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Legal Sidebar

Siegel v. Fitzgerald: Supreme Court Makes Rare Comment on the Bankruptcy Clause's Uniformity Requirement

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On June 6, 2022, the Supreme Court decided *Siegel v. Fitzgerald*, holding that the Bankruptcy Judgeship Act of 2017 (the "2017 Act") violated the uniformity requirement of the U.S. Constitution's Bankruptcy Clause. The 2017 Act increased quarterly administrative fees in most, but not all, federal districts, resulting in different fees on debtors depending on the district in which they filed for bankruptcy. In its fourth opinion ever on the uniformity requirement, the Supreme Court unanimously ruled that the 2017 Act established an arbitrary geographic disparity that contravened the Bankruptcy Clause. In so ruling, the Court touched on the limits that Congress faces when enacting legislation to address geographic problems. This Sidebar provides an overview of the uniformity requirement and analyzes the *Siegel* decision. It concludes with post-*Siegel* considerations for Congress.

The Uniformity Requirement

The Bankruptcy Clause bestows upon Congress the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." A bankruptcy statute thus must apply uniformly to a defined class of debtors to pass constitutional muster.

In three prior opinions, the Court has interpreted the uniformity requirement as flexible, but only to a point. First, in *Moyses v. Hanover National Bank*, the Court rejected a challenge to the constitutionality of the Bankruptcy Act of 1898, a statute that permitted individual debtor exemptions under state laws. The Court held that the uniformity requirement did not require Congress to eliminate existing state exemptions in bankruptcy laws, and that the "general operation of the law is uniform although it may result in certain particulars differently in different States."

Second, in the *Regional Rail Reorganization Act Cases*, the Court assessed the Regional Rail Reorganization Act of 1973, which applied only to rail carriers operating within a defined region of the country. Although the Act differentiated between regions on its face, there were no railroad reorganizations pending outside of that region, allowing the Court to conclude that in practice the statute "operate[d] uniformly upon all bankrupt railroads" in existence. In upholding the statute, the Court also

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relied on the "flexibility inherent" in the Bankruptcy Clause. The Court elaborated that the Bankruptcy Clause permits Congress to "take into account differences that exist between different parts of the country, and to fashion legislation to resolve geographically isolated problems."

Third, in *Railway Labor Executives' Association v. Gibbons*, the Court struck down the Rock Island Railroad Transition and Employee Assistance Act (RITA), where Congress altered the order of priority of claimants in a single railroad's bankruptcy. The Court held that RITA was neither responsive to the problems endemic to the railroad industry nor confined to a geographic area; accordingly, it could not be construed as applying uniformly to major railroads.

The Path to *Siegel*: The Dual Administrative Bankruptcy System

The statute at issue in *Siegel* was the 2017 Act; however, that statute was only the latest iteration of a bankruptcy system that operated on two distinct tracks. Until 1978, bankruptcy judges handled both judicial and administrative functions of a bankruptcy proceeding, including the appointment and supervision of private trustees. Congress piloted the United States Trustee Program that year in several federal judicial districts in an effort to reduce judges' workload and eliminate the appearance of bias that resulted from judges supervising their own appointed trustees. The pilot Trustee Program transferred administrative functions to the newly created United States Trustees, under the auspices of the Department of Justice.

In 1986, Congress sought to make the pilot Trustee Program permanent, but met resistance from the six federal judicial districts in North Carolina and Alabama, primarily on grounds that placing bankruptcy trustees under the supervision of the executive branch would create a conflict of interest. Congress implemented the Trustee Program on a permanent basis in all federal judicial districts except for the judicial districts in North Carolina and Alabama. Congress permitted those districts, also ultimately on a permanent basis, to continue the judicial appointment of bankruptcy administrators, a system deemed the "Administrator Program."

Both the Trustee Program and the Administrator Program perform the same functions, but they differ in their sources of funding. By statutes, the Trustee Program must be fully funded by user fees paid to the United States Trustee System Fund (the "UST Fund"). This comes primarily from large Chapter 11 debtors, who pay a fee each quarter of the year that their case remains pending. The rate is set by Congress and varies based on the amount of funds paid out, or disbursed, from the bankruptcy estate during that quarter. Congress does not require the Administrator Program to fund itself. Instead, the law permits the Judicial Conference of the United States to fund the program.

Congress passed the 2017 Act to address a shortfall in the UST Fund. The 2017 Act amounted to a temporary increase in the fee rates for large Chapter 11 cases, as of the first quarter of 2018. It was scheduled to sunset at the end of 2022. It applied to both currently pending and newly filed cases. The 2017 Act did not require Administrator Program districts to charge the same fees as Trustee Program districts. The Judicial Conference ultimately adopted the 2017 fee increase for the Administrator Program districts. In those six federal districts, the fee increase did not take effect until October 1, 2018, and the Judicial Conference applied it only to newly filed cases. For existing cases and for new cases filed during part of 2018, therefore, the quarterly fees were different for debtors with cases in the Trustee Program or the Administrator Program.

Four years later, in 2021, Congress amended the statute governing the parity of fees between Trustee Program and Administrator Program Districts. The amended statute provided that the Judicial Conference "shall require" imposition of fees equal to those imposed in Trustee Program districts.

Siegel: Case History and the Court's Decision

The facts giving rise to *Siegel* began in 2008, when Circuit City Stores, Inc. filed for bankruptcy in the U.S. Bankruptcy Court for the Eastern District of Virginia, a Trustee Program district. In 2010, the Bankruptcy Court approved Circuit City's joint liquidation plan, overseen by Trustee Alfred H. Siegel. The bankruptcy was ongoing when the 2017 Act became effective. In the first three quarters of 2018, Siegel paid $632,542 in fees. Prior to the 2017 Act, Siegel would have paid $56,000.

Siegel filed for relief against John P. Fitzgerald III, the Acting U.S. Trustee for Region 4, also in the Bankruptcy Court for the Eastern District of Virginia. He contended that the 2017 Act's fee increase was invalid because it did not apply in both Trustee Program districts and Administrator Program districts. The Bankruptcy Court agreed and ordered that for fees due from January 1, 2018, onward, Siegel pay the rate in effect prior to the 2017 Act. The U.S. Court of Appeals for the Fourth Circuit reversed, ruling that Congress permissibly passed the 2017 Act to replenish the dwindling UST Fund, which affected only non-Administrator Program districts. The Supreme Court granted certiorari to resolve a split that had developed in several circuits over the 2017 Act's constitutionality. The Second and Tenth Circuits had deemed the statute unconstitutional, while the Fifth and Eleventh Circuits had upheld the law.

The Supreme Court unanimously ruled that the 2017 Act violated the Constitution's uniformity requirement. As a threshold matter, it held that the uniformity requirement applied to the 2017 Act as a law "on the subject of Bankruptcies." The Court disagreed with Fitzgerald's argument that the 2017 Act did not implicate the uniformity requirement because it was administrative, rather than substantive, in nature. The Court reasoned that in prior cases it had interpreted the Bankruptcy Clause to have granted plenary power to Congress over the entirety of bankruptcy, and that it had never distinguished between substantive and administrative bankruptcy laws or suggested that the uniformity requirement would not apply to both.

Having ruled that the 2017 Act must satisfy the uniformity requirement, the Court next held that it failed to do so. The Court reasoned that the funding disparities between Trustee Program districts and Administrator Program districts arose not out of a region-specific problem, like the law at issue in the *Regional Rail Reorganization Act Cases*, but out of Congress's own "arbitrary" decision to separate the districts into two different systems. That decision to separate the districts, the Court held, derived not from geographical needs, but from a desire of the federal districts in two states to avoid participating in the Trustee Program.

In addition, the Court identified the limits of its decision. It declined to address the constitutionality of the dual administrative bankruptcy system. It also preserved Congress's authority to respond to geographically isolated bankruptcy problems. It further remanded to the Fourth Circuit to consider the proper remedy in the first instance.

Analysis and Implications for Congress

Siegel reaffirmed the broad applicability of the uniformity requirement to laws governing bankruptcy. That includes applicability to administrative requirements, meaning that Congress may exercise its power under the Bankruptcy Clause to provide for the administration of bankruptcy adjudication, but must also comply with the Bankruptcy Clause's uniformity requirements when it does so. A rare Supreme Court opinion on the uniformity requirement, *Siegel* also summarizes the doctrine's history and provides guidance for Congress moving forward. As Justice Sotomayor wrote for the Court, "our precedent provides that the Bankruptcy Clause offers Congress flexibility, but does not permit the arbitrary, disparate treatment of similarly situated debtors based on geography."

The Court granted certiorari in *Siegel* only to consider the constitutionality of the 2017 Act, and stopped at invalidating the different fee arrangements between the Trustee Program districts and the Administrator

Program districts. However, the dual administrative bankruptcy system itself is a creature of multiple federal statutes, most recently the Federal Courts Improvement Act of 2000, and establishes different rules for North Carolina and Alabama bankruptcies compared to the other 48 states.

Although the Court decided *Siegel* narrowly, its ruling raises the possibility that if challenged directly, the dual administrative bankruptcy system may not withstand scrutiny. The Supreme Court commented that "Congress exempted debtors in only two States from a fee increase that applied to debtors in 48 States, without identifying any material difference between debtors across those States." The same reasoning could apply to the differences between the Trustee Program and the Administrator Program more generally. The lower courts could apply that logic to conclude that the dual administrative bankruptcy system does not arise out of "certain particulars" unique to those two states (*Moyses*), and that it does not respond to geographically isolated needs (*Railroad Reorganization Act Cases*). In such a case, a debtor would likely need to allege or establish material differences between the Trustee Program and the Administrator Program.

In addition to providing a potential argument against the dual administrative bankruptcy system, the Court also provides Congress with a potential avenue for preserving it. The Court observed that the 2017 Act was unconstitutional in part because Congress had failed to identify any material difference between debtors in the Trustee Program districts and the Administrator Program Districts. Articulating a need for the system grounded in true geographical differences may bolster the system's constitutional position. Congress might do this when making periodic updates to the Trustee Program, as it did recently with the Bankruptcy Administration Improvement Act of 2020.

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