

02-458 YATES v. HENDON

Ruling below: CA 6, 287 F.3d 521.

QUESTION PRESENTED

The Employee Retirement Income Security Act ("ERISA") expressly grants sole shareholder corporations, partners and sole proprietors the right to be "participants" in an "employee benefit plan", as those terms are defined in ERISA, if other non-spouse employees participate in the employee benefit plan. Nine circuit courts of appeals and the Department of Labor ("DOL") have reviewed ERISA, and its regulations, and reached the same conclusion. This Court's holding in *Nationwide Mutual Ins. Co. v. Darden*, 503 U.S. 318, 112 S.Ct. 1344, 117 L.Ed.2d 581 (1992), provides that the common-law definition of employee should be used to determine who may be a "participant" in an employee benefit plan. Nonetheless, the Sixth Circuit held in *Hendon v. Yates (In re Yates)*, 287 F.3d 521 (6th Cir. 2002), reh'g denied, 2002 U.S. App. LEXIS 12550 (6th Cir. June 20, 2002) (Appendix, pp. 1a- 8a, 51a-52a), that a different definition of "employee" should be used to determine whether such persons can participate in an employee benefit plan.

The question presented is whether a one hundred percent (100%) shareholder of a corporate employer, partner or a sole proprietor can qualify as a participant in an employee benefit plan sponsored by the employer in which other non-spouse employees, as defined in 29 C.F.R. § 2510.3-3(c), participate, and thus, be entitled to enforce the restrictions against alienation contained in § 206(d) of ERISA and §401(a)(13) of the Internal Revenue Code ("Code").

CERT. GRANTED: 6/27/03