see Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 83 S. Ct. 1210, 10 L. Ed.2d 248 (1963), there is no requirement that Congress identify the several categories of state laws it wishes to preempt. Having elected to preempt all laws relating to covered plans, and to specify the categories of state laws that are not preempted, 29 U.S.C. § 1144(b)(2)(A), (b)(4), Congress is entitled to have its clearly expressed intentions carried out.

Id. at 492.

127. 1978 Amendment to The Civil Rights Act of 1964, Pub. L. 95-555, 92 Stat. 2076 (1978) (amending 42 U.S.C. § 2000e (1976)).

128. Our bill does not address State sex discrimination laws and such cases as *Goodyear Tire & Rubber Co. v. Dep't of Indus., Labor & Human Relations*, 16 EPD 8163 (Wisc. Cir. Ct. 1978) and *Montana State Telephone & Telegraph Co. v. Comm'n of Labor and Ind.*, No. 41908 (1st Jud. Dist. of Mont., Aug. 14, 1978) because passage of the pregnancy sex discrimination amendments, Public Law 95-955, appears to have mooted the issue of preemption of State laws requiring disability plans to cover pregnancy-related leave.

125 CONG. REC. S575 (daily ed. Jan. 24, 1979) (remarks of Sen. Jacob Javits concerning proposed amendments to § 514).

statutory proscription or remedy differs from the federal protection. The issue will persist, as well, in other areas of state civil rights law, such as age discrimination,[129] when state and federal law diverge.

VI. A GUIDELINE FOR DECIDING THE "RELATE TO" QUESTION

In the insurance, domestic relations, and civil rights areas, a fairly clear majority of cases has held that section 514 preempts the insurance laws, but does not preempt the domestic relations or civil rights laws. The meaning of the phrase "relate to," however, and the consequent application of section 514 in other areas of state law remain unclear after these cases. At least one case has endorsed each of the four theories of the meaning of the phrase.[130] Except for the two theories of intermediate scope, the legislative purpose and proximity theories, these interpretations are incompatible. The phrase cannot have the expansive meaning of the plain meaning theory in one context, such as insurance regulation, but a more restrictive meaning of one of the three other theories in another context, such as domestic relations or civil rights law. It is possible, however, to derive from these cases an interpretation of the phrase that reconciles the seemingly inconsistent decisions in the three areas. Either intermediate theory accounts for the general pattern in the insurance and domestic relations cases.[131] Under the proximity theory, an insurance law requirement of specific health benefits would result in preemption as a direct regulation of ERISA plans, but a domestic relations law requiring distribution of plan assets within the employee's family would not.[132] Similarly, under the legislative purpose theory, limitation of plan requirements to those mentioned in ERISA as an incentive to employers to provide benefit plans is a congressional policy that would support a decision to preempt a more restrictive state insurance law,[133] but protection of employee dependents is a congressional policy that would support a decision to avoid preemption of a state domestic relations law.[134]

129. *See* note 163 *infra* and accompanying text.

130. *See* notes 37, 42, 47, 49 *supra*.

131. *See* text accompanying notes 88-92 *supra*. The plain meaning theory cannot explain the general decision not to preempt in the domestic relations and civil rights cases. At the other extreme the specific conflict theory would not yield the majority result in the insurance cases and it is flatly inconsistent with the legislative history of § 514. *See* notes 29, 61, 62 *supra*.

132. *In re* Marriage of Johnston, 85 Cal. App. 3d 900, 909-10, 149 Cal. Rptr. 798, 804 (1978).

133. *See* note 6 *supra*.

134. *See* notes 97, 109-11 *supra* and accompanying text.

The legislative purpose and proximity theories suggest conflicting results for civil rights law. Section 514(d) can be read to indicate a congressional purpose to avoid preemption of state law complementing federal civil rights policy,[135] but a state law requirement that benefit plans cover pregnancy expenses is in direct proximity to ERISA plans in a way comparable to California and Hawaii health insurance requirements preempted in *Standard Oil* and *Hewlett-Packard*.[136] Thus, the legislative purpose theory is consistent with the majority outcome for all three areas, the proximity theory fails to predict the majority outcome only in the civil rights area.

When combined with the statutory interpretation rule[137] followed in a number of cases—that Congress will not be presumed to have intended to preempt areas of important and traditional state interest such as domestic relations and related property law[138]—the courts' analyses distill into a three-part guideline. A state law "relates to" a benefit plan under section 514 if (1) it affects the plan directly; (2) it is inconsistent with some national policy embodied in ERISA or other federal legislation; and (3) it does not represent an important and traditional state interest.

This guideline is also useful for approaching new areas of section 514 litigation. Cases in other areas are too few yet to establish recognizable patterns, but it is possible to apply the guideline to those issues which have arisen. The guideline clearly calls for preemption of state law in two substantive areas—state taxation of employee benefit plans[139] and state laws on restitution.[140]

Taxation of a benefit plan affects the plan directly by reducing its capacity to provide benefits. Thus, taxation also conflicts with the ERISA policy of protecting the financial condition of benefit plans[141] by

135. *See* notes 116-17 *supra* and accompanying text.

136. *See* notes 57, 65 *supra* and accompanying text.

137. *See* note 51 *supra* and accompanying text.

138. Gast v. Stevenson, 36 Or. App. 441, 585 P.2d 12 (1978), included sex discrimination as one of the "areas that traditionally have been matters of vital state concern." *Id.* at 458, 585 P.2d at 23. Stone v. Stone, 450 F. Supp. 919, (N.D. Cal. 1978), however, recognized that state regulation of employee health insurance, as an exercise of the state's police power, is "not nearly as well established as state regulation of community property." *Id.* at 932.

139. National Carriers' Conference Comm. v. Heffernan, 454 F. Supp. 914 (D. Conn. 1978).

140. Martin v. Hamill, No. 78-C-2643, slip. op. (N.D. Ill. Mar. 13, 1979); Bacon v. Wang, 445 F. Supp. 1189 (N.D. Cal. 1978).

141. *See* text accompanying notes 1-2 *supra*.

granting federal tax exemptions for qualified plans.[142] In addition, taxation of nonprofit organizations is hardly a traditional state interest.

The restitution problem arises because section 403(c) of ERISA prohibits refunds of trust funds to employers, except under specified circumstances.[143] One of these circumstances is mistake of fact.[144] Section 403(c) thus implicitly preempts any state law that provides restitution for mistake of law. On the combined authority of this section and section 514, courts, in fact, have found preemption.[145] Even without section 403(c), the three-part guideline suggests arguments for preemption. First, a court order to refund contributions affects the plan just as directly as removal of funds by taxation. Second, restitutionary depletion of funds, like taxation, conflicts with ERISA's policy of protecting the financial condition of plans; judicial depletion by restitution, in fact, may be more threatening than taxation to a plan's financial stability because it is less predictable. Third, restitution is not as obviously a traditional state interest as is domestic relations or property law. In any event section 403 rebuts the presumption against preemption in areas of traditional state concern by prohibiting refunds.

In contrast, it would be inappropriate under the proposed guideline to preempt state laws that license and regulate lawyers working for prepaid legal service plans.[146] Professional licensing and regulation principally affects only professionals and thus only indirectly affects the plans for which professionals work. Furthermore, it is unlikely that a court would find that provision of ERISA plan services to incompetent or unscrupulous professionals comports with any ERISA or other federal policy. Finally, licensing and regulation of professions is a longstanding state activity.

Similar arguments apply to state laws that prohibit deductions from pension payments to offset workers' compensation benefits.[147] One court has reasoned that this sort of law does not affect the plan qua plan, because the law is concerned with preserving ERISA plan bene-

142. I.R.C. §§ 401-415, 501.

143. ERISA § 403(c), 29 U.S.C. § 1103(c) (1975).

144. *Id.* at § 403(c)(2) (A), 29 U.S.C. § 1103(c)(2)(A).

145. *See* note 140 *supra*.

146. Suffolk County Bar Ass'n v. Law Research Serv., Inc., [1975-1979 Transfer Binder] PENS. PLAN GUIDE (CCH) ¶ 22,756 (N.Y. Sup. Ct. Jan. 13, 1978).

147. Buczynski v. General Motors Corp., 456 F. Supp. 867, *aff'd on rehearing*, 464 F. Supp. 133 (D.N.J. 1978).

fits.[148] In addition, the ERISA policy of conserving workers' benefit plan rights[149] is consistent with the goal of these workers' compensation laws. Finally, workers compensation programs are a traditional state function.

The guideline does not provide as clear an answer for laws providing for garnishment of pension payments by an unrelated judgment creditor.[150] The impact of garnishment on a benefit plan is indirect in the sense that garnishment proceedings affect only distribution of plan benefits the worker has earned. Garnishment, furthermore, is a traditional state function.[151] On the other hand, ERISA policy considerations favor preemption.[152] In the case of alimony, child support, or community property decrees, state law furthers the ERISA policy of protecting dependents of plan participants by depriving the participants of pension proceeds and transfering them to their estranged families.[153] When the proceeds go to an unrelated creditor, however, the state law is likely to deprive the participant's family of the security that ERISA was designed to provide.[154]

VII. AMENDMENTS TO SECTION 514

Senators Javits and Williams have responded to litigation over the scope of preemption under section 514 by introducing amendments to that section as part of the ERISA Improvements Act of 1979.[155] The

148. 456 F. Supp. at 873-74.

149. *See* text accompanying notes 1-2 *supra*.

150. *In re* Parker, 473 F. Supp. 746 (W.D.N.Y. 1979); Electrical Workers Local 1 v. IBEW-NECA Holiday Trust, 583 S.W.2d 154 (Mo. 1979); National Bank of N. Am. v. Local 3, IBEW, 93 Misc. 2d 590, 400 N.Y.S.2d 482 (Sup. Ct. 1977).

151. Cartledge v. Miller, 457 F. Supp. 1146, 1154 (S.D.N.Y. 1978); Electrical Workers Local 1 v. IBEW-NECA Holiday Trust, 583 S.W.2d 154, 159 (Mo. 1979).

152. *See* note 132 *supra* and accompanying text.

153. *See* note 134 *supra* and accompanying text.

154. *In re* Parker, 473 F. Supp. 746, 748 n.1 (W.D.N.Y. 1979).

155. S.209, 96th Cong., 1st Sess. 125 CONG. REC. S560 (daily ed. Jan. 24, 1979). Section 155 of that bill reads:

> Section 514 of such Act is amended by—(1) adding at the end of subsection (b)(2)(B) the following:
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> "A State insurance law which provides that a specific benefit or benefits must be provided or made available by a contract or policy of insurance issued to an employee benefit plan is a law which relates to an employee benefit plan within the meaning of subsection (a) and is not a law which regulates insurance within the meaning of subparagraph (A). A provision of State law which requires that a contract or policy of insurance issued to an employee benefit plan must permit a participant to convert or continue protection after it ceases to be provided under the employee benefit plan is a provision of

Act adds an exception to section 514 for the Hawaii statute preempted in *Standard Oil*[156] and "substantially identical"[157] state requirements.

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a law described in a subparagraph (A) and not a provision of law described in subsection (a).";

"(5)(A) Except as provided in subparagraph (B), subsection (a) shall not apply to the Hawaii Prepaid Health Care Law, Haw. Rev. Stat. §§ 393-1 through 51, as in effect on January 1, 1979, and to any other State law which is determined by the Secretary to—

"(i) be substantially identical to such Hawaii law on such date, and

"(ii) require benefits which are substantially identical in type and amount to those required or permitted under such Hawaii law on such date.

"(B) Subparagraph (A) shall not apply to any provision of a State law which the Secretary determines to be similar to any provision of parts 1, 4 and 5 of this subtitle.";

(2) adding a new subsection (b)(6) to read as follows:

"(6) Subsection (a) shall not apply respecting any judgment, decree, or order pursuant to a State domestic relations law (whether of the common law or community property type), if such judgment, decree or order is described in section 206(d)(3)"; and

(3) adding a new subsection (e) to read as follows:

"(e) For purposes of subsections (d)(2) and (3) and sections 515, 516, and 517, the term 'employee benefit plan' shall include any employee benefit plan—

"(1) defined in section 3 (3), irrespective of whether the only participants in the plan are owner-employees as defined in section 401(c)(3) of the Internal Revenue Code of 1954, and

"(2) which is described in section 4(a) and not exempt under section 4(b)."

Id. at S564-65.

156. *See* note 57 *supra* and accompanying text.

157. ERISA Improvements Act of 1979, S.209, 96th Cong., 1st Sess., 125 CONG. REC. S575 (daily ed. Jan. 24, 1979). Senator Javits explained:

> Our bill proposes two new exceptions from Federal preemption. The first deals with State health care-related statutes and is intended to address issues raised in such cases as *Standard Oil Co. of California v. Agsalud*, 442 F. Supp. 695 (N.D. Cal. 1977), *Hewlitt-Packard Co. v. Barnes*, 425 F. Supp. 1294 (N.D. Cal. 1977), *aff'd*, 571 F.2d 502 (9th Cir. 1978), *Wadsworth v. Whaland*, No. 76-266 (D. N.H. 1977), *aff'd*, 562 F.2d 70 (1st Cir. 1977), and *Insurers' Action Council, Inc. v. Heaton*, 423 F. Supp. 921 (D. Minn. 1976). . . .
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> . . . .
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> The proposed prepaid health care exception would save from ERISA preemption Hawaii's prepaid health care law and the health benefits required under it as in effect on January 1, 1979. The bill would also save any other State law which is determined by the Secretary of Labor to be substantially identical to such Hawaii law and to require benefits which are substantially identical in type and amount to those required or permitted by Hawaii on such a date. The bill would not save provisions of any such State law which the Secretary determines to be similar to ERISA's reporting and disclosure, fiduciary, and enforcement provisions. One purpose of this proposal is to save Hawaii's program of mandatory employee health insurance which may be the most progressive and enlightened State program of its kind in the Nation. As a supporter of a National Health Insurance Plan, I like Hawaii's groundbreaking efforts and believe that a humanitarian law like ERISA should not be the pretext for depriving citizens of that State the benefits provided under its law. Another policy behind this provision is to balance the desirability of such mandatory health insurance with the Federal interest in uniformity of regulation of interstate employee benefit plans. Consequently, the bill saves only those State statutes which are substantially identical to Hawaii's. Giving the Secretary authority to determine which statutes are identical to Hawaii's will permit consistent decisionmaking and avoid conflicting court decisions.

Id.

The Act overrules *Wadsworth*[158] by declaring that a benefit requirement imposed on an insurance company is not a law that regulates the insurance business, but instead "relates to" plans that purchase insurance.[159] Although states may not impose benefits on plans by acting upon insurers and pleading the insurance business exception, they may impose some of the same benefits directly on the plans under the *Standard Oil* exception in the amendment. The Act also adds an exception for state domestic relations law[160] and makes explicit the implicit ex-

158. *See* note 70 *supra* and accompanying text.

159. S.209 § 155, 96th Cong., 1st Sess. 125 CONG. REC. S564-65 (daily ed. Jan. 24, 1979). Senator Javits explained:

> The bill contains a second health-care related section which provides that a State insurance law which requires that a specific benefit be provided or made available by a contract or policy of insurance issued to an employee benefit plan is preempted and is not saved under the existing insurance exception—which is limited by the so-called deemer clause. The proposal is intended to overrule the decision in *Wadsworth* against *Whaland* in which the first circuit held that ERISA did not preempt a State insurance statute requiring insurers to provide coverage in group health insurance policies for treatment of mental illnesses and emotional disorders. *Wadsworth* permits indirect State regulation of employee benefit plans and would encourage plans to avoid such regulation through self-insurance. The bill, however, saves from preemption any provision of State law which requires that a contract or policy of insurance issued to a plan must permit a participant to convert or continue protection after it closes to be provided by the plan.

Id. at S.575.

160. *Id.* This provision also modifies the anti-assignment and anti-alienation section of the 1974 Act. Senator Javits commented on this exception:

> The second exception deals with State domestic relations statutes and is intended to address questions raised in such cases as *Stone v. Stone*, No. C-77-1124-CBR (N.D. Cal. Apr. 18, 1978), *Francis v. United Technologies*, C.A. No. C 77-1504-CBP (N.D. Cal. Mar. 2, 1978), *General Motors v. Townsend*, Slip. op., No. 6-72159 (E.D. Mich. 1976), and *Cartledge v. Miller*, 47 U.S. L.W. 2178 (Sept. 19, 1978).
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> . . . .
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> The second exception to broad Federal preemption provided in our bill involves State common law or community property domestic relations laws. The bill provides that Federal preemption does not reach a judgment, decree or order, including an approval of a property settlement, pursuant to a State common law or community property domestic relations law which: First, affects the marital property rights of any person in any benefit payable under a pension plan or the legal obligations of any person to provide child support or make alimony payments, and second, does not require a pension plan to alter the effective date, timing, form, duration or amount of any payments under the plan or to honor any election provided under the plan which is made by a person other than a participant or beneficiary.
>
> The bill also provides that ERISA's anti-assignment and alienation of benefits rule does not apply to such judgment, decree or order. The purpose of these provisions is to reserve for the States their traditional control over marital and family matters, and to assist plan administrators who are faced with the conflicting duties of obeying State court decrees to pay benefits to plan participants' former spouses and also complying with the Federal anti-alienation rule under penalty of plan disqualification.

Id.

emption recognized in the majority of domestic relations cases.[161]

The Act does not amend the "relate to" language of section 514; therefore, the proper interpretation of that phrase as applied to areas of state law not affected by these amendments still would be an open question. The Act calls into question the continued validity of the proximity theory by asserting that indirect regulation of plans through regulation of their insurers "relates to" the plans within the sense of section 514. Because the Act specifies one indirect relationship, however, it is reasonable to conclude that Congress may have intended to exclude other indirect relationships from its definition of the phrase. Further, it is not clear whether the Act indicates that domestic relations law "relates to" benefit plans but is exempted, or whether the language provides that this body of law does not "relate to" plans within the meaning of section 514.

Senator Javits explained that the Act does not deal with the problem of state sex discrimination laws requiring disability coverage for pregnancy because the sponsors believe the issue to be moot after the passage of comparable federal statutes.[162] Senator Javits also explained that the Act does not address the problem of state age-discrimination law or state regulation of professionals in prepaid legal service plans "because these matters appear not to be ripe for legislation."[163]

VIII. CONCLUSION

Congress' piecemeal approach to the problems of section 514 does little to clarify the scope of the phrase "relate to." The ERISA Improvements Act may settle some of the controversies over preemption of state insurance and domestic relations laws, but the Act fails to clarify the meaning of "relate to" in any way that would be of value in other areas of state law.

In the absence of a statutory exemption, it is impossible to predict the courts' treatment of the relationship between a state law and ERISA plans under section 514. A useful approach to this confusion, however, is to examine the state law in light of the proximity and legislative purpose theories outlined in this Note and the judicial presumption against

161. *See* note 16 *supra.*

162. 125 CONG. REC. S575 (daily ed. Jan. 24, 1979). The 1978 Amendment to The Civil Rights Act of 1964, Pub. L. 95-555, 92 Stat. 2076 (1978) (amending 42 U.S.C. § 2000e (1976)), includes pregnancy coverage in employment-related benefits programs.

163. 125 CONG. REC. S575 (daily ed. Jan. 24, 1979).

preemption in areas of state concern. When ERISA is ambiguous, the courts will likely continue to be receptive to arguments that a state law does not "relate to" plans if it affects them only indirectly, if it is consistent with some national legislative policy, or if it furthers an important and traditional state interest.

Stephen R. Snodgrass