Fordham Urban Law Journal

Volume 6 | Number 3 Article 8

1978

ERISA and the Preemption of State Law

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ERISA AND THE PREEMPTION OF STATE LAW

I. Introduction

Any valid law enacted by Congress becomes the "supreme law of the land,"[1] and must be strictly adhered to by all the states. Conversely, if a state law burdens, interferes with or is contrary to a valid federal law, the state law must necessarily yield.[2] Thus, the state law is "preempted" by the superseding federal law.

The basis for this preemption doctrine lies in the supremacy clause of the Federal Constitution.[3] The purpose of the supremacy clause is to insure that federal laws will have national application and force over any conflicting state laws.[4] Absent the supremacy clause, conflicts arising from inconsistent state and federal requirements would be inevitable.[5]

The Employee Retirement Income Security Act of 1974 (ERISA)[6] was enacted by the Ninety-third Congress pursuant to the general welfare[7] and commerce[8] clauses of the United States Constitution. Congress recognized that "the growth in size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial"[9] directly affecting millions of employees and their dependents.[10] The economic impact of employee benefit plans on commerce was becoming "increasingly interstate."[11] The federal taxing power was also directly affected because of the preferential treat-

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1. McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 327 (1819).
2. DeCanas v. Bica, 424 U.S. 351, 357-58 n.5 (1976); Free v. Bland, 369 U.S. 663, 666 (1962).
3. U.S. CONST. art. VI, cl. 2. The supremacy clause states:
   This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.
4. Mayo v. United States, 319 U.S. 441, 445 (1943).
5. United States v. Allegheny County, 322 U.S. 174, 183 (1944).
6. 29 U.S.C. §§ 1001 *et seq.* (Supp. V 1975).
7. U.S. CONST. art. I, § 8, cl. 1. The general Welfare clause states: "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States. . . ." *Id.*
8. *Id.* at § 8, cl. 3. The commerce clause states: "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes. . . ." *Id.*
9. ERISA § 2(a), 29 U.S.C. § 1001(a) (Supp. V 1975).
10. *Id.*
11. *Id.*

ment accorded such plans.[12] Congress appropriately noted that these plans were "affected with a national public interest"[13] requiring the uniform application of federal substantive law to insure their fiscal soundness, proper administration, and adequate judicial remedy.[14]

ERISA is a broad-based legislative scheme ultimately designed to readjust the regulatory roles of the state and federal governments with respect to employee benefit plans. Federal preemption of the state's authority to regulate employee benefit plans is contained in Section 514 of ERISA.[15] This section has caused considerable controversy at the state level. It is well established that when Congress legislates to occupy exclusively an entire area that requires national uniformity, any state regulation of that area is invalidated even if it is harmonious with the federal statute.[16] However, controversy arises when the Congressional intent is unclear, vague or ambiguous as evidenced by the wording of the statute or by its legislative history or both. This Comment will analyze the language of ERISA's preemption provisions, its legislative history, and the various court interpretations of the preemption provisions.

II. ERISA's Preemption Provisions: The Statutory Language

The language and construction of a statute are the most immediate factors a court examines in determining the application of the statute. When examining a statute, a court must look to the provisions of the whole law, its object and purposes.[17]

The term "employee benefit plan" encompasses pension plans whereby retirement funds are held in trust by an employer or employee organization for the benefit of the employee.[18] Section 3(3),[19]

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12. *Id.*

13. *Id.*

14. *Id.* § 2(b), 29 U.S.C. § 1001(b) (Supp. V 1975). This section provides:

> It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

Id.

15. 29 U.S.C. § 1144 (Supp. V 1975).

16. 424 U.S. at 356.

17. Philbrook v. Goldgett, 421 U.S. 707, 713 (1975).

18. ERISA § 3(2), 29 U.S.C. § 1002(2) (Supp. V 1975). Employee pension benefit plan is defined, in pertinent part, as follows:

defines "employee benefit plan" to also include "employee welfare benefit plan." This latter plan, also referred to as a "welfare plan," can provide such benefits as hospital, surgical or medical care, scholarship funds, prepaid legal services, vacation benefits, training programs, and sickness, accident or disability payments.[20] "Employee" means "any individual employed by an employer."[21] "Employer" is defined 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."[22]

Section 514 of ERISA[23] contains the actual provisions concerning

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[A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program —

(A) provides retirement income to employees, or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond,

regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

19. *Id.*, 29 U.S.C. § 1002(3) (Supp. V 1975). Section 3(3) states: "The term 'employee benefit plan' or 'plan' means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan." *Id.* § 3(3).

20. *Id.* § 3(1), 29 U.S.C. § 1002(1) (Supp. V 1975). This section provides, in pertinent part:

The terms "employee welfare benefit plan" and "welfare plan" mean any plan, fund or program . . . maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services. . . .

Id.

21. *Id.* § 3(6), 29 U.S.C. § 1002(6) (Supp. V 1975).

22. *Id.* § 3(5), 29 U.S.C. § 1002(5) (Supp. V 1975).

23. *Id.* § 514, 29 U.S.C. § 1144 (Supp. V 1975). Section 514 provides:

(a) Supersedure; effective date.

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan described in section 1003(a) [Section 4(a)] of this title and not exempt under section 1003(b) [Section 4(b)] of this title. This section shall take effect on January 1, 1975.

(b) Construction and application.

(1) This section shall not apply with respect to any cause of action which arose, or any act or omission which occurred, before January 1, 1975.

(2)(A) Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates

federal preemption. There are three particular clauses or provisos that are essential for interpreting the breadth of federal preemption.[24] The first clause is the "preemption" clause which authorizes the federal government to regulate specified employee benefit plans.[25] The second clause, the "state primacy" clause, permits the

insurance, banking, or securities.

(B) Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

(3) Nothing in this section shall be construed to prohibit use by the Secretary of services or facilities of a State agency as permitted under section 1136 of this title.

(4) Subsection (a) of this section shall not apply to any generally applicable criminal law of a State.

(c) Definitions.

For purposes of this section:

(1) The term "State law" includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

(2) The term "State" includes a State, any political subdivisions thereof, or any agency or instrumentality of either, which purports to regulate, *directly or indirectly*, the terms and conditions of employee benefit plans covered by this subchapter.

(d) Alteration, amendment, modification, invalidation, impairment, or supersedure of any law of the United States prohibited.

Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law. *Id.* (emphasis added).

24. The following chart is designed to serve as a quick reference for the terminology that will be used throughout the text.

Clause Name	Contained in Section # (Supp. V 1975)
preemption clause	514(a), 29 U.S.C. § 1144(a)
state primacy clause	514(b)(2)(A), 29 U.S.C. §1144(b)(2)(A)
deemer clause	514(b)(2)(B), 29 U.S.C. § 1144(b)(2)(B)

25. Section 514(a) was judicially labeled the "preemption" clause in Wadsworth v. Whaland, 562 F.2d 70, 76 n.34 (1st Cir. 1977); Standard Oil Co. v. Agsalud, 442 F. Supp. 695, 706 (N.D. Cal. 1977); Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294, 1297 n.10 (N.D. Cal. 1977).

states to continue to regulate insurance, banking and securities.[26] The third clause or the "deemer" clause prevents the states from enacting insurance, banking, and trust laws that affect employee benefit plans.[27]

The preemption clause broadly states that "the provisions of this subchapter . . . shall supersede any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan described in section 1003(a) [Section 4(a)] of this title and not exempt under section 1003(b) [Section 4(b)] of this title."[28]

The preemption clause is clarified by reference to other provisions. "State" is defined to "include a State, any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, *directly or indirectly*, the terms and conditions of employee benefit plans covered by this title."[29] Section 4(a) states that ERISA applies to any employee benefit plan established or maintained by "an employer" or "any employee organization[30] engaged in any industry or activity affecting commerce."[31] Section 4(b) lists certain benefit plans that are exempt from ERISA regulation. Such plans include:

(1) [A] governmental plan . . .[32]
(2) [A] church plan . . .[33]

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26. The "state primacy" clause is the author's own terminology but has been referred to as the "saving" clause in Wadsworth v. Whaland 562 F.2d at 75.

27. The "deemer" clause was labeled and discussed in *Wadsworth. Id.* at 77-78.

28. ERISA § 514(a), 29 U.S.C. § 1144(a) (Supp. V 1975). (emphasis added).

29. *Id.* § 514(c)(2), 29 U.S.C. § 1144(c)(2) (Supp. V 1975). (emphasis added). *See* text accompanying notes 174-75 *supra*.

30. Employee organization is *defined in* ERISA § 3(4), 29 U.S.C. § 1002(4) (Supp. V 1975) as follows:

> The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

Id.

31. *Id.* § 4(a), 29 U.S.C. § 1003(a) (Supp. V 1975).

32. "Governmental plan" is *defined in id.* § 3(32), 29 U.S.C. § 1002(32) (Supp. V 1975). It provides, in pertinent part, "a plan established or maintained for its employees by the Government of the United States, by the government of any State or political subdivision thereof. . . ." *Id.*

33. "Church plan" is *defined in id.* § 3(33), 29 U.S.C. § 1002(33) (Supp. V 1975). Although the definition is intricate, it generally means "a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 of Title 26 [Internal Revenue Code of 1954]."

> (3) [A] plan maintained solely for the purpose of complying with applicable workmen's compensation laws or uemployment compensation or disability insurance laws;
> (4) [A] plan . . . maintained outside of the United States primarily for the benefit of persons substantially all of whom are non-resident aliens; or
> (5) [A]n excess benefit plan[34] . . . [that] is unfunded.[35]

Therefore, any employee benefit plan not listed among these five exceptions is subject to federal statutory regulation as set forth in ERISA.

The second clause labeled the "state primacy" clause qualifies the sweeping preemption clause of Section 514(a). The state primacy clause has caused substantial controversy in determining the extent of federal regulation of employee benefit plans. This proviso, also quite broad, states that "[e]xcept as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities."[36]

However, subparagraph (B) contains the third clause or the "deemer" clause which materially limits the state primacy clause:

> Neither an employee benefit plan described in section 4(a) . . . which is not exempt under section 4(b) . . . (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.[37]

The deemer clause thus prevents a state from wrongfully declaring an employee benefit plan to be an insurer, bank, trust company, or investment company for the purpose of regulating a plan that would otherwise be properly subject to federal regulation under ERISA.

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34. "Excess benefit plan" is *defined in id.* § 3(36), 29 U.S.C. § 1002(36) (Supp. V 1975). It provides, in pertinent part:

> [A] plan maintained by an employer solely for the purpose of providing benefits for certain employees in excess of the limitations on contributions and benefits imposed by section 415 of Title 26 [the Internal Revenue Code of 1954] on plans to which that section applies without regard to whether the plan is funded.

Id.

35. *Id.* § 4(b)(1)-(5), 29 U.S.C. § 1003(b)(1)-(5) (Supp. V 1975).
36. *Id.* § 514(b)(2)(A), 29 U.S.C. § 1144(b)(2)(A) (Supp. V 1975).
37. *Id.* § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)(B) (Supp. V 1975).

Where the language of a statute unequivocally expresses its meaning, the courts are not required to probe into the legislative history to ascertain Congressional intent.[38] However, if the statutory language is susceptible to a number of possible constructions, as is the case here, the courts have on occasion examined the entire scheme of a statute to see whether it is so pervasive as to necessarily supersede state power.[39] In *Rice v. Santa Fe Elevator Corp.*,[40] the Supreme Court stated:

> Congress legislated here in a field which the States have traditionally occupied[41] . . . . So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress . . . . Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.[42]

It is evident that ERISA is a comprehensive statute. It imposes multitudinous duties on those persons associated with the creation, administration, and termination of employee benefit plans. The *Rice* Court added:

> [T]he Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the subject . . . Or the state policy may produce a result inconsistent with the objective of the federal statute.[43]

Since employee benefit plans were becoming "increasingly interstate"[44] and were "affected with a national public interest,"[45] there is much merit to a broad interpretation of federal preemption of employee benefit plans. Nevertheless, an examination of the legislative history of ERISA's preemption provisions is warranted to determine the degree of federal preemption intended by Congress.

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38. Caminetti v. United States, 242 U.S. 470, 485 (1917); Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294, 1297 (N.D. Cal. 1977).

39. Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142 (1963).

40. 331 U.S. 218 (1947).

41. Congress enacted the U.S. Warehouse Act, 7 U.S.C. §§ 241 *et seq.* in order to regulate the operation of public warehouses.

42. 331 U.S. at 230.

43. *Id.*

44. ERISA § 2(a), 29 U.S.C. § 1001(a) (Supp. V 1975).

45. *Id.*

III. The Legislative History of ERISA's Preemption Provisions

When investigating the legislative history of a particular statute, authoritative interpretations revealing Congressional intent are the committee reports and floor debates.[46] For several years the House Committee on Education and Labor heard testimony from various individuals expressing differing views as to the proper extent and breadth of federal preemption. Several prominent individuals familiar with employee benefit plans testified on behalf of absolute federal preemption to protect plan participants and avoid chaotic dual state and federal regulation.[47] Others testified for limited federal preemption.[48]

The extensive hearings failed to induce both Houses to adopt any one particular view towards the preemption question. The House version,[49] the bill from which ERISA derives, was more specific and narrow in delimiting the scope of federal preemption. The House rendition provided, in pertinent part:

> EFFECT ON OTHER LAWS
>
> Sec. 514 (a) It is hereby declared to be the express intent of Congress that . . . the provisions of part 1 of this subtitle shall supersede any and all laws of the States . . . insofar as they may now or hereafter *relate to* the reporting and disclosure responsibilities, and fiduciary responsibilities . . .
>
> (b) Nothing in part 1 of this subtitle shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities. . . . No employee benefit plan subject to the provisions of this

46. United States v. International Union United Automobile, Aircraft, Agricultural Implement Workers of America, 352 U.S. 567, 585 (1957).

47. *See Proposed Welfare and Pension Plan Protection Act* (forerunner of ERISA): *Hearings on H.R. 5741 Before the General Subcomm. on Labor of the House Comm. on Education and Labor*, 90th Cong., 2d Sess., at 185-86 (1968) [hereinafter *1968 Hearings*] (statement of Andrew J. Biemiller, Director, Department of Legislation, AFL-CIO) and *Proposed Revisions of the Welfare and Pension Plans Disclosure Act: Hearings on H.R. 2 and H.R. 462 Before the General Subcomm. on Labor of the House Comm. on Education and Labor*, 93d Cong., 1st Sess., pt. 1, at 315 (1973) [hereinafter *1973 Hearings*] (statement of Preston C. Basset on behalf of Towers, Perrin, Forster & Crosby, Inc.) and (statement of Lauren Upson, Member, California Banker's Association Committee on Employee Benefit Trusts). *Id.*, pt. 2, at 651.

48. *See 1968 Hearings*, *supra* note 47, at 338 (statement of Robert D. Hasse, Commissioner of Insurance, State of Wisconsin) and *1973 Hearings*, *supra* note 47, at 554-55 (statement of John P. Thompson for the Southland Corporation) and *id.* at 188-95 (statement of Stanley C. DuRose, Jr., Commissioner of Insurance of the State of Wisconsin).

49. H.R. 2, 93d Cong., 1st Sess. (1973) (enacted on February 28, 1974 by the House). *See* 120 CONG. REC. 4742 (1974).

> title . . . nor any trust . . . shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts . . .
>
> (c) It is hereby declared to be the express intent of Congress that . . . this subtitle shall supersede any and all laws of the States . . . insofar as they may now or hereafter *relate to* the nonforfeitability of participant's benefits . . . the funding requirements . . . the adequacy of financing . . . portability requirements . . . or the insurance of pension benefits. . . .[50]

Although the House version contained a preemption clause, a state primacy clause, and a deemer clause, the thrust of federal regulation was specifically limited only to matters that "related to" the reporting, disclosure, funding, financing, forfeitability, and fiduciary duties of employee benefit plans.[51]

The Senate advanced a more ambiguous document:

> (a) PRE-EMPTION OF STATE LAWS — It is hereby declared to be the express intent of Congress that . . . the provisions of this Act . . . shall supersede any and all laws of the States . . . insofar as they may now or hereafter *relate to* the *subject matters* regulated by this Act . . . except that nothing herein shall be construed —
>
> (1) to exempt or relieve any employee benefit plan not subject to this Act . . . from any law of any State;
>
> (2) to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities or to prohibit a State from requiring that there be filed with a State agency copies of reports required by this Act to be filed with the Secretary. . . .[52]

The Senate version differed from the House version in two key respects. First, no deemer clause was provided. Since the deemer clause was designed to prevent the states from enacting legislation under the guise of insurance or banking or securities law to evade ERISA, the failure to include such a clause undoubtedly weakens any clear broad interpretation of federal superiority in the regulation of employee benefit plans, especially when such plans retain features similar to ordinary commercial insurance plans. Second, the Senate version did not list any specific areas or aspects of employee benefit plans that were to be directly supervised by the federal government. Instead, the Senate chose to use the words "relate

50. *Id.* (emphasis added).
51. *Id.*
52. *Id.* at 5002 (emphasis added). The Senate version was passed on March 4, 1974.

to the subject matters regulated by this Act"[53] for determining the breadth and scope of federal preemption. Clearly, "relate to" and "subject matters" can be broadly or narrowly interpreted depending upon the circumstances.

The report of the Conference Committee ultimately proffered the current ERISA preemption provisions as outlined in Section II of this Comment. Essentially, the Conference Committee adopted the wording of the House version. It used the preemption, state primacy, and deemer clauses, but refused to limit federal regulation of employee benefit plans to reporting, disclosure, funding, financing, forfeitability, and fiduciary duties. Instead, it chose to leave the door open and allow for the federal preemption of all "State laws insofar as they . . . *relate to* any employee benefit plan . . . not exempt under section 4(b)."[54] The final version of the Conference Committee was more broad and sweeping than the House version but less ambiguous than the Senate version. The Conference Report states:

> [T]he provisions of title I are to supersede all State laws that *relate to* any employee benefit plan that is established by an employer engaged in or affecting interstate commerce or by an employee organization that represents employees engaged in or affecting interstate commerce.[55]

However, despite the good intentions of the Conference Committee to clarify the extent of federal preemption, it is apparent that some courts are not convinced. The courts have frequently looked to the record of the congressional floor debates prior to the enactment of a particular bill to aid in their interpretation of Congressional intent.[56] The *Congressional Record* contains several important influential statements concerning ERISA's preemption made by Congressmen who served as members of the various committees responsible for drafting the preemptory language of ERISA and

53. *Id.*

54. ERISA § 514(a), 29 U.S.C. § 1144(a) (Supp. V 1975) (emphasis added).

55. S.R. 93-1090, 93d Cong., 2d Sess. 383 (1974) (emphasis added).

56. Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 394-95 (1951). The cases referring to the congressional floor debates concerning preemption are: Wadsworth v. Whaland, 562 F.2d 70, 76-78 (1st Cir. 1977); Marshall v. Chase Manhattan Bank, 558 F.2d 680, 683 (1st Cir. 1977); Standard Oil Co. v. Agsalud, 442 F. Supp. 695, 704-07 (N.D. Cal. 1977); Bell v. Employee Security Benefit Association, 437 F. Supp. 382, 385-88 (D. Kan. 1977); Hewlett-Packard Co. v. Barnes, 425 F. Supp. 1294, 1297-1300 (N.D. Cal. 1977); Wayne Chemical, Inc. v. Columbus Agency Service Corp., 426 F. Supp. 316, 321-22 (N.D. Ind. 1977); Azzaro v. Harnett, 414 F. Supp. 473, 474 (S.D.N.Y. 1976).

serving as managers for the bill in their respective Houses.[57]

In the floor debates which followed the introduction of the Conference Committee version, Senator Jacob Javits, the ranking minority member of the Senate Committee on Labor and Public Welfare, commented on the three versions:

> Both House and Senate bills provided for preemption of State law, but — with one major exception appearing in the House bill[58] — defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.[59]

The first official to comment in the floor debates about ERISA's preemption provisions as advanced by the Conference Committee was Representative John Dent, Chairman of the Subcommittee on Labor of the House Labor and Education Committee and floor manager for ERISA in the House. He stated:

> Finally, I wish to make note of what is to many the crowning achievement of this legislation, the reservation to Federal authority 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 . . .
>
> The conferees, with the *narrow exceptions* specifically enumerated, applied this principle in its *broadest sense* to foreclose any non-Federal regulation of employee benefit plans. Thus, the provisions of section 514 would reach any rule, regulation, practice or decision of any State . . . which would affect any employee benefit plan as described in section 4(a) and not exempt under section 4(b).[60]

Representative Dent's statement raises several interesting points. First, Representative Dent explains that Section 514 was intended to preempt the field of employee benefit plans for federal control in the "broadest sense." Clearly, Representative Dent was referring to the sweeping language of the preemption clause.[61] Second, the

57. Statements made by those persons who were directly involved with a particular bill are the most influential for determining Congressional intent. City of Burbank v. Lockheed Air Terminal, 411 U.S. 624, 637 (1973).

58. Senator Javits was referring to the deemer clause as contained in H.R. 2. *See* text accompanying note 49 *supra*.

59. 120 CONG. REC. at 29942.

60. *Id.* at 29197 (emphasis added).

61. *See* text accompanying note 28 *supra*.

"broadest sense" application of the preemption provisions were subject to only "narrow exceptions." These narrow exceptions apply to the five enumerated employee benefit plans not subject to ERISA purview.[62]

A few days later Senator Harrison Williams, Jr., Chairman of the Senate Committee on Labor and Public Welfare, similarly underlined the extent of ERISA's federal preemption:

> It should be stressed that with the *narrow exceptions* specified in the bill,[63] the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its *broadest sense* to all actions of State and local governments, or any instrumentality thereof, which have the force or effect of law.[64]

It is interesting to note that Senator Williams used the same key phrases as Representative Dent to describe the extent of federal preemption. The Senator restated ERISA's "broadest sense" application with "narrow exceptions."[65] Later in the debate Senator Javits declared:

> Although the desirability of further regulation — at either the State or Federal level — undoubtedly warrants further attention, on balance, the emergence of a *comprehensive* and *pervasive* Federal interest and the interests of uniformity with respect to interstate plans required —but for certain exceptions — the displacement of State action in the field of private employee benefit programs.[66]

Although Senator Javits concurred in theory for broad federal preemption, he indicated that the question would obviously require further study. He was referring to Sections 3021 and 3022 of ERISA[67] which established the Joint Pension Task Force to study the effects and desirability of federal preemption as well as other problems.[68]

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62. *See* notes 32-35 and accompanying text *supra*.

63. *Id.*

64. 120 CONG. REC. at 29933 (emphasis added).

65. Representative Dent used these phrases on August 20, 1974. Two days later Senator Williams repeated the same key words.

66. 120 CONG. REC. at 29942 (emphasis added).

67. 29 U.S.C. §§ 1221-22 (Supp. V 1975).

68. Section 3022 provides:

> (a) The Joint Pension Task Force shall, within 24 months after September 2, 1974, make a full study and review of —
>
> (1) the effect of the requirements of section 411 of Title 26 [the Internal

Senators Javits and Williams and Representative Dent were essentially stressing the same points. They all favored federal preemption in the "broadest sense"[69] with "narrow exceptions"[70] in order to prevent "conflicting and inconsistent State and local regulation"[71] of employee benefit plans. All advocated uniform national regulations for employee benefit plans not excepted under Section 4(b) of ERISA.

Approximately two years later, the Joint Pension Task Force, established pursuant to Sections 3021 and 3022,[72] reported its conclusions concerning preemption to the House Committee on Education and Labor.[73] Although the report is not contemporaneous legislative history,[74] it is "virtually conclusive" as to legislative intent.[75] After much study the Joint Pension Task Force concluded:

> It is our understanding of this language [Section 514] that, with respect to regulation of the activities of certain employee benefit plans (those subject to ERISA jurisdiction), federal authority has been *expressly* extended to occupy the field to the *exclusion* of state authority, subject to certain exceptions . . .
>
> Based on our examination of the effects of section 514, it is our judgment that the legislative scheme of ERISA is sufficiently broad to leave *no* room for effective state regulation within the field preempted. Similarly it is our

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Revenue Code of 1954] and of section 1053 of this title to determine the extent of discrimination, if any, among employees in various age groups resulting from the application of such requirements;

(2) means of providing for the portability of pension rights among different pension plans;

(3) the appropriate treatment under subchapter III of this chapter (relating to termination insurance) of plans established and maintained by small employers;

(4) the effects and desirability of the Federal preemption of State and local law with respect to matters relating to pension and similar plans; and

(5) such other matter as any of the committees referred to in section 1221 of this title may refer to it.

(b) The Joint Pension Task Force shall report the results of its study and review to each of the committees referred to in section 1221 of this title.

Id., 29 U.S.C. § 1222 (Supp. V 1975).

69. *See* text accompanying notes 60 & 64 *supra*.

70. *Id.*

71. *See* text accompanying note 64 *supra*.

72. *See* note 68 *supra*.

73. H.R. REP. No. 1785 (Activity Report of the House Committee on Education and Labor), 94th Cong., 2d Sess. (1977) [hereinafter the Joint Pension Task Force Report].

74. ERISA's contemporanous legislative history is found in [1974] U.S. CODE CONG. & AD. NEWS 4639-5198.

75. Sioux Tribe v. United States, 316 U.S. 317, 329-30 (1942).

> finding that the Federal interest and the need for national uniformity are so great that the enforcement of state regulation should be precluded . . . Accordingly, any activity by a state or political subdivision thereof, which *relates to* employee benefit plans . . . is preempted by section 514(a).[76]

While the conclusions of the Joint Pension Task Force are not legally binding on any court, it certainly is persuasive authority for demonstrating Congressional intent.[77] The conclusions of the Joint Pension Task Force are in accord with the prior contemporaneous legislative history of Section 514, *i.e.*, federal preemption in the broadest sense. Although this legislative history, along with the statutory language and the pervasive statutory scheme, seem to indicate that Congress intended ERISA to be the sole source of private employee benefit plan regulation, the courts have differed over the intended degree of federal preemption.

IV. The Courts Diverge Over The Breadth Of Federal Preemption

The development of case law relating to the preemption issue has been modest. The first court to address the preemption issue, albeit briefly, was the District Court for the Southern District of New York in *Azzaro v. Harnett*.[78] Plaintiff-trustees of a union pension fund brought suit to enjoin the defendant Superintendent of Insurance of New York State from making any inquiries into the pension benefit status of a pension fund participant after January 1, 1975, the effective date of ERISA's preemption provisions.[79] Plaintiffs argued that the jurisdiction of the New York State Insurance Department over employee pension plans was superseded by the United States Department of Labor by virtue of Section 514(a) of ERISA. The defendant contended that the pension participant earned pension benefits prior to January 1, 1975 and thus, the New York State Insurance Department was not superseded in this matter by ERISA Section 514(b)(1).[80] Plaintiff countered that if the defendant prevailed, the state insurance department would continue to have jurisdiction over

76. Joint Pension Task Force Report, *supra* note 73, at 46-47 (emphasis added).

77. 316 U.S. at 329-30.

78. 414 F. Supp. 473 (S.D.N.Y. 1976), *aff'd mem.*, 553 F.2d 93 (2d Cir. 1977).

79. *Id.* at 473-74. ERISA § 514(b)(1), 29 U.S.C. § 1144(b)(1) (Supp. V 1975) provides, "This section shall not apply with respect to any to cause of action which arose, or any act or omission which occurred, before January 1, 1975." *Id.*

80. 414 F. Supp. at 474.

all employees who were enrolled in employee benefit plans prior to January 1, 1975. In sum, plaintiffs would be subject to "concurrent state and federal jurisdiction."[81] The *Azzaro* court stated that an examination of the legislative history was necessary to decide whether the state had supervisory jurisdiction over employee pension benefit plans.[82] The court cited, in particular, Senator Williams' statement that characterized federal preemption in the "broadest sense" with "narrow exceptions."[83] The *Azzaro* court concluded that "[t]he legislative history of ERISA shows that Congress intended *absolute preemption* of the field of employee benefit plans."[84] The court agreed with Congress that "preemption was intended to provide for uniform regulation of employee benefit plans."[85] It reasoned that the whole purpose of ERISA — the uniform federal regulation of employee benefit plans — would be contravened if the defendant were to succeed.[86] The court held that state regulation was clearly reduced to a "cleanup role" in that it had limited jurisdiction to handle only causes of action and disputes arising prior to January 1, 1975.[87]

Several months later the preemption question was discussed in one paragraph by the District Court for Minnesota in *Insurer's Action Council, Inc. v. Heaton*.[88] Plaintiff-insurance companies brought suit for declaratory and injunctive relief against the Minnesota Commissioner of Insurance[89] challenging the constitutionality of the Minnesota Comprehensive Health Insurance Act of 1976.[90]

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81. *Id.*
82. *Id.*
83. *Id.* *See* text accompanying note 64 *supra*.
84. 414 F. Supp. at 474 (emphasis added).
85. *Id.*
86. *Id.*
87. *Id.* at 475.
88. 423 F. Supp. 921 (D. Minn. 1976).
89. *Id.* at 923. Other defendants included the Insurance Division of the Minnesota Department of Commerce, and the Minnesota Comprehensive Health Association, an association created by the Minnesota Comprehensive Health Insurance Act of 1976 and composed of all commercial insurers, fraternals, self insurers, and health maintenance organizations who desire to write accident and health insurance in Minnesota. *Id.*
90. MINN. STAT. ANN. § 62E.01 *et seq.* (1976). The Minnesota act required all health and accident insurers to offer state residents a minimum specified amount of major medical coverage. 423 F. Supp. at 923. Furthermore, health care plans offered to employees were to contain specific minimum mandated benefits. *Id.* Finally, the act created the Minnesota Comprehensive Health Association to provide health and accident insurance for those persons unable to obtain such insurance through normal channels. *Id.*

Aside from arguments based on due process,[91] equal protection,[92] vagueness,[93] and impairment of contract,[94] the plaintiffs also asserted that the Minnesota act was preempted by ERISA Section 514(a) which provides that all state laws relating to employee benefit plans are superseded by ERISA.[95] The court labeled this latter assertion as "superficial" and "questionable at best."[96] It upheld the Minnesota statute based on three grounds. First, the court relied on the state primacy clause (Section 514(b)(2)(A)) whereby ERISA should not relieve any person from any state law regulating insurance.[97] Obviously, the court regarded the Minnesota act as primarily regulating insurance, in particular health and accident insurance, and not employee benefit plans. The court did admit that the state primacy clause was limited by the deemer clause (Section 514(b)(2)(B)). However, the court construed this limitation as a "very narrow exception."[98] Second, the court utilized Section 514(d)[99] whereby ERISA shall not be interpreted to impair or supersede any law of the United States, citing in particular the McCarran-Ferguson Act[100] which mandates that the business of insurance shall be regulated by the states.[101] Third, the court stated that the Minnesota statute regulated the *substance* of health and accident insurance plans and not reporting and disclosure requirements which are the chief concerns of ERISA.[102] For some reason the court failed to discuss the appropriate legislative history of Section 514 in reaching its conclusions.

The rationale of the *Insurer's Action Council* court was disputed by the District Court for the Northern District of Indiana in *Wayne*

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91. *Id.* at 923-25.
92. *Id.* at 926.
93. *Id.* at 925.
94. *Id.* at 926-27.
95. *Id.* at 926.
96. *Id.*
97. *Id.*
98. *Id.*
99. *Id. See* note 23 *supra* for text of section 514(d).
100. 15 U.S.C. § 1011 *et seq.* (1970). 15 U.S.C. § 1012(b) provides, in pertinent part, that "no Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of insurance . . . unless such Act specifically relates to the business of insurance." *Id.*
101. 423 F. Supp. at 926.
102. *Id.* (emphasis added).

Chemical, Inc. v. Columbus Agency Service Corp.[103] In *Wayne Chemical*, the employer, a covered employee and his covered dependent quadriplegic son brought suit against insurers to enforce benefit rights under a plan they were led to believe constituted an ordinary commercial group health insurance plan.[104] The plaintiffs further contended that an Indiana statute[105] provided that group health insurance coverage of a dependent of an employee may not terminate on attainment of a limiting age where the dependent, at the time he reaches the limiting age, is disabled.[106] The defendants maintained that the Indiana statute was inapplicable because the recently issued policy was actually an employee benefit plan subject to exclusive federal regulation as stated in Section 514(a). In sum, they argued ERISA had preempted the applicability of the Indiana statute and, as a result, no benefits could be conferred to the employee's dependent son.[107]

The issue in *Wayne Chemical* was threefold. The first question was whether the present policy was an employee benefit plan.[108] If this were so, was it subject to ERISA purview?[109] Finally, if the state law was inapplicable and no specific federal statute governed the issues involved in the case, could the court create federal common law to fill the void?[110]

The court had no difficulty in concluding that the policy issued by the defendants was indeed an employee benefit plan within the meaning of ERISA and thus subject to ERISA.[111] The Indiana statute became inoperative by virtue of the preemption clause contained in Section 514(a).[112] The court analyzed ERISA's legislative history concerning preemption and concurred with the prior conclusion of the *Azzaro* court, namely, "that Congress intended absolute [federal] preemption of the field of employee benefit plans."[113] In

103. 426 F. Supp. 316 (N.D. Ind. 1977).
104. *Id.* at 318-19.
105. IND. CODE ANN. § 27-8-5-10(B)(4) (Burns 1975).
106. 426 F. Supp. at 319.
107. *Id.* at 319-20.
108. *Id.* at 320.
109. *Id.* at 321.
110. *Id.*
111. *Id.* at 320.
112. *Id.* at 321.
113. *Id.* (quoting Azzaro v. Harnett, 414 F. Supp. at 474).

reaching its decision, the court scrutinized the statutory language[114] and referred to the statements of Senator Javits in support of the Conference Committee's version of Section 514.[115] The *Wayne Chemical* court, unlike the *Insurer's Action Council* court, attached a minimum of importance to the McCarran-Ferguson Act in determining ERISA's breadth of preemption. That court's rationale was that "some specific effort by Congress would be required to overcome state laws regulating insurance" and thus bypass the McCarran-Ferguson Act.[116] The *Wayne Chemical* court was convinced that Congress had indeed demonstrated more than a "specific effort" to preclude any state regulation of private employee benefit plans by enacting the comprehensive ERISA statute. Therefore, the court held that ERISA must be given effect.[117] If the court had held otherwise, it would have essentially nullified the purposes and effectiveness of ERISA.

After declaring the Indiana statute inapplicable, the court reasonably inferred that ERISA's statutory scheme and legislative history[118] permitted the court to formulate federal common law with regard to employee benefit plans.[119] The court ultimately incorporated the essential characteristics of the Indiana statute into federal common law granting relief to the plaintiffs.[120]

Unlike *Insurer's Action Council, Wayne Chemical* was not preoccupied with distinguishing between a state law that regulated the substance of insurance coverage and one that regulated reporting and disclosure requirements. The *Insurer's Action Council* court would uphold the validity of a state law that affected the substance of the insurance contract as being a proper subject for state regulation as supported by the McCarran-Ferguson Act. It would necessarily preempt a state law that affected reporting and disclosure requirements due to ERISA. In effect, federal preemption was limited to preserve the state's right to regulate insurance, *Wayne*

114. *Id.* at 320-21.
115. *Id.* at 321.
116. *Id.* at 320 n.1.
117. *Id.*
118. *Id.* at 321-22. The court cited remarks made by Senator Javits to support its inference: "It is also intended that a body of Federal substantive law will be developed by the courts to deal with issues involving rights and obligations under private welfare and pension plans. 120 CONG. REV. 29942.
119. 426 F. Supp. at 321.
120. *Id.* at 325.

Chemical's approach was to preempt absolutely any state law "relating to" ERISA covered employee benefit plans regardless of its content. This would allow the courts to create federal common law which could either adopt the thrust of the inapplicable state law or alternatively fashion a new law. The *Wayne Chemical* court noted that "state statutory sources of law will no doubt play a major role in the development of a federal common law under ERISA, particularly in defining rights under employee benefit plans."[121] In sum, the *Wayne Chemical* rationale affords the federal courts the necessary means to achieve the objectives of ERISA, *i.e.*, to perpetuate national uniform regulations and avoid the threat of conflicting or inconsistent state and local regulations of employee benefit plans.

Five days after *Wayne Chemical*, the Federal District Court for Northern California in *Hewlett-Packard Company v. Barnes*[122] reached a similar result.[123] In *Hewlett-Packward*, plaintiff employers and employee benefit organizations sought declaratory and permanent injunctive relief against the California Commissioner of Corporations challenging the validity of the California Knox-Keene Health Care Services Plan Act of 1975.[124] The Knox-Keene Act was intended to provide quality health care at a low cost to plan participants. Plaintiffs argued that ERISA preempted the Knox-Keene Act because the employee welfare benefit plans or health service plans offered by Knox-Keene were actually ERISA covered plans and thus preempted by Section 514(a).[125]

The defendant advanced four arguments: first, the language of ERISA's preemption clause was vague and ambiguous as to whether ERISA preempted health services plans such as those regulated by the Knox-Keene Act; second, the legislative history of ERISA failed to reveal Congressional intent to supersede state laws such as Knox-Keene; third, Knox-Keene was a state law regulating insurance and therefore was exempt from federal preemption under Section

121. *Id.*

122. 425 F. Supp. 1294 (N.D. Cal. 1977).

123. *Wayne Chemical* was decided on January 19, 1977 and *Hewlett-Packard* was decided on January 24, 1977. Due to the closeness in time of the decisions and the different circuits involved, the *Hewlett-Packard* court probably had no knowledge of the *Wayne Chemical* holding.

124. 425 F. Supp. at 1296. The Knox-Keene Act is found at CAL. HEALTH & SAFETY CODE §§ 1340-1395.5 (West Supp. 1977).

125. 425 F. Supp. at 1296.

514(b)(2)(A), the state primacy clause; and finally, Section 514(a) was unconstitutional because the Tenth Amendment to the Federal Constitution precludes such a broad substitution of national for local regulation.[126]

The *Hewlett-Packard* court dismissed defendant's first contention, declaring that Congress could not have used any more "precise" statutory language to preempt such state laws as Knox-Keene that related to employee benefit plans.[127] The court made an in depth analysis of ERISA's legislative history concerning preemption.[128] It discussed the chronological development of the several Congressional versions advocating various degrees of federal preemption, referred to the Conference Committee report[129] and made extensive use and reproduced in full all pertinent floor debate statements by some of ERISA's key legislative figures — Senators Williams and Javits and Representative Dent.[130] All these reports and statements compelled the court to conclude that:

> Overall, the legislative history reveals both that Congress carefully considered the question of preemption, including the feasibility of enacting a more limited preemption provision, and that Congress ultimately enacted Section 514(a) with the *express* purpose of summarily preempting state regulation of ERISA-covered employee benefit plans. That the statute, standing alone or buttressed by its legislative history, was intended to supersede state regulation of benefit plans such as plaintiffs' is *indisputable*.[131]

The *Hewlett-Packard* court also dealt unfavorably with the defendant's third contention by invoking Section 514(b)(2)(B), the deemer clause. The court held that a state could not evade ERISA's jurisdiction by simply treating certain employee benefit plans as a "unique variety of insurance arrangement" subject to special state enacted regulations such as the Knox-Keene Act.[132] To hold otherwise would "contravene the clear intent of Section 514(a) and (b) of ERISA that employee benefit plans, so dubbed or under any other name, be free of state regulation."[133]

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126. *Id.*
127. *Id.* at 1297.
128. *Id.* at 1297-1300.
129. *Id.* at 1298-99. *See* text accompanying note 55 *supra*.
130. 425 F. Supp. at 1299-1300. *See* text accompanying notes 59, 60, 64, & 66 *supra* for content of statements made by Senators Williams and Javits and Representative Dent.
131. 425 F. Supp. at 1300 (emphasis added).
132. *Id.*
133. *Id.*

Finally, the court could not agree with the defendant that the Tenth Amendment[134] undermined ERISA's validity. The court acknowledged that the Tenth Amendment prevents Congress from regulating states under the commerce power in a manner that adversely affects the states' ability to function effectively in the federal system.[135] However, the court added that the Tenth Amendment imposes no limitation on Congress' application of the commerce power to the private sector. The court held that ERISA specifically excluded federal regulation of government plans by virtue of Section 4(b),[136] and thus an adverse encroachment on state sovereignty was non-existent.[137]

By declaring the Knox-Keene Act inapplicable and holding for the plaintiffs, the *Hewlett-Packard* court necessarily adopted a broad interpretation of federal preemption similar to that of *Wayne Chemical*. Neither court preoccupied itself with first determining whether the particular state law regulated the substance of insurance or the reporting and disclosure requirements as did the *Insurer's Action Council* court. Instead, they utilized a more simple absolute preemption test; that is, if a state law merely "relates to" an employee benefit plan as defined by ERISA, then it is absolutely preempted by ERISA.

Two other subsequent decisions favored absolute federal preemption of employee benefit plans. The Court of Appeals for the Second Circuit in *Marshall v. Chase Manhattan Bank*[138] stated:

> The superior federal interest sought to be vindicated here is clear from . . . [§] 514 of the Act as well as its legislative history which establish the congressional intent that the United States regulate the field of employee benefit plans eliminating the threat of conflicting and inconsistent local regulation.[139]

Essentially, the rationale in *Azzaro* had been affirmed.[140]

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134. The tenth amendment provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. CONST. amend. X.

135. 425 F. Supp. at 1301 and n.19. *See also* National League of Cities v. Usery, 426 U.S. 833 (1976); Fry v. United States, 421 U.S. 542, 547 n.7 (1975).

136. *See* notes 32 and 35 and accompanying text *supra*.

137. 425 F. Supp. at 1301 and n.19.

138. 558 F.2d 680 (2d Cir. 1977).

139. *Id.* at 683. *See also id.* at 683 n.5 which quotes Representative Dent's remarks indicating the importance of ERISA's preemption provisions.

140. *See* text accompanying note 84 *supra*.

The second case, *Bell v. Employee Security Benefit Association*,[141] involved an action for permanent injunctive relief brought by the Kansas Commissioner of Insurance against the Employee Security Benefit Association (ESBA), an unincorporated association selling major medical and death benefit plans substantially similar to those offered by ordinary insurance companies.[142] The Commissioner contended that ESBA's plans were insurance policies subject to state regulation by the Kansas Department of Insurance and not an ERISA covered employee benefit plan as maintained by the defendant entrepreneurs.[143] The District Court for the District of Kansas ultimately held that ESBA's plans were not employee benefit plans because they were not established by "employers" or "employee organizations" as is required for an ERISA covered employee benefit plan.[144] Therefore, ESBA plans were subject to state regulation. ERISA simply did not apply.[145]

Nevertheless, the *ESBA* court discussed at length the scope of ERISA's preemption analyzing the statutory language and its legislative history.[146] The court stated that "[i]n light of [the] legislative history, we conclude that federal preemption in the area of pensions and other employee benefit programs is *virtually total*."[147] The *ESBA* court specifically stated that it had rejected the limited preemption view espoused by *Insurer's Action Council*.[148] Instead, it embraced the absolute federal preemption approach of the *Azzaro, Wayne Chemical*, and *Hewlett-Packard* courts.[149] To bolster its conclusion, the *ESBA* court cited the recent report of the Joint Pension Task Force[150] stating that federal authority was expressly intended to occupy the field of employee benefit plans to the exclusion of state regulation.[151] It is therefore clear that the court would have had no difficulty in preventing the Kansas Department of Insurance

141. 437 F. Supp. 382 (D. Kan. 1977).
142. *Id.* at 384.
143. *Id.*
144. *Id.* at 392. The court supplied four factors for distinguishing between an employee benefit plan and an ordinary insurance plan. *Id.* at 391.
145. *Id.* at 396.
146. *Id.* at 385-88.
147. *Id.* at 387 (emphasis added).
148. *Id.*
149. *Id.*
150. *See* text accompanying note 76 *supra*.
151. 437 F. Supp. at 388.

from interfering with ESBA's activities if the ESBA policies had been true ERISA covered employee benefit plans. The court would have applied the absolute preemption test[152] to preempt and declare inapplicable any Kansas regulation "relating to" employee benefit plans.

It appeared from the holdings in these cases that a trend was emerging in favor of ERISA's absolute preemption of employee benefit plans. However, this trend was temporarily impeded by the Court of Appeals for the First Circuit in *Wadsworth v. Whaland*.[153] The plaintiffs, administrators of various health and welfare funds, brought suit in the District Court for New Hampshire against the New Hampshire Commissioner of Insurance seeking declaratory relief to invalidate a New Hampshire law[154] mandating coverage of mental and nervous conditions in group health and accident insurance policies.[155] The plaintiffs contended that Section 514 preempted any "direct or indirect" regulation of employee benefit plans by the state.[156] They therefore asserted that the New Hampshire law is necessarily superseded by ERISA because it "relates to employee benefit plans."[157]

The Court of Appeals in *Wadsworth* conceded that ERISA's legislative history suggested federal preemption of all state laws that related to employee benefit plans.[158] The court further conceded that the New Hampshire law indirectly related to employee benefit plans, but concluded that preemption did not necessarily follow.[159] Its reasons were several. First, the New Hampshire law was not a disclosure law nor did it purport to regulate employee benefit plans directly.[160] Rather, it was specifically codified as an insurance law regulating insurers.[161] Second, the New Hampshire statute, as primarily an insurance regulation, was exempt from federal preemp-

152. The "absolute preemption test" can be stated generally as follows: If a state law relates to an employee benefit plan covered under ERISA, whether directly or indirectly, then it is absolutely preempted by ERISA.

153. 562 F.2d 70 (1st Cir. 1977).

154. N.H. REV. STAT. ANN. §§ 415:18(I)(a), 419:5(1), 420:5(1) (1975).

155. 562 F.2d at 72-73.

156. *Id.* at 75-76.

157. *Id.* at 76.

158. *Id.* at 77.

159. *Id.*

160. *Id.* at 76.

161. *Id.*

tion due to the state primacy clause, Section 514(b)(2)(A).[162] Third, although the deemer clause prevents a state from declaring an employee benefit plan to be insurance for the purposes of its insurance laws, it "does not prohibit a state from *indirectly* affecting [employee benefit] plans by regulating the *contents* of group insurance policies purchased by the plans."[163] The court reasoned that to declare inapplicable a state regulation that merely "indirectly" affected or related to an employee benefit plan would unjustly deny the states their authority to regulate insurance as preserved by the McCarran-Ferguson Act.[164]

Wadsworth, following the same approach used earlier in *Insurer's Action Council*, concluded that state statutes primarily codified as insurance laws regulating the substance or contents of insurance are valid even if they indirectly affect an ERISA covered employee benefit plan. Furthermore, only direct state interference with an employee benefit plan triggers federal preemption. Direct state interference occurs when a state regulation affects the administration of an ERISA covered employee benefit plan by mandating reporting and disclosure requirements.[165] Thus, *Wadsworth* and *Insurer's Action Council* have clearly embraced a limited view of preemption in order to preserve a state's right to regulate insurance even if such state regulation indirectly affects ERISA plans.

The trend towards absolute federal preemption was restored in *Standard Oil Co. Of California v. Agsalud*[166] whereby the Federal District Court for the Northern District of California held that the Hawaii Prepaid Health Care Act[167] was preempted by ERISA and therefore inapplicable to all ERISA covered employee benefit plans.[168]

The Hawaii statute required the workers in the state be covered

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162. *Id.* at 77.

163. *Id.* at 77-78 (emphasis added).

164. *Id.* at 78. *Insurer's Action Counsel* used the same analysis. *See* note 100 *supra* and text accompanying notes 99-101 *supra*.

165. 562 F.2d at 73-74. The Wadsworth court views the scope of ERISA as being primarily administrative in nature. The court lists examples of ERISA's administrative requirements for employee benefit plans and the court's holding seems to suggest that if a state law were to interfere with any of these administrative requirements, it would have to be preempted. *Insurer's Action Council* made the same distinction at 423 F. Supp. at 926.

166. 442 F. Supp. 695 (N.D. Cal. 1977).

167. HAW. REV. STAT. § 393-1 - 393-51 *as amended* 1976 Haw. Sess. Laws ch. 25.

168. 442 F. Supp. at 707.

by a comprehensive prepaid health care plan.[169] The statute also contained various reporting requirements that differed from those of ERISA.[170] The court was confronted with having to decide whether ERISA preempted the Hawaii statute.[171]

The *Standard Oil* court, contra to *Wadsworth* and *Insurer's Action Council*, utilized the absolute preemption test and determined that if any state law "related to" ERISA covered plans, it was necessarily preempted.[172] To determine the meaning of "relates to," the court stated that there could be no distinction between a state law relating to the substance of insurance benefits and one that related to administration. The court precisely stated the weakness of the limited preemption test:

> Laws relating to benefits of employee benefit plans relate to those plans as much as laws relating to their administration. There is simply no basis in the language of § 514(a) for distinguishing between types of state laws *all* of which "relate to" employee benefit plans. When Congress says "any and all State laws," courts cannot conclude that Congress really meant to say "some but not all State laws."[173]

In addition, the court reasoned that Section 514(c)(2)[174] clearly indicated that Congress intended to broadly preempt *all* state laws *directly* or *indirectly* affecting employee benefit plans leaving no room for state authority.[175]

However, the absolute preemption rationale also contains a key deficiency, although perhaps an inadvertent one. This deficiency was discussed briefly in *Standard Oil*. The passage of ERISA coupled with the application of the absolute preemption rationale have created a "moratorium of indefinite length on the passage of health insurance laws" possessing the depth and comprehension of the Hawaii act.[176] The court, although it preempted the Hawaii statute from affecting ERISA covered plans, was reluctant to do so and would have preferred to await further instruction from Congress.[177]

169. *Id.* at 696.
170. *Id.*
171. *Id.* at 697.
172. *Id.* at 707.
173. *Id.* (emphasis added).
174. *See* text accompanying note 29 *supra*.
175. 442 F. Supp. at 707 (emphasis added).
176. *Id.* at 711.
177. *Id.*

The millions of people whom ERISA was intended to protect[178] would be additionally protected by comprehensive state health insurance laws like the Hawaii law than without them.[179] Efforts by the various state legislatures to provide such additional protection for these people already under ERISA's umbrella would be futile so long as ERISA continued to preempt and render inapplicable all state laws relating to ERISA covered plans.[180]

V. Conclusion

A trend has emerged in the federal courts in favor of the absolute federal preemption rationale based upon ERISA's broad statutory language as contained in at least the preemption clause. This view is further supplemented by the legislative history of Section 514.[181]

The limited preemption view and the absolute preemption view both share the same result in at least preempting state laws that relate to the administration of ERISA covered plans. These state laws, although not declared void per se, are inapplicable to ERISA employee benefit plans.[182] However, the difference between the two views crystalizes when there is a state law that regulates the substance of insurance and indirectly affects an ERISA covered plan. The advocates of the limited preemption view, citing the state primacy clause, the deemer clause and the McCarran-Ferguson Act for support, would validate the state law as being within the state's authority to regulate insurance. Thus, there would be no federal preemption by ERISA.[183]

A contrary result occurs when applying the absolute preemption approach. It simply holds that there can be no distinction between state laws that affect the administration or substantive insurance benefits of an ERISA covered plan. Both "relate to" the plan, whether directly or indirectly, and therefore are necessarily superseded by ERISA.[184] These state laws will have no effect on ERISA

178. 29 U.S.C. § 1001 (Supp. V 1975).

179. The Hawaii act was unique and has been held up as a model for a national health insurance plan. 442 F. Supp. at 711 n.14.

180. *Id.* at 711.

181. The trend for absolute federal preemption is supported by the *Azzaro, Wayne Chemical, Hewlett-Packard, Chase Manhattan Bank, ESBA*, and *Standard Oil* decisions.

182. The cases cited in note 181 *supra* would support this contention as do the cases advocating the limited preemption view, *i.e.*, *Insurer's Action Council* and *Wadsworth*.

183. *See* 562 F.2d at 77-78; 423 F. Supp. at 926.

184. This view was best explained by the *Standard Oil* court. *See* notes 173-75 and text accompanying notes *supra*.

employee benefit plans.

Both views contain faults. The limited preemption view tends to undermine the pervasive federal interest of establishing and maintaining uniform national laws regulating employee benefit plans. Moreover, if limited preemption is applied to only some aspects of a state law and not others, one questions how effective the remaining state law will be. To preempt a state law, in whole or in part, would be at the heart of every controversy. Tension between the federal courts and the state legislatures would likely increase.

Alternatively, the absolute preemption view could seriously hinder the states' authority to regulate insurance, simply because any state law might, in some indirect way, affect an ERISA covered plan and thus be subject to preemption. Although this may have been what Congress intended, Congress should take a serious second look at whether it intends ERISA to preempt a state comprehensive health insurance law such as the one enacted by the Hawaii legislature. Since millions of employees and their dependents are directly affected by whatever rationale is utilized. Congress might be well advised to strike a balance between the two views by further clarifying the breadth of federal preemption.

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