

ORIGINAL

SUPREME COURT OF THE UNITED STATES

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In the Matter of:)	
)	
JOHN H. MACKEY, ET. AL.,)	
)	No. 86-1387
Petitioners)	
v.)	
)	
LANIER COLLECTIONS AGENCY &)	
SERVICES, INC.,)	

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----x
3 JOHN H. MACKEY, ET AL., :
4 Petitioners, :
5 v. : No. 86-1387
6 LANIER COLLECTIONS AGENCY & :
7 SERVICE, INC. :
8 -----x

9 Washington, D.C.

10 Tuesday, April 19, 1988

11 The above-entitled matter came on for oral argument
12 before the Supreme Court of the United States at 10:12 a.m.

13 APPEARANCES:

14 ERNEST L. MATHEWS, JR. ESQ., New York, New York

15 on behalf of the Petitioners.

16 BRIAN J. MARTIN, ESQ., Assistant to the Solicitor

17 General, Department of Justice, Washington, D.C.; as

18 amicus curiae, supporting Petitioners.

19 MAUREEN E. MAHONEY, ESQ., Washington, D.C.; as

20 amicus curiae, supporting judgment below.

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C O N T E N T S

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ORAL ARGUMENT OF

PAGE

ERNEST L. MATHEWS, JR., ESQ.

on behalf of the Petitioners

3

BRIAN J. MARTIN, ESQ.

as amicus curiae, supporting Petitioners

14

MAUREEN E. MAHONEY, ESQ.

as amicus curiae, supporting judgment below

19

1 PROCEEDINGS

2 (11:12 a.m.)

3 CHIEF JUSTICE REHNQUIST: Mr. Mathews, you may
4 proceed whenever you are ready.

5 ORAL ARGUMENT BY ERNEST L. MATHEWS, ESQ.

6 ON BEHALF OF PETITIONERS

7 MR. MATHEWS: Mr. Chief Justice, and may it please
8 the Court:

9 The issue in this case is the extent to which the
10 Employees Retirement Income Security Act of 1974, ERISA,
11 preempts state garnishment laws.

12 The Petitioner is a longshoreman's vacation and
13 holiday fund which is an employee benefit fund, a welfare fund
14 governed by ERISA.

15 The case arose when a collection agency in Georgia,
16 the Respondent Lanier Collection Agency, attempted to garnish
17 the vacation and holiday benefits of 23 longshoremen. They
18 brought a proceeding in the County Court of Chatham County,
19 Georgia.

20 In the decision under review, the Supreme Court of
21 Georgia held that while the state garnishment procedures were
22 not preempted as applied to ERISA welfare funds, the exception
23 in the Georgia statute, which removed from the effects of
24 garnishment welfare funds, was preempted as being contrary to
25 the provisions of ERISA.

1 The real issue in this case, it seems to me, is
2 whether Congress means what it says, because we are dealing
3 here with an expressed preempt section, Section 514 of ERISA,
4 which says that any state law that relates to an employee
5 benefit plan is preempted, so there is no need to psycho-
6 analyze Congress or to go into legislative history. It is
7 right there plain and simple in the statute. And the words
8 "relate to" have been construed by this Court in a unanimous
9 decision which has been relied on in five different cases with
10 no change from the definition that relate to as the ordinary,
11 common sense dictionary meaning. If something relates to
12 something, if it has an effect on it, it has reference to it,
13 it has a connection with it.

14 So really the only question in this case is whether
15 or not when you have an attempt to garnish these funds, does
16 the state garnishment law have an effect upon the funds.

17 QUESTION: How about state laws against embezzlement?
18 I mean it just can't possibly mean anything that has an effect
19 upon the fund. You mean state laws against embezzlement do not
20 apply to embezzlement from the funds?

21 MR. MATHEWS: Well, Congress anticipated your
22 question, Justice Scalia, because ERISA expressly removes from
23 its preemption section state laws of general -- criminal laws
24 of general application.

25 So embezzlement is a --

1 QUESTION: Civil laws of general application.

2 MR. MATHEWS: Criminal laws.

3 QUESTION: What about civil laws of general
4 application?

5 MR. MATHEWS: Congress does not remove that.

6 QUESTION: So there could be no civil action for
7 embezzlement under state law?

8 MR. MATHEWS: No, there could not. And I think
9 that's similar to a case that this Court had where the
10 beneficiaries of the fund tried to bring a common law action
11 against the trustees, and this Court held, no, they were
12 limited to the remedies provided in ERISA.

13 I think there would be a remedy in ERISA if there
14 were embezzlement by the trustees, but it wouldn't be a state
15 common law embezzlement action.

16 QUESTION: An automobile accident caused by a car
17 driven by an employee of the trust, on the business of the
18 trust, you say there could be no recovery because that would
19 relate to ERISA. You would say that.

20 MR. MATHEWS: Well, I --

21 QUESTION: You have to.

22 MR. MATHEWS: I don't think I have to.

23 QUESTION: No? All right.

24 MR. MATHEWS: I'm not sure. I mean that's not our
25 case, but I'm not sure because I think --

1 QUESTION: Well, I know it's not your case.

2 MR. MATHEWS: Well, I think that Congress obviously
3 intended that these ERISA plans function. And if they are
4 going to function in the real world, they are going to have to
5 hire employees, they are going to have to rent premises, you
6 know, rent a xerox machine, what have you. And nobody is going
7 to work for them if they can't sue them for their wages, and no
8 one is going to rent property or rent space to them if they
9 can't evict them if they don't pay.

10 So I think Congress must have intended that the
11 ordinary liabilities that someone has entering into any
12 business would apply to the ERISA fund.

13 QUESTION: So we are just arguing about whether being
14 liable for garnishment is one of the ordinary things that any
15 employer normally engages in.

16 MR. MATHEWS: And if this case were a garnishment
17 about a fund employee, I might even agree that that is not
18 preempted.

19 QUESTION: I see.

20 MR. MATHEWS: But this is a garnishment of the
21 beneficiaries of the fund. I mean our fund, for instance,
22 well, it really doesn't have any paid employees. But if it
23 did, it would have two or three.

24 Here they have got 3,000 of which 23 in one bunch are
25 being garnished, and in the year 1984, 109 garnishments were

1 filed.

2 QUESTION: Well, that makes a lot of sense. All I am
3 pointing out is you really just can't say it's simple language
4 if it relates to. You really don't mean that. I mean a lot of
5 things will relate to the fund in the sense of having an effect
6 upon the fund, which you will acknowledge are okay.

7 MR. MATHEWS: Yes. But I would say is that those
8 state laws would be preempted were it not for the doctrine that
9 the --

10 QUESTION: You can have fun but you can't die
11 laughing. That's the doctrine that applies.

12 MR. MATHEWS: No, the federal laws should not be
13 impaired in their work. And the doctrine in Shaw v. Delta
14 Airlines case, that they are sort of revived when they are
15 necessary to accomplish the ends of a federal statute.

16 One of the ends of ERISA is to have plans work, and
17 so I would say it's a revival, but that 514 still would,
18 without that concept of revival, would preempt them.

19 QUESTION: Well, Mr. Mathews, there is a sue and be
20 sued clause in ERISA, isn't there?

21 MR. MATHEWS: Yes, there is.

22 QUESTION: And this Court has said, based on other
23 sue and be sued clauses in other circumstances, that that would
24 include garnishment proceedings, hasn't it?

25 MR. MATHEWS: I believe it has.

1 QUESTION: So it certainly is conceivable that
2 Congress intended that garnishment procedures be included
3 within the scope of that sue and be sued provision as being all
4 right.

5 MR. MATHEWS: If we were looking for an implied
6 intent of Congress, I might agree with Your Honor. But
7 Congress has told us what it meant. It said all state laws
8 relating to. We don't have to delve for Congress's intent and
9 do it by extrapolation that sue and be sued is part of
10 functioning, or is expressly allowed.

11 Congress said if it relates to, and certainly --

12 QUESTION: Well, of course, Congress did enact
13 Section 206(d) dealing expressly with assignment or alienation
14 of benefits for pension plans.

15 MR. MATHEWS: That is true, but 206(d) in its
16 specific terms deals with the voluntary alienation of pension
17 funds.

18 QUESTION: Well, it deals across the board.

19 MR. MATHEWS: Well, there has been a gloss on the
20 statute by the courts that that would also cover involuntary
21 alienation. That is true. But 206 says nothing about welfare
22 plans.

23 QUESTION: Well, in your view, 206(d) is at least
24 partially superfluous since you think 514 would preempt anyway.
25 So why did Congress need to pass 206(d)?

1 MR. MATHEWS: Well, historically speaking, they
2 passed 206(d) before they passed 514. At the time that 206(d)
3 was drafted there was a much less pervasive preemption
4 provision in the House and Senate drafts of ERISA than in the
5 conference that come up with the 514 which got to the relation
6 that relate to the standard. So I think that would explain it
7 to some extent.

8 QUESTION: Do you think that garnishment law is
9 generally treated as a matter of state procedure?

10 MR. MATHEWS: I would have said that probably before
11 I did the research in this case. But doing the research, I
12 think it's substantive law. I think it creates rights and
13 liabilities where none existed before. That is, the right
14 against the holder of the funds as opposed to against the
15 judgment debtor, and I think that's substantive law. So I
16 wouldn't put it just in the matter of procedure.

17 There are a lot of procedures connected with it, and
18 that's part of the problem that the fund faces is that you have
19 got funds that have four different states involved, and they
20 all have different procedures. And Georgia has a particularly
21 noxious procedure in that you have got to appear like a
22 defendant, appear by attorney, file an answer, update it every
23 45 days if you haven't paid up everything, and really get
24 involved with the legal process.

25 A state like New York, you simply file it on the

1 garnishee and --

2 QUESTION: I am not convinced, I think, that Congress
3 was concerned in its preemption Section 514 with the workload
4 burden on the trustees. I know that's the thrust of your
5 argument on behalf of the trustees, but I'm not sure Congress
6 was really worried about that.

7 I think in the pension area they were worried about
8 protecting the benefits and not letting the employee lose the
9 benefit of the pension plan.

10 Now on vacation benefits, they seem to have less
11 concern about protection of the employee. But I don't find a
12 lot of concern about the trustees and the work they have to do
13 to meet state procedures.

14 MR. MATHEWS: Well, again, Your Honor, you are going
15 to an implied preemption analysis in trying to psycho analyze
16 Congress. I am not just saying let's do what Congress said.
17 They said does it relate it, and I think that in the real world
18 you cannot say it does not relate to when it makes the trustees
19 pay out the benefits differently than the trust funds says,
20 when it puts them to administrative burdens of appearing in
21 court, when it puts them to a large expense, because in every
22 one of these things they have got to hire a lawyer.

23 And I figure in the course of filing the updates and
24 everything, that lawyer has to put in an hour's time in the
25 course of a year. So you are figuring about \$100 per

1 garnishment. We have over 109 garnishments in one year alone.
2 That's money out of the fund.

3 And Congress itself has recognized in another
4 connection, the Consumer Protection Act, that state garnishment
5 laws do have an impact. They have made it a crime with a
6 \$1,000 fine and a year in jail for an employer to fire somebody
7 because his salary has been garnished.

8 Why do they do it? The legislative history of that
9 act tell us because it was such a burden on the employers that
10 they would rather fire somebody than pay the garnishment. In
11 the same statute there is a finding that the state garnishment
12 laws, the discrepancies and differences in them have made the
13 uniform application of bankruptcy law impossible. And
14 uniformity, as we know, is another one of the congressional
15 purposes in ERISA.

16 QUESTION: I have to go back to Justice Scalia's
17 questions if I may.

18 Supposing the fund doesn't have enough money to pay
19 its rent. They lease an office to operate the fund; it's a
20 small fund. Could they be sued in state court and invade the
21 fund to pay the rent?

22 MR. MATHEWS: I think they could.

23 QUESTION: Well, why is that different?

24 MR. MATHEWS: Because that is necessary to the
25 functioning of the fund or of anybody else who goes into

1 business, and I think it's impliedly revived by Congress's
2 intention that there be funds.

3 QUESTION: But your language is still the same, and
4 the garnishment -- you rely entirely on 514, don't you?

5 MR. MATHEWS: Yes, Your Honor, entirely.

6 I think 514 says what it says. It's very clear what
7 it says. This Court has said what it means.

8 Does it have an effect on the plan? It does have an
9 effect on the plan and therefore it's preempted.

10 QUESTION: What they seek to garnish in this case,
11 these were vested; these were not contingent benefits. These
12 were vacation benefits.

13 MR. MATHEWS: Well, they wouldn't get them until they
14 were due and owing.

15 QUESTION: But under the plan when would they have
16 gotten it if they weren't garnished?

17 MR. MATHEWS: In Georgia, it would be the end of the
18 year. So like December 31st they get all their holidays and
19 all their vacation for the previous year if they have qualified
20 for vacation and holiday benefits.

21 That's what I say about the 45-day renewal. If they
22 get served with a garnishment in January, every 45 days they
23 have got to go up and say, we don't owe them anything yet until
24 we get to December 31st. And then they come in and they say,
25 and now we owe it to them, and here's the money. So it's an

1 ongoing thing which plan has to refer to our office, and an
2 attorney has to work on them.

3 QUESTION: So suppose that you are right that this
4 law does relate to garnishment, or does relate to the plan.
5 That's your position?

6 MR. MATHEWS: Yes, sir.

7 QUESTION: It's preempted, and therefore what?

8 MR. MATHEWS: It's preempted. It is null and void.

9 QUESTION: So?

10 MR. MATHEWS: ERISA plans may not be garnished under
11 state garnishment procedures.

12 Now what happens is that when the money gets paid
13 over to the --

14 QUESTION: On what do you rely for that?

15 MR. MATHEWS: Well, the statute is null and void if
16 it is preempted.

17 QUESTION: All right. The state law which exempts --

18 MR. MATHEWS: No, I said the state law which permits
19 garnishment is null and void, because it relates to the plans.

20 QUESTION: All right.

21 MR. MATHEWS: And I would like to reserve the rest of
22 my time for rebuttal if I might.

23 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Mathews.

24 We will hear now from you, Mr. Martin.

25

1 ORAL ARGUMENT BY BRIAN J. MARTIN, ESQ.

2 AS AMICUS CURIAE, IN SUPPORT OF PETITIONERS

3 MR. MARTIN: Thank you, Mr. Chief Justice, and may it
4 please the Court:

5 We agree with Petitioner that ERISA, in general,
6 preempts the application of state garnishment laws to employee
7 benefit plans. Our view is also based on 514. But before I
8 get to the 514 point, I'd like to respond to a couple of points
9 of Justice O'Connor.

10 The sue and be sued clause in Section 502 seems to us
11 to mean that a plan may be sued on any valid federal claim or
12 non-preempted state claim. It does not override the preemptive
13 provision of 514, whatever that means.

14 And with respect to 206(d)(1), which provides that
15 pension benefits may not be assigned or alienated, we do think
16 there is a bit of overlap between 206 and 514. But we think
17 that to conclude it, this overlap makes much more sense in a
18 complex ERISA statute that was built over the course of years
19 than to conclude that 206, by addressing pension benefits and
20 not welfare benefits, silently excluded garnishment of welfare
21 benefits from 514. Exclusions from 514 are in 514, 514(b) in
22 particular.

23 Justice Scalia raises the obvious question, where
24 does the line draw in 514. We think that there are a number of
25 ways to answer that question.

1 One rule of decision would be a state law that
2 determines whether plan benefits will be paid to a plan
3 participant is a law that relates to that plan. I think this
4 Court's decision in Shaw and in Metropolitan Life would support
5 that view. In those cases the state law required the payment
6 of benefits in the cases of mental illness and pregnancy.

7 Another possible decision, rule of decision would be
8 the state law that requires, or forbids the payment of benefits
9 is preempted if, in addition, it imposes administrative duties
10 on the trustees.

11 In this case we have those duties. They have to
12 answer a garnishment summons within 45 days. They have to pay
13 over the funds if they can calculate them to the court.

14 QUESTION: Well, that's true any time you allow the
15 trustees to be sued under state law. They are going to have to
16 hire a lawyer. They are going to have to file an answer, that
17 sort of thing. But you are not saying that no legal action
18 based on the state law can ever be brought against the
19 trustees, are you?

20 MR. MARTIN: No, no, I'm not saying that. They can
21 be sued for zoning violations if they have to house the --

22 QUESTION: Well, unpaid rent, Justice Scalia's
23 example.

24 MR. MARTIN: Unpaid rent, all of these. I'm giving
25 examples of where the line could be drawn. One that determines

1 whether benefits will be paid to a plan participant and imposes
2 administrative tasks is one possible line. But I think perhaps
3 the narrowest and clearest line is where did Congress draw the
4 line. And we know from an amendment to ERISA in 1984, the
5 Retirement Equity Act that added 514(b)(7), that Congress
6 thought that garnishment laws sufficiently affect ERISA plans
7 to be preempted.

8 QUESTION: How about a state tax lien on the
9 employee's benefits?

10 MR. MARTIN: That would be preempted too under
11 514(b)(7) which the House Report accompanying the bill
12 specifically endorsed the Ninth Circuit's decision in Franchise
13 Tax Board which held that state tax levies could not be
14 applied.

15 QUESTION: Tell me again what is 514(b)(7) and where
16 is it?

17 MR. MARTIN: 514(b)(7) is an exclusion from the
18 preemption language of 514(a). It allows garnishment in the
19 case of domestic relations orders.

20 QUESTION: Like from pension plans.

21 MR. MARTIN: From pension or welfare. It codified
22 the line of cases that had held that there was an implied
23 exclusion from 514(a) for family domestic relation orders such
24 as alimony and child support.

25 In 1984, Congress said, well, 514(a) may have swept

1 that in there. We don't want it swept in there, so we will
2 amend the statute. But in amending it, they made clear that
3 other types of garnishments would continue to be preempted.

4 So, to me, perhaps the narrowest and most clearest
5 way to decide the case is to look where Congress drew the line
6 in this case. We know that garnishment, but for domestic
7 relation orders, sufficiently affects the plan to be preempted.

8 QUESTION: That's nice for this case.

9 MR. MARTIN: Yes.

10 QUESTION: It won't help very many others, will it?

11 MR. MARTIN: Probably not.

12 QUESTION: There are likely to be a lot of these. I
13 mean there are a lot of those plans and they involve a lot of
14 money, and we seem to be getting a fair amount of litigation
15 involving this issue of what "related to" means which certainly
16 is not self-evident.

17 MR. MARTIN: Well, it's not self-evident. Congress,
18 unfortunately, left it to this Court to draw that line in
19 various cases. That is why I am suggesting that at the state
20 level --

21 QUESTION: What do you think would be a line of more
22 general utility?

23 MR. MARTIN: A state law that determines whether the
24 trustees will pay benefits to a plan participant pursuant to
25 the plan is preempted, tied to the benefits and to the plan.

1 QUESTION: Is the legislative history as clear as
2 you describe it?

3 What you are relying on is what's quoted on Page 18
4 of your brief, isn't it?

5 MR. MARTIN: Yes.

6 QUESTION: "The committee emphasizes that except as
7 expressly provided nothing in the bill is intended to limit or
8 otherwise change the original broad intent behind ERISA's rule
9 of preemption. That intention has always been to preempt state
10 or local government laws or actions of any type which directly
11 or indirectly relate to any employment benefit plan."

12 What does that tell us about garnishments?

13 MR. MARTIN: The next sentence adds --

14 QUESTION: That just repeats the language of the
15 statute.

16 MR. MARTIN: The next sentence of the House Report,
17 "Thus, for example, the committee reasserts that a state tax
18 levy on employee welfare benefit plans is preempted by ERISA,"
19 citing the Ninth Circuit's decision in Franchise Tax Board.

20 In the Senate Report, which unfortunately I don't
21 believe is cited or quoted in our brief, at Page 19 of the
22 Senate Report, the Senate Finance Committee says that, "Only
23 those orders that qualify as domestic relation orders are not
24 preempted by ERISA."

25 So I do think that in other provisions of the

1 committee reports make it clear that but for garnishment of
2 domestic relation orders, alimony, child support, garnishment
3 laws would be preempted.

4 If there are no other questions, the judgment should
5 be reversed.

6 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Martin.

7 We will hear now from you, Ms. Mahoney.

8 ORAL ARGUMENT BY MAUREEN E. MAHONEY, ESQ.

9 AS AMICUS CURIAE IN SUPPORT OF JUDGMENT BELOW

10 MS. MAHONEY: Mr. Chief Justice, and may it please
11 the Court:

12 The Solicitor General and the Petitioners are
13 searching for a line on how to interpret Section 514's relate
14 to language. There is no question it's a difficult task. But
15 in all of the other cases, with the exception of Franchise Tax
16 Board in which this Court has considered the preemptive scope
17 of Section 514, it was dealing with actions which were brought
18 by trustees or beneficiaries.

19 Trustees and beneficiaries are provided specific
20 remedies under Section 502 of the Act. And the Court has found
21 that when you are dealing with claims by beneficiaries and by
22 trustees within the core of the Act, that all state law, all
23 state substantive law and even the causes of action are
24 preempted because those are within the core of ERISA.

25 The only case where this Court has considered the

1 scope of preemption in an action brought by a party not covered
2 by Section 502, such as a creditor of the fund or as in this
3 case, a creditor who seeks garnishment against a beneficiary,
4 was Franchise Tax Board.

5 And in that case this Court specifically drew the
6 line by saying that ERISA was not intended to preempt all
7 causes of action by third parties against a fund. It doesn't
8 speak to the question of what a third party's remedies against
9 the fund may be.

10 Instead, it says that the causes of action themselves
11 are preserved, but the substantive law that will be applied to
12 the right to recover has to be consistent with federal law
13 under ERISA.

14 So, in effect, in Franchise Tax Board, the Court drew
15 a line and said the action to enforce the tax levy, which was
16 brought by the state, was not in and of itself preempted, but
17 the question of whether or not the trustee could comply with
18 that remedy had to be answered under federal substantive law.

19 So, in effect, this Court has said that while a
20 conflicts analysis for preemption isn't required in a case
21 which is brought by an beneficiary or by a trustee within the
22 realm of rights covered under Section 502, it is required when
23 it is an action which is brought by a third party against a
24 fund for remedies which are collateral to the substantive
25 purposes of ERISA.

1 QUESTION: Ms. Mahoney, was the Franchise Tax Board
2 decision to which you refer, was that decision of our Court or
3 of the Ninth Circuit?

4 MS. MAHONEY: That was a decision of your Court, Your
5 Honor.

6 QUESTION: Of our Court.

7 MS. MAHONEY: In that, it was a case involving the
8 question of whether or not an action which was brought by the
9 State of California to enforce its tax levy could be removed to
10 federal court as a federal question. And in looking at that
11 question, this Court had to decide whether or not ERISA
12 preempted that cause of action in its entirety such that it
13 couldn't proceed in state court.

14 And the Court very explicitly said, we don't answer
15 the question of whether or not ERISA precludes garnishment.
16 That's a question that has got to be answered under the
17 substantive law of ERISA. In other words, the question of
18 whether or not the trustee should comply with a writ of
19 garnishment is one which has to be answered under common law
20 principles developed by this Court pursuant to ERISA.

21 So it seems to me that the question in this case is
22 whether or not the garnishment action that has been brought by
23 the Respondent in this case conflicts with the substantive law
24 of ERISA. And essentially the Petitioners in the United States
25 maintain that it conflicts in two respects.

1 First, they say it conflicts because ERISA was
2 intended to prevent any creditor from ever asserting a claim
3 for garnishment against the fund, or ever attempting to
4 alienate the benefits in favor of creditors; that that was a
5 substantive protection which ERISA was intended to provide
6 which would be destroyed.

7 Second, they maintain that ERISA was intended to
8 prevent the fund itself from having to endure the burdens of
9 garnishment.

10 With respect to both of these issues, I think the
11 answer is that there simply is no such federal purpose under
12 ERISA. And that if we look at each of these questions
13 separately, it becomes apparent why.

14 First, on the question of whether or not Congress
15 intended to protect beneficiaries in all welfare plans from
16 involuntarily alienation of benefits, we look first to what
17 ERISA says on this subject.

18 Under Section 206(d), Congress very explicitly
19 provided that pension benefits cannot be alienated, can't be
20 alienated in an involuntary or a voluntary fashion. And when
21 it did that, it was acting against the backdrop of the common
22 law, and I think it's important to understand how you protected
23 benefits, or wages, or property from creditors at common law in
24 order to understand the significance of what Congress did.

25 Essentially at common law any property in the hands

1 of a third party could be alienated in favor of creditors
2 unless it had been donated, placed in the trust and the trust
3 had a spendthrift clause.

4 So when Congress came to this problem for pension
5 benefits, it went ahead and it required that pension --
6 promises to pay pension benefits have to be funded, they have
7 to be placed in a trust, and they have to have a spendthrift
8 clause.

9 QUESTION: Well, Ms. Mahoney, Congress also, though,
10 enacted Section 514, and that's what obviously the government
11 and the Petitioner are relying on. And in the process,
12 Congress also, in 514(b)(8), exempted domestic relations orders
13 from the preemptive effect of 514(a).

14 Now why would it have done that if it didn't think it
15 had prevented in 514(a) the garnishment pursuant to a child
16 support order, for example?

17 MS. MAHONEY: Your Honor, the domestic relations
18 order I believe was done for a very different purpose. It
19 wasn't directed at garnishment per se. It was directed at the
20 substantive law question. In other words, what the exception
21 to 514 for domestic relations order does, because it says that
22 the substantive law of whether or not a wife is entitled to
23 support will be determined under the state law of domestic
24 relations order.

25 QUESTION: Well, aren't most of these domestic,

1 relations orders from an errant parent collected by a
2 garnishment order if there are some funds to do it?

3 MS. MAHONEY: Your Honor, it could be --

4 QUESTION: And isn't that legitimately a concern of
5 Congress in exempting it?

6 MS. MAHONEY: Yes, it is, except that the domestic
7 relations exception does something much broader than
8 garnishment itself. It actually provides that the plan -- that
9 the issue of rights to benefits is to be decided under state
10 domestic relations law, not under federal law, and --

11 QUESTION: But it may also affect the garnishment.

12 MS. MAHONEY: It certainly may affect the
13 garnishment. But I think that you -- that the exception is
14 necessary only to the extent that it affects the substantive
15 law. And that in this case, no exception to, or no exemption
16 from 514 is necessary, because federal substantive law does
17 have to govern the question of whether or not the trustee is
18 obligated to comply with the garnishment order. I think that
19 is the critical difference, and that's why the exception for
20 domestic relations orders shouldn't be read to just mean that
21 any garnishment has to be approved by a specific exemption to
22 the section, because it did much more than approve garnishment
23 orders.

24 In fact, it's not even clear that garnishment orders
25 itself are within the specific definition of domestic relations

1 orders.

2 QUESTION: Let me ask you, since you are interrupted,
3 about this particular Georgia law.

4 It seems to me that under the terms of the Georgia
5 law, even if we agreed with you on the scope of 514, we would
6 still have to reverse because the Georgia Supreme Court was
7 certainly -- it took a very odd view of the effect of the
8 Georgia law, didn't it?

9 MS. MAHONEY: You are referring to the section which
10 exempts ERISA plans from garnishment?

11 I think that the section which exempts ERISA plans
12 from garnishment has to be preempted by Section 514. And the
13 Georgia Supreme Court was correct in that, because that
14 section, its only purpose is to regulate ERISA plans.

15 In effect, what the exemption does is it says trusts
16 in the State of Georgia have valid spendthrift clauses whenever
17 they are created for an ERISA plan beneficiary. That will
18 create the precise disuniformity which Congress intended the
19 preemption clause to establish.

20 If Georgia is permitted to say that in our state
21 spendthrift clauses are in force, then there will not be a
22 uniform substantive law governing trust administration
23 throughout the United States, and that's why this Court in
24 Franchise Tax Board said that the question has to be answered
25 under the federal common law developed under ERISA and cannot

1 be answered under state law.

2 And also, Your Honor, to the extent that that section
3 is preempted, the rest of the garnishment laws remain in tact,
4 and the remedy can proceed.

5 QUESTION: Do you happen to know if prior to the
6 enactment of ERISA going back in the early days in Georgia, and
7 prior to the enactment of the particular statute that you just
8 say is preempted, the one relating to ERISA, would the
9 garnishment been appropriate in Georgia of a, just say there
10 was a state-administered plan like this?

11 MS. MAHONEY: Your Honor, I don't now of a specific
12 case, but I believe that the general principles of garnishment
13 that were applicable in Georgia would have permitted this
14 garnishment because there was no general exception for benefits
15 of any type.

16 In fact, there is no exception for vacation benefits
17 that are not in an ERISA fund under the Georgia law. So there
18 is no indication that Georgia, independent of ERISA, would have
19 wanted to protect these particular kinds of benefits.

20 QUESTION: Do you happen to know if there is any
21 reported cases in Georgia of garnishments of these funds, you
22 know, just normal state trusts?

23 MS. MAHONEY: I know of no such case.

24 QUESTION: It sounds strange to me. I was just
25 thinking back in my own practice. I don't remember garnishing

1 trust funds like this even before ERISA was enacted.

2 MS. MAHONEY: Well, one of the things that I think is
3 important to keep in mind here is that the specific funds are
4 vacation funds. And ordinarily garnishment of vacation funds
5 occurs just in the ordinary course of wage garnishment, because
6 the vast majority of American workers are paid vacation pay
7 through their regular wage distributions.

8 And, in fact, the Department of Labor has found that
9 vacation pay shouldn't even be subject to ERISA except to the
10 extent it's placed in a trust fund, because Congress didn't
11 have any substantive intent to protect vacation pay.

12 And what that really says here is that Congress must
13 not have intended to prevent the alienation of vacation pay in
14 favor of creditors. Otherwise, all vacation pay should be
15 subject to ERISA. Nor can it be said that there is a good
16 reason to find that vacation pay should be protected from
17 alienation simply because it's been put in an ERISA fund.

18 QUESTION: Well, you get two kinds of vacation pay.
19 Some just pay the regular salary when an employee is on
20 vacation and that, of course, would be subject to garnishment
21 if he just got his salary.

22 But if you put it in a fund, it's not payable until
23 the employee accrues the amount that would be distributed when
24 he gets his vacation, he or she gets his vacation.

25 MS. MAHONEY: Your Honor, it cannot be garnished

1 until that point in time either.

2 QUESTION: Well, of course not, because there is no
3 vested interest in it until --

4 MS. MAHONEY: That's right.

5 So, in other words, the garnishment works precisely
6 the same way. Under the Georgia law, the creditor is not
7 entitled to obtain that vacation pay until the date in which it
8 in fact can be paid to the employee.

9 QUESTION: Right.

10 MS. MAHONEY: And when it garnishes wages, it's not
11 entitled to the wages until the date on which it is payable to
12 the employee.

13 QUESTION: Right.

14 MS. MAHONEY: So they are really indistinguishable.
15 In fact, it's just happenstance that vacation pay is in a trust
16 fund in this case. It only occurs really because these are --
17 it is an industry where they have multiple employers during the
18 year, and therefore the only way to provide vacation benefits
19 is through a trust fund of this type.

20 But it is very difficult to look at the issue of
21 vacation pay and to say that Congress had an affirmative intent
22 to make sure that vacation benefits would not be subject to
23 claims of creditors.

24 In fact, it's the Department of Labor's position on
25 vacation pay by adopting a regulation which takes vacation pay

1 outside of the scope of ERISA is the best evidence of the fact
2 that Congress didn't intend to provide this kind of substantive
3 protection to vacation pay.

4 QUESTION: Ms. Mahoney, the government has given us
5 its best shot at a general rule to determine what "relating to"
6 means.

7 What is yours? What is the general rule that
8 includes this case and also helps us in future cases?

9 MS. MAHONEY: I think the general rule has got to be
10 that, first of all, state procedures are not laws that relate
11 to ERISA plans even though they might burden ERISA plans,
12 except to the extent they are in conflict with the substantive
13 requirements of ERISA.

14 And I say that because if you look to the statute, it
15 seems very clear that Congress did not intend to preempt state
16 procedures. Congress preserved concurrent jurisdiction. It
17 provided certain procedural requirements for cases brought in
18 federal court which it did not impose on the state courts
19 hearing the same actions such as service of process and venue.

20 And with respect to the kind of procedure that's in
21 issue here, procedures in aid of execution of judgments, there
22 simply are no federal procedures in aid of execution of
23 judgments.

24 QUESTION: Well, it seems to me this is a procedure
25 if you look at it from the standpoint of the creditor, or from

1 the standpoint of the debtor, but I don't know that from the
2 standpoint of the garnishee getting an order from the court is
3 a procedure. It's no different from a tax assessment, it seems
4 to me.

5 MS. MAHONEY: Well, I think, Your Honor, it's more
6 like a subpoena. It's been defined as a procedure under Rule
7 69. It is a writ, that's what it is. It has been defined as a
8 procured under the Consumer Credit Protection Act which governs
9 garnishment, and even in the Rules Enabling Act that gives this
10 Court the power to adopt federal rules, it says Rules of
11 Procedure include writs.

12 So I do think that it is a procedure. It's much like
13 a subpoena.

14 When the trust fund obtains a subpoena to come and
15 testify and bring records, it is very, very burdensome, and
16 nobody likes getting them, but certain -- and it certainly
17 burdens the plan in much the same way that the garnishment writ
18 burdens the plan. But I don't think that 514 was meant to
19 totally displace all of the judicial remedies which are used in
20 both state and federal courts.

21 And essentially I don't think -- it doesn't serve to
22 adjudicate liability. It only serves to take liability which
23 is already established.

24 QUESTION: What about an order and execution of
25 judgment; is that a procedure?

1 MS. MAHONEY: Yes, it is, Your Honor.

2 QUESTION: So any state judgment --

3 MS. MAHONEY: The judgment itself.

4 QUESTION: So long as you can get a judgment in state
5 court, you can execute it against the ERISA trust.

6 MS. MAHONEY: I think that's correct except to the
7 extent that it would contravene the substantive provisions of
8 ERISA. I mean that's what Franchise Tax Board does very
9 explicitly, and says that you have to look to see whether or
10 not a third-party remedy would be inconsistent with the
11 substantive law governing ERISA. And I think that's where the
12 line has got to be.

13 If it conflicts with the purposes of ERISA, if ERISA,
14 for instance, was intended to preclude alienation, then
15 certainly it is preemptive. But unless ERISA in fact intends
16 to preclude alienation, or intends to prevents burdens on
17 plans, plans themselves, then I do not think that it can be
18 preempted. There has to be a conflict with the substantive law
19 of ERISA before --

20 QUESTION: So you say then that even if ERISA would
21 provide that you can't get a hold of these vacation benefits,
22 nonetheless, the garnishment process would be in force?

23 MS. MAHONEY: No, Your Honor. Well, the procedure
24 would be in force, but there would be no right to recover. In
25 other words, if someone --

1 QUESTION: Yes, but that would mean the trustee would
2 have to answer not that you can never garnish the trust, but
3 that there is no liability on the trust in this case. We hold
4 nothing that you can get by garnishment process.

5 MS. MAHONEY: That's correct. There would be no
6 liability. Sure, he would have to respond, because I just
7 don't think 514 can be viewed as something which simply
8 displaces all of the incidents of the judicial process, and
9 garnishment summons -- the answer would be, we're not liable
10 because -- or we don't have to turn this over to you because
11 Congress said that it would be inappropriate to do so, and that
12 is a perfectly valid answer which would have to preempt any
13 state answer to the country.

14 QUESTION: But, counsel, I have trouble with this
15 word "procedure". That when you take all of my money, that is
16 the procedure.

17 MS. MAHONEY: Your Honor.

18 QUESTION: I guess you call execution a procedure.

19 MS. MAHONEY: Yes, Your Honor, I would.

20 QUESTION: That's a procedure?

21 MS. MAHONEY: Yes, it is. Under Rule -- you're
22 talking about execution of judgments, I assume.

23 QUESTION: I said executions.

24 MS. MAHONEY: Oh, I'm sorry, Your Honor.

25 I don't think that's provided for under Rule 69.

1 Whether you call garnishment a procedure, which Rule 69 does
2 call it, or whether you say that it in fact is a creditor's
3 remedy, the answer should be the same.

4 QUESTION: Well, do you see a difference between the
5 procedure of asking you to testify and the procedure of taking
6 your money away from you? Do you think they are both
7 procedures, right?

8 MS. MAHONEY: Your Honor, in this case I do,
9 because --

10 QUESTION: They are a little different, though,
11 aren't they?

12 MS. MAHONEY: Yes, they are different. They are
13 asking for something different. But when they ask for the
14 money, they are not attempting to adjudicate liability on the
15 part of the fund. We're talking about a liability which is
16 established, a liability that is due not to the garnishee but
17 rather, to the beneficiary.

18 And the only -- the significance of the writ of
19 garnishment is it says instead of paying over the money you owe
20 to the beneficiary, you pay 25 percent of it, in the case of
21 wages, over to us. It's very similar to -- it's equivalent --

22 QUESTION: You mean as to the person with the money,
23 it's just a procedure.

24 MS. MAHONEY: To the person with the money, it is a
25 procedure, yes.

1 The trust doesn't dispute that the monies are owed to
2 the beneficiary, and it discharges their liability to the
3 beneficiary. They just claim that it's burdensome to have to
4 do it just as it is burdensome -- I mean their complaint is not
5 about having to give the money. It's about the fact that they
6 have to go through the burdens attendant to garnishment, and
7 that's an argument that's been rejected by this Court before.

8 In *FHA v. Burr*, the federal agency said we can't be
9 subject to garnishment for our employees' wages because it's
10 too burdensome. It requires us to process these claims, and
11 the Court said, no, that is an important part of the judicial
12 process unless Congress expressly says you are relieved from
13 that burden.

14 QUESTION: Well, that didn't involve an ERISA plan
15 though.

16 MS. MAHONEY: No, Your Honor, it didn't.

17 QUESTION: So I think that -- unless you are dealing
18 with Section 514, that probably isn't a good precedent.

19 MS. MAHONEY: Well, the reason that I think it is a
20 good precedent is because it says that garnishment is viewed as
21 a normal incident of the judicial process. And unless you are
22 immune from suit, or unless Congress expressly says you are not
23 subject to garnishment, you are.

24 And I think that when you look at 514, it really
25 can't be construed as an expressed direction that no

1 garnishment can be permitted, and that's why I think that the
2 case in fact is very much on point.

3 Why is it that the trust funds are exempt from
4 garnishment? Is it because it's simply a burdensome procedure?
5 Well, if so, then why aren't they also exempt for a subpoena
6 directing them to produce all their records and come and
7 testify?

8 QUESTION: Well, I think the Solicitor General
9 doesn't point so much to that as it does a protection of the
10 benefits themselves.

11 MS. MAHONEY: Okay, that is a very different
12 question. To the extent that Congress intended to protect the
13 benefits from alienation, there is no question that the
14 substantive federal law has to govern.

15 I do not think, though, that ERISA reflects an intent
16 to protect the beneficiaries from alienation of vacation
17 benefits. Congress knew how to protect benefits. They knew
18 that they needed to put them in a trust fund, and they needed
19 to have a spendthrift clause. That's what they did for pension
20 plans. But they didn't do it for welfare benefits. They
21 didn't require them to be funded.

22 QUESTION: Well, they may have done more in 514 with
23 their "relate to" language. That's what this turns on, doesn't
24 it? What does "relate to" mean?

25 MS. MAHONEY: Yes, Your Honor, except that I don't

1 believe that the "relate to" language should be construed to
2 apply to a third-party action when Congress didn't even address
3 the question of what remedies would be available to third
4 parties.

5 I don't think that this is really any different than
6 let's say a cause of action by an accountant for breach of
7 contract against the fund. That would require the fund to pay
8 out monies that otherwise could be paid to beneficiaries if
9 they were held liable, and there is no federal creation of a
10 cause of action for such creditors.

11 Nevertheless, it would relate to the fund in the same
12 way that garnishment relates to the fund. But I can't believe
13 that Congress intended to preempt all third-party actions, and
14 that really was the essence of the holding in Franchise Tax
15 Board. Was that for those remedies that Congress doesn't speak
16 to, remedies by parties other than trustees and beneficiaries,
17 they are preserved except to the extent they are inconsistent
18 with the federal substantive law under ERISA.

19 And so we are back to the question, the key question
20 in this case of whether or not Congress intended to prevent the
21 alienation of vacation benefits.

22 QUESTION: May I just clarify one. I think I know
23 the answer, but I want to be sure.

24 You do agree, do you not, that if this were a pension
25 plan, you could not garnish the --

1 MS. MAHONEY: That's correct, Your Honor.

2 QUESTION: And you emphasized the fact that welfare
3 plans and pension plans are treated differently under the
4 statute.

5 MS. MAHONEY: That's correct.

6 QUESTION: But then in Franchise Tax Board, it was a
7 welfare plan, wasn't it?

8 MS. MAHONEY: Yes, it was, Your Honor.

9 QUESTION: Then how to you explain that case?

10 MS. MAHONEY: Well, Franchise Tax Board I think is
11 critical to the analysis here, because in Franchise Tax Board
12 the state brought an action to collect on its tax levy in state
13 court. They did it under a state cause of action. The
14 trustees of the plan that were sued removed the case to federal
15 court, and the question which was ultimately decided by this
16 Court was whether or not the removal was proper. And they
17 found that they had to answer two questions in determining
18 whether or not the removal was proper.

19 The first was whether or not that cause of action
20 raised a federal question on its face. And the answer given
21 was it does present a federal question. The federal question
22 is whether or not the trustees are obligated to comply with the
23 levy. But that is raised by way of defense. Therefore, it's
24 not removable under the well pleaded complaint rule.

25 But the looked to a second question, and that was

1 whether or not it was removable because the cause of action
2 itself was preempted in its entirety by ERISA. And the Court
3 said it was not. This Court said that ERISA does not speak to
4 the question -- in fact, it says that ERISA neither creates nor
5 expressly denies any cause of action in favor of state
6 governments to enforce tax levies or for any other purpose. It
7 doesn't purport to reach every question relating to plans
8 covered under ERISA.

9 And it found that the action to enforce a levy is not
10 itself preempted.

11 QUESTION: But then, as I remember the legislative
12 history the government cites on (b)(7), refers to the Ninth
13 Circuit decision in Franchise Tax Board.

14 MS. MAHONEY: That's correct.

15 QUESTION: Now was that before our decision? What's
16 the timing on that, or do we --

17 MS. MAHONEY: Your Honor, I believe --

18 QUESTION: See, that seems inconsistent with your
19 position, or am I missing something?

20 MS. MAHONEY: No, I think you are correct. I think
21 it is inconsistent with the position. I don't have a reason to
22 say that it is different. The only thing I could say is that
23 when Congress looked at the Franchise Tax Board opinion, that
24 opinion didn't consider whether or not the substantive law of
25 ERISA could be used to prevent garnishments which were

1 inconsistent with the purposes of ERISA.

2 And it may well be that if Congress had understood
3 the issue in that fashion, they wouldn't have found that
4 garnishment should be precluded, because they may have been
5 concerned that garnishments could occur even where plan
6 benefits should not be subject to alienation.

7 QUESTION: Before the (b)(7) amendment, had the
8 courts been allowing -- in alimony and child support cases, had
9 they been allowing collections from pension trusts as well as
10 welfare trusts?

11 MS. MAHONEY: Yes, they had, Your Honor.

12 QUESTION: They had.

13 MS. MAHONEY: They had been allowing them.

14 QUESTION: Which was really inconsistent with --
15 normally thought to be inconsistent with that spendthrift --

16 MS. MAHONEY: Yes, but they found an implied
17 exception essentially.

18 QUESTION: Yes.

19 MS. MAHONEY: I don't think that those cases are
20 particularly germane to the issue of whether or not non-
21 domestic relations orders can be enforced against a plan or not
22 though.

23 QUESTION: Can you refresh my recollection on one
24 other thing?

25 Why isn't the Respondent defending the case itself?

1 Why were you appointed?

2 This isn't a moot case is what I wanted to be sure --

3 MS. MAHONEY: No, Your Honor, it's not a moot case.
4 They still very much would like to have the monies collected,
5 but they simply didn't want to invest anymore monies in the
6 case.

7 QUESTION: I see. I take it you are defending the
8 judgment below and also the rationale?

9 MS. MAHONEY: Your Honor, yes, that is correct.

10 QUESTION: You defend every step in that.

11 QUESTION: Well, that's quite wrong. You said you
12 thought the statute was preempted, the Georgia statute that
13 they construed.

14 MS. MAHONEY: The section of the Georgia statute
15 which purports to provide --

16 QUESTION: You say you don't rely on that statute.
17 You rely on the general garnishment statute.

18 MS. MAHONEY: That's correct, but that --

19 QUESTION: So that's a very different argument than
20 the Georgia court made.

21 MS. MAHONEY: Well, the Georgia court simply said
22 that that section of the Georgia law which purports to provide
23 an exemption from garnishment is preempted, and it didn't go
24 into detail in looking at what else there was, but they
25 affirmed the order of garnishment, so they presumably found

1 that the rest of the statute remained in tact, and I think that
2 that is the analysis.

3 QUESTION: The Georgia court did say that this state
4 was preempted.

5 MS. MAHONEY: They said that the section --

6 QUESTION: Yes.

7 MS. MAHONEY: Yes, Your Honor, they did.

8 QUESTION: But then it went on and did what?

9 MS. MAHONEY: It went on and upheld the garnishment
10 orders --

11 QUESTION: Because?

12 MS. MAHONEY: -- because the rest of the statute was
13 not preempted and the garnishment was consistent with ERISA.

14 QUESTION: I thought they thought that ERISA
15 affirmatively permitted garnishment.

16 MS. MAHONEY: They did. In other words, they found
17 that --

18 QUESTION: Sort of a negative inference from --

19 MS. MAHONEY: Yes, the inference which I think --

20 QUESTION: And you defend that?

21 MS. MAHONEY: Oh, absolutely; oh, absolutely. I
22 think that ERISA very much intended to permit creditors'
23 remedies against welfare plans, particularly in the case of
24 benefits such as vacation pay.

25 QUESTION: Well, if that's so, that's all the court

1 below needed to say. If the ERISA affirmatively intended to
2 permit garnishment, a state should not be able to except it.

3 MS. MAHONEY: That's correct. I believe that is what
4 the Georgia Supreme Court said.

5 QUESTION: Well, they didn't even need to mention 514
6 then.

7 MS. MAHONEY: Well, I think they mention 514 in that
8 that is the expressed preemption clause. So to that extent,
9 but you are right, it would be preempted even if there were not
10 an --

11 QUESTION: Yes.

12 MS. MAHONEY: -- expressed preemption clause.

13 But on the question of whether or not -- I really
14 think that the key question here is whether or not there is,
15 under this Court's power, to create common law of trusts,
16 whether or not there is a policy reason in favor of preventing
17 the alienation of vacation benefits held in a fund.

18 CHIEF JUSTICE REHNQUIST: Thank you, Ms. Mahoney.

19 Mr. Mathews, you have six minutes remaining.

20 MR. MATHEWS: Your Honor, obviously Ms. Mahoney and I
21 are in sharp disagreement, but I think the lines are well
22 drawn, and I don't think I have to take any more time of this
23 Court.

24 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Mathews.

25 The case is submitted.

1 (Whereupon, at 12:02 o'clock p.m., the case in the
2 above-entitled matter was submitted.)
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REPORTERS' CERTIFICATE

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DOCKET NUMBER: 86-1387
CASE TITLE: John H. Mackey, et al. v. Lanier Collection Agency & Service, Inc.
HEARING DATE: April 19, 1988
LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the United States Supreme Court.
and that this is a true and accurate transcript of the case.

Date: 4-25-88

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