BANKRUPTCY LAW—EXCLUDED PROPERTY—A DEBTOR'S PENSION PLAN IS EXCLUDED FROM THE BANKRUPTCY ESTATE BECAUSE ANTI-ALIENATION CLAUSES IN QUALIFIED ERISA PENSION PLANS ESTABLISH A TRANSFER RESTRICTION RECOGNIZABLE UNDER APPLICABLE NONBANKRUPTCY LAW IN SECTION 541(C)(2)—*Patterson v. Shumate*, 112 S. Ct. 2242 (1992).

Commencement of a bankruptcy case under the Bankruptcy Reform Act of 1978 (Code)[1] creates a debtor estate and defines

---

[1] 11 U.S.C. §§ 101-1330 (1988 & Supp. III 1992). The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (1978) (codified at 11 U.S.C. §§ 101-1330 (1988 & Supp. III 1992)) *as amended by* Pub. L. No. 98-249, 98 Stat. 116 (1984); Pub. L. No. 98-271, 98 Stat. 163 (1984); Pub. L. No. 98-299, 98 Stat. 214 (1984); Pub. L. No. 98-454, 98 Stat. 1745 (1984); Bankruptcy Judges, United States Trustees, And Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3088 (1986).

In July 1970, Congress established the Commission on the Bankruptcy Laws of the United States (Commission) to review the Bankruptcy Act of 1898. Act of July 24, 1970, Pub. L. 91-354, §§ 1-6, July 24, 1970, 84 Stat. 468, *as amended by* Pub. L. 92-251, March 17, 1972, 86 Stat. 63; Pub. L. 93-56, § 1, July 1, 1973, 87 Stat. 140. After studying the Act of 1898, the Commission made recommendations in the Report of the Commission on the Bankruptcy Laws of the United States. *Id. See generally* REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. Doc. No. 137, 93d. Cong., 1st Sess., pts. I, II (1973) [hereinafter COMMISSION REPORT] (discussing suggestions and conclusions of the Commission), *reprinted in* 2 App. COLLIER ON BANKRUPTCY 1 (Lawrence P. King, ed., 15th ed. 1992). Formation of the Commission was prompted due to: the rise in the number of consumer bankruptcies filed; the costs, delays and inefficiencies of the administrative process; the overall need for revision of the administrative system; the need for uniform treatment of creditors and debtors; and inadequate relief provided to debtors within the bankruptcy system. COMMISSION REPORT, *supra*, at 2-5; *see also* Anthony L. Martin, Comment, *Bankruptcy Exemptions: Whether Illinois's Use Of The Federal "Opt Out" Provision Is Constitutional*, 1 S. ILL. U. L.J. 65, 65 (1981) (indicating that "Congress sought to correct . . . the inadequate relief provided to individual debtors . . . [and] . . . to . . . give[ ] 'adequate exemptions and other protections to ensure that bankruptcy will provide a fresh start.' ") (citation omitted).

In furtherance of these goals, the Commission undertook and authorized the following studies: Management Studies of Bankruptcy Administration; The Operation of the Dischargeability Legislation of 1970; The Impact of the Wage Garnishment Legislation of 1970 on Bankruptcies; Correlation of Bad Debt Losses and Nonbusiness Bankruptcy Rates; Chapter XIII Versus Straight Bankruptcy in the Eastern District of Tennessee; Study of Business Failures; and The Delphi Inquiry (Institute for the Future). COMMISSION REPORT, pt. I, at 6-7. The Commission also circulated a questionnaire to organizations and individuals that addressed the following topics: "(1) courts of bankruptcy, their jurisdiction, and procedure; (2) administration; (3) consumer bankruptcy; (4) business bankruptcy; (5) exemptions; (6) discharge; (7) collection and liquidation of estates; (8) creditors and claims; (9) crimes and contempt; (10) arrangements, reorganizations, and compositions." *Id.* at 7. A business questionnaire was also circulated to 50 law professors and practicing attorneys acknowledged as experts in relief to business debtors. *Id.*

The Commission made proposals for major changes to the Bankruptcy Act of

1898. *Id.* at 17. One of the major changes the Commission proposed was reorganization of the administrative structure. *Id.* at 17-21. The Commission pointed out that bankruptcy judges were handling the administrative tasks of individual bankruptcy cases. *Id.* at 17. This involvement, the Commission recognized, was inefficient because it involved the judge in extra procedures and paper shuffling when a case was uncontested. *Id.* Moreover, the Commission identified impartiality of tribunal decisions as a second major justification for separating judicial and administrative functions. *Id.* at 17-18. Because a judge is involved in both the administration and the litigation of a case, the Commission noted, certain bias might result, but even if prejudice did not occur, outside parties might view the bankruptcy court as an unfair forum. H.R. Rep. No. 764, 99th Cong., 2d Sess. (1986), *reprinted in* 1986 U.S.C.C.A.N. 5227, 5230 [hereinafter HOUSE REPORT]. Accordingly, Congress established the U.S. Trustee Pilot Program to handle the administrative aspects of each case. *Id.* The foundation of this program separated the administrative and judicial functions of bankruptcy. *Id.* Bankruptcy judges were then free to settle disputes untainted by administrative involvement. *Id.*

After extensive study, the Commission also identified the following internal policy goals of the Code: to provide equal access to the bankruptcy process by both creditors and debtors, to establish equitable and fair distribution among creditors, to facilitate a "fresh start" for the debtor and to foster economically efficient administration. COMMISSION REPORT, *supra*, at 75-82. The Commission noted, however, that fraud and dishonest conduct within the bankruptcy process were also of import. *Id.* at 82.

Equal access to the bankruptcy process, both to collect and establish debts, is accomplished by making bankruptcy intellectually, physically and economically accessible. *Id.* at 76. Equitable treatment encompasses both a debtor's fairness to creditors and fairness among creditors themselves in regard to the debts. *Id.* Particularly, the congressional commission decreed: "The individualistic creditors' rights laws, many of which are applicable equally to the enforcement of open credit economy debts and to the enforcement of all other debts, must be balanced in bankruptcy against rules for fair and equitable distribution collectively among all creditors of a debtor." *Id.*

Debtor rehabilitation, according to the Commission, is facilitated through seasonable, comprehensive, flexible and enduring relief to the debtor. *Id.* at 79. A vehicle that furthers debtor rehabilitation, noted one commentator, is allowing the debtor—by way of exemptions or exclusions—to retain property that will facilitate the debtor's "return to a normal life." John W. Draskovic, United States v. Security Industrial Bank: *A Final Determination of the Retrospectivity of Section 522(f)(2)*, 10 OHIO N.U. L. REV. 573, 573 (1983). Debtor rehabilitation is commonly referred to as giving the debtor a "fresh start." *Id.*

Efficient economic administration is promoted through four objectives outlined by the Commission:

> [*I*]*mpartial, expert*, and *speedy* performance of decision-making and other functions necessary to bring a case to a fruitful conclusion; *economy* that avoids waste, duplication, dilatoriness, and inefficiency; *uniformity* in case procedure and in the application of substantive laws throughout the United States; and managerial *flexibility* that can adjust quickly and efficiently to changes in quantity, kind, size, and location of cases.

COMMISSION REPORT, *supra*, at 81 (emphasis in original). The Commission established that the above objectives would be best implemented through a single governmental agency, i.e., the U.S. Trustee Program. *Id.*; *see* Janet A. Flaccus, *Bankruptcy Trustees' Compensation: An Issue Of Court Control*, 9 BANKR. DEV. J. 39, 39 (1992). The United States Trustee program was originally enacted as an experi-

the parameters of debtor and creditor rights.[2] The Code, in § 541, enumerates what property must be included in the bank-

---

mental program through the 1978 bankruptcy legislation. DAVID G EPSTEIN, DEBTOR-CREDITOR LAW: IN A NUT SHELL 150 (1991). The experimental program was comprised of the District of Columbia together with parts of seventeen states. *Id.* The United States Trustee program became nationwide in 1986 through congressional amendment. *Id.* The United States trustee is appointed by the Attorney General. *Id.* The trustee primarily performs an administrative task that bankruptcy judges formerly performed. *Id.* Particularly, it is the United States trustee that supervises and selects the bankruptcy trustee. *Id.* The United States trustee may act as a trustee in Chapter 13 and Chapter 7 cases (not Chapter 11); the trustee is not, however, considered or intended to be a replacement for the private bankruptcy trustee. *Id.*

The private bankruptcy trustee is to be distinguished from the United States trustee. The bankruptcy trustee, unlike the United States trustee, is a private citizen. *Id.* at 147. The bankruptcy trustee, as set forth in § 323 of the Code, is "the representative of the estate." *Id.* As such, the bankruptcy trustee may be sued or sue on behalf of the estate in bankruptcy. *Id.* at 148. The authority and function of the bankruptcy trustee deviate from chapter to chapter depending on the nature of the chapter—liquidation in chapter 7 versus reorganization in chapter 13. *Id.* Although the duties are similar, the chapter 13 trustee functions as a disbursing agent whereas the chapter 7 trustee collects and liquidates property of the estate. *Id.* at 148. Chapters 7 and 13 always have a private bankruptcy trustee; it is rare, however, for a bankruptcy trustee to become involved in a chapter 11 proceeding. *Id.*

A chapter 11 bankruptcy trustee will be appointed only if the bankruptcy judge decides there is good " 'cause' or the 'appointment is in the interest of creditors, any equity security holders, and other interests of the estate.' " *Id.* When a chapter 11 bankruptcy trustee is appointed, the trustee takes over the operation of the debtor business. *Id.*

[2] Mark A. Haskins, Comment, *Congressional Intent? Qualified Retirement Plan Benefits May or May Not be Protected from Creditors' Claim in Bankruptcy*, 20 STETSON L. REV. 565, 565 (1990); *see* 11 U.S.C. §§ 301-303 (1988 & Supp. III 1992) (Commencement of a case—voluntary cases; joint cases; involuntary cases). Bankruptcy protection is generally sought to gain relief from creditors. Laurence B. Wohl, *Pension And Bankruptcy Laws: A Clash Of Social Policies*, 64 N.C. L. REV. 3, 4 (1985). Relief can be procured either by discharging a debtor's debts or by having the court create an orderly plan that reorganizes a debtor's existing debts. *Id.* Debtors often seek to exempt or exclude assets from the estate so that these assets will not be distributed among creditors under chapter 7 or factored into a rehabilitation plan under chapter 11 or chapter 13. Robert A. Johnson, In re Moore: *Moore Confusion on Excluding ERISA Pension Plans from the Bankruptcy Estate by Code Section 541(c)(2)*, 16 J. CORP. L. 575, 579-80 (1991).

Although there are various bankruptcy filing chapters, chapters 7, 13, and 11 are the most common. Maria A. Di Pippo and Gerald P. Wolf, *ERISA And The Bankruptcy Code: Stepping Into Quicksand Or Something Else, Post* Mackey, 8 TOURO L. REV. 521, 524 n.9 (1992). Chapter 7 is often called "straight bankruptcy." BLACK'S LAW DICTIONARY 148 (6th ed. 1990) [hereinafter BLACK'S]. Providing for immediate distribution of a debtor's assets, chapter 7 requires a debtor to pay creditors as much of the owed debt as can be liquidated. Wohl, *supra*, at 4. Chapter 7 may be either voluntary—the debtor petitions the bankruptcy court to commence proceedings—or involuntary—the debtor's creditors petition the bankruptcy court to commence proceedings. BLACK'S, *supra*, at 148. Once the debtor's available assets are liquidated and distributed to the creditors, the debtor is forever relieved from liability

ruptcy estate.[3] Additionally, the Code delineates what property

on the remaining bankruptcy debts. Wohl, *supra*, at 4 (citing 11 U.S.C. §§ 701-766 (1982)).

In anticipation of full payment of existing debt, chapters 11 and 13 provide court supervised plans to reorganize an insolvent's debt structure. *Id.* Chapter 13 is deemed the "wage earner's plan." BLACK'S, *supra*, at 148. This chapter permits insolvent debtors to draft and file a plan with the bankruptcy court. *Id.* Chapter 13 plans set a schedule for repayment of monies owed to creditors. *Id.* The benefit of chapter 13 is that it provides an insolvent debtor with additional time to meet his creditors' demands. *Id.* Chapter 11, "business reorganization," is substantially similar to chapter 13 in that it allows an insolvent business to draft and file a plan with the bankruptcy court, thereby giving the debtor business adequate time to meet its creditors' demands. *Id.* at 147-48.

[3] 11 U.S.C. § 541(a) (1988 & Supp. III 1992). The estate is created pursuant to § 541(a) of the Code. Johnson, *supra* note 2, at 579 & n.26. Requiring inclusion of almost every property interest held by the debtor before bankruptcy, the Code included both intangible and tangible assets in the debtor estate. *Id.* Specifically, § 541(a) provided:

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case. . . .
>
> (c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in agreement, transfer instrument, or applicable nonbankruptcy law-
>
> (A) that restricts or conditions transfer of such interest by the debtor; or
>
> (B) that is conditioned on the insolvency of financial condition of the debtor, on commencement of a case under this title, or on the appointment of or the taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

11 U.S.C. § 541(a) (1988 & Supp. III 1992). This expansive definition of property attempted to alleviate the problem of determining what debtor property would be included in the bankruptcy estate. *See* Wohl, *supra* note 2, at 11-12. *See generally* Susan C. Gieser, *Property Of The Estate: Section 541(a)(1)*, 4 BANKR. DEV. J. 123, 123-31 (1987) (examining background history of § 541(a)(1)); Anita F. Hill, *The Relative Nature of Property in the Context of Bankruptcy: Resolution of a Conflict Between Federal Pension Law and Bankruptcy Law*, 40 KAN. L. REV. 643, 644-47 (1992) (outlining jurisprudence of property under the Code).

Under the Bankruptcy Act of 1898, however, only state exemptions were permitted. Wohl, *supra* note 2, at 6 n.17 (citation omitted). As a result, conflict arose as to what qualified as property under the statutory exemption. *Id.* at 6. Because the Bankruptcy Act exemptions failed to enumerate a list of items constituting property, the judiciary began to define property exemptions. *Id.* at 6-7. *See also* Daniel Spitzer, Comment, *Contra* Goff: *Of Retirement Trusts And Bankruptcy Code § 541(c)(2)*, 32 UCLA L. REV. 1266, 1269 (discussing what constituted property of a debtor's estate under the Bankruptcy Act of 1898).

interests may be exempted or excluded from a debtor's estate.[4]

---

[4] Haskins, *supra* note 2, at 565. Section 541(c)(2) provided the following exclusion: "A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title." 11 U.S.C. § 541(c)(2) (1988 & Supp. III 1992).

Section 522 of the Code allows a debtor to exempt specific property from the bankruptcy estate. Theresa H. Curmi, Note, *Qualified Retirement Plan Benefits—Does ERISA's Anti-Alienation Provision Protect Them From Bankruptcy Court Attachment?*, 62 U. DET. L. REV. 109, 117-18 (1984). Under § 522, a debtor is permitted to choose either federal exemptions under § 522(d) or federal nonbankruptcy law and state exemptions under § 522(b)(2)(A). Spitzer, *supra* note 3, at 1274. Section 522 provided in pertinent part:

> (b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or in the alternative, paragraph (2) of this subsection. . . .
> (1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,
> (2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition . . .
> (d) The following property may be exempted under subsection (b)(1) of this section:
> (1) The debtor's aggregate interest, not to exceed $7,500 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence . . .
> (2) The debtor's interest, not to exceed $1,200 in value, in one motor vehicle.
> (3) The debtor's interest, not to exceed $200 in value in any particular item, or $4,000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
> (4) The debtor's aggregate interest, not to exceed $500 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.
> (5) The debtor's aggregate interest in any property, not to exceed in value $400 plus up to $3,750 of any unused amount of the exemption provided under paragraph (1) of this subsection.
> (6) The debtor's aggregate interest, not to exceed $750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.
> (7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.
> (8) The debtor's aggregate interest, not to exceed in value $4,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual whom the debtor is a dependant.
> (9) Professionally prescribed health aids for the debtor or a dependent of the debtor.
> (10) The debtor's right to receive—

Section 541(c)(2) allows a debtor's property interest to be excluded from the bankruptcy estate if the interest is non-transferable under "applicable nonbankruptcy law."[5]

Heated debate, however, surrounds what bodies of law constitute applicable nonbankruptcy law.[6] Particularly, the debate centers on whether federal law, such as the Employee Retirement Income Security Act of 1974 (ERISA),[7] qualifies as applicable

---

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1986. . . .

11 U.S.C. §§ 522(b) & (d) (1988 & Supp. III 1992). See Spitzer, *supra* note 3, at 1275, for a chart outlining the property exclusions afforded under §§ 541 and 522.

[5] Wohl, *supra* note 2, at 12-13. Section 101(50) of the Code defined transfer as: "[E]very mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the debtor's equity of redemption . . . ." 29 U.S.C. § 101(50) (1988 & Supp. III 1992).

[6] *See* 14 MARTIN M. WEINSTEIN & JAMES J. DOHENY, MERTENS LAW OF FEDERAL INCOME TAXATION 147 (April 1993 Monthly Update).

[7] 29 U.S.C. §§ 1001-1461 (1988 & Supp. III 1992). ERISA provided for the preservation of employee pension benefit plans as well as employee welfare benefit plans. Jonathan T. Baer, Comment, *ERISA Preemption Of State Exemption Laws: The Effects In Bankruptcy*, 7 BANKR. DEV. J. 615, 621 (1990). The policies of ERISA, as outlined by some of the bill's sponsors, are memorialized within the legislative history of ERISA. *Id.* Section 1001a(c) of ERISA delineated additional policies of the act. *Id.* at 621. Section 1001a(c) provided in relevant part:

It is hereby declared to be the policy of this Act—

(1) to foster and facilitate interstate commerce,

(2) to alleviate certain problems which tend to discourage the maintenance and growth of multiemployer pension plans,

(3) to provide reasonable protection for the interests of participants and beneficiaries of financially distressed multiemployer pension plans, and

(4) to provide a financially self-sufficient program for the guarantee of employee benefits under multiemployer plans.

29 U.S.C. § 1001a(c) (1988 & Supp. III 1992).

nonbankruptcy law under § 541(c)(2).[8] The majority of circuit courts have refused to apply federal ERISA law in the bankruptcy context and therefore have caused qualified ERISA pension plans to be included in the debtor's bankruptcy estate.[9] This inclusion

---

[8] Margaret K. Garber, *ERISA-Qualified Plans: "Applicable Nonbankruptcy Law"?*, 8 BANKR. DEV. J. 605, 605 (1991).

[9] Curmi, *supra* note 4, at 116. *See, e.g.*, Samore v. Graham (*In re* Graham), 726 F.2d 1268, 1271 (8th Cir. 1984) (ruling qualified ERISA pension plans were not exempt from debtor's bankruptcy estate); Lichstrahl v. Bankers Trust (*In re* Lichstrahl), 750 F.2d 1488, 1490 (11th Cir. 1985) (opining qualified ERISA pension plans with anti-alienation clauses only excluded from debtor's bankruptcy estate if plan was enforceable pursuant to state spendthrift law); Daniel v. Security Pacific National Bank (*In re* Daniel), 771 F.2d 1352, 1360 (9th Cir. 1985) (finding ERISA pension plans only excluded from debtor's bankruptcy estate if plan was enforceable under state spendthrift law); Goff v. Taylor (*In re* Goff), 706 F.2d 574, 577 (5th Cir. 1983) (holding applicable nonbankruptcy law did not include federal law such as ERISA).

Prior to *Patterson v. Shumate*, the circuit courts contrived two major positions regarding whether ERISA qualified pension plans were to be included in a debtor's bankruptcy estate. 14 MARTIN M. WEINSTEIN & JAMES J. DOHENY, MERTENS LAW OF FEDERAL INCOME TAXATION 147 (April 1993 Monthly Update). The majority position, followed by the Fifth, Eighth, Ninth and Eleventh Circuits—limited its interpretation of applicable nonbankruptcy law to state spendthrift law exclusively. Garber, *supra* note 8, at 615-20. Under this view, only pension plans that qualified under state spendthrift law were eligible for exclusion from a debtor's bankruptcy estate under § 541(c)(2). *Id.* The minority line of circuit courts—the Third, Fourth, Sixth and Tenth Circuits—held that applicable nonbankruptcy law enveloped both state and federal nonbankruptcy law. *See id.* at 620-27; 14 MARTIN M. WEINSTEIN & JAMES J. DOHENY, MERTENS LAW OF FEDERAL INCOME TAXATION 147 (April 1993 Monthly Update).

Due to this divergent circuit court interpretation of § 541(c)(2), disparate treatment of pension plans resulted depending on where a debtor's bankruptcy petition was filed. Jack E. Karns, *Can The Internal Revenue Service Levy And Collect Against ERISA Qualified Pension Plan Benefits In Bankruptcy Proceedings?*, 27 WAKE FOREST L. REV. 657, 677 (1992). This multiplicity of possible outcomes promoted bankruptcy forum shopping. *Id.* It is therefore not surprising, observed Professor Karnes, that the United States Supreme Court granted certiorari to hear *Patterson* and establish a uniform standard. *Id.*

A spendthrift trust is "created to provide a fund for the maintenance of a beneficiary and at the same time to secure the fund against his improvidence or incapacity; provisions against alienation of the trust fund by the voluntary act of the beneficiary or by his creditors are its usual incidents." BLACK'S, *supra* note 2, at 1400 (citation omitted). In most states, spendthrift trusts cannot be attached by creditors. *Id.*

The earliest use of the term "spendthrift trust" appeared in the syllabus of the case Ashhurst's Appeal. ERWIN N. GRISWOLD, SPENDTHRIFT TRUSTS 32 & n.32 (2d ed. 1947); *see* Ashhurst's Appeal, 77 Pa. 464 (1875). General acceptance of spendthrift trusts emanated from dictum in *Nicholas v. Easton*. GRISWOLD, *supra*, at 22; Nicholas v. Easton, 91 U.S. 716 (1875). In *Nicholas*, Griswold stated, the issue involved "the validity of a forfeiture on alienation, followed by a discretionary trust." *Id.* at 26. Although there was no reason to deal with the issue of restraints on alienation, Griswold added, Justice Miller wrote a detailed opinion on spendthrift trusts. *Id.* Griswold observed that the Justice found validity in spendthrift trusts

is in direct conflict with the purpose of ERISA.[10]

---

based on the contention that the intent of a "donor commanded respect above all other considerations." *Id.* at 27. Subsequent to *Nicholas*, Griswold contended, the spendthrift dictum was pronounced "law" by treatise text writers. *Id.* at 28-32 (chronicling adoption of *Nicholas* dictum by treatise writers).

Anti-alienation provisions in qualified plans are comparable to state spendthrift trusts. Elynn Lambert, Note, *ERISA Plans As Property of Individuals' Bankruptcy Estates*, 5 CARDOZO L. REV. 685, 689 (1984) (citation omitted). State spendthrift trusts were established to prevent the beneficiary (frequently seen as a spend-thrift) from assigning the right to receive income from the trust and to prevent creditor access. *Id.* Although most spendthrift trusts are valid, some states consider self-settled spendthrift trusts invalid. *Id.* A perusal of state spendthrift-trust law indicated that four states—Wyoming, New Mexico, Idaho and Alaska—have no spendthrift trust law. *Id.* at 689 n.30 (citations omitted). Three states—Rhode Island, Ohio and New Hampshire—have invalidated spendthrift trusts. *Id.* Other states have validating spendthrift case law or statutes. *Id.*

Numerous issues, however, come into question when a trust is self-settled. *See* AUSTIN W. SCOTT, ET. AL., THE LAW OF TRUSTS, § 156.2 at 175-79 (4th ed. 1987). Generally, when a self-benefiting trust is created, creditors may reach the maximum amount that the trustee could pay to the settlor or expend for the settlor's benefit. RESTATEMENT (SECOND) OF TRUSTS, § 156 cmt. e (1959). An example of state law that forbids self-settled spendthrift trusts is New Jersey Statute 3B:11-1. This statute provides in pertinent part:

> The right of any creator of a trust to receive either the income of the principal of the trust or any part either thereof, presently or in the future, shall be freely alienable and shall be subject to the claims of his creditors, notwithstanding any provision to the contrary in the terms of the trust.

N.J. STAT. ANN. § 3B:11-1 (West 1987).

[10] Wohl, *supra* note 2, at 5. The policies behind ERISA are uniform employee retirement benefit protection and promotion of private funding of pensions. Edward W. Brankey and Frank P. Darr, *Debtor Interest In Pension Plans As Property Of The Debtor's Estate*, 28 AM. BUS. L.J. 275, 296-97 (1990). Uniform protection is made possible through anti-alienation and anti-assignment provision requirements. Garber, *supra* note 8, at 606. Anti-alienation and anti-assignment clauses ensure that an employee's vested interests are actually available upon retirement. Lambert, *supra* note 9, at 689. All ERISA plans require anti-alienation and anti-assignment clauses to be tax-qualified. Spitzer, *supra* note 3, at 1282. These clauses not only seek to prevent plan participants' misadventures but also outsiders' attempts to reach plan benefits. Curmi *supra* note 4, at 113. Section 1056 of ERISA outlines the anti-alienation requirements. Specifically, §§ 1056 (d) (1) & (2) provided in pertinent part:

> (d) Assignment or alienation of plan benefits.
>
> (1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.
>
> (2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued non-forfeitable benefit

In keeping with ERISA objectives, the United States Supreme Court has consistently refused to permit nonbankruptcy creditors to gain access to qualified ERISA plans.[11] Even

---

and is exempt from the tax imposed by section 4975 of title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of title 26.

11 U.S.C. §§ 1056 (d)(1) & (2) (1988 & Supp. III 1992).

When a judicial bankruptcy decision is made to distribute plan assets, potential tax disqualification of an entire corporate ERISA plan arises. Brankey, *supra*, at 296-97. Specifically, a direct turnover of plan assets to a debtor's bankruptcy estate may cause other plan participants to lose substantial tax incentives even though they did not violate the plan's anti-alienation clauses. *Id.*

Private funding of pension plans by employers is promoted through favorable tax treatment. *Id.* at 279. Section 401(a) of the Internal Revenue Code outlined the standard for tax benefit qualification. *Id.* Section 401 provides in pertinent part:

> (a) Requirements for qualification.—A trust created or organized in the United States and forming part of a stock bonus, pension or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—
> (1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance with such plan;
> (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus of income to be (within the taxable year of thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries (but this paragraph shall not be construed, in the case of a multiemployer plan, to prohibit the return of a contribution within six months after the plan administrator determines that the contribution was made by a mistake of fact or law (other than a mistake relating to whether the plan is described in section 401(a) or the trust which is part of such plan is exempt from taxation under section 501(a), or the return of any withdrawal liability payment determined to be an overpayment within six months of such determination)[sic];
> (3) if the plan of which such trust is a part satisfies the requirements of section 410 (relating to minimum participation standards); and
> (4) if the contributions or benefits provided under the plan do not discriminate in favor of highly compensated employees (within the meaning of section 414(q)). . . .

26 U.S.C. § 401 (West Supp. 1992).

[11] Garber, *supra* note 8, at 606 (citing Mackey v. Lanier Collections Agency & Serv., Inc., 486 U.S. 825, 841 (1988) (holding that although ERISA welfare benefits are not protected from state enforcement proceedings, ERISA pension benefits are protected by § 206(d)(1), which preempts state law)). The Supreme Court also declared that debtors who have embezzled funds from a union still have a guaranteed right to ERISA plan interests, so long as no ERISA funds were embezzled. *Id.* (cit-

with the Court urging ERISA protection in the most extreme situations, numerous circuit courts have refused to protect qualified ERISA pension plans from a debtor's bankruptcy estate.[12] This refusal is based upon the perceived conflict between the goals of the Code and the goals of ERISA.[13]

Recently, however, several circuit courts declined to concur with the majority interpretation of applicable nonbankruptcy law and have determined federal law such as ERISA to be germane under § 541(c)(2).[14] Accordingly, the minority of circuit courts refused to include qualified ERISA pension plans in a debtor's bankruptcy estate.[15] The minority interpretation of applicable

---

ing Guidry v. Sheet Metal Workers National Pension Fund, 493 U.S. 365, 373 (1990)).

[12] *See* Garber, *supra* note 8, at 606. Although one of ERISA's goals was to provide uniform benefits to employees—both in and out of bankruptcy—the majority of courts have concluded that qualified ERISA pension plans may not be excluded from a debtor's bankruptcy estate. *Id.* at 607. Accordingly, this majority interpreted the phrase "applicable nonbankruptcy law" to refer to state spendthrift law only. *Id.*

[13] *See id.* at 610, 619. Legislation was introduced in the House and Senate in an effort to settle the long standing dispute over the compatibility of ERISA and the Code. Marvin Krasny and Bruce Grohsgal, *Whose Pension Is It Anyway?—ERISA And The Bankruptcy Code*, 97 COM. L.J. 12, 12 (1992); *see* S. 1985, 102d Cong., 1st Sess. (1991) (Bankruptcy Code Reform Act, Introduced by Sen. Heflin on 11/19/91); H.R. 3804, 102d Cong. 1st Sess. (1991) (Personal Bankruptcy Pension Protection Act of 1991, introduced by Rep. Gibbons on 11/19/91).

The failed bill, introduced by Rep. Gibbons, proposed to add a new subsection to § 541 of the Code. Nancy E. Blackwell, *To Include Exclude, or Exempt—That Is the Question!: An Individual's Pension Benefits in Bankruptcy and the Potential Effect of H.R. 3804*, 60 UMKC L. REV. 291, 310 (1991). The additional subsection would have excluded a debtor's qualified ERISA pension plan from the bankruptcy estate so long as the pension satisfied ERISA anti-assignment provisions. *Id.* Moreover, the subsection explicitly stated that funds that are contributed to a plan—one year prior to filing bankruptcy—in order to a defraud creditor as provided in section 548(a)(1) of the Code would not be excluded from the debtor's estate. *Id.* For reasons why these bills did not pass see *Why The Bankruptcy Bill Failed?*, 23 BANKR. CT. DEC., October 22, 1992, at A4. *See* Blackwell, *supra* at 310 (discussing the provision's problems—resolved and unresolved—by H.R. 3804).

[14] Di Pippo, *supra* note 2, at 530. *See, e.g.*, Forbes v. Lucas (*In re* Lucas), 924 F.2d 597, 601 (6th Cir. 1991) (holding applicable nonbankruptcy law did not refer exclusively to state law); Velis v. Kardanis, 949 F.2d 78, 81 (3d Cir. 1991) (ruling applicable nonbankruptcy law included federal as well as state law); Gladwell v. Harline (*In re* Harline), 950 F.2d 669, 674 (10th Cir. 1991) (concluding ERISA qualified plans are exempt from a debtor's bankruptcy estate); Anderson v. Raine (*In re* Moore), 907 F.2d 1476, 1477 (4th Cir. 1990) (finding applicable nonbankruptcy law not limited to state spendthrift law).

[15] *Harline*, 950 F.2d at 6744. One commentator noted that although the logic of the majority of circuit courts is "attractive," it failed to further the goals and purpose of ERISA. Garber, *supra* note 8, at 615-16.

nonbankruptcy law became precedent in *Patterson v. Shumate.*[16] In *Patterson*, the United States Supreme Court refused to limit the clause "applicable nonbankruptcy law" solely to state law.[17] Instead, the Court endorsed a broad application of the phrase and determined that applicable nonbankruptcy law included federal as well as state law.[18]

Respondent Joseph Shumate was the president and majority shareholder of the Coleman Furniture Corporation (CFC).[19] As an employee of CFC, Shumate had an interest in the corporation's qualified ERISA pension plan.[20] In 1982, CFC experienced financial difficulty and as a result petitioned for bankruptcy under chapter 11 of the Code.[21] CFC's petition was granted; the case was converted, however, to a proceeding under chapter 7.[22] Shumate also suffered economic hardship and con-

---

16 112 S. Ct. 2242 (1992); *see id.* at 2246, 2247.

17 *Id.* at 2247. The Court refused to consider whether the pension plan was exempt under § 522(b)(2)(A) of the Code because the plan was already excludable under § 541(c)(2). *Id.* at 2250.

18 *Id.* at 2247. The *Patterson* Court argued that a broad reading of § 541(c)(2) was in accord with other references to applicable nonbankruptcy law throughout the Code. *Id.* at 2246. Moreover, the Court stated that where Congress intended to restrict the scope of the Code to state law it did so explicitly. *Id.* The Court supported its analysis by citing the following Code sections:

> 11 U.S.C. § 109(c)(2) (entity may be a debtor under chapter 9 if authorized "by State law"); 11 U.S.C. § 522(b)(1) (election of exemptions controlled by "the State law that is applicable to the debtor"); 11 U.S.C. § 523(a)(5) (debt for alimony, maintenance, or support determined "in accordance with State or territorial law" is not dischargeable); 11 U.S.C. § 903(1) ("a State law prescribing a method of composition of indebtedness" of municipalities is not binding on nonconsenting creditors).

Id.

19 *Id.* at 2245. For over thirty years, Shumate was employed by CFC. *Id.* His final position with CFC was chairman of the board and president. *Id.*

20 *Id.* Under article 16.1, CFC's plan embodied an anti-alienation clause as required by § 206(d)(1) of ERISA. *Id.* Article 16.1 provided that " '[n]o benefit, right or interest' of any participant 'shall be subject to alienation, sale, transfer, assignment, pledge, encumbrance or charge, seizure, attachment or other legal, equitable or other process.' " *Id.* at 2247 (citing App. 342). Respondent's valued interest in the pension plan was estimated at $250,000. *Id.* at 2245 (citing App. 93-94).

21 *Id.*

22 *Id.* Conversion of a chapter 11 proceeding is outlined in § 1112 of the Code. Section 1112 provides:

> (a) The debtor may convert a case under this chapter to a case under chapter 7 of this title unless—
>
> (1) the debtor is not a debtor in possession;
>
> (2) the case originally was commenced as an involuntary cased under this chapter; or

sequently petitioned for bankruptcy in 1984.[23] Shumate's chapter 11 petition was granted and similarly converted to a proceeding under chapter 7.[24]

As a result of CFC's petition for bankruptcy, its benefit plan was terminated by CFC's trustee and liquidated.[25] Upon liquida-

---

(3) the case was converted to a case under this chapter other than on the debtor's request.
(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including—
(1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;
(2) inability to effectuate a plan;
(3) unreasonable delay by the debtor that is prejudicial to creditors;
(4) failure to propose a plan under section 1121 of this title within any time fixed by the court;
(5) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or modification of a plan;
(6) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or modified plan under section 1129 of this title;
(7) inability to effectuate substantial consummation of a confirmed plan;
(8) material default by the debtor with respect to a confirmed plan;
(9) termination of a plan by reason of the occurrence of a condition specified in the plan; or
(10) nonpayment of any fees or charges required under chapter 123 of title 28.
(c) The court may not convert a case under this chapter to a case under chapter 7 of this title if the debtor is a farmer or a corporation that is not a moneyed, business, or commercial corporation, unless the debtor requests such conversion.
(d) The court may convert a case under this chapter to a case under chapter 12 or 13 of this title only if—
(1) the debtor requests such conversion;
(2) the debtor has not been discharged under section 1141(d) of this title; and
(3) if the debtor requests conversion to chapter 12 of this title, such conversion is equitable. . . .
(f) Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

11 U.S.C. § 1112 (1988 & Supp. III 1992).

[23] Shumate v. Patterson, 943 F.2d 362, 363 (4th Cir. 1991); *aff'd* 112 S. Ct. 2242 (1992).

[24] *Patterson*, 112 S. Ct. at 2245.

[25] *Id.* A trustee's role and capacity is defined in § 323 of the Code. Section 323 provided in pertinent part: "(a) The trustee in a case under this title is the representative of the estate. (b) The trustee in a case under this title has capacity to sue

tion, CFC's trustee disbursed vested funds to all plan participants except for Shumate.[26] Thereafter, Shumate's trustee filed a proceeding against CFC's trustee in bankruptcy court.[27] This petition attempted to gain possession of Shumate's plan interest in order to credit his bankruptcy estate.[28] Shumate also petitioned the district court to order CFC's trustee to disburse his plan interest directly to him.[29] The bankruptcy action initiated by Shumate's trustee was later consolidated with Shumate's district court proceeding.[30]

The district court declined to accept the proposition that

---

and be sued." 11 U.S.C. § 323 (1988 & Supp. III 1991). The duties of the trustee under chapter 7 are defined in § 704 of the Code. This section stated:

> The trustee shall—
> (1) collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interest of the parties in interest;
> (2) be accountable for all property received;
> (3) ensure that the debtor shall perform his intention as specified in section 521(2)(B) of this title;
> (4) investigate the financial affairs of the debtor;
> (5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
> (6) if advisable, oppose the discharge of the debtor;
> (7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;
> (8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; and
> (9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee.

11 U.S.C. § 704 (1988 & Supp. III 1992).

In chapter 7, the principal aim of a trustee is to convert the property of the debtor estate to money so that it can be distributed to creditors. T. N. Ambrose, *The Sale Of Assets From A Bankruptcy Estate*, 21 IDAHO L. REV. 583, 583-84 (1985). To accomplish this aim, a trustee has the capacity to sell debtor property that is part of the estate. *Id.*

[26] *Shumate*, 943 F.2d at 363. Shumate was a plan participant with four hundred other co-workers. *Patterson*, 112 S. Ct. at 2245.

[27] Creasy v. Coleman Furniture Corp., 83 B.R. 404, 405 (Bankr. W.D. Va. 1988); *rev'd sub nom.* Shumate v. Patterson, 943 F.2d 362 (4th Cir. 1991); *aff'd* 112 S. Ct. 2242 (1992). The adversary proceeding was filed in the Bankruptcy Court for the Western District of Virginia. *Patterson*, 112 S. Ct. at 2245.

[28] *Id.*

[29] *Shumate*, 943 F.2d at 363. Shumate petitioned the district court to assume the authority over the action because the court was handling a related matter. *Id.*

[30] *Id.*

Shumate's plan interest qualified for exemption from his bankruptcy estate.[31] Moreover, the court ruled that the term "applicable nonbankruptcy law" in § 541(c)(2) did not embrace federal law.[32] Applying Virginia law,[33] the district court found that Shumate's interest was afforded no protection under state law because it was not a qualified spendthrift trust.[34] Additionally, the court declined to endorse Shumate's alternative argument that he was exempt under § 522(b)(2)(A).[35] The district court therefore decreed that CFC's trustee must pay Shumate's plan interest to his bankruptcy estate.[36]

On appeal, the Fourth Circuit reversed relying upon precedent established by the court subsequent to the district court decision in *Patterson*.[37] Particularly, the Fourth Circuit held that Shumate's plan interest was excludable from his bankruptcy estate under Code § 541(c)(2).[38] The court declined, however, to consider Shumate's alternative relief argument under § 522(b)(2)(A).[39]

The United States Supreme Court granted certification to resolve the split in the court of appeals and to determine whether the Fourth Circuit correctly declared that Shumate's qualified ERISA pension plan interest was excludable under applicable nonbankruptcy law.[40] The *Patterson* Court held that it was consistent with public policy to find that applicable nonbankruptcy law

---

31 *Creasy*, 83 B.R. at 406.

32 *Id.* Specifically, the *Creasy* court proffered that the Fourth Circuit interpreted applicable nonbankruptcy law to mean solely state law.

33 *Id.* Although Virginia law recognized spendthrift trusts, the district court found the trust to be self-settled and thus denied Shumate his plan interest. *Id.* at 406, 410.

34 *Id.*

35 Creasy v. Coleman Furniture Corp., 83 B.R. 404, 410 (Bankr. W.D. Va. 1988). Finding the majority weight to the contrary, the district court asserted that qualified ERISA pensions did not fall within the rubric of § 522(b)(2)(A). *Id.* The court argued that § 522(b)(2)(A) related to pensions and benefits established by federal law or a related industry historically guarded by the federal government not private ERISA pensions. *Id.* Thus, the district court concluded that Congress did not intend private pensions to be exempt from a debtor's bankruptcy estate. *See id.*

36 *Id.*

37 *Shumate*, 943 F.2d at 364-65. Following the district court holding in *Patterson*, a Fourth Circuit panel found that a qualified ERISA plan fell under § 541(c)(2)'s applicable nonbankruptcy provision. *Patterson*, 112 S. Ct. at 2245-46; Anderson v. Raine (*In re* Moore), 907 F.2d 1476, 1480 (4th Cir. 1990). *See infra* notes 72-76 and accompanying text for a detailed discussion of *Moore*.

38 *Shumate*, 943 F.2d at 2246.

39 *Id.* The Fourth Circuit stated that *Moore* advocated the argument that all qualified ERISA plans qualify as applicable nonbankruptcy law. *Id.* at 364-65.

40 *Patterson*, 112 S. Ct. at 2246 (citing Patterson v. Shumate, 112 S. Ct. 932

included federal as well as state law. [41] The Supreme Court determined such a holding ensured the security of debtor pension benefits.[42] Therefore, the Court affirmed that qualified ERISA pension plans were excludable from a debtor's bankruptcy estate under § 541(c)(2).[43]

Before *Patterson*, a split existed among the Circuit Courts of Appeal concerning the meaning of applicable nonbankruptcy law in § 541(c)(2).[44] The rise of the majority view began with *Goff v. Taylor (In re Goff)*.[45] In *Goff*, the Fifth Circuit examined whether § 541(c)(2) of the Code exempted qualified ERISA pension plans from a debtor's estate in bankruptcy.[46] After examination of the legislative history, the overall congressional scheme of the Code and the relationship and effect of the Code on ERISA, the court found that the phrase "applicable nonbankruptcy law" referred solely to state spendthrift trust law.[47] The *Goff* court thus embraced a narrow construction of applicable nonbankruptcy law and grounded its decision on congressional intent.[48]

After *Goff*, a trend adopting this narrow construction of ap-

---

(1992)). The Court listed the split in the circuits as: Tenth, Third, Sixth, Fourth versus Fifth, Ninth, Eleventh, Eighth. *Patterson*, 112 S. Ct. at 2246 n.1.

41 *Id.* at 2250.

42 *Id.*

43 *Id.*

44 Di Pippo, *supra* note 2, at 529.

45 706 F.2d 574 (5th Cir. 1983); Mary F. Radford, *Implied Exceptions to the ERISA Prohibitions Against the Forfeiture and Alienation of Retirement Plan Interest*, 1990 UTAH L. REV. 685, 736 (1990). *See generally* Brankey, *supra* note 10, at 287-89 (highlighting the *Goff* court's ruling); Haskins, *supra* note 2, at 570-72 (analyzing the *Goff* decision and the majority view); Karns, *supra* note 9, at 672-74 (critiquing the three step approach utilized by the *Goff* court); Nancy Roetman Menzel, Note, *Corporate Pension Plans as Property of the Bankruptcy Estate*, 69 MINN. L. REV. 1113, 1124-26 (1985) (noting that the *Goff* holding is similar to the *Lichstrahl* ruling); Spitzer, *supra* note 3, at 1297-1314 (recording *Goff* and its progeny).

46 *Goff*, 706 F.2d at 576. In *Goff*, the debtors sought to insulate their self-employed pension plans under § 541(c)(2). *Id.* The pension plan contained the necessary ERISA qualification provisions. *Id.* at 577. The Goffs contended that applicable nonbankruptcy law in § 541(c)(2) referred to federal law and therefore their qualified ERISA plans should be exempt. *Id.* at 576.

47 *Id.* at 589. The Court further declared:

> [I]t is apparent that Congress did not intend by reference to "applicable nonbankruptcy law" to exempt ERISA-qualified pension plans from the bankruptcy estate by virtue of ERISA's provisions precluding assignment or alienation. Rather, it is clear that Congress intended a limited exemption for "spendthrift trusts," as defined by reference to state law.

Id.

48 *See id.*

plicable nonbankruptcy law emerged among the circuit courts.[49] Faced with an ERISA plan similar to *Goff*, the Eighth Circuit, in *Samore v. Graham (In re Graham)*,[50] echoed the Fifth Circuit holding.[51] The *Graham* court, relying upon the policy articulated in *Goff*, determined the two cases presented analogous issues.[52] Accordingly, the Eighth Circuit concluded that Congress in no way intended ERISA to be considered applicable nonbankruptcy law under § 541(c)(2).[53]

The *Graham* court also considered whether a debtor may be entitled to an exemption under § 522(b)(2)(A).[54] After review of the enumerated list of federal laws included in the House and Senate reports, the court surmised that Congress's exclusion of ERISA was intentional.[55] This exclusion, the *Graham* court articulated, indicated that ERISA was not considered federal law within the meaning of § 522(b)(2)(A) and therefore the debtor was not entitled to an exemption.[56]

The Eleventh Circuit joined the majority view in *Lichstrahl v. Bankers Trust (In re Lichstrahl)*.[57] Particularly, the *Lichstrahl* court

---

49 *See* Samore v. Graham (*In re* Graham), 726 F.2d 1268, 1271 (8th Cir. 1984); Lichstrahl v. Bankers Trust (*In re* Lichstrahl), 750 F.2d 1488, 1490 (11th Cir. 1985); Daniel v. Security Pacific National Bank (*In re* Daniel), 771 F.2d 1352, 1360 (9th Cir. 1985).

50 726 F.2d 1268 (8th Cir. 1984). *See generally* Garber, *supra* note 8, at 618-19 (highlighting the *Graham* court's reasoning); Karns, *supra* note 9, at 676 (arguing Eighth Circuit's approach in *Graham* is third view, separate and apart from majority and minority views); Menzel, *supra* note 45, at 1122-24 (discussing *Graham* decision).

51 *Graham*, 726 F.2d at 1273, 1274. In *Graham*, the debtor was the sole director, officer and stockholder of a professional corporation which derived its earnings from the debtor's services as a physician. *Id.* at 1269. The professional corporation employed only two people during its entire existence. *Id.* The corporation had a qualified ERISA pension plan and both employees were plan participants. *Id.* The qualified plan contained a provision that limited disbursement only to participants who obtained the age of sixty-five. *Id.*

52 *Id.* at 1271-73, *accord Goff*, 706 F.2d at 581-87 (proferring that review of legislative history indicated Congress intended "applicable nonbankruptcy law" to exclude traditional spendthrift trusts only).

53 *Graham*, 726 F.2d at 1272. The *Graham* court stated: "There is no indication whatever that Congress intended section 541(c)(2) to be a broad exclusion which would apply to keep all debtors' entire ERISA plan benefits out of the estate." *Id.*

54 *Id.* at 1273. Graham argued that the anti-alienation provision and the federal tax qualification of the plan made it eligible for federal exemption under section 522(b)(2)(A). *Id.*

55 *Id.* at 1273-74.

56 *Id.* at 1274.

57 750 F.2d 1488 (11th Cir. 1985); *see* Di Pippo, *supra* note 2, at 529 & n.24 (noting *Lichstrahl*'s consonance with majority view adopted by Ninth, Eighth, and Fifth Circuits). *See generally* Garber, *supra* note 8, at 616-17 (denoting that *Lichstrahl* decision is in accordance with majority interpretation of applicable nonbankruptcy

questioned whether applicable nonbankruptcy law referred exclusively to state spendthrift trust law.[58] Applicable nonbankruptcy law, the court contended, encompassed only state spendthrift law.[59] Consequently, the *Lichstrahl* court ruled that qualified ERISA pension plans with anti-alienation clauses were excluded from a debtor's bankruptcy estate only if the plan was enforceable pursuant to state spendthrift law.[60] The Eleventh Circuit utilized legislative history and similar circuit court decisions to justify its holding.[61]

The *Lichstrahl* court also addressed whether the trusts could be excluded from the bankruptcy estate under § 522.[62] Although the court recognized that the House and Senate reports' lists of property excluded under federal law were not exhaustive, the court held that it was indicative of Congress's purposeful intent to exclude ERISA.[63] Specifically, the court noted that Congress was aware of the heated debates surrounding the statute when it declined to place ERISA on the list of exclusions.[64] Moreover, the *Lichstrahl* court explained, other sections of the Code contained explicit citations to ERISA.[65]

The Ninth Circuit joined the majority with its decision in *Daniel v. Security Pacific National Bank (In re Daniel)*.[66] The *Daniel* court questioned whether ERISA qualified pensions were exclud-

---

law); Menzel, *supra* note 45, at 1124-29 (comparing *Lichstrahl* court's reasoning with that of *Goff* and *Graham* courts).

58 *Lichstrahl*, 750 F.2d at 1489-90. In *Lichstrahl*, the debtor was also the sole stockholder, director and officer of a professional association. *Id.* at 1489. Specifically, the debtor was a beneficiary to two self-settled trusts. *Id.* Although the trusts contained an anti-alienation clause, the debtor (beneficiary) reserved the right to terminate or amend the trust. *Id.* In 1982, the debtor filed for bankruptcy under chapter 7. *Id.* Relying on § 541(c)(2) of the Code, the debtor excluded the two trusts and claimed they were exempt from the bankruptcy estate. *Id.* The bankruptcy court decided against the debtor and ordered the trusts included in the debtor's bankruptcy estate. *Id.* An appeal was taken and the Eleventh Circuit affirmed. *Id.*

59 *Id.* at 1490.

60 *Id.*

61 *Id.* *See* Goff v. Taylor (*In re* Goff), 706 F.2d 574 (5th Cir. 1983); Samore v. Graham (*In re* Graham), 726 F.2d 1268 (8th Cir. 1984); *In re* La Fata, 41 B.R. 842 (Bankr. E.D. Mich. 1984); *In re* Berndt, 34 B.R. 515 (Bankr. N.D. Ind. 1983).

62 *Lichstrahl*, 750 F.2d at 1491-92.

63 *Id.* at 1491. The *Lichstrahl* court expounded that ERISA was also different from the laws listed. *Id.* Specifically, the court stated, ERISA regulates private funds while the enumerated list of statutes are federal in nature. *Id.*

64 *Id.*

65 *Id.*

66 771 F.2d 1352 (9th Cir. 1985); Di Pippo, *supra* note 2, at 529 & n.24. *See generally* Garber, *supra* note 8, at 616 (highlighting the *Daniel* decision).

able from a debtor estate under either § 541(c)(2) or § 522(b)(2)(A).[67] The only way a qualified ERISA pension plan would be excluded under Code § 541(c)(2), the Ninth Circuit proffered, would be to find the plan enforceable under state spendthrift law.[68] Basing its decision on the legislative history of the Code and prior circuit court case law, the *Daniel* court found the plan did not qualify under state spendthrift law.[69] The court also declared that the failure to note ERISA in the legislative history was purposeful, and therefore reasoned that it was indicative of congressional intent to exclude ERISA from qualifying as an exclusion under § 522(b)(2)(A).[70]

The majority view, however, began to dissolve in favor of a movement in other circuit courts toward incorporation of federal law within the definition of applicable nonbankruptcy law.[71] This emerging interpretation was first witnessed in the milestone decision, *Anderson v. Raine (In re Moore)*.[72] In *Moore*, the United States Court of Appeals for the Fourth Circuit questioned the meaning of applicable nonbankruptcy law and whether qualified ERISA pension plans fell under the definition of applicable nonbankruptcy law in Code § 541(c)(2).[73] In the Fourth Circuit's evaluation, the court analyzed the plain language of § 541(c)(2), the

---

67 *Daniel*, 771 F.2d at 1358-61. In *Daniel*, the debtor was the sole shareholder, director and employee of a professional corporation. *Id.* at 1353. The pension plan was ERISA-qualified. *Id.* at 1353-54. Prior to filing bankruptcy, the debtor contributed a substantial sum of money to the plan. *Id.* at 1354.

68 *Id.* at 1360.

69 *Id.*; *see* Goff v. Taylor (*In re* Goff), 706 F.2d 574 (5th Cir. 1983); Samore v. Graham (*In re* Graham), 726 F.2d 1268 (8th Cir. 1984); Lichstrahl v. Bankers Trust (*In re* Lichstrahl), 750 F.2d 1488 (11th Cir. 1985).

70 *Daniel*, 771 F.2d at 1360.

71 *See* Di Pippo, *supra* note 2, at 530 & n.28. *Compare* Lichstrahl v. Bankers Trust (*In re* Lichstrahl), 750 F.2d 1488, 1490 (11th Cir. 1985); *Daniel*, 771 F.2d at 1360 (9th Cir. 1985); Samore v. Graham (*In re* Graham), 726 F.2d 1268, 1271 (8th Cir. 1984); *with* Forbes v. Lucas (*In re* Lucas), 924 F.2d 597, 601 (6th Cir. 1991); Velis v. Kardanis, 949 F.2d 78, 81 (3d Cir. 1991); Gladwell v. Harline (*In re* Harline), 950 F.2d 669, 674 (10th Cir. 1991); Anderson v. Raine (*In re* Moore), 907 F.2d 1476, 1477 (4th Cir. 1990).

72 907 F.2d 1476 (4th Cir. 1990); Johnson, *supra* note 2, at 577. *See generally* Garber *supra* note 8, at 621-30 (addressing the *Moore* court's logic in harmonizing the policies of the Code and ERISA); Haskins, *supra* note 2, at 573-74 (surveying the minority approach as set forth in *Moore*); Johnson, *supra* note 2 (examining the *Moore* decision and its interpretation of § 541(c)(2)); Karns, *supra* note 9, at 674-75 (categorizing the *Moore* decision as the plain meaning approach to § 541(c)(2)).

73 *Moore*, 907 F.2d at 1477, 1479. In *Moore*, the debtors were all employees of Spring Industries, Inc. *Id.* at 1476. Spring Industries had a comprehensive retirement plan that was ERISA qualified because it contained an anti-alienation provision. *Id.* at 1476-77. The debtors' trustee sought to include the debtors' pension interests in the bankruptcy estate. *Id.* at 1477. Relying solely on state spendthrift

Code's overall usage of the phrase "applicable nonbankruptcy law" and the legislative history.[74] Approving the district court ruling, the *Moore* court held that applicable nonbankruptcy law was not limited to state spendthrift law and thus included federal law such as ERISA.[75] Additionally, the court determined that ERISA did contain the appropriate transfer restrictions necessary under § 541(c)(2).[76]

Adopting the rationale of the *Moore* court, the Sixth Circuit, in *Lucas v. Lucas (In re Lucas)*,[77] considered whether applicable nonbankruptcy law included ERISA.[78] In the course of its opinion, the Sixth Circuit outlined the justification for federal law inclusion under the applicable nonbankruptcy law provision.[79] Where statutory construction was unambiguous, the court observed, it was not necessary to analyze legislative history.[80] Accordingly, the court refused to use the majority rationale and concurred with the rapidly expanding minority view set forth in

---

law, the trustee argued that this inclusion was appropriate because the plan failed to qualify as a legitimate state spendthrift trust. *Id.*

74 *Id.* at 1477-79.

75 *Id.* at 1479-80. Recognizing that several circuit courts had read § 541(c)(2) narrowly, the *Moore* court dismissed these holdings because they placed unnecessary emphasis on legislative history. *Id.* at 1478. The Fourth Circuit argued that where statutory language was unambiguous and clear, examination of legislative history was inappropriate and irrelevant. *Id.* at 1478-79. Moreover, the court stated that the legislative history, even if relevant, was inconclusive. *Id.* at 1479.

76 *Id.* at 1480.

77 924 F.2d 597 (6th Cir. 1991); Johnson, *supra* note 2, at 590. *See generally* Garber, *supra* note 8, 622-24 (noting that the *Lucas* court adopted the plain language approach of *Moore*); Karns, *supra* note 9, 674-75 (summarizing the *Lucas* opinion).

78 *Id.* at 674; *Lucas*, 924 F.2d at 599. In *Lucas*, the debtor was a fully vested participant in an employee retirement fund. *Id.* at 598. Subsequent to her bankruptcy filing, the debtor received three withdrawals from the pension plan. *Id.* Based on these withdrawals, the bankruptcy trustee filed to have the released pension assets turned over to the bankruptcy estate. *Id.* The trustee's request was granted by the court on a summary judgment motion and the district court affirmed. *Id.* (citations omitted).

79 *Id.* at 600-02.

80 *Id.* at 600. The court articulated:

> It is an axiom of statutory construction that resort to legislative history is improper when a statute is unambiguous. . . . Applying this familiar principle, we find that the language of § 541(c)(2) is clear and unambiguous . . . . Thus, we reject the position of those courts which rely on the legislative history to conclude that "applicable nonbankruptcy law" refers exclusively to state spendthrift law. . . . " 'Applicable nonbankruptcy law' means precisely what it says: all laws, state and federal, under which a transfer restriction is enforceable."

Id. at 600-01 (citing Anderson v. Moore (*In re* Moore), 907 F.2d 1476, 1477 (4th Cir. 1990)).

Moore.[81] The court thus held that applicable nonbankruptcy law unambiguously applied to ERISA because the transfer restriction was enforceable against general creditors and therefore should also be enforceable against bankruptcy creditors.[82]

The Third Circuit, in *Velis v. Kardanis*,[83] also rejected the majority exclusion of federal law from the applicable nonbankruptcy law provision of § 541(c)(2).[84] Mirroring the *Moore* rationale, the *Velis* court contended that analysis of the statute began with the provision's plain language and that the judiciary should only resort to legislative history when the statute is ambiguous.[85] Consequently, the Third Circuit found that applicable nonbankruptcy law was not limited to state law.[86]

The *Velis* court also dismissed the contention that if § 541(c)(2) encompassed federal and state law, then § 522(d)(10)(E)[87] would be useless.[88] Particularly, the Third Cir-

---

81 *Id.* at 602.

82 *Id.* at 603 (citations omitted).

83 949 F.2d 78 (3d Cir. 1991). *See generally* Krasny, *supra* note 13, at 21-22 (discussing the *Velis* court opinion and its adoption of the *Moore* reasoning).

84 *Id.* at 21-22. In *Velis*, the debtor was the sole shareholder in a professional corporation. *Velis*, 949 F.2d at 79. As employees of the corporation, the debtor and his wife were participants in the corporation's qualified ERISA pension plan. *Id.* at 79-80. Subsequent to filing chapter 11, the debtor borrowed funds against his and his wife's pension plan interests. *Id.* at 80. The bankruptcy court allowed this disbursement of funds with the stipulation that the debtor was merely borrowing the funds. *Id.* Thereafter, the debtor attempted to exempt the pension funds from the bankruptcy estate under § 541(c)(2) to avoid paying back the funds. *Id.*

85 *Id.* at 81. The *Velis* court explicated: "In our view, the term 'enforceable under applicable nonbankruptcy law' is not in the least ambiguous, and cannot reasonably be interpreted as 'enforceable under applicable state spendthrift-trust law.' The term 'nonbankruptcy law' is, on its face, not limited to state law." *Id.*

86 *Id.*

87 The relevant portion of § 522(d)(10)(E) provides:

> (d) The following property may be exempted under subsection (b)(1) of this section: . . .
>
> (10) The debtor's right to receive— . . .
>
> (E) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—
>
> (i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;
>
> (ii) such payment is on account of age or length of service; and
>
> (iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue Code of 1986 (26 U.S.C. 401(a), 403(a), 403(b), 408, or 409).

11 U.S.C. § 522(d)(10)(E) (1988 & Supp. III 1992).

88 *Velis*, 949 F.2d at 81.

cuit stated that the argument failed to note the distinctions between §§ 541(c)(2) and 522(d)(10)(E).[89] The *Velis* court clarified that § 522 exempted a debtor's vested pension benefits, while § 541 exempted non-vested pension interests only.[90]

In keeping with the emerging minority view, the Tenth Circuit adopted the expansive definition of applicable nonbankruptcy law in *Gladwell v. Harline (In re Harline)*.[91] The *Harline* court questioned whether a profit sharing plan was exempt from a debtor's bankruptcy estate under § 541(c)(2).[92] Although the court found the plan to be excludable under state spendthrift law, the Tenth Circuit articulated that ERISA qualified plans are exempt from a debtor's bankruptcy estate.[93] The court based its decision upon the contention that Congress's intent to include both state and federal law was demonstrated by its utilization of the phrase applicable nonbankruptcy law in similar sections of Code.[94] Additionally, the Tenth Circuit dismissed the majority's reliance on legislative history by stating that it had no place when a section was unambiguous.[95]

The resolution of the circuit courts' diametrically opposed positions came in the United States Supreme Court decision *Patterson v. Shumate*.[96] In *Patterson*, the Court analyzed two distinctive issues.[97] First, the Court addressed whether applicable nonbankruptcy included federal law such as ERISA.[98] The second concern of the *Patterson* Court was whether an anti-alienation clause in a qualified ERISA pension plan established a transfer restriction recognized under § 541(c)(2).[99]

---

89 *Id.*

90 *Id.* at 81-82.

91 950 F.2d 669 (10th Cir. 1991); Krasny, *supra* note 13, at 22.

92 *Harline*, 950 F.2d at 669. In *Harline*, the debtor filed for bankruptcy under chapter 11 which was subsequently changed to a chapter 7 proceeding. *Id.* The debtor excluded a profit sharing plan from his list of assets. *Id.* The trustee, however, believed that the plan was a legitimate asset of the bankruptcy estate and sued to attach the debtor's interest in the plan. *Id.*

93 *Id.* at 674.

94 *Id.* (citing Anderson v. Raine (*In re* Moore), 907 F.2d 1476, 1478 (4th Cir. 1990)) (citations omitted).

95 *Id.* (citation omitted).

96 112 S. Ct. 2242 (1992); Karns, *supra* note 9, at 675. *See generally* Barry L. Zaretsky, *Pensions and IRAs*, 208 N.Y.L.J. 11 (1992) (discussing the *Patterson* holding and its effect); Walter A. Effross, *Debtor's Interest in ERISA Plans Exempt from Estate*, 131 N.J.L.J. 759 (1992) (outlining the *Patterson* decision and its implications on the bankruptcy practice).

97 *See Patterson*, 112 S. Ct. at 2246-48.

98 *Id.* at 2246-47.

99 *Id.* at 2247.

Writing for the Court,[100] Justice Blackmun began the Court's evaluation by stating that the plain language of ERISA and the Code would serve as the Court's guidepost.[101] Additionally, the Justice identified § 541(c)(2) as the relevant bankruptcy Code section.[102] The Court pronounced that a plain reading of § 541(c)(2) would entitle a debtor to an exclusion of property from the debtor's bankruptcy estate if the debtor's interest in the property (plan or trust) contained a transfer restriction pursuant to any relevant nonbankruptcy law.[103] Furthermore, Justice Blackmun stated, a reading of § 541(c)(2) does nothing to connote, as urged by the petitioner, that the phrase "applicable nonbankruptcy law," embraced state law exclusively.[104] The Justice explained that the relevant text was not narrow in scope and therefore contained no limit with regard to the origin of the law.[105]

Justice Blackmun further contended that to read nonbankruptcy law to encompass state as well as federal law was in accord with other source of law citations in the Code.[106] Moreover, the Court stated that Congress's deliberate choice of the term "applicable nonbankruptcy law" in § 541(c)(2) suggested that Congress did not aspire to limit the provision to state law.[107]

---

100 *Id.* at 2245. *Patterson* was a unanimous decision except that Justice Scalia filed a concurring opinion solely to highlight the Court's prior inconsistencies. *See id.* at 2250-01.

101 *Id.* at 2246 (citing Toibb v. Radloff, 111 S. Ct. 2197, 2199, 2200 (1991) (maintaining that when statutory interpretation is necessary, a court should first look to the statute's plain language and if the statute is unclear and ambiguous, then to legislative history) (citation omitted)).

102 *Id. See supra* note 4 (quoting § 541(c)(2)).

103 *Patterson*, 112 S. Ct. at 2246.

104 *Id.*

105 *Id.*

106 *Id.* Specifically, the *Patterson* Court asserted that an evaluation of the Code indicated that if Congress had intended to restrict the ambit of applicable law it possessed the knowledge and power to do so. *Id.* A review of various Code sections indicated, according to Justice Blackmun, that Congress expressly articulated when a provision within the Code strictly applied to state law. *Id. See, e.g.*, 11 U.S.C. § 109(c)(2) (entity authorized to be a debtor pursuant to chapter 9 if permitted "by State law"); 11 U.S.C. § 522 (b)(1) (elected exemptions are controlled by "the State law that is applicable to the debtor"); 11 U.S.C. § 523(a)(5) (a debt owed pursuant to child support, maintenance or alimony is determined "in accordance with State or territorial law"); 11 U.S.C. § 903(1) ("a State law prescribing a method of composition of indebtedness" for municipalities cannot bind nonconsenting creditors).

107 *Patterson*, 112 S. Ct. at 2246-47. The Court set forth a lengthy list of case law that similarly interpreted applicable nonbankruptcy law in various provisions of the Code to embrace federal law. *Id.* at 2247 n.2. *See* Eagle-Pitcher Industries, Inc. v. United States, 937 F.2d 625, 639-40 (D.C. Cir. 1991) (Federal Tort Claims Act);

The *Patterson* Court concluded that § 541(c)(2) was not restricted solely to state law and therefore all federal law, including ERISA, was applicable to the nonbankruptcy law provision.[108]

Upon finding that applicable nonbankruptcy law was not restricted to state law, Justice Blackmun next determined whether the anti-alienation clause in the qualified ERISA pension plan fulfilled the textual terms of § 541(c)(2).[109] After review and analysis of relevant ERISA and Internal Revenue Code (IRC) provisions, the *Patterson* Court concluded that CFC's pension plan met ERISA and IRC requirements.[110] Because the Court in the past had strictly enforced ERISA's restriction on assignment of pension benefits, the Court articulated that the transfer restrictions were enforceable as required by § 541(c)(2).[111] Based on this premise, the majority decreed that CFC's anti-alienation provision, as required under ERISA, was enforceable under § 541(c)(2) and therefore Patterson's interest under the plan was excludable from his bankruptcy estate.[112]

In further qualifying the *Patterson* holding, Justice Blackmun dismissed the petitioner's three major challenges to the conclusion that ERISA should be considered applicable nonbankruptcy law.[113] The Court noted, however, that because of the textual clarity of the statute, petitioner had a high burden of persuasion.[114] Patterson first alleged, Justice Blackmun observed, that contemporaneous legislative materials indicated that the exclu-

---

Motor Carrier Audit & Collection Co. v. Lighting Products, Inc., 113 B.R. 424, 425-26 (Bankr. N.D. Ill. 1989) (Interstate Commerce Act); *In re* Ahead By a Length, Inc., 100 B.R. 157, 162-63 (Bankr. S.D. N.Y. 1989) (Racketeer Influenced and Corrupt Organizations Act); *In re* Stanley Hotel, Inc., 13 B.R. 926, 931 (Bankr. D. Colo. 1981) (federal security law).

108 *Patterson*, 112 S. Ct. at 2247. Specifically, the Court pronounced that "[p]lainly read, the provision encompasses any relevant nonbankruptcy law, including federal law such as ERISA." *Id.*

109 *Id.*

110 *Id.* at 2247-48. *See supra* note 20 (setting forth the relevant CFC provision). The Court furthered that ERISA required trustees and fiduciaries of a plan to perform their duties pursuant to instruments and documents that governed the plan. *Patterson*, 112 S. Ct. at 2247 (citing 29 U.S.C. § 1104(a)(1)(D)). The Court also noted that "[a] plan participant, beneficiary, or fiduciary, or the Secretary of Labor may file a civil action to 'enjoin any act of practice' which violates ERISA or the terms of the plan." *Id.* (citing 29 U.S.C. §§ 1132(a)(3) & (5)).

111 *Id.* at 2247-48 (citing Guidry v. Sheet Metal Workers Pension Fund, 493 U.S. 365, 376-77 (1990) (enforcing ERISA's prohibition on alienation or assignment of pension benefits and noting that it was up to Congress to formulate any exceptions)).

112 *Id.* at 2248.

113 *Id.* at 2248.

114 *Id.* at 2248 (citation omitted).

sion provision of § 541(c)(2) should not encompass debtor interests in qualified ERISA pension plans.[115] The Justice explained that even though legislative material may shed light on a statutory ambiguity, further inquiry was unnecessary when statutory language was clear.[116] Moreover, the Court emphasized that consideration of legislative material in this case would not establish a clear legislative intent adverse to the Court's findings.[117]

Justice Blackmun also concluded that the House and Senate reports did not indicate a congressional intent to restrict the § 541(c)(2) exclusion to state spendthrift trust law.[118] Specifically, the Court deemed the excerpts negligible and, at most, indicative of only an intent to incorporate state law.[119] The majority therefore concluded that the reports did not reflect a Congressional intent to limit § 541(c)(2) to state spendthrift trust law.[120]

The Court next entertained petitioner's second assertion that the Court's construction of § 541(c)(2) rendered Code § 522(d)(10)(E) dispensable.[121] The *Patterson* Court maintained that petitioner's argument failed because the exemption provision of Code § 522(d)(10)(E) covered a broader list of interests

---

115 *Id.*

116 *Id.* (citing Toibb v. Radloff, 111 S. Ct. 2197, 2200 (1991) (stating that analysis of legislative history is only necessary where statutory language is ambiguous); United States v. Ron Pair Enterprise, Inc., 489 U.S. 235, 242 (1989) (noting the plain meaning of legislation is conclusive except where such interpretation produces a result contrary to the intent of its drafters) (citation omitted)).

117 *Id.* (citing Consumer Product Safety Commission v. GTE Sylvania, Inc., 447 U.S. 102, 108 (1980) (opining that absent clear legislative intent to the contrary, statutory language prevails)).

118 *Id.* The Court examined H.R. Rep 95-595 and its introductory section. *Id.* The House Report stated that "[p]aragraph (2) of subsection (c) . . . preserves restrictions on transfer of a spendthrift trust to the extent that the restriction is enforceable under applicable nonbankruptcy law." *Id.* (citing H.R. Rep. No. 95-595, p. 369 (1977)). The introduction narrated that the Code "continues over the exclusion from property of the estate of the debtor's interest in a spendthrift trust to the extent the trust is protected from creditors under applicable state law.' " *Id.* (citing 1978 U.S.C.C.A.N 6136).

119 *Id.* at 2248.

120 *Id.*

121 *Id.* at 2248-49. If a debtor's plan interest could be fully omitted from the bankruptcy estate, the petitioner argued, there would be no reason for Congress to establish a limited exemption elsewhere in the Code. *Id.* at 2249. Justice Blackmun rebutted the petitioner's contention by explaining that "[u]nder § 522(d)(10)(E), a debtor who elects the federal exemptions set forth in § 522(d) may exempt from the bankruptcy estate his right to receive 'a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract . . . , to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, ...' " *Id.* (quoting 11 U.S.C. § 522(d)(10)(E)).

than § 541(c)(2) excluded.[122] Specifically, the Court articulated that because petitioner conceded that § 522(d)(10)(E) was applicable to more than qualified ERISA plans with anti-alienation provisions, § 522(d)(10)(E) was not superfluous.[123]

The majority concluded by addressing the petitioner's final argument—that the Court's ruling forestalled the Code's policy of securing a broad inclusion base of assets.[124] The *Patterson* Court averred that the petitioner was mistaken in his assertion that a broad inclusion of assets was an underlying policy of the entire Code.[125] Justice Blackmun asserted that if any policy considerations were even necessary, the Court's construction of § 541(c)(2) was preferable to the petitioner's.[126] The Justice also noted that the majority's decision ensured equal treatment of all pension beneficiaries regardless of bankruptcy status.[127] Because the Court had declined in the past to make any exceptions to ERISA's anti-alienation requirement outside the bankruptcy context, the Court declined to make an exception in the bankruptcy context.[128]

Justice Blackmun reasoned that the majority holding promoted the goals of ERISA and discouraged manipulation of the Code to obtain otherwise inaccessible funds.[129] The Justice also

---

122 *Id.* Specifically, the Court exampled that church and government entity pension plans as well as "pension plans that qualify for preferential tax treatment under 26 U.S.C. § 408 (individual retirement accounts)" need not follow ERISA's subchapter one anti-alienation requirement. *Id.* (citation omitted). Even though the debtor's interest in the aforementioned plans was not excludable under § 541(c)(2), the Court noted, the interest could be exempt under § 522(d)(10)(E). *Id.*

123 *Id.*

124 *Id.*

125 *Id.*

126 *Id.*

127 *Id.* at 2249-50 (citing Butner v. United States, 440 U.S. 48, 55 (1978) (positing that happenstance of bankruptcy should not produce a windfall for the debtor and therefore uniform treatment among property interests will produce harmonious results within and without the bankruptcy context) (quotation omitted)).

128 *Id.* at 2250 (citations omitted).

129 *Id.* The Supreme Court described the goal of ERISA as one that ensured receipt of pension benefits upon retirement. *Id.* (quoting Nachman Corp. v. Pension Benefit Guaranty Corp., 446 U.S. 359, 375 (1980)). Moreover, the Court remarked, this principle was furthered in *Guidry v. Sheet Metal Workers National Pension Fund*, wherein the Supreme Court, notwithstanding contrary equitable principles, refused to establish an exception to ERISA's anti-alienation provision. *Id.* (citing Guidry v. Sheet Metal Workers National Pension Fund, 493 U.S. 365, 376 (1990)). The *Guidry* Court contended, Justice Blackmun pointed out, that if any exceptions were to be made the task belonged to Congress. *Id.* (quoting *Guidry*, 493 U.S. at 376). Applying *Guidry* to the case at bar, the *Patterson* Court refused to find an exception to ERISA's anti-alienation clause. *Id.*

concluded that the Court's ruling furthered the important ERISA policy of treating pension benefits in a national uniform manner.[130] Specifically, the *Patterson* Court explicated that inclusion of federal law would ensure that ERISA governed a debtor's pension benefits rather than leaving the decision solely to differing state spendthrift laws.[131]

Justice Scalia authored a short concurrence with two cutting observations.[132] First, the Justice discredited the three circuit courts that found applicable nonbankruptcy law to mean exclusively state law.[133] The concurrence was baffled that a court could find the terms "state law" and "applicable nonbankruptcy law" synonymous.[134] Second, Justice Scalia, consistent with the majority holding, repeated that it is correct to read the Code in concert, rather than analyze each section individually.[135] This principal, the Justice commented, would merit no mention except for the fact that the Court distinctly rejected it earlier in the term.[136]

The majority's opinion correctly concluded that the phrase "applicable nonbankruptcy law" encompasses more than state law.[137] A narrow reading applying only state law, as espoused by some circuit courts, indirectly defeats the goals of ERISA.[138] Par-

---

130 *Id.* (citing Fort Halifax Packing Co., Inc. v. Coyne, Director, Bureau of Labor Standards of Maine, 482 U.S. 1, 9 (1987)).

131 *Id.*

132 *See id.* at 2250-51.

133 *Id.* at 2250.

134 *Id.*

135 *Id.* at 2251.

136 *Id.* (citing Dewsnup v. Timm, 112 S. Ct. 773, 777-78 (1992)). In *Dewsnup*, Justice Scalia pointed out that Supreme Court precedent established that the normal guide to statutory construction was to find that identical words throughout an act have the same meaning. *Id.* at 780-81 (citations omitted). Finding that the majority did not adhere to this established criterion, Justice Scalia opined that the majority had instead adopted a "one-subsection-at-a-time approach" for statutory construction. *Id.* at 781.

137 *See id.* at 2247.

138 *See, e.g.* Samore v. Graham (*In re* Graham), 726 F.2d 1268, 1271 (8th Cir. 1984) (ruling that qualified ERISA pension plans were not exempt from a debtor's bankruptcy estate); Lichstrahl v. Bankers Trust (*In re* Lichstrahl), 750 F.2d 1488, 1490 (11th Cir. 1985) (opining that qualified ERISA pension plans with anti-alienation clauses were only excluded from a debtor's bankruptcy estate if the plan was enforceable pursuant to state spendthrift law); Daniel v. Security Pacific National Bank (*In re* Daniel), 771 F.2d 1352, 1360 (9th Cir. 1985) (finding that ERISA pension plans were only excluded from a debtor's bankruptcy estate if the plan was enforceable under state spendthrift law); Goff v. Taylor (*In re* Goff), 706 F.2d 574, 577 (5th Cir. 1983) (holding that applicable nonbankruptcy law did not include federal law such as ERISA).

ticularly, ERISA provides for uniform treatment of pension holders and the assurance of benefits upon retirement or disability.[139] Allowing pension holders to be treated differently within and without the bankruptcy context not only defeats the uniform treatment policy, but in some cases—depending on the jurisdiction—diminishes the assurance of pension benefits upon retirement or disability.[140] Therefore, the uniform definition of applicable nonbankruptcy law, as set forth in *Patterson*, provides homogeneous treatment of pension holders within the bankruptcy context consistent with ERISA standards outside the bankruptcy realm.[141]

The Court's opinion, however, leaves open the possibility for abuse.[142] *Patterson* allows debtors to exploit and manipulate the Code more easily.[143] Specifically, debtors who foresee the possibility of bankruptcy—or who bring it on purposefully—may "bankruptcy plan" by converting non-qualifying plans into ERISA qualified plans or by making individual contributions to an established qualified plan. These possibilities are of great import as one of the underlying "other policies" of the Code is to deter fraud.[144] Although § 548 of the Code specifically deals with the problems of fraud in the bankruptcy arena, the *Patterson* decision provides an alluring haven for some debtors.[145] As a result, the

---

139 *See* Fort Halifax Packing Co., Inc. v. Coyne, Director, Bureau of Labor Standards, 482 U.S. 1, 9 (1987); Nachman Corp. v. Pension Benefit Guar. Corp., 446 U.S. 359, 359 (1980). *See supra* notes 7 and 10 (discussing the policies and goals of ERISA).

140 Before *Patterson*, the law surrounding ERISA pension benefits varied depending upon the jurisdictions. Karns, *supra* note 9, at 677. As a result, debtors were enticed to forum shop prior to filing bankruptcy. *Id. Patterson* establishes a uniform treatment of pension benefits in bankruptcy, thereby cutting short a debtor's ability to forum shop.

141 *See Patterson*, 112 S. Ct. at 2250.

142 *See* Maureen E. Sweeney, *Exclusion of ERISA Interests in Bankruptcy: From* Goff *to* Shumate, 12 J.L. & COM. 167, 180 (1992) (noting potential abuse and arguing that creditors may seek redress through bankruptcy Code sections on fraud, preferential transfers and bad faith).

143 Garber, *supra* note 8, at 630.

144 *See supra* note 1 (discussing Code policy on the deterrence of fraud).

145 Section 548 provided in pertinent part:

> (a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily-
>
> (1) made such transfer or incurred such obligation with actual intent to hinder, delay or defraud any entity to which the debtor was or became, on or after the date that such transfer was made of such obligation was incurred, indebted . . . .

case provides debtors with questionable incentives, thereby leading to increased administrative policing of potential fraud.

Marcia Ann Miller

---

11 U.S.C. § 548 (a)(1) (1988 & Supp. III 1992).