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Bankruptcy—Qualified ERISA Plans Deemed Excludable from Bankruptcy Estates. Patterson v. Shumate, 112 S. Ct. 2242 (1992).

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BANKRUPTCY—QUALIFIED ERISA PLANS DEEMED EXCLUDABLE FROM BANKRUPTCY ESTATES. *Patterson v. Shumate*, 112 S. Ct. 2242 (1992).

I. INTRODUCTION

The Federal Bankruptcy Code excludes from the debtor's bankruptcy estate property that is "subject to a restriction on transfer enforceable under 'applicable nonbankruptcy law.' "[1] However, the Code is silent as to what applicable nonbankruptcy law is and whether qualified Employee Retirement Income Security Act (ERISA) pension plans fall within the realm of applicable nonbankruptcy law. Until recently, the United States Circuit Courts of Appeals were split as to the meaning of applicable nonbankruptcy law. Recently, the United States Supreme Court resolved this issue in *Patterson v. Shumate*[2] and held that qualified ERISA plans are to be excluded from the bankruptcy estate.[3]

II. FACTS

Joseph B. Shumate, Jr. was president and chairman of the board of directors of Coleman Furniture Corporation.[4] Shumate, along with approximately 400 other Coleman employees, participated in the Coleman Furniture Corporation Pension Plan (Plan), a plan which satisfied all of the requirements necessary under ERISA to qualify for favorable tax treatment under the Internal Revenue Code,[5] including the requirement that benefits are not to be alienable or assignable.[6] Specifically, Article 16.1 of Coleman's Plan stipulated that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated."[7]

Shumate, employed by Coleman for over thirty years, had a Plan interest of approximately $250,000 when Coleman filed for bankruptcy under Chapter 11 of the Bankruptcy Code in 1982.[8] The case was later converted to a Chapter 7 proceeding, and a trustee

1. *Bankruptcy and Exceptions to the Antiassignment Rule*, PPD ERISA NEWSLETTER (Pension Publications of Denver, Inc.), No. 92-4 at 1, 1. *See* 11 U.S.C. § 541(c)(2) (1988).
2. 112 S. Ct. 2242 (1992).
3. *Id.* at 2250.
4. *Id.* at 2245.
5. *Id.*
6. 29 U.S.C. § 1056(d)(1) (1988).
7. 112 S. Ct. at 2245.
8. *Id.*

was appointed.[9] Due to personal financial difficulties, Shumate himself filed for bankruptcy in 1984,[10] and John R. Patterson was named as trustee.[11]

The bankruptcy trustee for Coleman terminated the Plan and paid out full distributions to all of the participants with the exception of Shumate.[12] Patterson then filed an adversary proceeding in the Bankruptcy Court for the Western District of Virginia to obtain Shumate's portion of the Plan for the benefit of his creditors.[13] Shumate resisted by asking the United States District Court for the Western District of Virginia, which consolidated these actions, to pay his interest in the Plan directly to him, arguing that the proceeds from his pension plan were excluded from the bankruptcy estate because "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title [of the Bankruptcy Code]."[14] The District Court declined to follow Shumate's interpretation of § 541(c)(2) of the Bankruptcy Code, holding the "applicable nonbankruptcy law" provision to apply only to state law and not to federal law.[15] The court found that Shumate's interest did not qualify as a spendthrift trust under Virginia law and was thus not excluded from the bankruptcy estate.[16]

The decision of the district court was reversed by the Fourth Circuit Court of Appeals.[17] The court relied on its previous decision in *Anderson v. Raine (In re Moore)*[18] in holding that the ERISA-qualified pension plan was protected under "applicable nonbankruptcy law," and, therefore, the pension was excluded from the bankruptcy estate.[19]

The United States Supreme Court granted certiorari[20] because of the split in the circuit courts as to the meaning of "applicable

9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. 11 U.S.C. § 541(c)(2) (1988).
15. 112 S. Ct. at 2245 (1992) (quoting Creasy v. Coleman Furniture Corp., 83 B.R. 404, 406 (W.D. Va. 1988)).
16. *Id.* (quoting Creasy v. Coleman Furniture Corp., 83 B.R. 404, 406-09 (W.D. Va. 1988)).
17. 943 F.2d 362 (4th Cir. 1991).
18. 907 F.2d 1476 (4th Cir. 1990).
19. 943 F.2d at 365.
20. 112 S. Ct. 932 (1992).

nonbankruptcy law" in § 541(c)(2) of the Bankruptcy Code.[21] The Court held that "applicable nonbankruptcy law" clearly applied to federal as well as state law and that Shumate's pension proceeds were part of a qualified pension plan under ERISA and, therefore, excluded from his bankruptcy estate.[22] *Patterson v. Shumate*, 112 S. Ct. 2242 (1992).

III. Historical Development

Congress enacted § 541 of the Bankruptcy Code with the intention that its uniformity and thorough scope would allow creditors to reach more of the debtor's property and, at the same time, provide the debtor with the possibility of a "fresh start" albeit not a "head start."[23] What Congress did not anticipate was the confusion that would develop from the different interpretations of the exclusion clause found in § 541(c)(2). Before the Supreme Court construed the meaning of "applicable nonbankruptcy law," there were three different interpretations of the clause.

A. "Applicable Nonbankruptcy Law": Not Including Federal Law

The earliest and most prominent case to hold that applicable nonbankruptcy law did not include federal law is the Fifth Circuit case of *Goff v. Taylor (In re Goff)*.[24] The assets sought to be protected in *Goff* were the debtors' self-employed retirement plans, or Keogh plans.[25] These plans expressly provided that "[n]either the assets nor the benefits provided hereunder shall be subject to alienation, anticipation, assignment, garnishment, attachment, execution, or levy of any kind."[26]

The Fifth Circuit Court of Appeals refused to exclude the plans from the bankruptcy estate, holding that its "examination of the Bankruptcy Code's provisions and of discernible congressional intent

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21. 112 S. Ct. at 2246.

22. *Id.* at 2246-48.

23. Robert Hutchison, Comment, *ERISA and Bankruptcy: Can Creditors Reach a Chapter 7 Debtor's Pension?*, 61 Miss. L.J. 389, 392 (1991). *See also* Geoffrey Orlandi, Recent Development, *Property of the Estate: Section 541*, 3 Bankr. Dev. J. 341, 342-43 (1986).

24. 706 F.2d 574 (5th Cir. 1983). *See* William C. Byrd II, Note, *To Exclude or Not to Exclude: The Dilemma of ERISA Pension Plans in the Realm of Bankruptcy*, 15 Am. J. Trial Advoc. 343, 353-60 (1991); Hutchison, *supra* note 23, at 394-99; Marvin Krasny & Bruce Grohsgal, *Whose Pension is it Anyway?—ERISA and the Bankruptcy Code*, 97 Com. L.J. 12, 14-19 (1992).

25. 706 F.2d at 576.

26. *Id.* at 577.

reveals that applicable nonbankruptcy law was intended as a narrow reference to state 'spendthrift trust' law and not as a broad reference to all other law, both federal and state, including ERISA."[27] The court looked to the legislative history found in House and Senate Reports discussing § 541(c)(2) to support its decision.[28] The House Report stated that "[p]aragraph (2) of subsection (c) . . . preserves restrictions on transfer of a spendthrift trust to the extent that the restriction is enforceable under applicable nonbankruptcy law."[29] The Senate Report stated that "[p]aragraph (2) of subsection (c) . . . preserves restrictions on a transfer of a spendthrift trust . . . [since] . . . the restriction is enforceable nonbankruptcy law to the extent of the income reasonably necessary for the support of a debtor and his dependents."[30] The court also relied on a Supreme Court decision under prior bankruptcy law which held that where property "is sufficiently rooted in pre-bankruptcy past and so little entangled with the bankrupts' ability to make an unencumbered fresh start . . . it should be regarded as 'property' [of the estate]."[31]

Goff has been criticized for its review of legislative history because of the generally accepted principle of statutory construction that legislative history of a statute is not examined when the statute reviewed is clear.[32] Further, critics argued legislative history did not support the conclusion that Congress intended to limit the § 541(c)(2) exclusion to spendthrift trusts.[33] Others have argued that by interpreting the exclusion in this manner, the policy goal of ERISA is undermined because the debtor is left with "virtually no means with which to provide for himself and his family after he retires."[34]

Less than one year after *Goff*, the Eighth Circuit Court of Appeals held in *Samore v. Graham (In re Graham)*[35] that "[t]here [was] no indication whatever that Congress intended § 541(c)(2) to be a broad exclusion which would apply to keep all debtors' entire ERISA plan benefits out of the estate."[36] In determining this

27. *Id.* The Fifth Circuit reaffirmed its holding in *Goff* in Heitkamp v. Dyke (*In re* Dyke), 943 F.2d 1435 (5th Cir. 1991).

28. 706 F.2d at 581-86. *See* Byrd, *supra* note 24, at 353-56.

29. Byrd, *supra* note 24, at 354 (citing H.R. REP. No. 95, 95th Cong., 2d Sess. 369 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6325); *see also Goff*, 706 F.2d at 581.

30. Byrd, *supra* note 24, at 354 (citing S. REP. No. 95, 95th Cong., 2d Sess. 83 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6136); *see also Goff*, 706 F.2d at 582.

31. 706 F.2d at 578 (quoting Segal v. Rochelle, 382 U.S. 375, 380 (1966)).

32. Krasny & Grohsgal, *supra* note 24, at 15.

33. Krasny & Grohsgal, *supra* note 24, at 16.

34. Byrd, *supra* note 24, at 363-64.

35. 726 F.2d 1268 (8th Cir. 1984).

36. *Id.* at 1272.

Congressional intent, the *Graham* court also looked to the legislative history of § 541(c)(2) after determining that the statute was not clear on its face.[37] Another factor the court considered in finding that § 541(c)(2) did not apply was that § 522(b)(1) explicitly allows an individual debtor to exempt property specified under § 522(d), which includes pension benefits, among other alternatives.[38] Pension benefits, if not chosen, would not be exempt, clearly showing an intention to normally include pension benefits as part of the bankruptcy estate.[39]

Over the following several years, other circuit courts followed *Goff*.[40] The Ninth Circuit Court of Appeals adopted this reasoning in *Daniel v. Security Pacific National Bank* (*In re Daniel*)[41] and stated that the "*Goff* case makes it clear that Congress *never intended* for the ERISA and IRC anti-alienation provisions to create exemptions or exclusions for pension plans under . . . the nonbankruptcy exclusions of 11 U.S.C. § 541(c)(2)."[42] The Eleventh Circuit Court of Appeals followed these courts' reasoning in *Lichstrahl v. Bankers Trust* (*In re Lichstrahl*)[43] and held that because the pension plans

37. *Id.* at 1271-72. *See also* Comment, *The Fate of ERISA-Qualified Pension Plans Under the Federal Bankruptcy Code*, 11 WM. MITCHELL L. REV. 1045, 1061-62 (1985).

38. 11 U.S.C. §§ 522(b)(1) and 522(d) (1988).

39. 726 F.2d at 1272.

40. Krasny & Grohsgal, *supra* note 24, at 19-20.

41. 771 F.2d 1352 (9th Cir. 1985).

42. *Id.* at 1359. *See also* Krasny & Grohsgal, *supra* note 24, at 19-20. The Ninth Circuit Court of Appeals reaffirmed the *Daniel* ruling in Pitrat v. Garlikov, 947 F.2d 419 (9th Cir. 1991). The *Pitrat* court cited *Daniel*, saying, "[T]he phrase '*applicable non-bankruptcy law*' . . . was intended to be a narrow reference to *state* 'spendthrift trust' law and not a broad reference to *all* other laws, including ERISA and IRC, which prohibit alienation." 947 F.2d at 422.

43. 750 F.2d 1488 (11th Cir. 1985). The court held that " 'applicable non-bankruptcy law' refers only to state spendthrift trust law. Therefore, ERISA-qualifying pension plans containing anti-alienation provisions are excluded pursuant to section 541(c)(2) only if they are enforceable under state law as spendthrift trusts." *Id.* at 1490. The court determined that the pension plans were not spendthrift trusts under Florida law because the person who was the beneficiary was also the trustee of the pension plans and as such he enjoyed "absolute dominion" over the trust property. *Id.* Since the plans were not spendthrift trusts, they were not excluded from the bankrupt estate by § 541(c)(2). *Id.* Critics of the *Lichstrahl* case argue that by definition, qualified ERISA plans satisfy the requirement of a restraint on the transferability of the beneficiary's interest. Nancy R. Menzel, Note, *Corporate Pension Plans as Property of the Bankruptcy Estate*, 69 MINN. L. REV. 1113, 1124 (1985). Nevertheless, the court in *Lichstrahl* pierced the corporate veil of the debtor and held that the trust could not be a spendthrift trust because of the reservation by the settlor-debtor of the power to amend or terminate the trust through the corporation, which in the court's mind gave the settlor-debtor "absolute dominion." 750 F.2d at 1490. *See also* Menzel, *supra* at 1124.

were not spendthrift trusts, they were not to be excluded from the bankruptcy estate under § 541(c)(2).[44]

B. "Applicable Nonbankruptcy Law": Including Federal Law

The leading case holding that applicable nonbankruptcy law does include federal law is *In re Moore*.[45] The debtors in this case were all employees of Springs Industries who participated in the company's extensive retirement plan.[46] The plan contained anti-assignment restrictions.[47] The court rejected the "overly restrictive interpretation" that § 541(c)(2) only applied to state spendthrift trust law,[48] and maintained that the narrow interpretation demanded by the bankruptcy trustee simply was not the interpretation required by the statute's "broad language."[49] The court found that "[n]othing in the phrase 'applicable nonbankruptcy law' . . . suggests that the phrase refers exclusively to state law, much less to state spendthrift trust law,"[50] and pointed out that it was "incongruous to give the same phrase in § 541(c)(2) ["applicable nonbankruptcy law"] a narrower construction than the identical phrase in other parts of the Bankruptcy Code, particularly since the disparate sections of the Bankruptcy Code were enacted together in a single comprehensive statute."[51]

The *Moore* court declined to consider legislative history,[52] calling it "irrelevant" and "inconclusive."[53] The court stated that it was improper to examine the legislative history because the language was clear,[54] and "[l]egislative history is irrelevant to the interpretation of an unambiguous statute."[55]

Finally, the court held that ERISA constituted applicable nonbankruptcy law because it unquestionably prevented general

44. 750 F.2d at 1490.
45. 907 F.2d 1476 (4th Cir. 1990). *See* Byrd, *supra* note 24, at 360-63; George L. Flint, Jr., *ERISA: Anti-Alienation Superiority in Bankruptcy*, 94 W. VA. L. REV. 411, 475-76 (1991); Krasny & Grohsgal, *supra* note 24, at 20-22; Richard Rollings, Jr., Note, *A Debtor's Interest in ERISA Funds as Property of the Estate: A Question of Statutory Interpretation*, 56 MO. L. REV. 787 (1991).
46. 907 F.2d at 1476-77.
47. *Id.* at 1477.
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.* at 1478. *See also* Flint, *supra* note 45, at 475.
52. 907 F.2d at 1478.
53. *Id. See also* Flint, *supra* note 45, at 475.
54. 907 F.2d at 1478.
55. *Id.* at 1478-79 (quoting Davis v. Michigan Dep't of Treasury, 109 S. Ct. 1500, 1504 n.3 (1989)).

creditors from obtaining an interest in a debtor's ERISA-qualified trust.[56] The court also said that this conclusion advanced ERISA's purpose of securing uniform pension benefit treatment throughout the country.[57]

The *Moore* holding soon had much influence over decisions in other circuits.[58] The Sixth Circuit followed the *Moore* decision in *Forbes v. Lucas (In re Lucas)*.[59] The *Lucas* court said that "[i]t is an axiom of statutory construction that resort to legislative history is improper when a statute is unambiguous"[60] and declared the language of § 541(c)(2) to be unambiguous.[61] The court found consistency between the "plain language of the statute" and the inclusion of ERISA within the definition of "applicable nonbankruptcy law."[62]

The Third Circuit in *Velis v. Kardanis*[63] and the Tenth Circuit in *Gladwell v. Harline (In re Harline)*[64] both followed the holding in *Moore* that "the plain meaning of § 541(c)(2) excluded from the estate the debtor's interest in an ERISA-qualified pension plan."[65] In *Velis*, the court found that "the term 'enforceable under applicable nonbankruptcy law' is not in the least ambiguous, and cannot reasonably be interpreted as 'enforceable under applicable state spendthrift-trust law.' "[66] The court included the debtor's IRA in the bankruptcy estate, however, because, although it had an anti-alienation clause, the debtor could withdraw the funds without penalty. Therefore, there were no "enforceable" restrictions on transferring the interest in the account.[67] As for the debtor's pension plan and Keogh plan, the court concluded that "to the extent the assets in these plans have already been distributed to or for the benefit of the debtor, the debtor no longer has available the protections which might otherwise have been accorded under the ERISA statute."[68] The court reasoned that when the money was taken out of the plans for the debtor's own purposes, the debtor had unrestricted possession

56. *Id.* at 1479.
57. *Id.* at 1480.
58. Krasny & Grohsgal, *supra* note 24, at 21-22; Rollings, *supra* note 45, at 797-99.
59. 924 F.2d 597 (6th Cir. 1991).
60. *Id.* at 600. *See also* Rollings, *supra* note 45, at 797.
61. 924 F.2d at 601. *See also* Rollings, *supra* note 45, at 797.
62. 924 F.2d at 601-02. *See also* Rollings, *supra* note 45, at 797.
63. 949 F.2d 78 (3rd Cir. 1991).
64. 950 F.2d 669 (10th Cir. 1991).
65. Krasny & Grohsgal, *supra* note 24, at 22.
66. 949 F.2d at 81.
67. *Id.* at 82. *See also* Krasny & Grohsgal, *supra* note 24, at 22.
68. 949 F.2d at 82.

of the pension funds, and they were no longer considered to be pension assets but were part of the estate.[69] The undistributed funds in the pension plan and the Keogh plan, on the other hand, were deemed to be excludable under § 541(c)(2).[70]

The *Harline* court followed the reasoning of the Third, Fourth, and Sixth Circuit Courts of Appeals and concluded that a "tax-qualified ERISA pension or profit sharing plan is exempt from the bankruptcy estate under § 541(c)(2)."[71] Although remanded for lack of a sufficient record upon which to determine whether the plan qualified, the Tenth Circuit held that if the plan was ERISA-qualified and the debtor had not retired or ceased employment with the employer-sponsor, then his interest in the plan would be excluded from his bankruptcy estate by § 541(c)(2).[72]

C. ERISA-Qualified Plans Are State Spendthrift Trusts

Prior to the Supreme Court's decision in *Patterson v. Shumate*, the Seventh Circuit Court of Appeals and the district courts of the Second Circuit held that "ERISA-qualified pension plans constitute state spendthrift trusts, at least in part."[73] In *In re Tisdale*,[74] the court rejected the argument that § 541(c)(2) excluded all ERISA-qualified pension plans from the bankruptcy estate[75] but resolved that under Connecticut law the part of the debtor's plan that was funded by the employer contained anti-alienation restrictions.[76] The court then found that the pension plan constituted a spendthrift trust and was exempt to the extent of the employer's contributions.[77]

The same result was reached applying New York law in *In re Kleist*[78] and Indiana law in *In re LeFeber*.[79] In *Kleist*, a New York statute allowed qualified ERISA plans to be "conclusively presumed to be spendthrift trusts under [the statute] and the common law of the state of New York for all purposes, including . . . all cases arising under or related to a case arising under" the Bankruptcy

69. *Id. See also* Krasny & Grohsgal, *supra* note 24, at 22.
70. 949 F.2d at 83. *See also* Krasny & Grohsgal, *supra* note 24, at 22.
71. 950 F.2d at 674. *See also* Krasny & Grohsgal, *supra* note 24, at 22.
72. 950 F.2d at 676.
73. *In re* LeFeber, 906 F.2d 330 (7th Cir. 1990); *In re* Tisdale, 112 B.R. 61 (D. Conn. 1990); *In re* Kleist, 114 B.R. 366 (N.D.N.Y. 1990). *See also* Krasny & Grohsgal, *supra* note 24, at 23.
74. 112 B.R. 61 (Bankr. D. Conn. 1990).
75. *Id.* at 64.
76. *Id.* at 66.
77. *Id.*
78. 114 B.R. 366 (Bankr. N.D.N.Y. 1990).
79. 906 F.2d 330 (7th Cir. 1990).

Code.[80] The court noted that the state would be given deference in creating the boundaries of the definition of spendthrift trusts, thus allowing a state to put property over which the debtor has control within the protection of spendthrift trust boundaries.[81]

In *LeFeber*, an Indiana statute included ERISA-qualified pension plans as spendthrift trusts, and the Seventh Circuit Court of Appeals ruled that the statute was "applicable nonbankruptcy law" under § 541(c)(2) and excluded the pension assets from the bankruptcy estate.[82] The court held, "In our opinion, the restriction preventing an irrevocable assignment would be enforceable under Indiana law, and therefore § 541(c)(2) makes the same restriction enforceable in bankruptcy."[83]

IV. ANALYSIS OF THE COURT IN *SHUMATE*

In *Patterson v. Shumate*,[84] the United States Supreme Court resolved the question of whether qualified pension plans are to be included in the bankruptcy estate. The Court's decision to exclude the qualified pension benefits was principally based upon the "plain language of the Bankruptcy Code and ERISA."[85] The Code provides that "[a] restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title."[86] The Court found that there was nothing in the statute which limited the application of "applicable nonbankruptcy law" to state law.[87] Justice Blackmun, writing for the Court, concluded:

> The Code reveals, significantly, that Congress, when it desired to do so, knew how to restrict the scope of applicable law to 'state law' and did so with some frequency. . . . Congress' decision to use the broader phrase 'applicable nonbankruptcy law' in § 541(c)(2) strongly suggests that it did not intend to restrict the provision in the manner that petitioner contends.[88]

The Court held that, when plainly read, there was nothing in the statute to limit applicable nonbankruptcy law to state law, and,

80. 114 B.R. at 368-69. *See also* Krasny & Grohsgal, *supra* note 24, at 23.
81. 114 B.R. at 369-70. *See also* Krasny & Grohsgal, *supra* note 24, at 23.
82. 906 F.2d at 331. *See also* Krasny & Grohsgal, *supra* note 24, at 23.
83. 906 F.2d at 331.
84. 112 S. Ct. 2242 (1992).
85. *Id.* at 2246.
86. 11 U.S.C. § 541(c)(2) (1988).
87. 112 S. Ct. at 2246.
88. *Id.* at 2246-47. Justice Blackmun also pointed out that the phrase "applicable nonbankruptcy law" was used in the other sections of the Bankruptcy Code and had been interpreted by courts to include federal law. *Id.* at 2247 n.2.

therefore, federal law such as ERISA was included under § 541(c)(2).[89] Justice Scalia, in his concurring opinion, observed that "[w]hen the phrase 'applicable nonbankruptcy law' is considered in isolation, the phenomenon that three Courts of Appeals could have thought it a synonym for 'state law' is mystifying."[90]

After concluding that applicable nonbankruptcy law was not confined to state law, the Court turned to the anti-alienation clause in Coleman's Plan to determine if it satisfied the terms of § 541(c)(2).[91] The Court looked at § 206(d)(1) of ERISA,[92] which states that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated."[93] The Court also looked at the correlative section of the Internal Revenue Code.[94] This section states that "[a] trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated."[95] The Court concluded that both sections unquestionably dictated a "restriction on the transfer" of a debtor's "beneficial interest" in the trust and that Coleman Furniture's Plan complied with these requirements.[96] Because ERISA is considered applicable nonbankruptcy law and because Coleman's pension plan contained the proper anti-alienation clause to be a qualified plan under ERISA, the Supreme Court held that there was an enforceable transfer restriction and that Shumate's pension proceeds were excluded from his bankruptcy estate.[97]

The Court addressed Patterson's arguments against this reading of the Code. First, he asserted that the Court should have looked at relevant legislative materials that established that exclusion from the bankruptcy estate did not include the debtor's interest in a qualified ERISA pension plan under § 541(c)(2).[98] The Court responded that even if it had considered the legislative history of § 541(c)(2), there was nothing in this material that would have changed the outcome of the decision because there was "no clearly expressed legislative intention contrary to the result reached above."[99]

89. *Id.* at 2247.
90. *Id.* at 2250 (Scalia, J., concurring).
91. *Id.* at 2247.
92. 29 U.S.C. § 1056(d)(1) (1988).
93. 112 S. Ct. at 2247 (citing 29 U.S.C. § 1056(d)(1) (1988)).
94. 26 U.S.C. § 401(a)(13) (1988).
95. 112 S. Ct. at 2247 (citing 26 U.S.C. § 401(a)(13)).
96. *Id.*
97. *Id.* at 2246-48.
98. *Id.* at 2248.
99. *Id.* The legislative material referred to by the petitioner was from the House

Second, Patterson claimed that by allowing a debtor to exclude his ERISA-qualified pension plan interest under § 541(c)(2), the Court rendered § 522(d)(10)(E),[100] the exemption section, useless.[101] This section allows a debtor who chooses the federal exemptions to exempt his right to secure "a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract . . . to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."[102] Patterson argued that if the entire pension plan interest could be excluded then there would be no reason for a limited exemption for it elsewhere.[103] The Court rejected this argument on the ground that "§ 522(d)(10)(E) exempts from the bankruptcy estate a much broader category than § 541(c)(2) excludes."[104] Justice Blackmun maintained that "[o]nce [the] petitioner concedes that § 522(d)(10)(E)'s exemption applies to more than ERISA-qualified plans containing anti-alienation provisions, his argument that our reading of § 541(c)(2) renders the exemption provision superfluous must collapse."[105]

Finally, Patterson asserted that the Court's holding thwarted the policy of the Bankruptcy Code to guarantee an extensive inclusion of the debtor's assets in the bankruptcy estate.[106] He claimed that Congress expansively defined property of the bankruptcy estate by declaring that it included "all legal and equitable interests of the debtor in property as of the commencement of the case."[107] One narrow exception exists for assets where there is a "restriction on the transfer of the debtor's interest in a trust that is enforceable

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and Senate Reports for the Bankruptcy Reform Act of 1978. These reports spoke of allowing spendthrift trusts to fall under the protection of applicable nonbankruptcy law and in the petitioner's opinion that limited § 541(c)(2) to spendthrift trusts. *Id.* The House Report states: "Paragraph (2) of subsection (c) . . . preserves restrictions on transfer of a spendthrift trust to the extent that the restriction is enforceable under applicable nonbankruptcy law." *Id.* (citing H.R. REP. No. 95-595, at 369 (1977)). The Senate Report states that section 541(c)(2) "preserves restrictions on a transfer of a spendthrift trust." *Id.* (citing S. REP. No. 95-989, at 83 (1978)).

100. 11 U.S.C. § 522(d)(10)(E) (1988).

101. 112 S. Ct. at 2248-49.

102. *Id.* at 2249 (citing 11 U.S.C. § 522(d)(10)(E) (1988)).

103. *Id.*

104. *Id.* Justice Blackmun described pension plans that could be exempted from the bankruptcy estate under § 522(d)(10)(E) but would not qualify under § 541(c)(2) because they lacked an anti-alienation clause. Some examples include individual retirement accounts, governmental entity pension plans, and church pension plans. *Id.*

105. *Id.*

106. *Id.*

107. *Id.* at 2249 (citing 11 U.S.C. § 541(a)(1) (1988)). *See also* Hutchison, *supra* note 23, at 389-90.

under applicable nonbankruptcy law."[108] The Court rejected this assertion for several reasons. First, the Court suggested that the petitioner mistook the expansive definition of includable property to mean that it was an underlying "policy" of the complete Code.[109] In rejecting this argument, the Court said that "to the extent that policy considerations are even relevant where the language of the statute is so clear, we believe that our construction of § 541(c)(2) [including ERISA as applicable nonbankruptcy law] is preferable to the one petitioner urges upon us."[110]

Secondly, the Court reasoned that its decision ensured the uniform treatment of pension benefits regardless of the beneficiary's financial status.[111] The Court stated that it had refused any exceptions to ERISA's anti-alienation clause outside of the bankruptcy context in previous cases.[112] This approach was taken in order to decrease the attempts of creditors to manipulate the bankruptcy laws in order to attain access to funds not available under other conditions.[113]

Next, the Court found that its ruling gave ERISA's goal of pension benefit protection full force and effect.[114] This goal guarantees that "if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he actually will receive it."[115]

Lastly, the Court stated that the holding in *Shumate* promoted uniformity in the treatment of pension benefits nationwide.[116] *Shumate* insured that the benefits from pension plans would be governed under the federal law of ERISA instead of being left to the independent interpretations of state spendthrift trust law.[117] Because there is only one governing authority, pension plan regulation is more uniform, and the beneficiaries of the plan are given more protection and better security.[118] If the *Goff* and *Lichstrahl* state spendthrift trust tests were used to determine whether a qualified pension plan would be excluded or included in the bankruptcy estate,

108. Hutchison, *supra* note 23, at 390.
109. 112 S. Ct. at 2249.
110. *Id.*
111. *Id.*
112. *Id.* at 2250. *See* Guidry v. Sheet Metal Workers Pension Fund, 493 U.S. 365 (1990).
113. 112 S. Ct. at 2250.
114. *Id.*
115. *Id.* (quoting Nachman Corp. v. Pension Benefit Guaranty Corp., 446 U.S. 359, 375 (1980)). *See also* Hutchison, *supra* note 23, at 391.
116. 112 S. Ct. at 2250 (citing Fort Halifax Packing Co. v. Coyne, 482 U.S. 1, 9 (1987)).
117. *Id.*
118. Byrd, *supra* note 24, at 351.

the results would vary in different states due to the differing treatment of the debtor's plan under separate state laws.[119]

V. SIGNIFICANCE OF *PATTERSON V. SHUMATE*

Patterson v. Shumate had an immediate impact on bankruptcy law. A mere nine days after the decision, the Eighth Circuit Court of Appeals remanded *Wear v. Greene (In re Greene)*[120] to the bankruptcy court to be considered in the light of *Shumate* because its prior decision in *Samore v. Graham (In re Graham)*[121] no longer constituted valid law. Other cases, such as *In re Jones*[122] and *In re Iannacone*,[123] have also been remanded in light of *Shumate*. In Massachusetts, the district court issued memorandums in *In re Sirois*[124] and *In re Greif*[125] holding that if the pension plans in question were deemed qualified under ERISA, then they would be excluded from the bankruptcy estate due to the holding in *Shumate*.

Patterson v. Shumate has far reaching benefits for debtors in bankruptcy. It will allow qualified pension plans to be protected for the debtor's benefit, and the debtor will receive what he has been promised from the pension plan. It will also, as the Court recognized, provide a uniform procedure for treatment of qualified pension plans.[126]

However, *Shumate* does not answer the question of the availability of qualified pension funds as assets of the bankruptcy estate once the employee begins to receive distributions of the corpus from the pension plan. Section 522(d)(10)(E) allows an exemption for "a payment under a stock bonus, pension, profitsharing, annuity . . . to the extent reasonably necessary for the support of the debtor and any dependent of the debtor,"[127] but this is an issue that will need to be decided on a case by case basis.

From the creditor's point-of-view, the ruling provides another barrier to access to the debtor's assets. Qualified pension plans will be another safe harbor for the debtor in bankruptcy. The money, once placed in a qualified pension plan, will not be taken to pay the debts of a bankrupt debtor. The creditor will more than likely

119. Menzel, *supra* note 43, at 1126.
120. 967 F.2d 1216 (8th Cir. 1992).
121. 726 F.2d 1268 (8th Cir. 1984).
122. 142 B.R. 950 (Bankr. W.D. Wash. 1992).
123. 974 F.2d 88 (8th Cir. 1992).
124. 144 B.R. 12 (Bankr. D. Mass. 1992).
125. 144 B.R. 206 (Bankr. D. Mass. 1992).
126. 112 S. Ct. at 2249.
127. 11 U.S.C. § 522(d)(10)(E) (1988).

view *Shumate* as a way for the debtor to circumvent the debt owed to the creditor.

B. Shay Wilson