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I. INTRODUCTION

When a participant in an employee benefit plan covered by the Employee Retirement Income Security Act (ERISA) files for Chapter 7 bankruptcy, the first question asked is whether the interest in the plan can be used to satisfy the claims of creditors and administrative expenses. This question has led to conflicts between ERISA and the Bankruptcy Code since their enactment in 1974 and 1979, respectively. This question was partially solved, however, in 1992 when the United States Supreme Court decided Patterson v. Shumate. In Patterson, the Court held that a participant's interest in such a plan could not be used to satisfy the claims of creditors or administrative costs because ERISA is applicable nonbankruptcy law that protected plan benefits, thus making any restrictions on the transfer of interests in employee benefit plans covered under the act enforceable.

Dr. Raymond B. Yates was a participant in a pension plan sponsored by the corporation in which he was the sole owner. When his creditors filed an involuntary Chapter 7 bankruptcy petition against him, the bankruptcy trustee attempted to recover two preferential payments made by Dr. Yates to the plan. The lower courts held that because Dr. Yates was the sole owner of the sponsoring corporation, he could not be a participant in the plan, thus removing his interest in the plan from the protection of ERISA. The United States Supreme Court reversed the decision of the Sixth Circuit Court of Appeals by holding that Dr. Yates could be a participant, so long as there were other non-owner employees participating in the plan.

This note first takes a look at the historical foundation for Yates and how the lower courts disposed of the case. It then explores the background of the relationship between ERISA and the Bankruptcy Code, and how state

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4. Id. at 758.
6. Id. at 8.
7. See id. at 9–11.
8. Id. at 6.
9. See infra Part II.
law may also enter the equation.\(^\text{10}\) This note then shifts to the United States Supreme Court's reasoning in arriving at its decision to allow owner-employees to participate in employee benefit plans.\(^\text{11}\) Finally, this note concludes with an analysis of the significance of *Yates* and a brief look at what may be left of the conflict between ERISA and the Bankruptcy Code after *Yates*.\(^\text{12}\)

## II. FACTS

Dr. Raymond B. Yates was the sole shareholder of Raymond B. Yates, M.D., P.C., a professional corporation organized in Tennessee.\(^\text{13}\) Dr. Yates was the administrator and trustee of his company's money purchase pension plan and its profit sharing plan, the Raymond B. Yates, M.D., P.C. Profit Sharing Plan ("Plan").\(^\text{14}\) The Plan always had at least one other employee participating other than Dr. Yates and his wife.\(^\text{15}\) As of June 30, 1996, the time of the original action, there were four employees who had been designated as participants in the Plan, including Dr. Yates.\(^\text{16}\) As required by ERISA, the Plan contained a spendthrift clause that stated "no benefits or interest available hereunder will be subject to assignment or alienation, either voluntarily or involuntarily."\(^\text{17}\)

In December 1989 Dr. Yates borrowed $20,000 from the plan.\(^\text{18}\) A loan agreement was set up in which Dr. Yates would repay the loan over five years at a rate of eleven percent per annum.\(^\text{19}\) Dr. Yates, however, failed to make his scheduled payments under that agreement.\(^\text{20}\) In June 1992 the money purchase pension plan merged into the profit sharing plan, at which

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10. See infra Part III.
11. See infra Part IV.
12. See infra Part V.
15. *Id*.
16. *In re Yates*, 287 F.3d at 524.
17. *Id* at 525.
18. *Id* at 524.
20. *In re Yates*, 287 F.3d at 524. There was some evidence that Dr. Yates made some of his payments. See Joint Appendix at 21a, *Yates* v. *Hendon*, 541 U.S. 1 (2004) (No. 02-458) (recounting the deposition of Raymond B. Yates, M.D.). The Sixth Circuit Court of Appeals, unfortunately, did not differentiate whether he made some payments but not all or whether he never made any payments. See *In re Yates*, 287 F.3d at 521. It simply stated, "Dr. Yates failed to make the monthly payments." *Id* at 524. The Supreme Court, however, apparently took this to mean that Dr. Yates never made any of the payments because it stated, "Yates failed to make any monthly payment." *Yates*, 541 U.S. at 8 (emphasis added).
time Dr. Yates renewed his loan for another five years, but again he failed to make the monthly payments.\textsuperscript{21}

In November 1996 Dr. Yates sold his house and used a portion of the proceeds to repay the loan to the Plan.\textsuperscript{22} He repaid the balance due, along with all accumulated interest, in two payments totaling $50,476.46.\textsuperscript{23} After these payments, Dr. Yates’s interest in the Plan amounted to approximately $87,000.\textsuperscript{24}

On December 2, 1996, approximately three weeks after Dr. Yates made the repayments to the Plan, his creditors filed an involuntary petition for bankruptcy against him.\textsuperscript{25} The petition was filed in the United States Bankruptcy Court for the Eastern District of Tennessee at Knoxville\textsuperscript{26} under Chapter 7 of the Bankruptcy Code.\textsuperscript{27} Respondent, William T. Hendon, was appointed the trustee of the bankruptcy estate.\textsuperscript{28}

In August 1998 respondent Hendon filed a complaint against both the Plan and Dr. Yates as the Plan’s trustee.\textsuperscript{29} In the complaint, respondent Hendon asked the court to make the following orders: (1) set aside Dr. Yates’s repayment to the Plan as preferential, and (2) order Dr. Yates as trustee of the Plan to turn the $50,467.46 over to respondent for inclusion in the bankruptcy estate.\textsuperscript{30}

A. United States Bankruptcy Court for the Eastern District of Tennessee at Knoxville

In the United States Bankruptcy Court for the Eastern District of Tennessee at Knoxville, both parties filed for summary judgment.\textsuperscript{31} In ruling for the respondent Hendon, the court made two explicit holdings.\textsuperscript{32} First, the court found that the two payments Dr. Yates made in repayment of his obligation to the Plan were preferential under § 547(b) of the Bankruptcy Code.\textsuperscript{33} Dr. Yates either failed to or chose not to challenge this finding on

\begin{itemize}
\item \textsuperscript{21} \textit{Id.} at 8.
\item \textsuperscript{22} \textit{Id.}
\item \textsuperscript{23} \textit{Id.}
\item \textsuperscript{24} \textit{Id.}
\item \textsuperscript{25} \textit{In re Yates}, 287 F.3d at 524.
\item \textsuperscript{26} \textit{Id.} at 521.
\item \textsuperscript{27} \textit{Id.} at 524.
\item \textsuperscript{28} \textit{See Yates}, 541 U.S. at 8.
\item \textsuperscript{29} \textit{In re Yates}, 287 F.3d at 524.
\item \textsuperscript{30} \textit{Id.}
\item \textsuperscript{31} \textit{Id.}
\item \textsuperscript{32} \textit{See Yates}, 541 U.S. at 9–10.
\item \textsuperscript{33} \textit{Id.} at 9. Section 547(b) of the Bankruptcy Code essentially allows a bankruptcy trustee to avoid a payment made to a creditor within ninety days prior to the filing of the petition for bankruptcy, if such payment would result in the creditor getting more than he would have through the bankruptcy proceeding. 11 U.S.C. § 547(b) (2004).
\end{itemize}
appeal. Second, the court held that the Plan’s anti-alienation provision could not be enforced to prevent respondent Hendon from avoiding the repayments to the Plan. The court reasoned that because Dr. Yates was the self-employed owner of the company he did not qualify as a participant under ERISA. The anti-alienation clause therefore could not be enforced via § 541(c)(2) of the Bankruptcy Code. The bankruptcy court’s primary authority for this holding was SEC v. Johnson and Fugarino v. Hartford Life & Accident Insurance Co., both of which were Sixth Circuit Court of Appeals cases.

B. United States District Court for the Eastern District of Tennessee

The United States District Court for the Eastern District of Tennessee affirmed the judgment of the bankruptcy court. Although it admitted that other circuits had held to the contrary, the court maintained that it was bound by prior Sixth Circuit decisions such as Fugarino. In upholding the bankruptcy court’s holding that an owner of a company could not be a participant in an ERISA plan, the district court held that because Dr. Yates had never been a participant in an ERISA plan, none of the money he had ever contributed to the Plan was protected by the anti-alienation clause. While this meant that the bankruptcy trustee could void the $50,467.46 in loan repayments to the Plan, it also seemed to indicate that the bankruptcy trustee could have acquired Dr. Yates’s entire interest in the Plan.

35. Id.
36. Id. at 9–10.
37. See id. at 10.
38. 143 F.3d 260 (6th Cir. 1998). In Johnson, the Sixth Circuit Court of Appeals held that ERISA did not apply to a corporate president’s pension plan because the president was both the employer and a plan beneficiary. Id. at 262. The plan’s funds therefore were not exempt from disgorgement in a securities fraud proceeding. Id.
39. 969 F.2d 178 (6th Cir. 1992). In Fugarino, the Sixth Circuit Court of Appeals held that an employer could not ordinarily be an employee or a participant in a benefit plan under ERISA. Id. at 185–86. Consequently, a benefit plan whose sole beneficiaries are the company’s owners cannot qualify as a plan under ERISA. Id. at 185.
40. Yates, 541 U.S. at 10.
41. Id.
42. Id.
43. Id.
44. Section 541 of the Bankruptcy Code states that all of a debtor’s property interests become part of the bankruptcy estate and that only those transfer restrictions enforceable under applicable nonbankruptcy law would be enforceable under § 541(c)(2). If the Plan’s transfer restriction is not enforceable under ERISA, then it is likely not enforceable at all, making all of Dr. Yates’s interest in the Plan subject to inclusion in the bankruptcy estate.
The United States Court of Appeals for the Sixth Circuit

The Sixth Circuit Court of Appeals heard this case in order to decide whether or not the trustee in a Chapter 7 bankruptcy case is able to void a preferential loan repayment made by a debtor to his wholly-owned corporation’s employee benefit plan barely three weeks before an involuntary bankruptcy petition was filed by the debtor’s creditors. In affirming the decision of the district court, it held that neither ERISA nor Tennessee’s state law dealing with alienation of trusts was applicable nonbankruptcy law that would be enforceable under § 541(c)(2) of the Bankruptcy Code.

1. The Applicability of ERISA to Yates and His Plan

The court first addressed the applicability of ERISA. It stated that Sixth Circuit published case law clearly directed that, for the purposes of ERISA, a sole shareholder of a business cannot be considered an employee, but must only be considered an employer. Furthermore, as an employer, the sole shareholder could not be a participant in an ERISA plan.

The appellants (Yates and the Plan) brought three arguments asserting that Fugarino was not valid. They argued that it (1) did not coincide with a plain language reading of ERISA, (2) conflicted with Department of Labor advisory opinions, and (3) was contrary to similar decisions rendered by eight other circuits. The court, however, maintained that it could not overrule Fugarino, and that for it to be overruled the arguments would have to be brought in a rehearing en banc on Fugarino.

The appellants further argued that Fugarino was overruled by HIPAA. Specifically, they claimed that HIPAA provided that the term “participant” in a group health plan also includes self-employed individuals. The court dismissed this argument, stating that not only was the Yates plan not a group health plan, but also that there were other Sixth Circuit decisions that were in accord with Fugarino that had been decided well

45. In re Yates, 287 F.3d at 523.
46. Id. at 524.
47. Id. at 525 (citing Fugarino v. Hartford Life & Accident Ins. Co., 969 F.2d 178 (6th Cir. 1992)).
48. Id.
49. Id.
50. Id.
after HIPAA. The court concluded that according to its case law, the spendthrift clause in the Plan was not enforceable under ERISA.

2. The Applicability of Tennessee Law to Yates and His Plan

The court next addressed the applicability of Tennessee law. The appellants argued that the Tennessee Personal Property Owner’s Rights and Garnishments Act of 1978 protected Yates’ interest in the Plan. The Act states, among other things, that interests in a retirement plan that is qualified under certain sections of the Internal Revenue Code are exempt from the claims of creditors of the participant or beneficiary of the plan, except those claims brought by the State of Tennessee.

The court stated that this section of the Act applied only to exemptions and that it does not make the use of a “transfer restriction” necessary, apparently considering the term “transfer restriction” a term of art. Section 541(c)(2) of the Bankruptcy Code, however, only provides for the enforcement of transfer restrictions applicable under nonbankruptcy law. The Tennessee statute therefore simply did not fall within the scope of § 541(c)(2) because it only exempted interests in retirement plans and did not literally provide for the enforcement of a “transfer restriction.”

The court of appeals concluded by stating that the exemption in the Tennessee law was a right personal to the debtor and that Yates would have to claim it on his own behalf, not as the trustee. It also left open the question whether the spendthrift clause would be enforceable at common law or in equity.

III. BACKGROUND

Bankruptcy courts have often been the battleground for conflicts between the ERISA and the Federal Bankruptcy Code. The analysis of the relationship between these bodies of law must begin with a question: “How does ERISA work its way into the Bankruptcy Code in the first place?” The answer to this question lies in understanding §541(c)(2) of the Bankruptcy

54. In re Yates, 287 F.3d at 526.
55. Id.
56. Id.
57. Id; see also Tenn. Code Ann. § 26-2-105(b) (2004).
58. In re Yates, 287 F.3d at 526.
59. See id. at 526–27.
60. Id. at 527.
61. Id.
62. Id.
63. Pryor, supra note 2, at 65.
 OWNER-EMPLOYEE ERISA PENSION PLANS

Code. Next, a consideration of the landmark case addressing the relationship between ERISA and the Bankruptcy Code, Patterson v. Shumate, will give insight into exactly how the United States Supreme Court has resolved the question of what law constitutes applicable non-bankruptcy law with respect to pensions. At this point it becomes important to understand the scope of ERISA, and exactly how ERISA defines employee, employer, employee benefit plan, and participant. Finally, an overview of state law alternatives to ERISA and Tennessee’s law covering trusts will complete the overall picture by shedding light on how the pension plan in Yates v. Hendon might have been handled if it were found to be outside the coverage of ERISA.

A. Applicable Non-bankruptcy Law and the Bankruptcy Code: Why §541(c)(2) Exists and What It Was Meant To Accomplish

When a petition for Bankruptcy is filed, debtors and creditors begin the process of determining what property goes into the bankruptcy estate. The Bankruptcy Code is nothing more than a system of laws that adjusts this relationship between debtors and creditors. A primary purpose for the enactment of the 1978 Bankruptcy Code was to make it easier for debtors to make a “fresh start” by discharging their debts. When a Chapter 7 bankruptcy case is filed, § 541(a) of the Bankruptcy Code states that a bankruptcy estate is established that includes all of the debtor’s legal and equitable interests in property. Section 541(b) lists a few types of property interests that are not to be included in the estate. Furthermore, § 541(c)(1) provides, subject to subsection (c)(2), for the inclusion of property in the estate despite such property being covered by any restrictions on transfer. Section 541(c)(2), however, states, “A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbank-

64. See infra Part III.A.
66. See infra Part III.B.
67. See infra Part III.C.
68. See infra Part III.D.
70. Id.
71. Pryor, supra note 2, at 66.
73. 11 U.S.C. § 541(b) (2004).
74. Id. § 541(c)(1).
ruptcy law is enforceable in a case under this title.” It has been said that § 541(c)(2) simply preserves under federal law those spendthrift transfer restrictions that were previously enforceable under state law. It is important to note that ERISA in no way preempts the Bankruptcy Code because its preemption rule does not apply to any federal law.

Because § 541(c)(2) does not define “applicable nonbankruptcy law” or its use of the term “trust,” the courts have taken this task upon themselves, but their decisions have been widely varied. Commentators have also noted portions of the legislative history in attempting to interpret the meaning of § 541(c)(2). One House Report was noted as stating that § 541(c)(2) “preserved” spendthrift restrictions enforceable under state law, indicating that it may simply have been meant to preserve the previous state law exclusions. In interpreting this report, some courts have held § 541(c)(2) to apply only to state law, while others have considered them to be simply examples of interests that would be excluded, but consider all types of interests and both federal and state laws in determining what § 541(c)(2) applies to.

As a result of these considerations of § 541(c)(2) and the sparse interpretive notes, there are three possibilities for how the section applies to ERISA plans: (1) ERISA plans are exempt because ERISA is applicable nonbankruptcy as described in § 541(c)(2); (2) ERISA plans are exempt because state law is applicable nonbankruptcy as described in § 541(c)(2); or (3) ERISA plans are not exempt because the exclusion for trusts was not meant to include ERISA plans.

75. Id. § 541(c)(2).
76. Jonathan T. Baer, *ERISA Preemption of State Exemption Law: The Effects in Bankruptcy*, 7 BANKR. DEV. J. 615, 616 (1990). In fact, several courts have held that the term “applicable nonbankruptcy law” in § 541(c)(2) refers only to exemptions under state law. See, e.g., Goff v. Taylor, 706 F.2d 574, 577 (5th Cir. 1983); see also McLean v. Central States, S.E. & S.W. Areas Pension Fund, 762 F.2d 1204, 1207–08 (4th Cir. 1985) (finding that allowing ERISA to be applicable nonbankruptcy law promoted the principal purpose of ERISA). Contra Anderson v. Raine, 907 F.2d 1476 (4th Cir. 1990).
79. See id. at 237.
80. See id.
81. See id. at 237–38. Compare Samore v. Graham, 726 F.2d 1268 (8th Cir. 1984), and Nelson v. White, 47 Bankr. 410 (Bankr. W.D. Wash. 1985) (finding that congress did not intend “applicable nonbankruptcy law” to include ERISA), with Clotfelter v. Ciba-Geigy Corp., 24 Bankr. 927 (D. Kan. 1982), and Shults v. Rose’s Stores, Inc., 32 Bankr. 767 (Bankr. E.D. Tenn. 1983) (both holding that ERISA qualified as “applicable nonbankruptcy law” for § 541(c)(2)).
82. Seiden, supra note 1, at 238.
B. **Patterson v. Shumate**: The Supreme Court Addresses What Non-bankruptcy Law Is Applicable to Pensions for Purposes of § 541(c)(2)

When the bankruptcy petition has been filed, the process of what is included in the bankruptcy estate and what is excluded under § 541(c)(2) begins. Cases addressing what qualifies as applicable nonbankruptcy law for purposes of § 541(c)(2) have covered all points of the spectrum. According to one commentator, some of the reasons for this are "the complexity and variety of the applicable laws and the applicable plan rights and interests and, in some cases, because of the judge’s, attorney’s or debtor’s unfamiliarity with ERISA." The landmark case *Patterson v. Shumate* finally settled the issue.

In *Patterson*, Joseph B. Shumate filed for Chapter 11 bankruptcy, which was later converted to a Chapter 7 bankruptcy. Shumate had worked for a furniture company for over thirty years and had always participated in an ERISA pension plan with approximately 400 other employees. The furniture company also went bankrupt, and the employee benefit plan was terminated and liquidated. John R. Patterson, as the trustee of Shumate’s bankruptcy estate, filed to have Shumate’s interest in the plan paid directly to him. Patterson argued that the interest was excluded from his bankruptcy estate, but the district court disagreed, holding that § 541(c)(2) of the Bankruptcy Code applied only to state law and not to federal regulations such as ERISA. The Fourth Circuit reversed, holding that ERISA was applicable nonbankruptcy law. The court of appeals also held that ERISA plans included enforceable transfer restrictions by way of the anti-alienation clause. Therefore, the court of appeals reasoned that

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85. Seiden, *supra* note 1, at 229.
89. *Id.*
90. *Id.*
91. *Id.* at 755–56.
92. *Id.* at 756.
93. *Id.*
Shumate’s plan contained a restriction on transfer that was enforceable under applicable nonbankruptcy law and thus should be excluded from the bankruptcy estate.\textsuperscript{95} The United States Supreme Court granted certiorari to consider the question “whether an anti-alienation provision in an ERISA-qualified pension plan constitutes a restriction on transfer enforceable under ‘applicable nonbankruptcy law’ for purposes of the § 541(c)(2) exclusion of property from the debtor’s bankruptcy estate.”\textsuperscript{96} In a unanimous opinion written by Justice Blackmun, the court affirmed the decision of the Fourth Circuit and held that it did.\textsuperscript{97}

The Court cited the plain language of the Bankruptcy Code and ERISA as its primary source of guidance.\textsuperscript{98} Because a simple reading of § 541(c)(2) indicates that the debtor could enforce any transfer restriction enforceable under any nonbankruptcy law, and because Congress had expressed no view to the contrary, the transfer restriction in Shumate’s plan was enforceable under applicable nonbankruptcy law.\textsuperscript{99}

Two questions remained after \textit{Patterson}: (1) What exactly is an ERISA plan, and (2) If a plan is not an ERISA plan, then what Bankruptcy provisions might it be exempt under?\textsuperscript{100}

C. The Scope of ERISA

ERISA was enacted in 1974 and is one of the most complex and difficult federal regulations to interpret.\textsuperscript{101} In order to better understand the scope of ERISA, it is important to first understand why ERISA exists.\textsuperscript{102} This section then explores the definitions of employee, employer, employee benefit plan, and participant, and how those definitions affect the coverage of ERISA.\textsuperscript{103} Finally, this section considers what it means for an employee benefit plan to be an “ERISA plan.”\textsuperscript{104}

\textsuperscript{95} \textit{Patterson}, 504 U.S. at 756–57.  
\textsuperscript{96} \textit{Id.} at 757.  
\textsuperscript{97} \textit{Id.} at 760. Justice Scalia filed a concurring opinion in which he stated that two traditions of statutory interpretation, the consistent usage of phrases within an act and close attention to the text and methodology of the act, were sufficient to support the court’s finding. \textit{Id.} at 766–67 (Scalia, J., concurring).  
\textsuperscript{98} \textit{Id.} at 757.  
\textsuperscript{99} \textit{Id.} at 758.  
\textsuperscript{100} Pryor, \textit{supra} note 2, at 74.  
\textsuperscript{102} \textit{See infra} Part III.C.1.  
\textsuperscript{103} \textit{See infra} Part III.C.2.  
\textsuperscript{104} \textit{See infra} Part III.C.3.
1. **What is ERISA, and Why Does It Exist?**

Congress felt it important to protect the interests of employees participating in employer-sponsored benefit plans so it enacted ERISA in 1974.\textsuperscript{105} The act was codified in part under the Department of Labor statutes, with the remainder in the Internal Revenue Code.\textsuperscript{106} This was done in order to provide for the enforcement of ERISA by the Department of Labor while at the same time providing tax benefits to ERISA plans under the Internal Revenue Code.\textsuperscript{107} Another goal of Congress was to create an incentive that would increase the use of pension plans.\textsuperscript{108} A third goal was to provide a single, uniform set of laws governing pension plans,\textsuperscript{109} a goal recognized by the Supreme Court in *Fort Halifax Packing Co. v. Coyne.*\textsuperscript{110} As one commentator put it, "Without federal mandated uniformity, Congress feared that employers would face state generated multiformity."\textsuperscript{111} It has been noted that Congress realized the impact that employee benefit plans could have on employment, industry, and commerce.\textsuperscript{112} ERISA has two features that are of primary importance to the employees: the anti-alienation clause in § 206(d) and the preemption clause in § 514(a).\textsuperscript{113}

a. **Transfer restriction under ERISA**

ERISA contains two sections that detail restrictions on transfers of interests in covered plans.\textsuperscript{114} Section 206(d)(1) of ERISA states that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated."\textsuperscript{115} This regulation has been found to apply to all

\begin{footnotes}
\item[105] Pryor, supra note 2, at 65.
\item[106] Seiden, supra note 1, at 225. The Department of Labor statutes are in Title 29 of the U.S.C., while the Internal Revenue Code is in Title 26.
\item[107] Litman, supra note 72, at 639.
\item[108] Pryor, supra note 2, at 70.
\item[109] Id.
\item[110] 482 U.S. 1, 11 (1987). In *Fort Halifax* a packing plant claimed that ERISA preempted a state law that would require it to provide a one-time severance payment to employees in the event the plant closed. Id. at 8. The United States Supreme Court held that one time payments did not fall under the scope of ERISA because (1) ERISA applied to employee benefit plans, not simply employee benefits, (2) preemption of this particular statute would not further the purpose of ERISA’s preemption clause, (3) preemption of this particular statute would not further the overall goals of ERISA, and (4) failure to preempt this particular statute would not create a incentive for employers to circumvent ERISA. Id. at 11–17.
\item[111] Id. at 70–71.
\item[112] Litman, supra note 72, at 639.
\item[113] Pryor, supra note 2, at 65–66. The anti-alienation clause is codified at 29 U.S.C. § 1056(d) (2004); the preemption clause is codified at 29 U.S.C. § 1144(a) (2004).
\item[114] Seiden, supra note 1, at 238.
\end{footnotes}
types of retirement benefit plans except individual retirement accounts and Keogh plans in which only owners or partners of a business participate.\textsuperscript{116} Section 401(a) of the Internal Revenue Code states that no trust shall qualify under that section unless the plan including the trust also includes a provision that the benefits it provides may not be assigned or alienated.\textsuperscript{117} The Congressional notes on ERISA explain that these provisions were included to ensure that employees would be able to protect their retirement benefits so the benefits would actually be available when they retired.\textsuperscript{118}

There are four exceptions to ERISA’s anti-alienation provisions, the first two of which are found in § 206(d)(2) of ERISA.\textsuperscript{119} The first exception is found in the initial sentence of § 206(d)(2) which reads “there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, . . . .”\textsuperscript{120} This sentence, simply put, deals with the beneficiary’s right to voluntarily assign up to ten percent of his or her benefits.\textsuperscript{121}

The second exception is found in the last sentence of § 206(d)(2), which reads “a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant’s accrued nonforfeitable benefit . . . .”\textsuperscript{122} This sentence appears to deal with a beneficiary who wishes to use his or her interest in a benefit plan as collateral against a loan from the plan.\textsuperscript{123}

The third statutory exception was enacted to codify several judicial decisions that held that spouses or children in community property states could reach a beneficiary’s retirement benefits to satisfy child support or alimony obligations.\textsuperscript{124} The exception appears in § 206(d)(3)(A) of ERISA, which states that the anti-alienation provision shall not apply to an order of the court “if the order is determined to be a qualified domestic relations order.”\textsuperscript{125} A qualified domestic relations order has been generally described as any judgment, decree, or order made pursuant to the domestic relations law or community property law state.\textsuperscript{126} This would include any court approved settlements requiring a participant’s plan benefits to be paid to a spouse,

\begin{itemize}
  \item \textsuperscript{116} Litman, \textit{supra} note 72, at 640.
  \item \textsuperscript{117} 26 U.S.C. § 401(a)(13)(A) (2004).
  \item \textsuperscript{118} Seiden, \textit{supra} note 1, at 240.
  \item \textsuperscript{119} \textit{Id.}; see also 29 U.S.C. § 1056(d) (2004).
  \item \textsuperscript{120} 29 U.S.C. § 1056(d)(2) (2004).
  \item \textsuperscript{121} Seiden, \textit{supra} note 1, at 240.
  \item \textsuperscript{122} 29 U.S.C. § 1056 (d)(2) (2004).
  \item \textsuperscript{123} Seiden, \textit{supra} note 1, at 240.
  \item \textsuperscript{124} \textit{Id.}
  \item \textsuperscript{126} Seiden, \textit{supra} note 1, at 254 n.102.
\end{itemize}
former spouse, or child in the form of alimony payments, child support, or marital property rights. The final exception lies in § 206(d)(4) of ERISA and was also enacted to codify several judicial exceptions. The exception applies to offsets that a beneficiary is ordered or required to pay out of his plan benefits as a result of a conviction or civil judgment, court order, or order for spousal annuity payments.

ERISA contains two provisions that both require covered plans to contain anti-alienation clauses that will be broadly applied. Furthermore, its exceptions to the anti-alienation requirement are very narrowly drawn. In regard to § 206(d), Patterson ultimately held that ERISA is nonbankruptcy law that requires the enforcement of an anti-alienation clause as against participants and creditors alike.

b. Preemption under ERISA

Section 1144(a) of ERISA states that, as they relate to any employee benefit plan, the provisions of Title I and Title IV supersede all state laws. This seems to indicate that ERISA reserves the power to regulate any plan that would fall under ERISA’s definition of a covered plan in § 1003(a). In fact, one of the representatives who sponsored the act claimed that the crowning achievement of ERISA is “the reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans. With the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation.”

127. Id.
128. 29 U.S.C. § 1056(d)(4) (2004). An example of the type of judicial exception codified can be found in St. Paul Fire & Marine Ins. Co. v. Cox, 583 F. Supp. 1221 (N.D. Ala. 1984). In St. Paul, the defendant was convicted of embezzlement from a bank. Id. at 1222. The district court held that the anti-alienation clause in defendant's pension plan did not prevent garnishment of his interest in the plan to repay the money he had embezzled. Id. at 1229. Congress, the court reasoned, did not intend ERISA to protect criminals from their victims. Id. at 1226.
130. Seiden, supra note 1, at 242.
131. See id.
132. Id.
134. Baer, supra note 76, at 622. Section 1003(a) states that ERISA covers any employee benefit plan that is established or maintained by an employer or employee organization engaged in commerce or in any industry or activity affecting commerce. 29 U.S.C. § 1003(a) (2004).
135. Baer, supra note 76, at 621–22 (citing 120 CONG. REC. 29, 197 (1974)).
2. The Definitions of Employee, Employer, Employee Benefit Plan, and Participant

ERISA defines "employee" as "any individual employed by an employer." The legislative notes indicate that while the term is meant to include anyone covered by a collective bargaining agreement, the term also covers those not associated with unions or covered by collective bargaining agreements. A common question is whether or not this description of "employee" is broad enough to include sole shareholders or owner-employers, or whether the statute must include an express term that includes them.

ERISA defines an "employer" as "any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity." Although this definition does not specifically mention sole proprietors, sole shareholders, partners, or owner-employees, it would appear to be broad enough to include them. It is also interesting to note that ERISA defines employer "in relation to an employee benefit plan." Based on a literal reading of the definition of "employee benefit plan," one could reason that employee benefit plans must cover more than one employee and employers, for purposes of ERISA, are only those that employ more than one employee.

ERISA defines "employee benefit plan" as an "employee welfare benefit plan or an employee pension benefit plan or a plan which is both an

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137. Litman, supra note 72, at 660; see also S. REP. No. 93-127 (1974); H.R. REP. No. 93-533 (1974). The Department of Labor has developed its own definition of employee as well; it reads, "the term 'employee benefit plan' shall not include any plan, fund or program, . . . under which no employees are participants covered under the plan, . . . ." 29 C.F.R. § 2510.3-3(b) (2004). In reference to "employee," paragraph (c) states that "[a]n individual and his or her spouse shall not be deemed to be employees with respect to a trade or business . . . which is wholly owned by the individual or by the individual and his or her spouse." 29 C.F.R. § 2510.3-3(c) (2004).
138. See Litman, supra note 72, at 661. The Supreme Court initially faced the problem of defining the term "employee" for ERISA purposes in Nationwide Mutual Insurance v. Darden, 503 U.S. 318 (1992). In Nationwide, the Court adopted a common-law test for determining who qualified as an employee. Id. at 323. Of paramount importance, the Court stated, was "the hiring party's right to control the manner and means by which the product is accomplished." Id. at 323-24 (citing Cmty. for Creative Non-Violence v. Reid, 490 U.S. 730 (1989)).
140. Litman, supra note 72, at 661.
141. Id.
142. Id.
employee welfare benefit plan and an employee pension benefit plan.143 An "employee welfare benefit plan" is a benefit plan that provides for medical services or insurance benefits.144 ERISA defines "employee pension benefit plan" as a plan or program established or maintained by an employer that "(i) provides retirement income to employees, or (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond."145 As already mentioned, a literal interpretation of this definition could result in the exclusion of plans covering only one employee.146 Interpretations by the courts and the Department of Labor, however, have employed a looser definition, finding that employee benefit plans under ERISA may cover only one employee.147

ERISA defines "participant" as "any employee or former employee of an employer . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan . . . or whose beneficiaries may be eligible to receive any such benefit."148

3. Which Employee Pension Benefit Plans Are "ERISA Plans"?

One commentator has interpreted ERISA’s definition of a pension plan as "a plan established or maintained by an employer . . . that provides retirement income to employees or defers employees’ income for a period of time up to or after termination of employment."149 There are two broad categories of pension plans covered by ERISA: defined benefit plans and defined contribution plans.150

A defined benefit plan is a program in which the employer agrees to pay a certain benefit to its employees upon their retirement.151 The employer makes payments into a general trust based upon estimates of what will be needed to make the promised benefit payments in the future.152 A defined contribution plan is a program in which a portion of the employee’s pay each period is deposited into a trust account on his or her behalf.153 The funds are then managed as an investment, and the employee’s retirement benefits will be based upon the performance of that investment.154 The dif-

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144. Id. § 1002(1).
145. Id. § 1002(2)(A).
146. See supra note 125.
147. Litman, supra note 72, at 661.
150. Seiden, supra note 1, at 221.
151. Baer, supra note 76, at 186.
152. Id. at 186–87.
153. Id. at 187.
154. Id.
ference between the two plans is that in a defined benefit plan, the employer runs the risk that its general fund will not be large enough to cover the promised benefit payments, but in a defined contribution plan the employee assumes all the risk that the investment fund will not perform well. Furthermore, while the ERISA definition of employee benefit plan does not expressly include those plans whose only participants are sole shareholders or owner-employees, the legislative history of ERISA and its subsequent amendments indicate a congressional intent that they should be included in the definition.

Title I of ERISA authorizes the Secretary of Labor to enact regulations necessary to enforce Title I. Labor Regulation 2510.3-3 in particular lends clarity to the meaning of “employment benefit plan” by stating that no employee benefit plan shall “include any plan, fund or program, other than an apprenticeship or other training program, under which no employees are participants covered under the plan, as defined in paragraph (d) of this section.” Section (d) simply states that employees become participants when they either make a contribution under a defined contribution plan, or complete their first year of work and are entitled to benefits under a defined benefit plan. Section (c) of the regulation, however, states that a business owner and the business owner’s spouse “shall not be deemed to be employees . . . and [a] partner in a partnership and his or her spouse shall not be deemed to be employees with respect to the partnership.” This might seem to indicate that to be a participant one must be employee and to be an employee one must not be the owner of the business or a partner in a partnership. Because section (c) begins with the phrase “for purposes of this section,” however, this is the section applicable to the analysis of whether or not a plan has employees. In other words, a business owner and spouse (or business partner) may not be considered when determining if the plan in question covers employees. The logical result of this is that as long as the plan has non-owner or partner participants, a working owner or partner may be an employee and participant as well.

155. Id.
156. Litman, supra note 72, at 664–65.
157. Id. at 665.
158. 29 C.F.R. § 2510.3-3(b) (2004).
159. 29 C.F.R. § 2510.3-3(d)(1)(ii) (2004).
160. 29 C.F.R. § 2510.3-3(c) (2004).
161. Litman, supra note 72, at 672.
162. Id.
163. Id.
D. What if It's Not ERISA-Qualified?: The Law Affecting the Alienability of Interests in Trusts in Tennessee

Simply because a plan is not covered by ERISA does not mean that it does not contain an enforceable transfer restriction. As an alternative to ERISA, courts may consider state law to determine whether or not a plan is covered by an enforceable transfer restriction. This section first looks at the basic situations in which courts may use state law. This section then takes a brief look at Tennessee's law of trusts.

1. State Laws in Determining the Bankruptcy Estate

Historically, courts have been widely divided over how state law will apply as an alternative to, or in lieu of, ERISA. Many of these courts have held transfer restrictions enforceable if the applicable state law recognized the enforceability of such clauses, or similar "spendthrift" clauses. Some courts, however, have limited the applicability of state law by either excluding plans in which the beneficiary exerts control over the trust or by simply excluding plans covered by ERISA.

Also, as an alternative to exclusion of a debtor's interest via a state enforceable transfer restriction, § 522(d) of the Bankruptcy Code exempts several types of property from the bankruptcy estate. Subsection (b), however, allows states the opportunity to opt-out of these standard exemptions by stating that state law may choose not to recognize the exemptions in subsection (d). Under subsection (b)(2), therefore, a state may enact its own laws governing exemptions. If it does so, however, the debtor is limited to those exemptions and may not claim any of the federal exemptions in subsection (d).

164. Chapman, supra note 77, at 100.
165. Seiden, supra note 1, at 245.
166. See infra Part III.D.1.
167. See infra Part III.D.2.
168. See Seiden, supra note 1, at 245-47.
169. Id. at 245; see, e.g., Lichstrahl v. Bankers Trust, 750 F.2d 1488 (11th Cir. 1985). In Lichstrahl, the Eleventh Circuit Court of Appeals held that the phrase "applicable nonbankruptcy law" in § 541(c)(2) of the Bankruptcy Code referred only to state trust law.
170. Seiden, supra note 1, at 246-47; see, e.g., In re Slezak, 63 B.R. 625 (Bankr. W.D. Ky. 1985). In Slezak the bankruptcy court held that a person's interest in a pension plan is part of the bankruptcy estate if that person has complete control over the plan, regardless of whether the plan contains a restriction against alienation.
173. Id. § 522(b)(2).
Thus, if ERISA does not apply, under state law a debtor may attempt to protect a beneficial interest in a pension plan one of two ways. First, the debtor can attempt to enforce a transfer restriction under the applicable state law. Second, the debtor can attempt to exempt the beneficial interest from the bankruptcy estate under a state’s exemption laws.

2. Tennessee’s Law Concerning Pensions

Tennessee’s law regarding pensions states that “any interest of any participant or beneficiary in a retirement plan which is qualified under . . . the Internal Revenue Code of 1986, [is] exempt from any and all claims of creditors of the participant or beneficiary, except the state of Tennessee.”175 The only exception to this rule, other than that reserved for the State of Tennessee, is for claims arising out of a qualified domestic relations order.176 This would seem to indicate that while a transfer restriction would not necessarily be enforceable under state law, a debtor could simply exempt an interest in a pension from the bankruptcy estate under state law.177

IV. REASONING

In Yates v. Hendon,178 the United States Supreme Court reversed the Sixth Circuit Court of Appeals’ holding that a working owner of a company could not qualify as a participant in a plan covered by ERISA.179 The Supreme Court held that so long as there is at least one other non-owner employee participating in the plan, the working owner can participate on equal terms with the non-owner employee.180

In support of its holding, the Court began by considering how ERISA related to the Internal Revenue Code.181 It also considered the significance of several exemptions found in ERISA and the plain meaning of the text in various provisions.182 The Court followed this by briefly pointing out how its reading of ERISA advanced Congress’s intended purpose of the act.183

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177. See generally id. § 26-2-105.
179. Id. at 23.
180. Id. at 6.
181. Id. at 12. The Supreme Court prefaced its analysis by giving a brief description of ERISA and its four titles. Id. at 6–7.
182. Id. at 13.
183. Yates, 541 U.S. at 17.
The Court then analyzed a 1999 Department of Labor opinion and how it coincided with the Court's interpretation of ERISA.\textsuperscript{184} The Court's next point of analysis was how the Sixth Circuit misunderstood a key Department of Labor regulation in \textit{Fugarino v. Hartford Life and Accident Insurance Co.}\textsuperscript{185} The Supreme Court concluded its analysis by pointing out how the Sixth Circuit had misinterpreted ERISA's anti-inurement provision.\textsuperscript{186}

Justice Scalia wrote a concurring opinion in which he stated that the Court should give due respect to implementing agencies whenever they issue authoritative interpretations of law.\textsuperscript{187} Justice Thomas also concurred, expressing his reluctance to rely on the implications of the text and exemptions in ERISA relied upon by the Court.\textsuperscript{188}

A. The Majority Opinion

In the opinion written by Justice Ginsburg, the Supreme Court held that working owners may participate in employee benefit plans as long as there is at least one other non-owner employee participating at all times.\textsuperscript{189} In reaching this decision, the Court looked at the text of ERISA and its relation to the Internal Revenue Code,\textsuperscript{190} certain exemptions in ERISA,\textsuperscript{191} the Department of Labor's published opinion on the topic,\textsuperscript{192} and how the Sixth Circuit Court of Appeals had misinterpreted some of these.\textsuperscript{193} Ultimately the court remanded the case to the Sixth Circuit.\textsuperscript{194}

1. \textit{The Text of ERISA, the Internal Revenue Code, and ERISA's Exemptions}

The Court began its analysis by examining the text of ERISA.\textsuperscript{195} It determined that it would have to look to other provisions of ERISA because the Act's definitions of employee and participant are uninformative.\textsuperscript{196} It went on to assert, however, that because the text of ERISA contained ample
evidence of Congress's intent to include working owners, it did not need to resort to common law.197

Because ERISA was enacted with consideration of the existing Internal Revenue Code (IRC), it would have been contradictory for ERISA to establish a system in conflict with the IRC.198 Under the IRC, owners, partners, and shareholders have been allowed to participate in tax qualified pension plans since 1962.199 ERISA did not change this because Congress intended ERISA to work alongside the IRC rather than against it.200 In support of this finding, the Court noted provisions in Title I that exempt some ERISA plans with working owners from certain requirements of ERISA that apply to plans without working owners.201 If working owners were not originally intended to be included in plans covered by ERISA, these exemptions would have been unnecessary.202

The Court also reasoned that Title IV of ERISA and the IRC clarify that an owner may have "dual status" according to their definitions.203 The owner may simultaneously be an employer administering the plan and an employee participating in the plan.204 The Court concluded by stating that because the text of ERISA contained ample evidence of its scope and coverage, it was confident that its holding was in line with Congressional intent to include working owners as participants in plans covered by ERISA.205

2. Congress's Intended Purpose of ERISA

The Court maintained that its interpretation of ERISA furthered the purposes intended by Congress.206 Because one of Congress's goals was to encourage the creation of plans,207 the Court noted that allowing participation by working owners would increase plan creation and participation.208 Another Congressional goal was to create one uniform governing body of law for pension and benefit plans.209 Allowing the working owner to participate in ERISA plans eliminated the need for maintaining federal law for non-owner participant plans, and state law for working owner participant

197. Id.
199. Id. at 13.
200. Id.
201. Id.
202. Id.
203. Id. at 16.
204. Yates, 541 U.S. at 16.
205. Id. at 16–17.
206. Id. at 17.
207. Id.; see supra Part III.C.1, note 44.
208. Yates, 541 U.S. at 17.
209. See supra Part III.C.1, note 46.
plans.\textsuperscript{210} Excluding working owners, however, from ERISA plans would create administrative difficulties and would not be consistent with the goal of uniform treatment of pension and benefit plans.\textsuperscript{211}

3. \textit{United States Dept. of Labor Advisory Opinion 99-04A}

The Supreme Court next shifted its analysis to a 1999 Department of Labor Advisory Opinion.\textsuperscript{212} The Pension and Welfare Benefits Administration of the Department of Labor confirmed in advisory opinion 99-04A that working owners could be participants in an ERISA plan.\textsuperscript{213} According to the Administration, the text of ERISA taken in its entirety clearly shows Congress’s intent that working owners be included as participants under Title I of ERISA.\textsuperscript{214} The report goes on to state that Congress could not have intended for working owner-employees to be excluded under Title I and included for tax purposes under Titles II and IV.\textsuperscript{215} This would create unwanted tension between the titles.\textsuperscript{216}

4. \textit{The Sixth Circuit's Misinterpretation of 29 C.F.R. § 2510.3-3}

The Court next focused on how the Sixth Circuit’s primary authority, \textit{Fugarino v. Hartford Life and Accident Insurance Co.},\textsuperscript{217} had misinterpreted a key Department of Labor regulation, 29 C.F.R. § 2510.3-3.\textsuperscript{218} The court in \textit{Fugarino} interpreted the regulation as excluding owners from being participants in any situation.\textsuperscript{219} The Court pointed out that the correct interpretation is that owners may not be considered participants for purposes of determining whether or not ERISA covers the plan.\textsuperscript{220} According to the regulation, therefore, as long as ERISA has been determined to cover the plan, the owner may be a participant alongside the non-owner employees.\textsuperscript{221}

\textsuperscript{210} Yates, 541 U.S. at 17.
\textsuperscript{211} Id.
\textsuperscript{212} Id.
\textsuperscript{213} Id.; see also Pension and Welfare Benefits Admin., United States Dept. of Labor, Advisory Opinion 99-04A, 26 BNA Pension and Benefits Rptr. 559 (1999).
\textsuperscript{214} Yates, 541 U.S. at 17.
\textsuperscript{215} Id.
\textsuperscript{216} Id.
\textsuperscript{217} 969 F.2d 178 (6th Cir. 1992).
\textsuperscript{218} Yates, 541 U.S. at 18. For a brief description of the definition of “employee” in 29 C.F.R. § 2510.3-3, see \textit{supra} note 138.
\textsuperscript{219} Yates, 541 U.S. at 19.
\textsuperscript{220} Id. at 22.
\textsuperscript{221} Id.
5. *The Sixth Circuit's Misinterpretation of ERISA's Anti-inurement Provision*

The Supreme Court's final point of analysis addressed the Sixth Circuit's treatment in *Fugarino* of ERISA's anti-inurement provision. The court in *Fugarino* relied on this provision to declare that when someone falls within the definition of employer, they may never be entitled to any benefits from the plan. The correct reading of the provision, according to the Supreme Court, is that the benefits must be reserved for distribution only to plan participants. The provision does not apply in any way to whether a working owner-employee may be a plan participant. The purpose of the anti-inurement provision is to limit fiduciary abuse by employers, a purpose that would not be furthered by excluding working owner-employees from receiving plan benefits under an ERISA plan. The anti-inurement provision, therefore, does not act as a barrier to working owner-employees being participants in an ERISA plan.

6. *The Remand*

The Court remanded the case back to the Sixth Circuit for further proceedings not inconsistent with its decision. In light of Yates' questionable conduct with respect to the loan, the Supreme Court authorized the court of appeals to consider: (1) whether or not Yates' repayments to the Plan became part of his interest in the plan that was excluded from the bankruptcy estate, and (2) even if they were, could the bankruptcy trustee still exercise his power to avoid the preferential transfers?

B. The Concurrences

Justice Scalia wrote a concurring opinion in which he declared that "[t]he Court uses a sledgehammer to kill a gnat." In his view, when an administering agency, such as the Department of Labor issues an authoritative opinion, that opinion should be afforded due respect. Because the

222. Id. The anti-inurement provision basically states that a plan's assets may not inure to, or be used for, the benefit of the employer. 29 U.S.C. § 1103(c)(1) (2004).
223. Yates, 541 U.S. at 22.
224. Id.
225. Id. at 23.
226. Id.
227. Id.
228. Id.
230. Id. (Scalia, J., concurring).
231. Id. (Scalia, J., concurring).
Solicitor General issued Opinion 99-04A to specifically address the issue in this case, Justice Scalia felt that the Court should not have bothered with its lengthy analysis of ERISA's text. He stated that because the Court did embark on its crusade of statutory construction, much of the authority of agency interpretations would be lost. In his view, this result will invite lengthy litigation of issues that could have been easily resolved through the use of an authoritative agency decision.

Justice Thomas also filed a concurring opinion in which he criticized the Court's use of the text of ERISA as dispositive of ERISA's scope. He took the position that many of the exemptions that the majority relied upon in its opinion could just as easily have been used to support the view that working owners could not be participants in plans covered by ERISA. Because the text of ERISA was ambiguous, Justice Thomas would have remanded the case back to the Sixth Circuit with an instruction to use the common law definition of employee to determine if Yates also qualified as a participant.

V. SIGNIFICANCE

The significance of Yates v. Hendon is twofold. First, the decision is of utmost importance to the working small business owner who is trying to structure an employee benefit plan. Second, the decision is important to the federal circuit courts because it finally resolves the ongoing conflict between them as to whether a working owner may participate in an employee benefit plan covered by ERISA.

This section first examines the impact the Yates decision might have on the small business owner. It then considers the different approaches taken by the federal circuit courts in addressing the issue of working owner participation in employee benefit plans.

232. Id. at 24–25.
233. Id. at 25.
234. Id.
235. Yates, 541 U.S. at 25 (Thomas, J., concurring).
236. Id. at 25–26.
237. Id. at 26.
240. See infra Part V.A.
241. See infra Part V.B.
A. The Significance of *Yates v. Hendon* to the Working Small Business Owner

The United States Supreme Court’s holding in *Yates v. Hendon* is important to working small business owners because it allows them to set up employee benefit plans in which they may participate on equal terms with the non-owner participants.242 Also, allowing working owners the protections afforded by ERISA will encourage them to establish and maintain employee benefits plans,243 which is one of Congress’s intended goals for ERISA.244

There are over ten million people in the United States who are self-employed.245 Several hundred thousand of these people participate in employee benefit plans sponsored by their businesses.246 One of Congress’s stated goals of ERISA was to create one single authoritative body of law governing pension and benefit plans.247 It is clear that under *Patterson v. Shumate*,248 non-owner employees can exclude their entire interest in employee benefit plans covered by ERISA by invoking ERISA’s anti-alienation provisions.249 If the Supreme Court’s holding in *Yates* had been to affirm the Sixth Circuit’s holding, however, working owner participants would have been unable to invoke ERISA’s anti-alienation provisions. Instead they would have had to rely on state exemption statutes to protect them and then only to the extent allowed by such statutes and not preempted by ERISA.250 By rejecting the holding of the Sixth Circuit, the Supreme Court avoided establishing a two-tier system governing pension and benefit plans: one of state law governing working owners and one of federal law governing non-owner employees.251 Because of the Supreme Court’s decision in *Yates*, working small business owners now have an extra incentive to establish and maintain benefit plans for their employees and themselves.252

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243. Id.
244. See supra note 108 and accompanying text.
246. Id.
247. See supra note 109 and accompanying text.
249. See id.
250. Culhane, supra note 245, at 60.
251. See *Yates*, 541 U.S. at 17.
B. The Resolution of Conflict Between the Circuits

The United States Supreme Court's decision in *Yates* is also significant because it resolves a long-standing split between the federal circuits as to whether a working owner may participate in his own company's employee benefit plan. Before *Yates*, the circuits who had addressed this issue were split four to three in favor of not allowing working owner participation.

Those circuits not allowing working owners to participate were the First, Sixth, Seventh, and Tenth Circuits. The First Circuit held in *Kwatcher v. Massachusetts Service Employees Pension Fund* that ERISA specifically had separate definitions for employee and employer; therefore, the sole owner of a business could not be an employee for purposes of ERISA. The Sixth Circuit held similarly, in *Fugarino v. Hartford Life and Accident Insurance Co.*, that the sole owner of a business could not be a participant in a benefit plan under ERISA. The Seventh Circuit, in *Giardono v. Jones*, held that an employer could not be a participant in an ERISA plan because plan benefits must never inure to the benefit of the employer. Finally, the Tenth Circuit held in *Peckham v. Board of Trustees of International Brotherhood of Painters and Allied Trades Union* that contractors who served in a dual role as employer and employee were not to be considered employees for purposes of participation in employee benefits plans covered by ERISA.

For the other side of the argument, the Fifth Circuit held in *Vega v. National Life Insurance Services, Inc.* that a husband and wife who were co-owners of the business could be considered employees for purposes of par-

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255. 879 F.2d 957 (1st Cir. 1989). In *Kwatcher*, a business owner who had made payments to a union pension plan was deemed not eligible to receive the benefits because he was an employer and not an employee. *See id.* at 963.
256. *Id.* at 960.
257. 969 F.2d 178, 185–86 (6th Cir. 1992); *see also supra* note 27 and accompanying text.
258. 867 F.2d 409 (7th Cir. 1989). *Giardono* was also a case involving union benefits. *Id.* In that case the employer was held not to have status to bring an ERISA claim because he could not qualify to be a participant in the plan in question. *Id.* at 413.
259. *Id.* at 411–12.
260. 653 F.2d 424 (10th Cir. 1981). In a case in which the facts were nearly identical to those of *Kwatcher*, the Tenth Circuit held in *Peckham* that the petitioners were not eligible for union benefits because ERISA precluded employers from participation in employee pension benefit plans. *Id.* at 426–27.
261. *Id.* at 427.
262. 188 F.3d 287 (5th Cir. 1999).
participating in the company’s employee benefit plan covered by ERISA.\textsuperscript{263} The Fourth Circuit, in \textit{Madonia v. Blue Cross & Blue Shield of Virginia},\textsuperscript{264} held that a sole shareholder was eligible to participate in an employee benefit plan under ERISA.\textsuperscript{265} Finally, the Seventh Circuit held in \textit{In re Baker}\textsuperscript{266} that although the debtor was the majority shareholder of the corporation, he was considered an employee.\textsuperscript{267} Therefore, under ERISA his interest in the company’s employee benefit plan was excluded from the bankruptcy estate.\textsuperscript{268}

As previously stated, one of Congress’s goals for ERISA was to provide a single uniform body of law governing pension and benefit plans.\textsuperscript{269} It seems that part of this should also be uniform interpretation and enforcement. The United States Supreme Court’s decision in \textit{Yates v. Hendon} advances this goal by ensuring that all federal courts interpret alike the provisions governing “employer,” “employee,” and “participant.”

The United States Supreme Court’s decision in \textit{Yates v. Hendon} moves two sometimes disparate bodies of law, ERISA and the Bankruptcy Code, one step closer together. In holding that working owners who are considered “employees” can participate in employee benefit plans sponsored by their companies, the Supreme Court has provided a real benefit that will be most easily recognized by small business owners, in that they will have the incentive to provide employee benefit plans.\textsuperscript{270} The benefits of these plans will not rest solely on a working owner, though, as many non-working owners will now have access to employee benefit plans that they normally would not. While the Supreme Court’s decision in \textit{Yates} is one step towards reconciliation between ERISA and the Bankruptcy Code, its remand to the Sixth Circuit Court of Appeals appears to set the stage for the next step towards that end. The Supreme Court specifically instructed the Sixth Circuit to determine whether the bankruptcy trustee can avoid the preferential payments Dr. Yates made to the Profit Sharing Plan, and whether those payments in fact became part of Dr. Yates’s interest in the Profit Sharing Plan.\textsuperscript{271} The resolution of that issue will help to further clarify the area. Dr. Yates chose to pay one creditor at the expense of other creditors. Whether employee

\textsuperscript{263} \textit{Id.} at 291–92.
\textsuperscript{264} 11 F.3d 444 (4th Cir. 1993).
\textsuperscript{265} \textit{Id.} at 450. In \textit{Madonia}, the Fifth Circuit held that the sole shareholder was also an employee because the sole shareholder drew a paycheck from the corporation, was listed on the corporate tax forms as an employee, and actually listed the corporation as his employer on the plan application. \textit{Id.} at 449.
\textsuperscript{266} 114 F.3d 636 (7th Cir. 1997).
\textsuperscript{267} \textit{Id.} at 639.
\textsuperscript{268} \textit{Id.} at 639–40.
\textsuperscript{269} \textit{See supra} note 109 and accompanying text.
\textsuperscript{270} \textit{See supra} notes 245–55 and accompanying text.
\textsuperscript{271} \textit{See supra} note 232.
benefit plans have senior status among creditors has not been definitively resolved.

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