

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

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CAPTION: JOHN R. PATTERSON, TRUSTEE, Petitioner

V. JOSEPH B. SHUMATE, JR.

CASE NO: 91-913

PLACE: Washington, D.C.

DATE: April 20, 1992

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----X

3 JOHN R. PATTERSON, TRUSTEE, :

4 Petitioner :

5 v. : No. 91-913

6 JOSEPH B. SHUMATE, JR. :

7 -----X

8 Washington, D.C.

9 Monday, April 20, 1992

10 The above-entitled matter came on for oral
11 argument before the Supreme Court of the United States at
12 1:00 p.m.

13 APPEARANCES:

14 G. STEVEN AGEE, ESQ., Roanoke, Virginia; on behalf of
15 the Petitioner.

16 KEVIN R. HUENNEKENS, ESQ., Richmond, Virginia; on behalf
17 of the Respondent.

18 CHRISTOPHER J. WRIGHT, ESQ., Assistant to the Solicitor
19 General, Department of Justice, Washington, D.C.;
20 on behalf of the United States, as amicus curiae,
21 supporting the Respondent.

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1 P R O C E E D I N G S

2 (1:00 p.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 now in No. 91-913, John R. Patterson, Trustee v. Joseph B.
5 Shumate, Jr.

6 Mr. Agee. Is that the correct pronunciation?

7 MR. AGEE: It is Agee, Mr. Chief Justice.

8 QUESTION: Agee.

9 MR. AGEE: Yes, Mr. Chief Justice.

10 ORAL ARGUMENT OF G. STEVEN AGEE

11 ON BEHALF OF THE PETITIONER

12 MR. AGEE: Mr. Chief Justice, and may it please
13 the Court:

14 This case involves the disposition in bankruptcy
15 of a debtor's interest in an ERISA qualified pension plan
16 which has terminated. The ERISA policy of safeguarding
17 benefits in a participant's plan crosses with the
18 bankruptcy policy of marshalling all of a debtor's assets
19 for the payment of creditors in return for a fresh start.

20 The trustee in bankruptcy's position is that the
21 ERISA benefit is included as an asset of the bankruptcy
22 estate, subject to any exemption that exists under the
23 code.

24 If this is the law, what are the public policy
25 results of it? Would there be multitudes left destitute

1 by attachment of the pension interest in bankruptcy?
2 Would pension plans be cancelled or a pension plan
3 administration made untenable, and would there be an
4 improper change to the uniformity of application of ERISA
5 rules?

6 I would submit that the answer to those
7 questions is no. Most plan participants would not be
8 affected in the event that the ERISA plan benefit were
9 included as part of their estate should they take
10 bankruptcy.

11 The first ground of defense in that case would
12 be the spendthrift-type protection that exists in an ERISA
13 plan by reason of ERISA's requirement that every plan have
14 an anti-alienation protection. For instance, if you,
15 whether you worked on the line for Ford Motor Company or
16 were the chief executive officer, your ability to control
17 the distribution out of the pension for your benefit the
18 day before you filed bankruptcy would be extremely
19 limited, if existing at all.

20 As with the Coleman Furniture Corporation case,
21 if someone worked on the line building chairs for Coleman
22 Furniture Corporation they would have no control over the
23 plan. They would have no access to be able to get any
24 benefits out of the plan.

25 QUESTION: What does that have to do with

1 anything before us?

2 MR. AGEE: Mr. Justice White, I think what that
3 has to do with is establishing that plan participants have
4 very little exposure, by and large, if the interest of
5 their --

6 QUESTION: What does that have to do with the
7 entitlement of the beneficiary?

8 MR. AGEE: It protects the entitlement of the
9 beneficiary. Let me go directly, in answer to that
10 question, to the legal argument with respect to an
11 exclusion and an exemption out of the bankruptcy code.

12 Congress has only apparently spoken one time
13 directly, either in ERISA or the bankruptcy code, as to
14 when an exemption for an ERISA benefit would exist. In
15 the exemption section of the bankruptcy code Congress
16 specifically said that the debtor's interest in a pension
17 plan, qualified under section 401(a) would be exempt,
18 limited to the reasonable needs of the debtor.

19 That establishes an exemption in bankruptcy
20 which could not exist if the interest in the ERISA plan is
21 first excluded from the estate under section 541(c)(2) of
22 the code.

23 QUESTION: But this section applies to all
24 pension plans or not?

25 MR. AGEE: Section 522? Section 522 makes a

1 division into two different categories. In, for distance,
2 the District of Columbia, which is a non-opt-out State, it
3 uses the Federal exemptions. In opt-out States such as
4 Virginia, which is the majority of States, they do not
5 have this reasonable needs of the debtor limitation.
6 However, if there exists --

7 QUESTION: Yes, but it would apply to, not just
8 ERISA pension plans, wouldn't it?

9 MR. AGEE: That -- that's correct. 522 --

10 QUESTION: But if it is an ERISA plan you have a
11 provision in ERISA plans that may not be present in other
12 plans, namely, that it is not subject to attachment.

13 MR. AGEE: Mr. Justice White, that's correct.
14 And I would say that the key point that comes out that is
15 that if there is first an exclusion out of the bankruptcy
16 estate, by virtue of the applicable nonbankruptcy law
17 language in section 541(c)(2), then you would never be
18 able to get to the exemption provision.

19 . That would in effect write out of the code in
20 the non-opt-out States the provision that limits to the
21 reasonable needs of the debtor the exemption under ERISA.

22 QUESTION: Well, on your provision you are
23 writing out of the code, ERISA as a nonbankruptcy
24 applicable law.

25 MR. AGEE: That's correct, in a sense, Mr.

1 Justice White, for two reasons. One, if you attribute to
2 the language in 522(d)(10)(e) the plain meaning that
3 Congress has written in that there is to be an exemption
4 limited to the reasonable needs of the debtor, you write
5 out effectively an exclusion, if it were to exist under
6 541(c)(2). Otherwise, that serves no function.

7 That is true there are church plans and some
8 government plans that would still function under this
9 section 522(d). However, the reasonable needs limitation
10 would be written out.

11 QUESTION: Where do we find the text of
12 522(b)(2)(a)? I mean, other than the U.S. Code. Where in
13 the briefs?

14 MR. AGEE: In my brief, Mr. Chief Justice, it
15 would be in the petition for cert.

16 QUESTION: Is that Appendix 1A, petition for
17 cert.?

18 MR. AGEE: That's correct, page 60A in the
19 petition for certiorari.

20 QUESTION: Thank you.

21 MR. AGEE: The bankruptcy trustee would be able
22 to access, if the ERISA benefit is included as part of the
23 estate, only that to which the debtor could have accessed.
24 If there was no ability of the debtor to get into the plan
25 at the time they filed bankruptcy, to take something out,

1 the bankruptcy could accede to no greater than the debtor
2 had.

3 That is another reason that I believe that the
4 inclusion in the estate of the ERISA benefit would be of
5 limited significance to most participants in most plans.

6 QUESTION: Well, it might be of limited
7 significance, but it's still the case that there is not a
8 complete identity of the subjects to which the exclusion
9 and the exempt apply. So you cannot -- I take you agree,
10 you cannot make the argument that the one is rendered sort
11 of totally useless by the other.

12 MR. AGEE: Mr. Justice Souter, I do to this
13 extent: that if you conclude first that there is an
14 omnibus exclusion of ERISA benefits under 541(c)(2), using
15 that applicable nonbankruptcy law language, then if you
16 came to the exemption section, the only place where the
17 Congress apparently has said explicitly, this is where we
18 are dealing with an ERISA benefit, and it has placed, at
19 least in the non-opt-out States, a limitation to the
20 reasonable needs of the debtor, I submit that that is
21 written out of the code because you have created first an
22 omnibus --

23 QUESTION: That may be written out with respect
24 to the ERISA plans, but there are still going to be plans
25 covered by the exemption that are not covered by the

1 exclusion; isn't that correct?

2 MR. AGEE: That is correct. There are some
3 plans that would be covered. When the drafting was done
4 on section 522(d), the commission on the bankruptcy
5 laws --

6 QUESTION: Where is the language you are talking
7 about?

8 QUESTION: The text of the reasonable needs --

9 QUESTION: 6(b)(a), isn't it?

10 QUESTION: No.

11 MR. AGEE: 522(d), I think will be, as cited in
12 my brief --

13 QUESTION: Where is the -- I want the text.

14 MR. AGEE: That would be page 3.

15 QUESTION: Page 3 of your brief?

16 MR. AGEE: Yes, Mr. Chief Justice.

17 QUESTION: Thank you.

18 MR. AGEE: But if there is an inclusion of the
19 ERISA benefit where the actual trust protection of the
20 plan doesn't cover it for some reason, or if the
21 bankruptcy trustee was able to access an asset that the
22 debtor could actually reach into the plan and take out,
23 there would still remain the exemptions available in
24 bankruptcy under section 522(d).

25 I would submit that plan administration would

1 not be affected to any significant degree because the
2 processing of many, many qualified domestic relations
3 orders would be no different than the processing of the
4 bankruptcy order to pay out part of the pension plan.

5 QUESTION: Mr. Agee, could I ask you a question
6 because I must confess I am having a little difficulty
7 following the argument. As I understood the court of
8 appeals, they analyzed the case under 541(c)(2) and found
9 it unnecessary to reach 522. Is that correct?

10 MR. AGEE: That's correct.

11 QUESTION: And am I also correct that your
12 argument based on this (d)(2), whatever, relates solely to
13 522?

14 MR. AGEE: No, Mr. Justice Stevens. What I am
15 saying is that the plain meaning of this 522(d), the
16 exemption provision, has Congress writing, for the only
17 time, either in the bankruptcy code or ERISA, how will we
18 treat ERISA benefits in bankruptcy?

19 QUESTION: It doesn't refer to ERISA though.
20 That's why you mislead me. I am looking around. It
21 doesn't say ERISA.

22 MR. AGEE: Well, it refers to, on page 4, three
23 triple I's, plans -- it's done in the negative, but plans
24 to qualify under section 401(a). And that is ERISA.

25 QUESTION: Exclusively ERISA, nothing but ERISA

1 MR. AGEE: No, that would include other types of
2 plans including Government plans.

3 QUESTION: Yes, but that shoots your argument.

4 MR. AGEE: Well, I hope that it doesn't.

5 QUESTION: That utterly destroys your argument.

6 MR. AGEE: Because if you are going to accord
7 plain meaning to this particular section, then reasonable
8 needs limitations for private plans, pension plans, stock
9 bonus plans, profit-sharing plans, that's gone. And when
10 this section was drafted, placed into the code, the
11 bankruptcy commissioners' report was very specific in what
12 they wanted to get at here.

13 They were to exempt the private employer plans
14 and the reason that the reasonable needs limitation was
15 put in there was that in recognition, as here, that there
16 would be substantial benefits held by corporate officers
17 and by members of professional corporations. That is
18 exactly what I think the Congress was trying to get at in
19 this provision.

20 QUESTION: But even if ERISA is excluded under
21 the earlier provision, you would still need this provision
22 to cover some plans other than ERISA, as to which you
23 wanted only the reasonable needs limitation; isn't that
24 right? So it would still make sense.

25 MR. AGEE: It would still make sense as long as

1 -- if you read out 522(d) the coverage for pension plans,
2 stock bonus plans and profit-sharing plans, which would be
3 private plans.

4 QUESTION: Right.

5 MR. AGEE: And I don't think the Congress would
6 have intended that if they would have included that
7 language in the statute.

8 QUESTION: Maybe not, but you can't say that it
9 is utterly illogical. You might say that it doesn't cover
10 very much, but it still covers something that you would
11 need that language to cover, despite the fact that you had
12 excluded ERISA earlier.

13 MR. AGEE: It would -- that's correct. It would
14 still continue to cover a Government plan and a State
15 plan.

16 QUESTION: A little bit.

17 MR. AGEE: There is another issue here in
18 dealing in particular with the exemption question which
19 differentiates this particular case from other cases the
20 Court has heard before.

21 When there have been garnishment or levy
22 statutes, State statutes which have attempted to reach
23 into a pension plan and take something out, they have been
24 preempted by that language in ERISA, section 514(a) which
25 preempts State law.

1 But ERISA also includes another section that
2 some would call a Federal preemption statute which does
3 not say that ERISA overrides other Federal law, but it
4 says that ERISA will not impair, invalidate or supersede
5 other Federal law.

6 And I would submit that the bankruptcy code
7 entering the picture fits into that circumstance, that if
8 the all inclusive scope of section 541 of the code, which
9 is to include all of the debtor's legal and equitable
10 interests in property, are brought into the code, that if
11 the anti-alienation provision of ERISA overrides it, then
12 it has impaired, superseded and certainly modified the
13 all-inclusive scope of property that was intended to be
14 included in the bankruptcy estate.

15 If you do reach the supposition that there is
16 not an exclusion of ERISA benefits from the bankruptcy
17 estate, there would still remain the question under
18 section 522 as to what kind of an exemption exists if any
19 in an opt-out State.

20 The bankruptcy trustee's position that there is,
21 there is -- there are exemptions but that they are limited
22 to the exemptions created by State law. ERISA is --

23 QUESTION: Could I back up just a second because
24 I want to be sure I understand your argument. 541(c)(2)
25 says that a restriction on the transfer of beneficial

1 interest to the debtor and the trust that is enforceable
2 under applicable nonbankruptcy law is enforceable in a
3 case until this title.

4 Are you contending that ERISA is not applicable
5 nonbankruptcy law?

6 MR. AGEE: I do, Mr. Justice Stevens, for
7 several reasons.

8 QUESTION: But I didn't understand you had made
9 that argument yet, and that is the argument the court of
10 appeals addressed and disagreed with.

11 MR. AGEE: That's correct.

12 QUESTION: Now, why are they wrong?

13 MR. AGEE: There are several reasons. The first
14 is this articulation that I attempted to make that says
15 the Congress has dealt with ERISA benefits as a matter of
16 exemption over here in 522(d), and they put this
17 reasonable needs limitation in here.

18 So if you say first under 541(c)(2) that you
19 exclude all the benefits, then with respect to the private
20 employer plans, which are the prime focus of the exemption
21 section -- not the exclusive, but a primary -- that the
22 reasonable needs limitation isn't going to be there for
23 any of those ERISA benefits, a plain meaning type
24 argument.

25 QUESTION: So you say, to G these two sections

1 you have to just say that ERISA is not an nonbankruptcy
2 law -- applicable nonbankruptcy law.

3 MR. AGEE: In this particular section --

4 QUESTION: Because Congress has specifically
5 dealt with the issue in another section?

6 MR. AGEE: That is the primary argument, Justice
7 White.

8 QUESTION: What kind of a nonbankruptcy law
9 would -- what kind of an law would be an applicable
10 nonbankruptcy law?

11 MR. AGEE: In that section, 541(c)(2), the
12 argument has been made in all the other lower courts that
13 the law -- the applicable nonbankruptcy law is limited to
14 State law in that section. There are other sections in
15 the bankruptcy code where that term means both State and
16 Federal law, but under the two --

17 QUESTION: Can I interrupt you again? Why
18 wouldn't your argument about making the reasonable needs
19 thing superfluous apply also to a State law of spendthrift
20 trust, because there you had no reasonable needs
21 limitation if it qualifies as spendthrift trust under
22 State law.

23 MR. AGEE: If it qualifies -- if you accept the
24 bankruptcy trustee's argument that State law is applicable
25 to nonbankruptcy law only here and the spendthrift trust

1 protection applies, then it has taken the property out of
2 the estate by this specific statutory exclusion before you
3 get to the exemption provision.

4 QUESTION: Exactly.

5 MR. AGEE: And in the legislative history of
6 this section, the discussion is on the continuing over of
7 the pre-code practice of honoring spendthrift trust
8 protection under State law. There are -- the two most
9 closely related sections in the bankruptcy code to this
10 one which are 541(c)(1) that deals with what laws
11 interfere with inclusion of property in the estate, and
12 522(b)(2)(b), which is tenants by the entirety property.

13 The phrase, applicable nonbankruptcy law is
14 limited to State law in those cases, the two most closely
15 related. So with that degree of difference between the
16 statutes, I think it is legitimate to look beyond it into
17 the legislative history to see this indication toward
18 State law.

19 But if ERISA then boils down to a question of
20 exemption, the question in the non-opt-out State is
21 settled, the reasonable needs of the debtor. But in the
22 States that don't opt out, would it exist as a Federal
23 exemption?

24 The legislative history again of that section
25 makes no mention of ERISA as an exemption. And in

1 addition, ERISA is addressed by statutory reference
2 directly in the non-opt-out section, 522(d), but not
3 addressed in the opt-out section, which is 522(b)(2)(a). .

4 It also points out the difference in the type of
5 anti-alienation protection that ERISA provides if you
6 compare it I think with just about any other Federal
7 protection statute: Social Security, civil service,
8 Foreign Service benefits. Those statutes provide a direct
9 prohibition on any type of alienation, garnishment or
10 levy.

11 ERISA, though, provides a derivative type .
12 protection. It doesn't say these assets shall not be
13 garnished. It provides that the ERISA plan must contain a
14 provision that prohibits alienation, and that is
15 successful in the nonbankruptcy context because of the
16 State preemption provision in ERISA where ERISA overrides
17 all of the State laws. But with the provision in ERISA
18 that says it will not impair or supersede another Federal
19 statute, then I think that, pointing up the difference in
20 the type of exemption ERISA puts out, is authority for
21 there being no Federal exemption under 522.

22 The exemption provisions in the bankruptcy code
23 are essentially State-based exemptions. If the Congress
24 had wanted to do otherwise, then 522(d) would be the only
25 provision there. That is why, for instance, Virginia has

1 a \$5,000 homestead exemption and Texas has a virtually
2 unlimited exemption.

3 Lastly, I would add a word about the rule that
4 the Court has discussed in Dewsnap v. Timm extending the
5 MidAtlantic National Bank case. In those cases where
6 there is a pre-code practice, unless it is set aside by
7 specific language of the bankruptcy code, or by the
8 legislative history, that practice carries over post-
9 code.

10 There was a pre-code, and in fact, in some
11 cases, post-ERISA practice that included assets from a
12 plan which were in pay status such as we have here from a
13 terminated plan prior to the time that Chapter 7
14 proceedings began.

15 This practice is not negated in the bankruptcy
16 code or even mentioned in the legislative history, and I
17 will submit that that practice carries over under the rule
18 from the Dewsnap and MidAtlantic cases.

19 The inclusion of the ERISA benefits would cover
20 comparatively few participants but it would cover those
21 who have the ability to access plan assets the day before
22 they file bankruptcy. And I would submit, if the policy
23 consideration is that we want to protect this stream of
24 income, if the debtor has the ability to take it out, he
25 can just as easily go to Mexico with it as he can, use it

1 for any type of retirement benefit.

2 There is no restriction on it, if the debtor can
3 get that property out before he files for bankruptcy.
4 That's what this case would cover.

5 And I would also submit, it does harmonize the
6 Federal exemption provision and the ERISA Federal
7 preemption provision by including the asset in the
8 bankruptcy estate. And it honors the pre-code practice
9 of including in a bankruptcy estate those assets which are
10 in pay status at the time that the debtor files for
11 bankruptcy.

12 And Mr. Chief Justice, I would like to reserve
13 the remainder of my time for rebuttal.

14 QUESTION: Thank you, Mr. Agee.

15 Mr. Huennekens.

16 ORAL ARGUMENT OF KEVIN R. HUENNEKENS

17 ON BEHALF OF THE RESPONDENT

18 MR. HUENNEKENS: Mr. Chief Justice, and may it
19 please the Court:

20 Mr. Shumate's interest in the Coleman Furniture
21 Company pension plan should be excluded from the
22 bankruptcy estate for three reasons.

23 First, it is required by the plain meaning of
24 section 541(c)(2) of the bankruptcy code. Second, no
25 judicial exception should be made to the considered

1 congressional policy choice that this Court recognized in
2 Guidry for beneficiaries who file bankruptcy. And third,
3 property interests should be treated the same whether a
4 debtor is in bankruptcy or outside of bankruptcy.

5 Turning to the first reason, the plain meaning.
6 The language of 541(c)(2) says that where a trust contains
7 an enforceable restriction on the transfer of a beneficial
8 interest that is enforceable under applicable bankruptcy
9 law, the restrictions recognized in bankruptcy and
10 operates to exclude that interest from assets of the
11 bankruptcy estate.

12 QUESTION: Applicable nonbankruptcy law.

13 MR. HUENNEKENS: Applicable nonbankruptcy law,
14 yes, Your Honor.

15 Certainly, ERISA qualifies as applicable
16 nonbankruptcy law.

17 QUESTION: A lot of ERISA plans are pension
18 plans, aren't they?

19 MR. HUENNEKENS: Yes, Mr. Justice.

20 QUESTION: Well, 522 speaks of pension plans and
21 it says how much of it can be exempted. And how do you --
22 why do you exclude ERISA plans from that provision?

23 MR. HUENNEKENS: The reason, Mr. Justice White,
24 that ERISA plans exclude from 541(c)(2) is because ERISA
25 requires that qualified plans, the pension plan, the

1 assets be held in a trust.

2 It also requires that the trust impose a
3 restriction on the transfer of a beneficiary's interest in
4 the trust. So for those two reasons it qualifies as --

5 QUESTION: Well, I know. My question is, why
6 doesn't an ERISA plan fall under 522(d), where it says --
7 where it limits the amount of a pension plan that is
8 exempt from administration?

9 MR. HUENNEKENS: There may very well be a slight
10 overlap between the two provisions, but that is not
11 necessarily fatal.

12 Section 522 deals with -- 522(d)(10)(e) deals
13 with many different kinds of pension plans and in addition
14 to pension plans, deals with profit-sharing plans and
15 other types of interest such as stock bonus plans. It
16 also would cover unqualified plans, such as a deferred
17 compensation plan.

18 So the universe covered by 522(d)(10) is very
19 different from the restriction in 541(c)(2) which covers
20 only a small majority -- minority of these plans which is
21 the ERISA-qualified plan.

22 And then to get to the section (iii), which
23 covers a restriction for insiders, basically, when a plan
24 is established that says, well, for them, under section
25 522, only plans that qualify under these certain sections

1 of the Internal Revenue Code can be exempted.

2 Again, there are many types of plans that are
3 included within that provision. For instance, IRA's would
4 be included, an Individual Retirement Account, which is
5 not an ERISA-qualified plan. Also included, as petitioner
6 mentions, would be the church plans and government plans
7 which are ERISA-qualified plans that do not contain an
8 anti-alienation provision.

9 So the exemption would be necessary because
10 those assets are not held in a trust and are not subject
11 to the exclusion of section 541(c) of the bankruptcy code.

12 Turning back to the plain meaning of section
13 541, nothing in the statute itself suggests that section
14 541(c)(2) was meant to refer only to State spendthrift
15 trust law as the petitioner suggests.

16 There -- the term, applicable nonbankruptcy law
17 is intentionally broad and it is unqualified on its face.
18 In other portions of the bankruptcy code, that same term
19 is used, and in each occurrence it refers to both Federal
20 law and State law and not simply to State law.

21 QUESTION: How can you be certain of that, Mr.
22 Huennekens? Has that been -- have these other provisions
23 that you say do that, have been definitively construed by
24 the courts?

25 MR. HUENNEKENS: Mr. Chief Justice, they have

1 not been definitively construed. We have set forth in our
2 brief a number of occurrences -- and the Fourth Circuit
3 set forth a number of occurrences where the phrase was
4 used throughout the bankruptcy code. And in each one of
5 those circumstances, the Fourth Circuit observed that it
6 was referring to both Federal and State law.

7 QUESTION: How did the Fourth Circuit know that?

8 MR. HUENNEKENS: From the context within which
9 the language was used in a particular place, for instance,
10 referring to the securities laws, referring to copyright
11 law, those types of references, obviously incorporating
12 Federal law as well as State law.

13 This Court has said time and again that courts
14 must presume that a legislature says in its statute what
15 it means. When the language is unambiguous, judicial
16 inquiry is complete. I would submit that there is no
17 basis, no reason to refer to the legislative history in
18 this case as petitioner argues.

19 But even if the Court were, the legislative does
20 nothing more than suggest that Congress intended for
21 spendthrift trust law to be included within the scope of
22 541(c)(2). It certainly doesn't suggest anywhere that
23 ERISA was meant to be excluded from it.

24 The second reason is that as this Court
25 recognized in Guidry, the anti-alienation provision in

1 ERISA reflects a considered congressional policy choice.
2 That decision was to safeguard a stream of income for
3 pensioners, and even if that decision, this Court wrote,
4 prevents others from securing relief for wrongs done.

5 If exceptions are to be made, this Court wrote,
6 it is for Congress to make them. No exceptions should be
7 made here for a debtor who files bankruptcy. Indeed, if
8 employee malfeasance and criminal misconduct did not
9 justify the creation of an exemption, the mere filing of a
10 bankruptcy petition should not.

11 Furthermore, the policies of ERISA and of the
12 bankruptcy code are not incompatible. ERISA is entirely
13 compatible with the fresh-start policy of the bankruptcy
14 code. Indeed, if a debtor such as Mr. Shumate, is -- who
15 is entirely dependent upon his retirement benefit for his
16 livelihood is to have any type of fresh start, his
17 retirement income must be protected. A fresh start means
18 protecting that retirement income.

19 The anti-alienation provision is not dependent
20 upon State spendthrift trust law. When this Court decided
21 Guidry, the Court did not refer to the State spendthrift
22 trust law of Colorado to determine whether or not the
23 pension benefits in that case could be subject --
24 subjected to a constructive trust.

25 That would be contrary to ERISA's policy of

1 national uniformity. The enforcement would become
2 dependent on the vagaries of State spendthrift trust laws.

3 State spendthrift trust law varies from State to
4 State. In some States creditors can reach the corpus of
5 spendthrift trusts, and in other States spendthrift trusts
6 have been abolished altogether.

7 Furthermore, contrary to what petitioner
8 suggests, most --

9 QUESTION: You mean it doesn't cover spendthrift
10 trusts?

11 MR. HUENNEKENS: In some States, spendthrift
12 trust law has been abolished altogether.

13 QUESTION: Yes, but in those States where there
14 is spendthrift trust laws, they would apply. They would
15 be an applicable law, wouldn't they?

16 MR. HUENNEKENS: They most certainly would be an
17 applicable law.

18 QUESTION: So that problem of having somewhat
19 varying and inconsistent State laws apply, I mean, that
20 problem exists no matter what, doesn't it?

21 MR. HUENNEKENS: Mr. Justice, I am suggesting
22 that ERISA has its own -- by virtue of the anti-
23 alienation provision, which has been -- preempts State
24 law, it is the end of the analysis with regard to whether
25 or not it can be -- the pension benefit can be subjected

1 to creditor process.

2 QUESTION: Once you have an ERISA plan, I
3 understand. But you are not suggesting that courts would
4 not have to grapple with varying State laws with respect
5 to spendthrift trusts under this provision anyway. I
6 mean, in some other instances, they will have to do that.

7 MR. HUENNEKENS: That is correct.

8 QUESTION: But just not for ERISA plans.

9 MR. HUENNEKENS: Just not for ERISA plans. And
10 the reason it is not just for ERISA plans and why it is
11 important, is because many of the practices that ERISA
12 actively encourages would be prohibited or violate the
13 spendthrift trust laws in certain jurisdictions.

14 For example, allowing employees to make matching
15 contributions would violate the spendthrift trust laws in
16 various States. Allowing for hardship withdrawals would
17 violate the spendthrift trust laws in various States.

18 Furthermore, many spendthrift trust laws would
19 treat as self-settled a plan where an employee can reach
20 his retirement benefit upon termination, a provision that
21 ERISA requires. For these reasons, Congress choose to
22 preempt the area and to avoid these nuances of State
23 spendthrift trust law.

24 Furthermore, on the element of control, no fact-
25 based inquiry under State law is necessary and no

1 exception is necessary. ERISA already contains adequate
2 safeguards to protect against the type of potential
3 mischief that could occur as suggested by the petitioner.

4 ERISA places limits on the amounts that an
5 individual can contribute to a plan. It places limits on
6 the ability to develop short-term plans. It also has
7 requirements on the type and number of employees that
8 would be covered under a plan. ERISA has stringent
9 fiduciary requirements and the Secretary of Labor is given
10 broad enforcement powers, as is the Internal Revenue
11 Service, which can disqualify a plan for violation and
12 trigger significant adverse tax consequences.

13 Furthermore, section 548 of the bankruptcy code
14 would give a trustee the right to avoid fraudulent
15 conveyances made by a person in control during the year
16 preceding the filing of the bankruptcy petition. These
17 safeguards are adequate, and the type of exception that is
18 being advocated by petitioner is not necessary, and in
19 fact, it would destroy the uniformity that Congress ought
20 to achieve. It would also destroy many of the provisions
21 encouraged by ERISA to foster growth of pension plans.

22 The third reason why Mr. Shumate's interest in
23 the retirement plan should be included -- should not be
24 included in the bankruptcy estate is because of the
25 disparate treatment that the property interest would be

1 given inside a bankruptcy as opposed to outside a
2 bankruptcy.

3 If a bankruptcy exception to the ERISA's anti-
4 alienation provision were to be created, then a debtor
5 outside of bankruptcy would enjoy greater rights than a
6 debtor who is inside a bankruptcy.

7 This Court has previously recognized that there
8 should be uniformity of treatment of property interests in
9 those circumstances --

10 QUESTION: How would that come about, Mr.
11 Huennekens, what you just said?

12 MR. HUENNEKENS: It is -- the restriction on the
13 voluntary or involuntary alienation of ERISA plans is
14 uniformly enforced outside of bankruptcy. Petition
15 acknowledges that, so that under Virginia law, for
16 instance, no creditor can reach through garnishment,
17 attachment or any other vehicle that benefit.

18 But a creditor could force an individual into
19 bankruptcy either by an involuntary filing or other
20 pressure -- collection pressure -- and thereby reach the
21 retirement benefit, so that the retirement benefit would
22 have a different status inside a bankruptcy where it would
23 be vulnerable to creditors, as opposed to outside a
24 bankruptcy where it would be protected.

25 QUESTION: That seems to me the whole purpose of

1 the bankruptcy law is to collect assets that have never
2 been collected before and protective and made available to
3 creditors.

4 QUESTION: And if you exemptions that operate
5 outside of bankruptcy, by virtue of State law, don't those
6 same exemptions continue to operate in bankruptcy even
7 though it is a part of the estate?

8 MR. HUENNEKENS: The easy answer, Mr. Chief
9 Justice, is yes. But in the area of ERISA, what we are
10 finding is that ERISA preemption provisions are being held
11 to preempt State law exemptions. And so what you are
12 ending up with in many jurisdictions such as in the Ninth
13 Circuit are complete inability for debtors to exempt
14 retirement benefits, either by exclusion or exemption.

15 Mr. Justice White, in response to your question,
16 the policy of the bankruptcy code is to allow a trustee to
17 assemble assets and to step into the shoes of the debtor
18 and to assemble the assets and liquidate them for the
19 benefit of creditors.

20 QUESTION: But property is just treated
21 differently in a bankruptcy proceeding than it is outside
22 a bankruptcy.

23 MR. HUENNEKENS: I would respectfully say no,
24 that inside a bankruptcy, the property interests are the
25 same as those outside of bankruptcy. A trustee has a few

1 additional powers that support or promote the concept of
2 equality of distribution among creditors, such as being
3 able to avoid preferences and pursuing fraudulent
4 conveyances.

5 QUESTION: Well, outside of bankruptcy,
6 creditors can just sue and attach. Inside a bankruptcy,
7 they can't.

8 MR. HUENNEKENS: That's exactly right, Justice
9 --

10 QUESTION: So the property is treated
11 differently.

12 MR. HUENNEKENS: The property is subject to an
13 automatic stay, so the creditors cannot reach the
14 property, but the property is there to be liquidated for
15 the benefit of the creditors by a trustee and then equally
16 divided among all creditors under the distribution
17 provisions of the bankruptcy code rather than allowing one
18 creditor to attach and beat out the other creditors.

19 And that would be the policy difference that.
20 would occur in bankruptcy. But with regard to what
21 property can be reached, the laws are uniform inside of
22 bankruptcy and out, otherwise, creditors would be
23 encouraged to file involuntary bankruptcies and force
24 creditors into bankruptcy, which is a policy which has not
25 been encouraged under the law.

1 Finally, I would like to address for just one
2 moment, the suggestion about the pay status in this case.
3 In petitioner's brief and response, it suggests that this
4 case was already in a pay status and suggests a date that
5 was subsequent to the filing of the bankruptcy petition by
6 Mr. Shumate.

7 Mr. Shumate filed bankruptcy a month before the
8 date that petitioner contends the plan was terminated. In
9 fact, this plan, the trust, held these assets for 3 years.
10 after the date that petitioner suggests was the
11 termination date, which I would suggest is an artificial
12 date. And in any event, a bankruptcy estate is created
13 under section 541 upon the filing of the bankruptcy
14 petition and not upon any date of conversion, and section
15 348 bears that out in the bankruptcy code.

16 Thank you.

17 QUESTION: Thank you, Mr. Huennekens.

18 Mr. Wright, we will hear from you.

19 ORAL ARGUMENT OF CHRISTOPHER J. WRIGHT

20 ON BEHALF OF THE UNITED STATES, AS AMICUS CURIAE,

21 SUPPORTING THE RESPONDENT

22 MR. WRIGHT: Thank you, Mr. Chief Justice, and
23 may it please the Court:

24 Two of my main points have been made by the
25 Court and so let me try to deal with them very briefly.

1 First, I think it has been pointed out that the linchpin
2 of the bankruptcy trustee's position is that ERISA is not
3 an applicable nonbankruptcy law.

4 But it certainly would seem on the face of those
5 words that ERISA is applicable nonbankruptcy law. Indeed,
6 the Fifth Circuit, which ruled contrary to our position in
7 Goff, acknowledged the facially broad language of the
8 statute and went on not to follow the facially broad
9 language of the statute because it felt that the
10 legislative history suggested that applicable
11 nonbankruptcy law was limited to State spendthrift trust
12 law.

13 I would suggest that that is not a proper way to
14 read the statute. Applicable nonbankruptcy would seem to
15 cover ERISA. If that is so, then in those cases where a
16 pension plan has an anti-alienation provision, mandated by
17 ERISA, then the benefits are excluded from the bankruptcy
18 estate under the plain language of the exclusion
19 provision.

20 The second point that has also been made is that
21 the exemption provisions are not contrary to the
22 straightforward reading that I have just tried to give to
23 the exclusion provision.

24 The exemption provision that petitioner has
25 focused on today is the 522(d)(10)(e) provision which

1 discusses pension plans. The Court seems to understand
2 clearly two points about this. First, that provision
3 covers all sorts of pension plans, not just pension plans
4 that qualify for tax benefits under ERISA.

5 If a -- those sorts of pension plans, those that
6 aren't qualified under ERISA, of course, do not contain an
7 ERISA-mandated anti-alienation provision. And in cases
8 involving such benefits, they would not necessarily be
9 excluded from the bankruptcy estate and therefore might be
10 subject to exemption under 522(d).

11 Let me add that there are three significant
12 categories of pension plans that qualify for tax benefits
13 under ERISA, and yet are not required by the statute to
14 have an anti-alienation provision. And those are
15 governmental pension plans, church pension plans and
16 Individual Retirement Accounts.

17 Again, under our reading of the statute, those
18 plans are not necessarily excluded from the bankruptcy
19 estate. Interests in such plans would only be excluded if
20 they happen to qualify under State spendthrift trust law,
21 but interest in such plans are subject to exemption under
22 section 522(d)(10)(e).

23 And without section 522(d)(10)(e), interest in
24 such plans might be totally distributed to creditors in
25 bankruptcy proceedings. So section 522(d)(10)(e) serves

1 the very important function, in cases involving Individual
2 Retirement Accounts, governmental plans and church plans,
3 of protecting pension assets to the extent reasonably
4 necessary to the creditor's fresh start.

5 If applicable nonbankruptcy law is read to
6 include ERISA, then the statutes harmonize and the anti-
7 alienation provision is given its full force. If it is
8 read in the restrictive manner that petitioner proposes
9 there is a real clash. The anti-alienation provision is
10 not given its force.

11 We contend that it would be doubly erroneous to
12 read applicable nonbankruptcy law not in a straightforward
13 manner in order to induce a clash between two statutes.
14 It should be read straightforwardly to harmonize the
15 statutes.

16 Many Federal agencies are, of course, frequently
17 creditors in bankruptcy proceedings. We considered that
18 carefully and concluded, nevertheless, that the language
19 of ERISA and the language of the bankruptcy code compel
20 the conclusion that pension benefits, protected by ERISA's
21 mandatory anti-alienation provision may not be distributed
22 to creditors, either in or outside of bankruptcy, and that
23 is our submission to this Court.

24 QUESTION: Thank you, Mr. Wright.

25 Mr. Agee, you have 8 minutes remaining.

1 REBUTTAL ARGUMENT OF G. STEVEN AGEE

2 ON BEHALF OF THE PETITIONER

3 MR. AGEE: Mr. Chief Justice, and may it please
4 the Court:

5 I have only three points in rebuttal. With
6 respect to the Guidry case, the first major distinction of
7 Guidry is of course that it was not a bankruptcy case.
8 Unlike a lot of previous decisions that dealt with the
9 application of ERISA protecting benefits from State law
10 claims, Guidry did involve another Federal statute.

11 But the point of distinction, as I recall the
12 course of opinion, was that the statute in effect there,
13 the Labor Management Relations Act, had its own savings
14 clause, its own preemption provision that said it would
15 not interfere with another Federal law. And the Court
16 concluded, in effect, that the ERISA provision that says
17 it will not modify or impair other Federal law, the two
18 trumped each other and therefore ERISA could prevail over
19 the Labor Management Relations Act.

20 But in this case there is no similar provision
21 in the bankruptcy code and there is no exception in ERISA
22 or anywhere else that I am aware of, from this Federal
23 preemption provision within ERISA itself that would make
24 the bankruptcy code subservient to ERISA in that
25 circumstance.

1 There is some discussion of the concept of the
2 fresh start, which is an important part of the bankruptcy
3 codes provisions. But in this particular case, I would
4 submit that the fresh start is not at all what was
5 anticipated in drafting the bankruptcy code where you have
6 an exemption for the tools of the trade, some small
7 exemption for household goods, things of that nature.

8 Because in this case, if the decision is in
9 favor of the debtor, the debtor simply goes to the clerk's
10 office, takes his check, can get on the first plane if he
11 or she chooses to do so and they are gone to Mexico. They
12 can spend the entire proceeds in the gaming house the very
13 first day that they are gone. There is no requirement,
14 there is no protection of the stream of income for
15 retirement purposes in this particular case.

16 And lastly, to speak about the harmonization of
17 the various code sections, this provision within ERISA
18 that says it will not supersede or impair other Federal
19 law functions like the all-inclusive scope of the
20 bankruptcy estate under section 541 is harmonized with
21 this reasonable needs exemption in section 522 that deals
22 with those exemptions.

23 So I submit there is a harmonization by reading
24 the code as the bankruptcy trustee suggests.

25 And I would submit to the Court that to honor

1 the plain meaning of this reasonable needs exemption in
2 bankruptcy under 522, there should be no exclusion from
3 the estate under 541(c)(2) and that the bankruptcy code's
4 preexisting practice dealing with benefits that are
5 prepared for distribution and ready for payment when the
6 debtor enters into bankruptcy proceedings should carry
7 over, post-code and apply in this case.

8 I thank the Court.

9 CHIEF JUSTICE REHNQUIST: Thank you, Mr. Agee.

10 The case is submitted.

11 (Whereupon, at 1:49 p.m, the case in the above-
12 entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents and accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

NO. 91-913 - JOHN R. PATTERSON, TRUSTEE, Petitioner V.

JOSEPH B. SHUMATE, JR.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Michael S. Sander
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