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ERISA - Welfare Benefit Plan - Garnishment Statutes - Preemption

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Recent Decisions

ERISA—WELFARE BENEFIT PLAN—GARNISHMENT STATUTES—PREEMPTION—The United States Supreme Court has held that a state garnishment statute which makes explicit reference to ERISA covered benefit plans is preempted by ERISA, but that a state's garnishment procedure which permits the garnishment of a participant's benefits in an ERISA welfare benefit plan is not preempted by ERISA.

Mackey v. Lanier Collections Agency & Service, Inc., 108 S. Ct. 2182 (1988).

John H. Mackey (Mackey) and others were trustees of an employee welfare benefit plan as defined by the Employee Retirement Income Security Act of 1974 (ERISA).[1] The welfare benefit plan provided annual vacation and holiday benefits to eligible employees located in several southeastern states.[2] Lanier Collections Agency & Service, Inc. (Lanier) was a collection agency.[3] Twenty-three participants of the welfare plan administered by Mackey owed money to clients of Lanier.[4] Lanier obtained money judgments against the plan participants and instituted a garnishment action in a Georgia trial court to collect the money judgments by garnishing the debtors' plan benefits.[5] "The trial court granted the garnishment request" and Mackey appealed the decision. [6] The Georgia Court of Appeals reversed, holding that under a Georgia statute, section 18-4-22.1,[7] which barred the garnishment of funds

1. Mackey, v. Lanier Collections Agency & Serv., Inc., 108 S. Ct. 2182, 2184 (1988). Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829, 29 U.S.C. § 1001 *et seq.* (1982).
2. 108 S. Ct. at 2184.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.* (citing App. to Pet. for Cert. at A-21).
7. GA. CODE ANN. § 18-4-22.1 (1982) provides in relevant part:
Funds or benefits of a pension, retirement, or employee benefit plan or program subject to the provisions of the federal Employee Retirement Income Security Act of

or benefits of an employee benefit plan subject to ERISA, the welfare plan benefits were exempt from garnishment.[8]

Lanier appealed and the Georgia Supreme Court reversed the decision of the Georgia Court of Appeals, concluding that ERISA preempted the Georgia statute "since it purports to regulate garnishment of ERISA funds and benefits, a matter specifically provided for" in the federal statute.[9] After analyzing the preemption provisions of ERISA, the Georgia Supreme Court determined that the federal statute did not bar garnishment of employee *welfare* plan benefits,[10] but did protect employee *pension* plan benefits[11] from garnishment or alienation.[12] The court found that the Georgia statute regulating ERISA covered plans, section 18-4-22.1,[13] was "in conflict with" the federal scheme, as the state law prohibited that which ERISA permitted; therefore, the state law was preempted by ERISA.[14] The Georgia Supreme Court, however, held that the welfare benefit plan administered by Mackey was subject to garnishment under the state's general garnishment law.[15]

"Because of conflicting decisions among the courts on the" issues presented, the United States Supreme Court on July 28, 1987, granted Mackey's petition for certiorari.[16] In a 5-4 decision,[17] the United States Supreme Court affirmed the decision of the Georgia Supreme Court.[18]

The Supreme Court began its analysis by addressing the ques-

1974, as amended, shall not be subject to the process of garnishment . . . unless such garnishment is based upon a judgment for alimony or for child support.

Id.

8. Mackey v. Lanier Collection Agency & Serv., Inc., 178 Ga. App. 467, 343 S.E.2d 492, 494 (1986).

9. Lanier Collections Agency & Serv., Inc. v. Mackey, 256 Ga. 499, 501, 350 S.E.2d 439, 442 (1986).

10. Welfare benefit plans provide health, legal, vacation or training benefits. *See* 29 U.S.C. § 1002(1)(A) (1982).

11. Pension benefit plans provide retirement income. *See* 29 U.S.C. § 1002(2)(A)(i) (1982).

12. 256 Ga. at 501, 350 S.E.2d at 442.

13. *See supra* note 7.

14. 256 Ga. at 501, 350 S.E.2d at 442.

15. *Id. See* GA. CODE ANN. § 18-4-20 *et seq.* (1982).

16. Mackey v. Lanier Collections Agency & Serv., Inc., 107 S. Ct. 3227 (1987).

17. Justice White delivered the opinion of the court, in which Chief Justice Rehnquist and Justices Brennan, Marshall, and Stevens joined. 108 S. Ct. at 2184-91. Justice Kennedy filed a dissenting opinion in which Justices Blackmun, O'Connor, and Scalia joined. *Id.* at 2191-94. The United States appeared *amicus curiae* by special leave of the Court. *Id.* at 2184.

18. *Id.* at 2184-85.

tion of whether the Georgia statute, section 18-4-22.1,[19] regulating ERISA covered benefit plans conflicted with the federal scheme and therefore was subject to preemption by ERISA.[20] Section 514(a) of ERISA provides for preemption of any state law insofar as it "relates to" plans covered within the purview of ERISA.[21] Justice White pointed out that in *Shaw v. Delta Air Lines, Inc.*,[22] the Supreme Court stated that "a law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or *reference to* such a plan."[23] The *Mackey* Court noted prior case law which had established "that state laws which make 'reference to' ERISA plan are laws that 'relate to' those plans within the meaning of section 514(a)."[24] The majority concluded that as the Georgia statute explicitly referred to ERISA employee benefit plans, the state law was subject to preemption under section 514(a).[25]

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19. *See supra* note 7.

20. 108 S. Ct. at 2185.

21. *Id.* ERISA § 514(a) provides that: "[T]he 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. . . ." 29 U.S.C. § 1144(a) (1982).

22. 463 U.S. 85 (1983). The issue presented in Shaw was whether ERISA preempted a New York Human Rights Law that prohibited discrimination in employee benefit plans on the basis of pregnancy, and the State's Disability Benefits Law, requiring employers to pay sick leave benefits to employees unable to work because of pregnancy. *Id.* at 88. The Supreme Court had no difficulty in finding that § 514(a) of ERISA preempted the New York laws on the basis that the laws related to employee benefit plans within the meaning of the preemption provision. *Id.* at 96.

23. 108 S. Ct. at 2185 (citing *Shaw*, 463 U.S. at 96-97).

24. *Id. See* Pilot Life Ins. Co. v. Dedeaux, 107 S. Ct. 1549 (1987). The issue presented in *Pilot Life* was whether ERISA preempts state common law tort and contract actions asserting improper processing of a claim for benefits under an insured employee benefit plan. *Id.* at 1550-51. The Supreme Court held that ERISA does preempt the state lawsuit asserting improper processing of claims for benefits under an ERISA regulated plan where the state common-law cause of action does not regulate insurance within the meaning of the savings clause in the ERISA preemption provision. *Id.* at 1558.

See also Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985). The issue presented in *Metropolitan Life* was whether ERISA preempts state mandated benefit laws, which are laws that require group health insurance policies to include coverage for certain specified health care needs. *Id.* at 727. The Supreme Court held that the mandated benefit laws were laws regulating insurance and fell within the savings clause exception, 29 U.S.C. § 1144(b)(2)(A) (1982), to ERISA preemption. *Id.* at 744.

25. 108 S. Ct. at 2185. The Supreme Court rejected the Georgia Court of Appeals' view that § 18-4-22.1 was saved from preemption because it might have been enacted to help effectuate ERISA's underlying purposes. Emphasizing that legislative "good intentions" are not sufficient to save a state law from preemption, the Supreme Court reiterated its position in *Metropolitan Life* that § 514(a) displaces all state laws that fall within its sphere, including those that are consistent with ERISA's substantive requirements. Therefore, the Supreme Court held that § 18-4-22.1 was preempted under § 514(a) of ERISA. 108 S. Ct. at

Justice White next addressed the question of whether Georgia's general garnishment statute, section 18-4-20,[26] which did not specifically mention ERISA plans of any kind, was preempted by ERISA.[27] Mackey asserted that the Georgia general garnishment law "related to" the welfare benefit plans and therefore was preempted by ERISA under section 514(a).[28] Specifically, compliance with a garnishment order involved and affected the plan and its trustees by requiring additional administrative tasks.[29] Since "ERISA itself" contained "no express answer as to whether welfare benefit plan trustees" were required to "comply with garnishment orders," the Supreme Court refuted Mackey's contentions by analyzing related ERISA provisions and the statute's structure.[30]

ERISA welfare benefit plans may sue or be sued under section 502[31] in several types of civil actions.[32] Section 502 allows law suits

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2185.

26. *See supra* note 12.

27. 108 S. Ct at 2185. The Supreme Court expressly reserved judgment on whether § 514(a) of ERISA preempted general garnishment laws in Franchise Tax Bd. of California v. Construction Laborers Vacation Trust for Southern California, 463 U.S. 1, 7, 26 n.30 (1983).

28. 108 S. Ct. at 2186. Although "Georgia's general garnishment statute does not single out or specially mention ERISA plans of any kind," the Supreme Court stated that "as we have recognized, the preemptive force of section 514(a) is not limited to such state laws." *Id.* (citing *Pilot Life* and *Shaw*).

29. *Id.*

30. *Id.* The Supreme Court joined the "virtually unanimous view of federal and state courts" and held that federal law does not bar a garnishment action like Lanier's. *Id. See, e.g.*, Misic v. Building Serv. Employees Health & Welfare Trust, 789 F.2d 1374, 1376-77 (9th Cir. 1986); Arizona Laborers, Teamsters, and Cement Masons, Local 395 Pensions Trust Fund v. Nevarez, 661 F. Supp. 365, 368-70 (D. Ariz. 1987); Local Union 212, Int'l Brotherhood of Electrical Workers Vacation Trust Fund v. Local 212, Int'l Brotherhood of Electrical Workers Credit Union, 549 F. Supp. 1299, 1300-02 (S.D. Ohio 1982), *aff'd per curiam*, 735 F.2d 1010, 1011 (6th Cir. 1984); First Nat'l Bank of Commerce v. Latiker, 432 So. 2d 293, 296 (La. App. 1983); Electrical Workers Credit Union v. IBEW-NECA Holiday Trust Fund, 583 S.W.2d (Mo. 1979).

31. 29 U.S.C. § 1132 (1982). The "sue and be sued" clause of ERISA, § 502, provides in pertinent part:

(a) . . .

A civil action may be brought -

(1) by a participant or beneficiary -

(B) to recover benefits due to him under the terms of his plan . . .

(d) . . .

(1) An employee benefit plan may sue or be sued under this subchapter as an entity . . .

2) Any money judgment won under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity . . .

Id.

32. 108 S. Ct. at 2186.

against an ERISA plan for specific relief and performance.[33] The Supreme Court stated that section 502 "clearly contemplates the enforcement of money judgments against benefit plans"[34] and run of the mill claims against the plan.[35] ERISA, however, does not provide an enforcement mechanism for collecting money judgments won in a civil action.[36] Therefore, the majority concluded that "state-law methods for collecting money judgments" should remain intact since there was no other "way to enforce such a judgment won against an ERISA plan."[37] The Supreme Court reasoned that since ERISA did not prohibit attachment of ERISA plans' funds, such attachments could not "relate to" an ERISA plan; therefore, Lanier's proposed garnishment order also would not "relate to" ERISA.[38] Thus, garnishment was one permissible method for collecting money judgments won in state or federal court against ERISA welfare benefit plans, based on state or federal law.[39]

Mackey claimed[40] that under the language of section 514(a), garnishment to collect judgments won by creditors of the plan was permissible, but garnishment to collect judgments obtained by creditors of the plan's participants was impermissible.[41] The Supreme Court determined that such a distinction was not supported by the language of section 514(a).[42] Conversely, the Court noted

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33. *Id.* at 2186-87.

34. *Id.* at 2187 (citing 29 U.S.C. § 1132(d)(2) (1982)).

35. The Supreme Court noted that "lawsuits against ERISA plans for run-of-the-mill state-law claims . . . [were] relatively commonplace." *Id.* Mackey and the United States Solicitor General conceded that run-of-the-mill type suits are not preempted under § 514(a), "although obviously affecting and involving ERISA plans and their trustees." *Id.* (citing Tr. of Oral Arg. at 6, 11-12, 15).

36. *Id. See also* FED. R. CIV. P. 69(a), which defers to state law to provide methods for collecting judgments.

37. 108 S. Ct. at 2187.

38. *Id.* The Supreme Court stated that "if attachment of ERISA plan funds does not 'relate to' an ERISA plan in any of these circumstances, we do not see how [Lanier's] proposed garnishment order would do so." *Id.*

39. *Id.* Mackey's brief argued "that *any* garnishment of an ERISA plan was preempted;" however, the Supreme Court noted that under questioning at oral argument, Mackey "conceded that garnishment is among the state-law enforcement mechanisms that may be used in certain types of cases involving ERISA welfare benefit plans." *Id.* at 2187-88 (emphasis in original).

40. *Id.* at 2188. The argument that ERISA law precluded garnishment by the creditor of a plan participant was also presented by the United States Solicitor General. *Id.*

41. *Id.*

42. *Id.* Section 514(a) preempts state laws "insofar as they . . . 'relate to'. . . *employee benefit plans*." 29 U.S.C. § 1144(a) (1982) (emphasis added). The Supreme Court stated that "there is simply no logical way to construe the English language so that garnish-

that Congress had expressly precluded enforcement of state law judgments against certain ERISA plans.[43] For example, section 206(d)(1)[44] bars the assignment or alienation of *pension* plan benefits, although Congress did not offer similar protection to *welfare* plan benefits, like those administered by Mackey.[45]

Justice White found the provisions of section 206(d)(1) important to the present case in two respects.[46] First, section 206(d)(1) prohibits the alienation of pension plan *benefits*.[47] In contrast, section 514(a) concerns state laws that control *plans*.[48] Mackey and the Solicitor General wanted the Supreme Court to interpret section 514(a) "as protecting only benefits, but not plans as a whole from state-law attachment orders."[49] Justice White reasoned that Congress, by passing section 206(d)(1), showed that Congress could "stay the operation of state law as it affects only benefits and not plans," if Congress wished to do so.[50] The Supreme Court refused to accept the Solicitor General's request to imply such a limitation on section 514(a) when Congress made the limitation express in section 206(d)(1).[51]

Second, Justice White concluded that if the court adopted the view of Mackey and the Solicitor General, that section 514(a) barred the garnishment of both pension and welfare plan benefits, the result would be to render section 206(d)(1) redundant with section 514(a).[52] The majority reasoned that when Congress enacted ERISA it chose to adopt a provision barring the alienation or garnishment of ERISA pension benefit plans and chose *not* to impose

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ment or attachment laws 'relate to' benefit plans when they are invoked by creditors of the beneficiaries, but not when they are invoked by beneficiaries or creditors of the [plan] itself." *Id.* (citing Brief of *Amicus Curiae* in Support of Judgment Below at 24.)

43. *Id.*

44. ERISA § 206(d)(1) provides that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1) (1982).

45. 108 S. Ct. at 2188 (emphasis in original).

46. *Id.*

47. *Id.* (emphasis in original). Justice White stated that this prohibition prevented "the use of state enforcement mechanisms only in so far as they prevent those benefits from being paid to plan participants." *Id.* at 2188-89.

48. *Id.* at 2189 (emphasis in original). *See supra* note 42.

49. 108 S. Ct. at 2189.

50. *Id.*

51. *Id.* The Supreme Court found no "basis for construing [ERISA] in this manner and . . . in light of [section] 206(d)(1), [rejected] the Solicitor General's suggested interpretation of [section] 514(a)." *Id.*

52. *Id.* Justice White noted that based on prior case law, the Supreme Court was "hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." *Id.*

that limitation on ERISA welfare benefit plans.[53] Since Congress, through its adoption of section 206(d)(1), was aware that ERISA plan benefits could be attached or garnished, the Supreme Court determined that congressional silence concerning the attachment or garnishment of ERISA welfare plan benefits acknowledged and accepted, rather than prohibited, the practice of garnishing welfare plan benefits.[54] Therefore, the Supreme Court concluded "that Congress did not intend" to preempt "state-law attachment of ERISA welfare plan benefits."[55]

The Supreme Court also rejected Mackey's and the Solicitor General's argument that amendments made to ERISA by the Retirement Equity Act of 1984[56] were evidence of Congress' intent that section 514(a) generally preempted state attachment and garnishment procedures.[57] Mackey and the Solicitor General contended that the 1984 amendment to section 514(a) made it clear that section 514(a), as originally enacted, generally preempted state attachment and garnishment procedures.[58] Mackey and the Solicitor General argued that otherwise, there would not have been any reason "to amend section 514(a) to save domestic relation orders from preemption."[59] Justice White, however, interpreted Congress' intentions in passing the 1984 amendments as correcting an

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53. *Id.* (emphasis in original). Justice White stated that "[i]n a comprehensive regulatory scheme like ERISA, such omissions are significant ones." *Id. Cf.* Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 147 (1985).

54. 108 S. Ct. at 2189 (quoting Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 516 (1981)).

55. *Id.*

56. Act of August 23, 1984, Pub. L. No. 98-397, 1984 U.S. CODE CONG. & ADMIN. NEWS (98 Stat.) 1426. 29 U.S.C. § 1056(d)(3) (1982 & Supp. III); 29 U.S.C. § 1144(b)(7) (1982 & Supp. III). The Retirement Equity Act of 1984 amendments to ERISA insured that the statute's antigarnishment and preemption provisions could not be used to block the enforcement of "qualified domestic relations orders" (QDROs). Generally, QDROs are court orders providing for child support and alimony payments by ERISA plan participants. 108 S. Ct. at 2190. The 1984 amendment to § 514(a) was reflected in § 514(b)(7), which states that "[s]ubsection (a) shall not apply to qualified domestic relations orders (within the meaning of § 1056(d)(3)(B)(i) of this title)." 29 U.S.C. § 1144(b)(7) (1982 & Supp. III).

57. 108 S. Ct. at 2189-90. The Supreme Court noted that:

> While the primary focus of this portion of the 1984 Act was removing [section] 206(d)(1)'s antigarnishment protection from pension plan benefits when spouses sought enforcement of domestic support orders, Congress at the same time also amended [section] 514(a)'s preemption provision. It apparently adopted the latter amendments in response to lower court rulings that had interpreted [section] 514(a) to bar state-law garnishment for the purpose of enforcing domestic relations orders.

Id. at 2190.

58. *Id.* at 2190.

59. *Id.*

error made by some courts in construing section 514(a) as pre-empting domestic relation orders.[60]

From the majority's perspective, the 1984 amendments clarified the original meaning of section 514(a), and corrected a judicial misinterpretation.[61] Justice White reasoned that even if Congress in 1984 believed that section 514(a) was enacted with the intent that it would preempt domestic relations orders, congressional opinion in 1984, as to the meaning of ERISA when it was enacted in 1974, did not control the issue.[62] The Supreme Court stated that "[t]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one."[63] The majority reasoned that it was the intent of the Congress that originally enacted the law that was controlling and the Court had to look at the language and structure of ERISA to determine congressional intent in 1974, when ERISA was first enacted.[64] Therefore, the Supreme Court held that section 514(a) did "not forbid garnishment of an ERISA welfare benefit plan, even where the purpose [was] to collect judgments against plan participants."[65]

In a dissenting opinion, Justice Kennedy[66] agreed with the majority that ERISA preempted section 18-4-22.1, but disagreed that section 514 of ERISA did not also prohibit a state general garnishment law from attaching participants' funds in ERISA welfare benefit plans.[67] Justice Kennedy concluded that the majority's holding was inconsistent with both ERISA and Supreme Court precedents.[68] Justice Kennedy concluded that the phrase "relate to" in section 514(a) must be "given its broad common sense meaning," and asserted that if a state law made reference to or has

60. *Id.*

61. *Id.* (citing Edward J. Debartolo Corp. v. Florida Gulf Coast Bldg. & Constr. Trades Council, 108 S. Ct. 1392, 1403-04 (1988); United Airlines, Inc. v. McMann, 434 U.S. 192, 218 (1977) (Marshall, J., dissenting)).

62. *Id.* (citing United Airlines v. McMann, 434 U.S. 192, 200 n.7 (1977)).

63. *Id.* (quoting United States v. Price, 361 U.S. 304, 313 (1960)).

64. *Id.* at 2191. The Supreme Court also refused to consider the 1984 House Committee Report relevant to congressional intent in 1974. The Report stated that: "[T]he Committee reasserts that a state tax levy on employee welfare benefit plans is preempted by ERISA." The Supreme Court stated that "this statement does suggest that the House Committee in 1984 thought that [section] 514(a) foreclosed state-law attachment orders akin to those at issue here. But again, these views, absent an amendment to the original language of the section, do not direct our resolution of this case." *Id.*

65. *Id.*

66. Justice Kennedy was joined in the dissent by Justices Blackmun, O'Connor, and Scalia. *Id.*

67. *Id.*

68. *Id.*

a connection with a benefit plan, such state law "relates to" that plan "in the normal sense of the phrase."[69] Justice Kennedy expressed the view that state garnishment laws related to employee benefit plans and were preempted because the effects of such garnishment laws on benefit plans were not "tenuous, remote, or peripheral."[70] The garnishment procedures required the plans to act as garnishees, thereby forcing the plan trustees to undertake substantial administrative burdens in order to comply with a garnishment order.[71]

Justice Kennedy also rejected the majority's view that the 1984 amendments to ERISA, which Congress effectuated with passage of the Retirement Equity Act, only corrected a perceived judicial error and clarified the original meaning of section 514(a) not to preempt state garnishment procedures.[72] In the opposite view, the dissent concluded that, in deciding to exempt certain garnishment procedures for the collection of child support and alimony from the preemptive reach of ERISA, Congress clearly manifested its intent to save only a limited class of garnishment orders from preemption.[73] Justice Kennedy stated that "[s]urely Congress knew that similar questions concerning the validity of garnishment procedures would arise in other contexts."[74] The dissent concluded that Congress' decision to enact only a limited exception to the preemption provision of ERISA was a "carefully calibrated legislative choice" which was being rendered inconsequential by the ma-

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69. *Id.* (citing Pilot Life Ins. Co. v. Dedeaux, 107 S. Ct. 1549, 1553 (1987); Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724, 739 (1985)).

70. *Id.* at 2192 (citing Shaw v. Delta Airlines, Inc., 463 U.S. 85, 100 n.21 (1983)).

71. *Id.* Justice Kennedy stated that in order for Mackey to comply with the state garnishment order he and the other trustees of the welfare benefit plan are:

> [R]equired to confirm the identity of each of the 23 plan participants who owe money to [Lanier], calculate the participant's maximum entitlement from the fund for the period between the service date and the reply date of the summons of garnishment, determine the amount that each participant owes to [Lanier] and the participant's entitlement. [Mackey] must also make decisions concerning the validity and priority of garnishments and, if necessary, bear the costs of litigating these issues. Further, as trustees of a multiemployer plan covering participants in several States, [Mackey and the other trustees] are potentially subject to multiple garnishment orders under varying or conflicting state laws.

Id.

72. *Id.*

73. *Id.* The dissent reasoned that the limited scope of the exception, exempting domestic relation orders from preemption, created a strong structural implication. *Id.*

74. *Id.* Justice Kennedy stated: "Congress decided to save from pre-emption only a limited class of garnishment orders, and then only upon specifically prescribed conditions." *Id. See* 29 U.S.C. § 1056(d)(3)(B)(i) (1982 & Supp. III).

jority's view that garnishment of welfare plan benefits were not barred by ERISA.[75]

The dissent adopted the position that the majority was incorrect to dismiss the views of Congress in 1984 on the ground that the views of a subsequent Congress should not be the basis for determining the intent of an earlier Congress.[76] Justice Kennedy reasoned that the congressional views the majority was rejecting were a "positive expression of legislative will" which the Supreme Court was "bound to give effect."[77] The dissent reasoned further that in amending section 514(a) in 1984, Congress clearly outlined the circumstances under which welfare benefit plans must comply with state garnishment orders of employee plan benefits.[78] Therefore, Congress manifested its intent through section 514(a) to prohibit the garnishment of funds due to participants in ERISA welfare benefit plans.[79]

Disputing that the issue in the case was not "whether garnishment may be used to enforce a valid judgment obtained against an ERISA plan," Justice Kennedy asserted that the issue was whether creditors of the plan's participants and beneficiaries could force their employer's ERISA plan "to act as a *garnishee*."[80] The dissent distinguished between garnishment proceedings where an ERISA plan is the debtor and where the plan is a garnishee.[81] In the situation where the employer is forced into the role of a garnishee, Justice Kennedy concluded that the majority's view that state garnishment laws are never preempted was too broad and unwarranted.[82] Where a plan is a garnishee, it is required to undertake the costs of monitoring hundreds of plan participants' and beneficiaries' controversies in several states, placing significant burdens on the plan.[83]

Disagreeing with the majority that the sue and be sued clause of ERISA, section 502, allows enforcement of garnishment orders

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75. 108 S. Ct. at 2192.

76. *Id.* (citing United States v. Price, 361 U.S. 304, 313 (1960)). *See supra* notes 62-64.

77. 108 S. Ct. at 2192.

78. *Id. See supra* note 56.

79. 108 S. Ct. at 2192.

80. *Id.* at 2193 (emphasis in original). The dissent argued that the majority's reasoning that since ERISA did not "provide an enforcement mechanism for collecting judgments won" in a civil suit against an ERISA plan pursuant to § 502, "Congress must have intended that state-law methods of collection remain undisturbed" was irrelevant to the issue before the Court. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

pursuant to state law, the dissent regarded cases relied on by the majority[84] that discussed sue-and-be-sued clauses as a waiver of sovereign immunity that enabled federal agencies to be sued just as a private or commercial enterprise might be sued.[85] In the ERISA context, however, the dissent concluded that the states' ability to treat employee benefit plans as they might treat any commercial enterprise was substantively limited by section 514.[86]

The dissent reasoned that the majority's view, that an interpretation of section 514(a) as only protecting benefits and not plans from garnishment would render section 206(d)(1) redundant with section 514(a), was not weighty in the present context for two reasons.[87] First, Justice Kennedy stated that the "alternative construction adopted by the majority results in the total redundancy of section 514(b)(7)."[88] The dissent favored a partial overlap of section 514(a) and section 206(d)(1) to avoid the total redundancy of section 514(b)(7).[89] Second, Justice Kennedy concluded that many state laws would be preempted even in the absence of the deliberate and expansive scope of section 514 based solely on the conflict between such laws and ERISA's substantive requirements.[90] The dissent reasoned that Congress chose an approach to preemption that resulted in foreseeable overlap, which was necessary to further the purpose for which section 514 was enacted.[91]

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84. *Id.* at 2187 (citing Franchise Tax Bd. of California v. USPS, 467 U.S. 512 (1984); FHA v. Burr, 309 U.S. 242, 245-46 (1940)).

85. *Id.* at 2193. The dissent determined that the sue and be sued clause in *Franchise Tax Board* and *FHA* "was a waiver of the sovereign immunity that otherwise would have protected certain federal agencies from legal process, including writs of garnishment." *Id.* Justice Kennedy stated that "in that context, it was perfectly sensible to 'presum[e] that when Congress launched a governmental agency into the commercial world and endowed it with authority to 'sue or be sued,' that agency is no less amenable to judicial process than a private enterprise under like circumstances would be." *Id.* (citing FHA v. Burr, 309 U.S. 242, 245 (1940)).

86. *Id.* The dissent noted that the Supreme Court's "cases finding several state-law causes of action pre-empted establish" at the very least that § 514 "substantively limits the States' ability to treat employee benefit plans as they may treat any commercial enterprise." *Id.* (citing Pilot Life Ins. Co. v. Dedeaux, 107 S. Ct. 1549 (1987) (holding that certain contract and tort laws, though otherwise generally applicable, may not be invoked against an employee benefit plan); Shaw v. Delta Airlines, Inc., 463 U.S. 85, 103-06 (1985) (finding certain fair employment laws preempted)).

87. *Id.*

88. *Id.* Section 514(b)(7) affects § 514(a) and states that "[s]ubsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 1056(d)(3)(B)(i) of this title)." 29 U.S.C. § 1144(b)(7) (1982 & Supp. III).

89. 108 S. Ct. at 2193.

90. *Id.* at 2194.

91. *Id.* The dissent reasoned that "[s]ome degree of overlap [was] a necessary concom-

Therefore, the dissent disagreed with the majority's conclusion that the Trustees of the ERISA welfare benefit plans must comply with the state garnishment orders.[92]

The Employee Retirement Income Security Act (ERISA) was enacted in 1974 as a result of the rapid and substantial growth of private pension and benefit plans and the states' inability to develop a comprehensive and uniform governing body of law.[93] ERISA was designed to provide for the general welfare, well-being and security of employees and their beneficiaries through federal regulation of employee benefit plans.[94] One of the policies expressed in ERISA is to establish standards of conduct, responsibility and obligation for fiduciaries of employee benefit plans in order to protect the interests of participants in such plans.[95] ERISA also provides appropriate remedies for plan participants and ready access to federal courts to obtain redress for violations of ERISA's established standards.[96]

To provide for the federal regulation of the pension and welfare benefit plans and eliminate conflicts with state regulation, a general preemption rule was set forth in section 514(a).[97] According to

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itant of the approach to pre-emption chosen by Congress." Justice Kennedy stated that "[t]he partial redundancy which the Court strives to avoid is essentially analogous to a host of like overlaps that Congress must have foreseen. To suggest that this type of overlap is sufficient to call into question the applicability of [section] 514 is to defeat the very purpose for which it was enacted." *Id.*

92. *Id.*

93. Pub. L. No. 93-406, 88 Stat. 829, 29 U.S.C. § 1001 *et seq.* (1982). ERISA is divided into four titles. Title I establishes minimum standards regulating the content of pension plans with respect to participation, benefit accrual, reporting and disclosure and funding. 29 U.S.C. § 1001-1145 (1982). Section 502 of Title I enables a participant, beneficiary, or fiduciary to bring a civil action in federal court to enforce the terms of an employee benefit plan or the provisions of Title I. *Id.* § 1132.

94. *Id.* § 1001 (1982).

95. Section 1001(b) states: "It is hereby declared to be the policy . . . to protect . . . the interests of participants in employee benefit plans . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing appropriate remedies . . . and ready access to the Federal courts." *Id.* § 1001(b).

96. *Id.*

97. Section 514(a) states that:

> Except as provided in subsection (b) of this section, the provisions of the 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 4(a) of this title and not exempt under section 4(b) of this title. 29 U.S.C. § 1144(a) (1982).
>
> For the purposes of section 514 the "term State law includes all laws, decisions, rules, regulation, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c) (1982).
>
> The "term state includes a State, any political subdivisions thereof, or any agency or

the legislative history, section 514 was intended to have a very broad reach.[98] The Chairman of the Committee on Labor and Public Welfare, Senator Williams, commented that, except in limited circumstances, section 514 would "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."[99] Representative Dent, Chairman of the Subcommittee on Labor of the House Labor and Education Committee, stated that section 514 is the "reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans."[100] Senator Javits, ranking minority member of the Committee on Labor and Public Welfare, stated: "[I]t is also intended that a body of federal substantive law will be developed by the courts to deal with issues involving rights under private welfare and pension plans."[101]

Section 514 does provide for some exceptions to absolute preemption. The savings clause, section 514(b)(2)(A), enables the states to continue to regulate the conduct of banks, insurance companies and securities markets without interference from the preemption provisions of ERISA.[102] The deemer clause, section 514(b)(2)(B), limits the savings clause by restricting the scope of what constitutes regulation of insurance.[103]

In 1984 Congress enacted the Retirement Equity Act[104] (REA) for the purpose of amending ERISA "to improve the delivery of retirement benefits and provide for greater equity under private

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instrumentality of either, which purports to regulate, directly or indirectly, the terms and conditions of employee benefit plans covered . . ." by ERISA. 29 U.S.C. § 1144(c) (1982).

Id. § 1144(a).

98. 120 CONG. REC. 29,917, 29,933, 29,942 (1974).

99. *Id.* at 29,933.

100. *Id.* at 29,917.

101. *Id.* at 29,942.

102. Section 514(b)(2)(A) provides that preemption shall not "exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." 29 U.S.C. § 1144(b)(2)(A) (1982).

103. Section 514(b)(2)(B) provides that no employee benefit plans covered by ERISA 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 state purporting to regulate" those entities. 29 U.S.C. § 1144(b)(2)(B) (1982).

104. Act of August 23, 1984, Pub. L. No. 98-397, 1984 U.S. CODE CONG. & ADMIN. NEWS (98 Stat.) 1426.

pension plans" for employees, spouses and dependents by considering such factors as changing work patterns, the status of marriage as an economic partnership, and the substantial contribution made by spouses to that partnership.[105] To accomplish this purpose, REA amended the spend thrift provision of ERISA, section 206(d),[106] and created a limited exception which permits the application of state law in some family property cases, thereby allowing a spouse, former spouse, child or other dependent of a plan participant to collect a participant's benefits as an alternate payee.[107]

To collect plan benefits, an alternative payee must obtain a qualified domestic relations order (QDRO).[108] A QDRO is defined as a domestic relations order made pursuant to a state domestic relations law relating to child support, alimony, or family property rights of spouses, former spouses, and children.[109] According to the House and Senate reports, clarification of the spendthrift rules was necessary because of a "divergence of opinion among the courts as to whether ERISA preempts State community property laws" relating to the rights a married couple might have to benefits under a pension, profit sharing, or stock bonus plan.[110] In order to permit

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105. S. REP. No. 575, 98th Cong., 2d Sess. 19, *reprinted in* 1984 U.S. CODE CONG. & ADMIN. NEWS 2547.

106. Section 206(d), assignment or alienation of plan benefits, provides that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1) (1982 & Supp. III).

107. S. REP. No. 575, 98th Cong., 2d Sess. 19 *reprinted in* 1984 U.S. CODE CONG. & ADMIN. NEWS 2547, 2565-67. The Senate Report also noted that if a plan did not contain a spendthrift provision, it was not a qualified plan under the Internal Revenue Code and that state laws permitting the assignment or alienation of plan benefits were preempted by § 514(a). *Id.* at 2564.

108. Section 206(d)(3) provides:

> Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

29 U.S.C. § 1056(b)(3)(A) (1982 & Supp. III).

109. Section 206(d)(3)(B)(ii) provides:

> The term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement) which—
> (I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and
> (II) is made pursuant to a State domestic relations law (including a community property law).

29 U.S.C. § 1056(d)(3)(B)(ii) (1982 & Supp. III).

110. H.R. REP. No. 655 Part 2, 98th Cong., 2d Sess. 18 (1984); S. REP. No. 575, 98th Cong., 2d Sess. 19, *reprinted in* 1984 U.S. CODE CONG. & ADMIN. NEWS 2547, 2565.

the application of state domestic relations laws to an ERISA qualified employee benefit plan, REA amended section 514(a) by adding section 514(b)(7), which provides that ERISA's preemption provisions do not apply to qualified domestic relations orders.[111] The Senate report stated that conforming changes to ERISA section 514 were "necessary to ensure that only those orders that are excepted from the spendthrift provisions are not preempted by ERISA."[112]

The United States Supreme Court first addressed the issue of preemption of state law under the substantive aspects of ERISA in *Alessi v. Raybestos-Manhattan*.[113] This case dealt with whether employers could offset pension benefits by amounts of workers' compensation awards for which retirees were eligible.[114] The employer's practice of reducing pension benefits by the amount of workers' compensation awards received by the retirees was in conflict with a provision of the New Jersey Workers' Compensation Act which prohibited such offsets.[115] The private pension plans in which the retirees were participants were subject to federal regulation under ERISA.[116]

The Supreme Court held that the New Jersey law was preempted by ERISA insofar as the state law eliminated a method for calculating pension benefits under ERISA governed plans.[117] The majority reasoned that Congress "meant to establish pension plan regulation as exclusively a federal concern" through the explicit language of section 514(a).[118] However, the Court noted that in order for the preemption provision to apply, the New Jersey law had to be deemed a state law that related to an employee benefit

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111. Section 514(b)(7) provides that "[s]ubsection (a) shall not apply to qualified domestic relations orders (within the meaning of section 206(d)(3)(B)(i) of this title)." 29 U.S.C. § 1144(b)(7) (1982 & Supp. III).

112. S. REP. No. 575, 98th Cong., 2d Sess. 19, *reprinted in* 1984 U.S. CODE CONG. & ADMIN. NEWS 2547, 2565.

113. 451 U.S. 504 (1981). Justice Marshall delivered the opinion of the Court, in which all other Justices joined. Justice Brennan took no part in the decision of the case. *Id.* at 526.

114. *Id.* at 507.

115. *Id.* at 507-08. The pertinent provision of the New Jersey statute provided that "[t]he right of compensation granted by [the New Jersey Workers' Compensation Act] may be set off against disability pension benefits or payments but shall not be set off against employees' retirement pension benefits or payments." N.J. STAT. ANN. § 34:15-29 (West Supp. 1980).

116. 451 U.S. at 507.

117. *Id.* at 525. The Court stated that "ERISA's authors clearly meant to preclude the States from avoiding through form the substance of the preemption provision." *Id.*

118. *Id.* at 523.

plan.[119] Although the New Jersey law was within the state's police power by regulating workers' compensation awards and not pension plans, the majority concluded that the New Jersey statute related to pension plans governed by ERISA because the statute eliminated the federally permitted method of integration for calculating pension benefits.[120] The majority reasoned that ERISA permits integration of pension funds with other public income for the purpose of calculating benefits and that the New Jersey law banning pension benefit offsets based on workers' compensation awards was in direct conflict with the federal calculation method.[121] Although the New Jersey law encroached indirectly, "rather than directly," on pension plans through the worker's compensation law, the Supreme Court found that the language of ERISA section 514(c)(2) made it clear that an intrusion upon an "area of exclusive federal concern" may occur through indirect state action.[122]

In *Shaw v. Delta Airlines, Inc.*,[123] the issue was whether ERISA preempted a New York Human Rights Law that prohibited discrimination in employee benefit plans on the basis of pregnancy and the State's Disability Benefits Law, which required employers to pay sick leave benefits to employees unable to work because of pregnancy.[124] Based on the plain language of section 514(a), and the structure and legislative history of ERISA, a unanimous Court had "no difficulty" in holding that the New York laws related to

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119. *Id.* The Court noted that the phrase "relates to any employee benefit plan" gives "rise to some confusion where, as here, it is asserted to apply a state law ostensibly regulating a matter quite different from pensions." *Id.* at 523-24. The New Jersey law regulated workers' compensation awards, not pension plan matters. *Id.* at 524.

120. *Id.* at 524. The Court explained that integration was "a calculation practice under which benefit levels are determined by combining pension funds with other income streams available to the retired employees." *Id.* Using the integration method, the total benefit pool to be distributed to retired employees contains contribution amounts from each income stream. Monies from other income maintenance programs are integrated with the pension funds, and "the pension benefit level is determined on the basis of the entire pool of funds." *Id.* at 514.

121. *Id.* at 524-25. The Court noted that it did not have to "determine the outer bounds of ERISA's preemptive language to find this New Jersey provision an impermissible intrusion on the federal regulatory scheme." *Id.* at 525.

122. *Id.* Section 514(c)(2) defined the term "State" to include "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 subchapter." 29 U.S.C. § 1144(c)(2) (1982).

123. 463 U.S. 85 (1983). Justice Blackmun delivered the opinion for an unanimous Court. *Id.* at 87.

124. *Id.* at 88.

employee benefit plans within the meaning of section 514(a).[125] The Supreme Court stated that a "law 'relates to' an employee benefit plan, in the normal sense of the phrase, if it has a connection with or reference to such a plan."[126] Using this definition, the Supreme Court found that the New York Human Rights Law and the Disability Benefits law related to benefit plans in that both laws placed restrictions on employers as sponsors of employee benefit plans.[127]

In *Shaw*, the Supreme Court also addressed the issue of whether the Human Rights Law was exempt from preemption by section 514(d), which provides that section 514(a) shall not "be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States."[128] The New York State Division of Human Rights argued that preemption of the Human Rights Law would modify and impair Title VII of the Civil Rights Act because it would alter Title VII enforcement provisions.[129] The Supreme Court held that preemption of the Human Rights Law would impair and modify Title VII to the extent that the Human Rights Law provided a means of enforcing Title VII.[130] The Supreme Court reasoned that the enforcement scheme to process a benefit plan discrimination claim under Title VII would be disrupted if the Court ordered the Human Rights Law preempted by ERISA.[131]

Before the passage of ERISA, a complaint submitted to the Equal Employment Opportunity Commission (EEOC) under Title VII was referred to the New York State Division of Human Rights.[132] If ERISA were permitted to preempt the Human Rights Law, the state would no longer be able to prevent the alleged discrimination and the New York Division of Human Rights would no

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125. *Id.* at 96. Section 514(a) requires federal law to preempt all state laws which "relate to" any ERISA plan. *See supra* note 97.

126. 463 U.S. at 96-97.

127. *Id.* at 97.

128. *Id.* at 100-01 (quoting 29 U.S.C. § 1144(d) (1982)).

129. *Id.* at 101. The Court stated that "[s]tate laws obviously play a significant role in the enforcement of Title VII." *Id.* (citing Kremer v. Chemical Constr. Corp., 456 U.S. 461, 468-69, 472, 477 (1982); New York Gaslight Club, Inc. v. Carey, 447 U.S. 54, 63-65 (1980)).

130. *Id.* at 102.

131. *Id.*

132. *Id.* Title VII expressly preserves nonconflicting state laws in § 708, which states:

> Nothing in this title shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present o future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this title.

42 U.S.C. § 2003-7 (1982).

longer be "authorized to grant relief."[133] Therefore, the EEOC could no longer refer claims to the New York state agency.[134] The Supreme Court concluded that such a result in the enforcement process "would frustrate the goal of encouraging joint state/federal enforcement of Title VII" and would " 'modify' and 'impair' federal law."[135] However, the Supreme Court held that insofar as the state law prohibited employment practices that were lawful under Title VII, the Human Rights Law was preempted by ERISA.[136]

The Disability Benefits Law was not preempted by ERISA because under section 514(a) state laws were not preempted even if they related to employee benefit plans exempt under section 4(b).[137] The Supreme Court reasoned that although a state might not require an employer to alter its ERISA plan, the employer might be forced by the state to decide whether to provide disability benefits in a separately administered plan or to include the state-mandated benefits in its ERISA plan.[138] Therefore, the Disability Benefits Law was held not preempted by ERISA, although the state of New York could not enforce its requirements through regulation which related to an ERISA-covered benefit plan.[139]

In a subsequent 1985 case, *Metropolitan Life Insurance Company v. Massachusetts*,[140] the Supreme Court, for the first time, addressed ERISA's complex "savings" and "deemer" clauses.[141] This case involved a Massachusetts statute[142] requiring that cer-

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133. 463 U.S. at 102.

134. *Id.*

135. *Id.* The Supreme Court, in a footnote, stated that "[p]reemption of this sort not only would eliminate a forum for resolving disputes that, in certain situations, may be more convenient than the EEOC, but also would substantially increase the EEOC's workload. The inevitable result of complete preemption, in short, would be less effective enforcement of Title VII." *Id.* at 102 n.23.

136. *Id.* at 103. The Supreme Court reasoned that "Title VII would prohibit precisely the same employment practices, and be enforced in precisely the same manner, even if no State made additional employment practices unlawful. Quite simply, Title VII is neutral on the subject of all employment practices it does not prohibit." *Id.*

137. *Id.* at 106. Section 4(b)(3) exempts from preemption "any employee benefit plan . . . maintained solely for the purpose of complying with applicable . . . disability insurance laws." 29 U.S.C. § 1003(b)(3) (1982).

138. 463 U.S. at 108.

139. *Id.* at 109.

140. 471 U.S. 724 (1985). Justice Blackmun delivered the opinion of the Court, in which all other Justices joined. Justice Powell took no part in the decision of the case. *Id.* at 726.

141. *Id.* at 733. For the language of the "savings" clause, *see supra* note 102, and for the language of the "deemer" clause, *see supra* note 103. *See also* Sherrick, *ERISA Preemption: An Introduction*, 64 MICH. B.J. 1074 (1985).

142. MASS. GEN. LAWS ANN. ch. 175, § 47B (West 1985).

tain minimum mental-health-care benefits be provided to state residents insured under either a general health insurance policy or an employee health-care plan that covered hospital and surgical expenses.[143] The ERISA issue involved in the case was whether the state mandated benefit laws were preempted by ERISA under section 514(a).[144]

The Supreme Court found that the Massachusetts law clearly related to ERISA governed welfare plans, thereby falling within the preemptive reach of section 514(a).[145] Relying on *Shaw*, the Supreme Court reaffirmed the broad scope of section 514(a) and stated that the "preemption provision was intended to displace all state laws that fall within its sphere, even including state laws that are consistent with ERISA's substantive requirements."[146] The Court also drew upon its opinion in *Alessi* and stated that "even indirect state action bearing on private pensions may encroach upon the area of exclusive federal concern."[147] Although the state law was not a benefit plan law, the Court found that it bore indirectly, but substantially, on all insured benefit plans since it mandated them to purchase certain mental-health benefits specified in the statute; therefore, the state law related to ERISA plans and was covered under the broad preemption provision of section 514(a).[148]

However, the Supreme Court held that the state mandated benefit law was a law regulating insurance, and therefore fell within the savings clause exception to ERISA preemption under section 514(b)(2)(A).[149] The *Metropolitan Life* Court relied on the plain language of section 514(b)(2)(A), its relationship to the other ERISA preemption provisions, the traditional understanding of insurance regulations, and the legislative history of ERISA to conclude that the Massachusetts state law was not preempted, but preserved, by section 514(b)(2)(A).[150] The Supreme Court reasoned that the common sense view that the state law was saved from preemption by the savings clause was reinforced by the language of

143. 471 U.S. at 727.

144. *Id.*

145. *Id.* at 739. *See supra* note 97.

146. 471 U.S. at 739.

147. *Id.* (quoting Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 525 (1981)).

148. *Id.* at 739.

149. *Id.* at 740. Section 514(b)(2)(A) preserves any state law "which regulates insurance, banking or securities" from preemption. 29 U.S.C. § 1144(b)(2)(A) (1982).

150. 471 U.S. at 739-47.

the deemer clause of ERISA.[151] Discussing congressional intent, the Supreme Court found that the deemer clause made Congress' intent explicit that laws that regulate insurance contracts were within the scope of insurance laws preserved by the savings clause.[152] If congressional intent would have been otherwise, it would not have been necessary for the deemer clause to explicitly exempt laws regulating insurance contracts from the savings clause.[153]

The Supreme Court in *Metropolitan Life* relied on cases construing the meaning of the phrase "business of insurance" in the McCarran-Ferguson Act[154] to determine that the savings clause encompassed regulation regarding the substantive terms of insurance contracts as laws "which regulate insurance."[155] Based on three criteria identified by cases as relevant to determining whether a particular practice fell within the meaning of "business of insurance," the Supreme Court concluded that the Massachusetts state mandated benefit laws were state regulation of the "business of insurance."[156]

In 1987, the Supreme Court decided *Pilot Life Insurance Company v. Dedeaux*,[157] again addressing the language of the "savings" and "deemer" clauses of ERISA.[158] The issue in this case was whether state common law tort and contract actions, asserting improper processing of a claim for benefits under an insured em-

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151. *Id.* at 740. The deemer clause states that an employee benefit plan shall not be deemed to be an insurance company "for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies." 29 U.S.C. § 1144(b)(2)(B) (1982).

152. 471 U.S. at 741.

153. *Id.*

154. 15 U.S.C. § 1101 *et seq.* (1982). The Act provides that "[t]he business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business." *Id.* § 1012(a). Congress enacted the McCarran-Ferguson Act to ensure that the states would continue to have the ability to tax and regulate the business of insurance. *See* Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205, 217-18 (1979).

155. 471 U.S. at 743 (citing Union Labor Life Ins. Co. v. Pireno, 458 U.S. 119, 129 (1982); Group Life & Health Ins. Co. v. Royal Drug Co., 440 U.S. 205 (1979)).

156. *Id.* The three criteria defining the phrase "business of insurance" are: "first, whether the practice has the effect of transferring or spreading a policyholder's risk; second, whether the practice is an integral part of the policy relationship between the insurer and the insured; and third, whether the practice is limited to entities within the insurance industry." *Id. See supra* note 155.

157. 107 S. Ct. 1549 (1987). Justice O'Connor delivered the opinion for a unanimous Court. *Id.* at 1550.

158. *Id.* at 1553. *See supra* notes 102-03.

ployee benefit plan, were preempted by ERISA.[159] After concluding that the common law causes of action asserted in this case related to an employee benefit plan within the meaning of the preemption clause of section 514(a), the Supreme Court then addressed the question of whether the Mississippi common law of bad faith was a law "which regulates insurance," thereby being saved from preemption by section 514(b)(2)(A).[160]

Relying on the reasoning and considerations set forth in *Metropolitan Life*, the Supreme Court concluded that the Mississippi common law of bad faith was not a law which regulated insurance within the meaning of the savings clause.[161] The Supreme Court reasoned that a common sense understanding of the phrase "regulates insurance" indicated that a law must be specifically directed toward the insurance industry in order to regulate it.[162] The Mississippi common law of bad faith was not just directed exclusively toward the insurance industry because its roots were "firmly planted in the general principles of Mississippi tort and contract law;" therefore, it did not fall within the purview of the savings clause.[163]

The McCarran-Ferguson Act[164] factors also did not support the assertion that the Mississippi common law of bad faith regulated insurance.[165] The *Pilot Life* Court found that the common law could not be said to effect the spreading of policyholder risk, and was not limited to entities within the insurance industry, although it did constitute an integral part of a policy relationship between the insurer and insured.[166] Consequently, since the common law

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159. 107 S. Ct. at 1550.

160. *Id.* at 1553. In determining if Dedeaux's common law causes of action "related to"an employee benefit plan, the Supreme Court relied on *Metropolitan Life* and *Shaw*. The Court stated that "[i]n particular we have emphasized that the preemption clause is not limited to 'state laws specifically designed to affect employee benefit plans.' " *Id.* (citing Shaw v. Delta Airlines, Inc., 463 U.S. 85, 98 (1985)). The Supreme Court concluded that the common law causes of action raised in this case "undoubtedly meet the criteria for preemption under [section] 514(a)." *Id.*

161. *Id.* at 1553. The considerations set forth in *Metropolitan Life* that the Court cited to determine whether a state law falls under the savings clause were first, a " 'common-sense view' of the language of the savings clause itself" and second, the Court "made use of the case law interpreting the phrase 'business of insurance' under the McCarran-Ferguson Act." *Id. See supra* notes 140-56.

162. 107 S. Ct. at 1554.

163. *Id.*

164. *See supra* notes 154-56.

165. 107 S. Ct. at 1554.

166. *Id.* at 1555. The Supreme Court noted that the Mississippi "common law of bad faith did not define the terms of the relationship between the insurer and the insured,"

only met one of the three criteria used to identify the "business of insurance," it did not "regulate insurance" within the meaning of the savings clause.[167] Finding that Congress clearly expressed an intent that the civil enforcement provisions of section 502(a) be the exclusive procedure for actions by plan participants and beneficiaries asserting improper processing of claims for benefits under an ERISA plan, the Supreme Court held that different state causes of action for claims that were within the scope of section 502(a) would be in conflict with the "purposes and objectives of Congress."[168] Therefore, the Mississippi common law of bad faith was preempted under section 514(a) of ERISA based on the McCarran-Ferguson Act factors, the "common sense understanding of the savings clause" and the exclusive language of section 502(a).[169]

Although there has been less guidance by ERISA concerning welfare benefit plans as opposed to pension plans, the courts have consistently held in the specific area of garnishment of welfare benefit plan assets that state garnishment laws are not preempted by section 514(a) of ERISA. In *Electrical Workers, Local No. 1 Credit Union v. IBEW-NECA Holiday Trust Fund*,[170] a Missouri state court held that ERISA did not preempt the garnishment of a holiday fund trust that required each employer to contribute a portion of its payroll to provide holiday pay benefits for employees, even if the plan contained a spendthrift clause.[171] In response to the Holiday Trust Fund's assertion that Missouri laws governing garnishment of employee benefit plans were preempted by ERISA, the state court examined the legislative history.[172] The state court

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which was "in contrast to the mandated-benefits law in *Metropolitan Life*." *Id.*

167. *Id.* The Supreme Court acknowledged that the Court had to look at the impact of the "savings clause in ERISA as a whole." *Id.* The Court stated that "[o]n numerous occasions we have noted that '[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.' " *Id.* (citing Kelly v. Robinson, 107 S. Ct. 353, 358 (1986); Offshore Logistics, Inc. v. Tallentire, 106 S. Ct. 2485, 2494 (1986); Mastro Plastics Corp. v. NLRB, 350 U.S. 270, 285 (1956); States v. Heirs of Boisdore, ___ U.S. (8 How.) 113, 122 (1849)). Therefore, the Supreme Court reviewed the legislative intent regarding the civil enforcement provisions of ERISA, § 502(a). 107 S. Ct. at 1555. *See supra* note 31.

168. 107 S. Ct. at 1555.

169. *Id.* at 1558. For the language of § 502(a), *see supra* note 31.

170. 583 S.W.2d 154 (Mo. 1979).

171. *Id.* at 156, 162. Each employer was to contribute an amount equal to 8.5% of their gross monthly payroll to the holiday fund trust for each plan year. *Id.* at 156. The state court concluded that the payments were in the nature of wages or earnings within the meaning of the Missouri state law, Mo. Rev. Stat. § 525.030 (West Supp. 1975). 583 S.W.2d at 162.

172. 583 S.W.2d at 159.

concluded that statements made by the legislators concerning the preemption clause were ambiguous and that the sole purpose of section 514(a) was to eliminate "the threat of conflicting or inconsistent state and local regulation of employee benefit plans."[173]

Section 514(a) was the only bar to the garnishment since section 206(d)(1) of ERISA does not require spendthrift language that benefits provided under a plan might not be assigned or alienated if a plan is not a pension benefit plan.[174] However, the Missouri court refused to apply section 514(a), concluding that an unwarranted "regulatory vacuum" could be the result of such preemption.[175] The state court reasoned that the enforcement of state court money judgments by creditors was a valid area of state concern which was totally unregulated by ERISA with respect to welfare plans.[176] The court declined to hold that the Missouri laws were preempted by ERISA because Congress had not expressed an intent to regulate in traditional areas of state concern.[177]

The United States District Court for the Southern District of Ohio in *Local 212 IBEW Vacation Trust Fund v. Local 212 IBEW Credit Union*[178] reached the same result as the Missouri state court.[179] A credit union, pursuant to Ohio state law, sought to garnish certain beneficiaries' interest in a vacation trust fund created in accordance with a collective bargaining agreement.[180] The court was presented with the question of whether ERISA prevents a creditor of an employee from garnishing funds held in a vacation trust fund for the benefit of the employee.[181] The district court concluded that section 206(d)(1) was expressly limited to pension plans and declined to hold that it applied to welfare benefit plans.[182] This result, the district court noted, was consistent with

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173. *Id.* The court referred to statements made during the floor debate on ERISA by Representative John Dent and Senator Harrison Williams, Jr., 120 CONG. REC. 29,933 (1974); 120 CONG. REC. 29,917 (1974).

174. 583 S.W.2d at 157 n.2, 159.

175. *Id.* at 159.

176. *Id.*

177. *Id.*

178. 549 F. Supp. 1299 (S.D. Ohio 1982), *aff'd per curiam*, 735 F. 2d 1010 (6th Cir. 1984).

179. 549 F. Supp. at 1302.

180. *Id.* at 1300.

181. *Id.* This was basically the same issue presented to the United States Supreme Court in Mackey v. Lanier Collections Agency & Serv., Inc., 108 S. Ct. 2182 (1988).

182. *Id.* at 1301-02. The district court discussed Franchise Tax Bd. v. Construction Laborers Vacation Trust, 679 F.2d 1307 (9th Cir. 1982), *vacated on other grounds*, 463 U.S. 1 (1983). The district court adopted the dissent's view in *Franchise Tax Bd.* that "ERISA's purposes did not mandate implication of such protection for employee welfare benefit

the overall preference ERISA affords pension benefits through statutory protection.[183] The district court found no similar preference given to welfare benefit plans in ERISA or in the legislative history.[184] The court reasoned that for section 514(a) to apply, an express or implied provision of ERISA had to be involved and none was found here.[185] Doubting that the state garnishment law related to the vacation trust fund because the fund's administrative expense incurred in processing the garnishment notices was the only "regulatory" effect the court could identify,[186] the district court considered this regulatory effect minimal, thereby rendering it insufficient to invoke ERISA's preemption provision.[187]

The only state or federal court decision which has held that ERISA preempts state-law attachments of welfare benefit plans was *Franchise Tax Board of California v. Construction Laborers' Vacation Trust for Southern California*,[188] a Ninth Circuit decision which was later vacated on jurisdictional grounds by the United States Supreme Court.[189] This case involved an attempt by the State of California to collect delinquent personal income taxes from union members by imposing a tax levy against money held in their union's vacation trust fund.[190] The vacation trust fund was an employee welfare benefit plan under ERISA and was governed by a spendthrift clause to protect it from voluntary and involuntary assignments of plan benefits.[191] The district court held that the statutes authorizing the state to collect delinquent personal income taxes directly from the Vacation Trust did not directly or indirectly regulate employee benefit plans and that such statutes were "wholly peripheral to the purposes of ERISA."[192] The Ninth Circuit reversed the district court and found that the purpose of ERISA and an implied restriction in the language of the anti-alienation clause of ERISA, section 206(d)(1), required that the same protection afforded pension plans should be extended to vacation

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plans." 549 F. Supp. at 1299.

183. 549 F. Supp. at 1302.

184. *Id.*

185. *Id.*

186. *Id.* at 1302.

187. *Id.*

188. 679 F.2d 1307 (9th Cir. 1982), *vacated on other grounds*, 463 U.S. 1 (1983).

189. 463 U.S. 1 (1983).

190. 679 F.2d at 1308.

191. *Id.*

192. Franchise Tax Bd. v. Construction Laborers Vacation Trust, No. 80-02741-R (C.D. Cal. Dec. 3, 1980).

trusts.[193] The majority concluded that the state failed to identify a state interest that would warrant ERISA not preempting the state levy on the Vacation Trust Fund.[194] The Ninth Circuit held that ERISA preempted the state's attempt to collect employees' tax liabilities directly from the vacation trust fund as the fund was entitled to the same protection guaranteed pension plans under section 514(a) as a welfare benefit plan.[195]

Other decisions from the Ninth Circuit have taken the view of Judge Tang's dissent in *Franchise Tax Board*.[196] Judge Tang reasoned that the explicit language of section 206(d)(1) states that only pension funds are covered under the anti-alienation clause, and since welfare benefit plans are "strictly distinguished" from pension plans under ERISA, the vacation trust fund was excluded from section 206(d)(1) coverage.[197] The dissent asserted that an anti-alienation restriction could not be implied to apply to employee welfare benefit plans for several reasons.[198] First, Congress took great care in drafting section 206(d)(1) to exclude employee welfare benefit plans, and consequently, Congress did not intend to "create an implied anti-alienation restriction."[199] Second, the legislative history of ERISA revealed no evidence that Congress intended to protect employee welfare benefit plans from garnish-

193. 679 F.2d at 1309. Section 206(d)(1) provides in full: "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1) (1982).

194. 679 F.2d at 1309.

195. *Id.*

196. *Id.* at 1310-11. *See, e.g.*, Misic v. Building Serv. Employees Health & Welfare Trust, 789 F.2d 1374 (9th Cir. 1986). In holding that ERISA does not forbid assignment by a beneficiary of his right to reimbursement under a health care plan to a health care provider, the court relied on the explicit language of § 206(d)(1), which only prohibits assignment of pension benefits and makes no mention of the assignment of employee welfare benefit plan benefits. The court relied further on the purpose of the anti-assignment provision, which is to ensure that employee's accrued benefits are available for retirement purposes. *Id.* at 1376. *See also* Arizona Laborers, Teamsters, and Cement Masons, Local 395 Pension Trust Fund v. Nevarez, 661 F. Supp. 365 (Ariz. 1987). *Nevarez* involved former spouses who had obtained judgments against participants in pension plans for failure to make required alimony and child support payments, and a spouse of a participant who instituted garnishment proceedings against the trust funds. *Id.* at 366. The court found that the express language of ERISA's anti-alienation clause of § 206(d)(1) applies only to pension plans and not welfare benefit plans, including health and welfare trust fund and vacation and savings trust fund. *Id.* at 369. The court found further that ERISA does not preempt state garnishment of a welfare benefit plan based on congressional intent to only protect pensions plans and not welfare benefit plans. *Id.* at 370.

197. 679 F.2d at 1310.

198. *Id.* at 1310-11.

199. *Id.* at 1310.

ment, attachment or levy.[200] Third, the purposes for which ERISA was enacted did not mandate implying an anti-alienation restriction covering employee welfare benefit plans.[201] Judge Tang concluded that the limited regulation of employee welfare benefit plans by ERISA, compared with ERISA's heavy regulation of pension funds, "strongly suggests" that Congress was more concerned with the loss of plan participants' pension benefits than with the depletion of their welfare plan benefits.[202] The dissent opined that the "loss of one's pension is far more catastrophic than the loss of funds devoted to financing an annual vacation."[203]

In discussing the preemption of the California levying statute under section 514(a), Judge Tang reasoned that the scope of section 514(a) is not unlimited.[204] By using the word "regulate" in section 514, the legislative choice was not to preempt the narrow category of state laws that did not relate to employee benefit plans within the meaning of section 514(a).[205] In Judge Tang's view, the state levying statute fell within that "narrow category of state laws" that only affect employee benefit plans.[206] Employee benefit plans are subject to federal tax levies; therefore, Judge Tang concluded that processing state tax levies did not impose an additional or serious administrative burden on the trustees of the vaca-

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200. *Id.* at 1310-11.

201. *Id.* at 1311. Judge Tang reasoned that "ERISA heavily regulated pension funds." *Id.* The dissent compared the statutory requirements imposed on pension benefit plans by ERISA with those imposed on welfare benefit plans. ERISA requires "extensive reporting and disclosure requirements, minimum plan standards for participant eligibility and vesting, minimum funding standards, and standards of conduct for persons who serve in a fiduciary capacity to a plan." *Id.* A welfare benefit plan must only comply with "the reporting and disclosure requirements and the fiduciary responsibility standards." *Id.*

202. *Id.* Judge Tang reasoned that even if § 206(d)(1) was found to apply to welfare benefit plans, it was unlikely that § 206(d)(1) preempted state levying statutes by its own force. Section 206(d)(1) does not address either levies or attachments and in the past when Congress wanted to preempt such statutes, it did so through express statutory language. *Id.*

203. *Id.*

204. *Id.* at 1312.

205. *Id.* The dissent reasoned that by using the word regulate in § 514 definitions "suggests that the section was not designed to preempt state laws having only a tangential, non-regulatory effect on benefits plans." *Id.* Judge Tang stated that "had that been the design, less restrictive words such as 'affect', 'influence', or 'connected with' would have been" used as an alternative, or "benefit plan administrators would have been given blanket immunity from the application of state law." *Id.*

206. *Id.* Judge Tang concluded that the state statute only sought to "secure payment of delinquent taxes and treat[ed] trust funds as" another means to "achieve this aim." *Id.* The statute, the dissent asserted, did not "regulate, directly or indirectly, plan reporting, disclosure, participation, funding, vesting, benefit calculation, or the trustees' fiduciary responsibilities." *Id.*

tion trust fund.[207] The dissent reasoned that the only "regulatory effect" identified by the trustees was the administrative burden associated with processing levy notices, and that was too minor to be considered "regulatory."[208]

The majority in Mackey correctly held that section 18-4-22.1 of the Georgia garnishment statute was preempted by ERISA section 514(a). The majority relied on *Shaw, Metropolitan Life*, and *Pilot Life* to hold that section 18-4-22.1, which singled out employee welfare benefit plans covered under ERISA for different treatment under Georgia's garnishment procedures, was preempted.[209] Under the Georgia garnishment statutes, ERISA welfare benefit plans were protected from garnishment, but non-ERISA plans were not protected from garnishment under Georgia law.[210] Because of its precedent in this area, the Supreme Court had taken it for granted that section 514(a) preempted state laws which were "specifically designed to affect employee benefit plans."[211] The dissent agreed with the majority that section 18-4-22.1 was preempted under section 514(a).[212]

Although the purpose of the Georgia legislature might have been to further ERISA's underlying policies, based on the legislative history, the majority, by preempting section 18-4-22.1, properly upheld the broad preemptive reach of section 514(a). Preemption of section 18-4-22.1 eliminated the threat of state or local regulation that might have conflicted with the regulation of ERISA governed welfare benefit plans. Through its decisions in *Alessi, Shaw, Metropolitan Life* and *Pilot Life*, the Supreme Court has developed a body of federal substantive law establishing when a state law or regulation which deals with rights under private welfare and pension plans is preempted by ERISA. This is in accord with what Congress intended when enacting section 514(a) of ERISA, as expressed by Senators Williams and Javits.[213]

The majority's decision that Georgia's entire garnishment proce-

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207. *Id.*

208. *Id.*

209. Mackey v. Lanier Collections Agency & Serv., Inc., 108 S. Ct. 2182, 2185 (1988).

210. *Id.* at 2185 n.4.

211. *Id.* at 2185.

212. *Id.* at 2191.

213. 120 CONG. REC. 29,917, 29,933, 29,942 (1974). Senator Williams commented that § 514 would eliminate the threat of conflicting or inconsistent state and local regulation of employee benefit plans. *Id.* at 29,933. Senator Javits commented that it was intended that the courts would develop a body of federal substantive law to deal with issues concerning private welfare and pension plans. *Id.* at 29,917, 29,942.

dure was not preempted by ERISA, thereby allowing the garnishment of a participant's benefits in an ERISA welfare benefit plan, followed the virtually unanimous view of federal and state courts that had decided this issue.[214] Like the trust funds in the Missouri state court case, *Electrical Workers*, and in the federal court case, *Local 212 IBEW*,[215] the trustees in *Mackey* argued unsuccessfully that the Georgia garnishment laws "related to" their ERISA governed welfare benefit plan because compliance with garnishment orders caused the plan to incur substantial administrative burdens and costs.[216] The courts have found that this effect on benefit plans is too minimal to invoke ERISA's preemption provision.[217]

According to the legislative history, section 514 was the "reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans."[218] However, through its power to regulate the field of employee benefit plans, ERISA does not provide for the enforcement of money judgments against benefit plans won in a civil action in accordance with section 502 of ERISA.[219] Therefore, under Federal Rule of Civil Procedure 69(a), deference has been given to state law to provide methods for collecting the judgments, and garnishment is one permissible method of collection.[220]

When ERISA was enacted in 1974, Congress included a spendthrift provision, section 206(d)(1).[221] Congress did not enact a provision barring the assignment or alienation of welfare plan benefits.[222] The *Mackey* majority appropriately concluded that Congress was aware, as evidenced by section 206(d)(1), that plan

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214. 108 S. Ct. at 2186. The majority stated in a footnote that the only court to hold otherwise was the Ninth Circuit's opinion in Franchise Tax Bd. of California v. Construction Laborers' Vacation Trust for Southern California, 679 F.2d 1307 (1982), *vacated on other grounds*, 463 U.S. 1 (1983). The majority noted, however, that subsequent Ninth Circuit opinions have held that § 514(a) does not preempt state-law attachments of welfare benefit plans. 108 S. Ct. at 2186 n.6.

215. 108 S. Ct. 2186. The majority cited these decisions as examples of other courts that have held that ERISA does not preempt the application of state garnishment procedures to ERISA welfare benefit plans. *Id.*

216. *Id.*

217. *See, e.g.*, Local 212 IBEW Vacation Trust Fund v. Local 212 IBEW Credit Union, 549 F. Supp. 1299 (S.D. Ohio 1982), *aff'd per curiam*, 735 F.2d 1010 (6th Cir. 1984); Mackey v. Lanier Collections Agency & Serv. Inc., 108 S. Ct. 2182, 2186 (1988).

218. 120 CONG. REC. 29,917 (1974).

219. 108 S. Ct. at 2187.

220. *Id.*

221. 29 U.S.C. § 1056(d)(1) (1982).

222. ERISA § 206(d)(1) specifically provides that pension plan benefits may not be assigned or alienated. Section 206(d)(1) makes no mention of welfare plan benefits. *See* 29 U.S.C. § 1056(d)(1) (1982).

benefits could be garnished.[223] In remaining silent on the attachment or garnishment of welfare plan benefits, Congress might well have intended that such benefits not be precluded from state garnishment laws.

The overall scheme of ERISA favoring the protection of pension plan benefits, but not welfare plan benefits, was furthered in 1984 when Congress enacted the REA. According to the senate report, Congress found it necessary to create a limited exception to the spendthrift provision of ERISA to clarify and provide guidance to the courts as to the circumstances under which state family property decrees are not preempted under ERISA.[224] The senate report discussed pension, profit sharing, and stock bonus plans throughout without mentioning welfare benefit plans.[225] Under the REA, section 206(d) was amended to allow for the assignment or alienation of pension benefits through a qualified domestic relations order, and section 514(b)(7) was added to save such order from preemption.[226] When Congress proposed the REA amendments, it had the opportunity to clarify ERISA with respect to the garnishment of welfare benefit plans outside the scope of family property decrees, and apparently chose not to do so.

The majority construed congressional action in 1984 as correcting an error made by the courts that domestic relation orders are preempted by ERISA, thereby clarifying the original meaning of section 514(a).[227] The majority took the position that the intent of the Congress that originally enacted ERISA was controlling and that the Supreme Court had to look at the structure and intent of ERISA in 1974, not 1984.[228] The dissent disagreed and maintained the view that when Congress enacted a limited exception to preemption in 1984, it was reflecting a positive expression of legislative will.[229] The Supreme Court, the dissent argued, was bound to give effect to the intent of Congress in 1984.[230]

However, the 1984 amendments to ERISA deal with the spendthrift provision of ERISA.[231] This reflects congressional concern

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223. 108 S. Ct. at 2189.

224. S. REP. No. 575, 98th Cong., 2d Sess. 19, *reprinted in* 1984 U.S. CODE CONG. & ADMIN. NEWS 2547, 2565.

225. *Id.* at 2564-69.

226. *Id.*

227. 108 S. Ct. at 2191.

228. *Id.* at 2190.

229. *Id.* at 2192.

230. *Id.*

231. S. REP. No. 575, 98th Cong., 2d Sess. 19, *reprinted in* 1984 U.S. CODE CONG. &

over the proper distribution of a participant's pension plan benefits, and also reflects the reality of a changing society that regards the family relationship as an economic partnership. The REA amendments provide for a participant's pension benefits to be assigned to a spouse, former spouse, or other dependent, not a commercial creditor of the participant.[232] The spendthrift provision specifically prohibits pension benefits from assignment or alienation with no mention of welfare plan benefits. It follows then that if a participant can assign or alienate his welfare plan benefits without violating a provision of ERISA, those benefits might be subject to the claims of that participant's creditors.

A greater need for litigation and federal court intervention has resulted from the lack of guidance in ERISA's provisions on the preemption of welfare benefit plans. In deciding not to preempt state law attachment or garnishment of welfare benefit plans, the courts seem to be in conflict with the congressional findings and declaration of policy enunciated in section 1(a) of ERISA.[233] Garnishment of participants' welfare benefits deprives them of anticipated benefits, affects their continued well-being and security, and impairs their general welfare. However, in spite of court decisions allowing garnishment of welfare plan benefits pursuant to state laws, Congress has not clarified ERISA through legislation to determine the boundaries of state and local regulation with respect to welfare benefit plans. Perhaps this congressional silence is an indication that Congress agrees with the courts' interpretation of ERISA's preemption provision. If so, the silence will continue until Congress feels compelled to correct the courts' error by amending ERISA to specifically prohibit garnishment of welfare plan benefits.

Leah Davis

ADMIN. NEWS 2547, 2564-69.

232. *Id.*

233. 29 U.S.C. § 1001(a) (1982).