No. 06-273

In the Supreme Court of the United States

MIKE COX, ATTORNEY GENERAL OF THE STATE OF MICHIGAN, ET AL., PETITIONERS

v.

DAIMLERCHRYSLER CORPORATION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether Section 206(d)(1) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1056(d)(1), which prohibits the alienation or assignment of pension benefits, precludes orders and notices under the Michigan State Correctional Facility Reimbursement Act, Mich. Comp. Laws §§ 800.401 *et seq.* (1998), directing a pension plan to deposit pension benefits owed to a prison inmate into that inmate's prison account, from which Michigan can then access up to 90% of the funds to pay the expenses of incarceration.

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This brief is filed in response to the Court's invitation to the Solicitor General to express the views of the United States. The position of the United States is that further review of this case is not warranted.

STATEMENT

The "anti-alienation" provision in Section 206(d)(1) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1056(d)(1), provides that "[e]ach pension plan shall provide that benefits provided under the plan may not be assigned or alienated." An almost identical provision in Section 401(a)(13) of the Internal Revenue Code, 26 U.S.C. 401(a)(13), likewise prohibits assignment or alienation of benefits if a pension plan is to be considered a tax qualified plan. Section 514(a) of ERISA further provides generally that ERISA "shall

supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. 1144(a). Petitioners seek review of the Sixth Circuit's holding that Section 206(d)(1) of ERISA, 29 U.S.C. 1056(d)(1), prohibits the application of the Michigan State Correctional Facility Reimbursement Act (SCFRA), Mich. Comp. Laws. §§ 800.401 *et seq*. (1998), to require a pension plan to direct an inmate's pension benefits to his prison account—an account from which the warden is then entitled to take up to 90% of the funds to cover the costs of incarceration.

1. SCFRA authorizes Michigan's attorney general to seek reimbursement for the costs of an inmate's incarceration by filing a complaint against the inmate in state court on behalf of the state treasurer. Mich. Comp. Laws § 800.404(1) (1998). The state court, after considering the inmate's legal and moral obligations to support dependents, may order the inmate to reimburse Michigan for the costs of incarceration, up to 90% of the inmate's assets. *Id*. §§ 800.403(3), 800.404(3) and (5). SCFRA defines the inmate's assets as including "income or payments * * * from * * * pension benefits." *Id*. § 800.401a(a). The state court "shall" order any person or entity having custody of an inmate's assets to apply them toward reimbursement of the State. *Id*. § 800.404(3). Under Section 800.404(6), if the person or entity fails to comply with such an order, the court "shall" enter an order to show cause why the person or entity should not be considered in contempt of court.

Here, Michigan sought to recover pension benefit payments that four inmates were receiving under the DaimlerChrysler Corporation-UAW Pension Agreement (the Plan). Pet. App. 4a. The Michigan attorney general obtained a judgment under SCFRA in state court, and

Michigan was awarded a percentage of each inmate's pension payments. *Id.* at 4a-5a. It is undisputed, however, that directly ordering a pension plan to turn over a prisoner's assets to the State would violate ERISA's anti-alienation provision. *Id.* at 4a. Accordingly, to effectuate the SCFRA award, the state court ordered each inmate to inform the Plan that benefit payments should be sent to his institutional address. *Id.* at 4a-5a. The orders further provided that, if the inmate refused to give such notice, the warden was to serve on DaimlerChrysler Corporation (DaimlerChrysler or respondent) a copy of the court's order and a notice that the institutional address was the legal address where the inmate should receive his pension benefits. *Id.* at 5a. The orders then directed the warden to make distributions to the State from each inmate's account in an amount equal to the court-ordered percentage of the inmates's pension benefits. *Ibid.*

Michigan Department of Corrections security restrictions allow inmates to have only one bank account —a prison account—during their term of incarceration, and they require that inmates receive all funds and conduct all financial transactions through that prison account. Pet. App. 3a (citing Mich. Dep't of Corrs. Policy Directive No. 04.02.105 (2004)). Consistent with that directive, the state court further ordered that, when payments from the pension plan were received at the institutional address, they were to be deposited directly into the inmate's institutional account, from which the warden was to make monthly distributions to Michigan of 90% of the funds. *Id.* at 5a.

Only one of the inmates complied with the order to notify the Plan that benefits should be sent to his institutional address, and DaimlerChrysler changed his ad-

dress accordingly. The other three inmates refused to provide notice to the Plan of their institutional address, and their respective wardens sent change of address notices to DaimlerChrysler as the state court had ordered. Pet. App. 5a-6a.

2. DaimlerChrysler did not comply with the wardens' notices, but instead brought this declaratory judgment action in the United States District Court for the Eastern District of Michigan, seeking a determination whether the state court orders and wardens' notices were enforceable against the Plan or were preempted by ERISA. Pet. App. 6a. The district court granted DaimlerChrysler's request for a declaratory judgment, holding that the orders and notices violated ERISA's anti-alienation provision to the extent that they purported to require DaimlerChrysler to direct pension benefits to a place not designated by the inmate. *Id.* at 7a. The district court, however, rejected DaimlerChrysler's contention that the state court orders and wardens' notices also were preempted by ERISA's general preemption provision, 29 U.S.C. 1144(a). Pet. App. 7a.[1]

3. The court of appeals affirmed. Pet. App. 1a-16a. The court observed that Treasury Regulation § 1.401(a)-13(c)(1) (26 C.F.R.) "define[s] the terms 'assignment'

[1] DaimlerChrysler originally sought to void the state court orders with respect to all four inmates. DaimlerChrysler subsequently limited its position and asserted only that the orders and notices were void to the extent that they purported to require the warden to direct funds to the prison accounts without the inmates' cooperation. Accordingly, whether a prohibited alienation occurs when a court orders an address change and the inmate cooperates in directing the plan to change his address is no longer an issue in this case and was not addressed on appeal. Pet. App. 7a-8a.

and 'alienation' [in ERISA's anti-alienation provision] as including '[a]ny direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary.'" Pet. App. 11a; see Reorg. Plan No. 4 of 1978, 3 C.F.R. 332 (1979) (Secretary of Treasury has authority to issue regulations under ERISA's anti-alienation provision). The court further observed that it, along with a majority of the other circuits, had held that once benefit payments have been disbursed to a beneficiary, creditors may encumber the proceeds, but that ERISA protects pension plan benefits from alienation up to the point of payment to the beneficiary. Pet. App. 13a. The court thus formulated the issue before it as whether the wardens' notices encumbered the benefit payments before the payments left plan control. *Id.* at 12a-13a.

The court of appeals concluded that "the SCFRA notices operate on plan benefits *before* they are sent," thus falling within ERISA's prohibition on alienation. Pet. App. 13a. The court explained that this is not a case "where a plan is no longer obligated to protect pension payments from alienation because the benefits have already been disbursed at the direction of the beneficiary." *Id.* at 14a. The court acknowledged that the warden could not obtain access to the pension benefit payments until after the funds were deposited into the inmate's account, but explained that the notices were received by the Plan while it still had control of the funds and, if the notices were enforceable against the Plan, they would effectively divert funds against the inmate's wishes to an account in which Michigan already

had a 90% interest. *Id.* at 13a-14a. The court thus concluded that this case stood in contrast to those cases in which an encumbrance was placed on funds *after* the pension plan no longer had control of them. *Id.* at 14a.

The court of appeals rejected petitioner's argument that the orders and notices did not result in a prohibited alienation of benefits because the state court order only directed the warden to send notices, but did not directly require DaimlerChrysler to do anything. Pet. App. 14a-15a. The court observed that DaimlerChrysler sought a declaration as to whether it must comply with the wardens' notices and reasoned that to hold that DaimlerChrysler had to comply with the notices would create a legal obligation enforceable against the Plan before distribution. *Id.* at 15a. Accordingly, the court concluded that the notices were void to the extent that they directed DaimlerChysler to send benefits to an account controlled by the warden, because such a directive would constitute an alienation of plan assets. *Ibid.*

The court of appeals acknowledged that the Michigan Supreme Court addressed similar notices and orders under SCFRA in *State Treasurer* v. *Abbott*, 660 N.W.2d 714 (2003), cert. denied, 540 U.S. 1112 (2004), and concluded, under the facts presented there, that there was no impermissible alienation of benefits. Pet. App. 15a. The Michigan Supreme Court reasoned that no alienation occurred because no transfer to "another person" was made when payments were directed to the inmates' institutional accounts. *Ibid.* The court of appeals found *Abbott*'s reasoning "unpersuasive." *Ibid.* The court of appeals explained that it was irrelevant that the inmates received payments at their "own" prison accounts, because the inmates did not want to receive payments in accounts in which Michigan already had obtained up to

a 90% interest. *Id.* at 15a-16a. The court concluded that "[t]he fact that the payments were sent to the prisoner's institutional address is therefore a mere formalism that is not dispositive of whether an alienation has occurred in the present case." *Id.* at 16a. The court opined that Michigan could still reach benefit payments but must wait until the payments are received at the direction of the inmate before encumbering them. *Ibid.* (citing *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 39 F.3d 1078, 1082-1083 (10th Cir. 1994), modifying, 10 F.3d 700 (10th Cir. 1993), cert. denied, 514 U.S. 1063 (1995)).

The court of appeals expressly noted that it was not ruling on whether state officials could compel an inmate to send an address change to the pension plan, because that issue was not before it. Pet. App. 16a. In addition, because the court of appeals held that ERISA's anti-alienation provision preempted the orders and notices under SCFRA, it declined to reach the Plan's alternative argument that the notices were void under ERISA's general preemption provision, 29 U.S.C. 1144(a). Pet. App. 16a.

DISCUSSION

The court of appeals correctly held that, if the wardens' notices directing the Plan to send benefits to the inmates' institutional accounts were enforceable against the Plan, an alienation of pension benefits prohibited by ERISA Section 206(d)(1) would result. Although that decision does not create a square conflict with any other decision, it is in substantial tension with the Michigan Supreme Court's decision in *State Treasurer* v. *Abbott,* 660 N.W.2d 714 (2003), cert. denied, 540 U.S. 1112 (2004). Further review of the court of appeals' decision nevertheless is unwarranted at this time. The

Michigan Supreme Court did not have the benefit of the federal government's views, and the combined effect of the court of appeals' decision here and the fact that the Treasury Department agrees with the court of appeals might lead the Michigan Supreme Court to reconsider *Abbott* in a future case. Moreover, as the court of appeals suggested, Pet. App. 16a, the State appears to have other means of reaching the proceeds of a prisoner's pension benefits, after they have been received, in a manner that would effectuate the policy judgment underlying SCFRA without violating ERISA's anti-alienation provision.

A. The Decision Below Is Correct

1. In enacting the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, Congress established a comprehensive federal scheme for the protection of pension plan participants and their beneficiaries. See *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). Finding "that the continued well-being and security of millions of employees and their dependents are directly affected by these plans," 29 U.S.C. 1001(a), Congress prescribed various disclosure and reporting requirements (29 U.S.C. 1021-1031 (2000 & Supp. IV 2004)), participation and vesting standards (29 U.S.C. 1051-1061 (2000 & Supp. IV 2004)), fiduciary obligations (29 U.S.C. 1101-1114 (2000 & Supp. IV 2004)), criminal penalties (29 U.S.C. 1131 (2000 & Supp. IV 2004)), and civil enforcement provisions (29 U.S.C. 1132 (2000 & Supp. IV 2004)) to effectuate the statute's policy of protecting "interstate commerce and the interests of participants in employee benefit plans and their beneficiaries." 29 U.S.C. 1001(b).

ERISA reflects a congressional policy decision "to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for wrongs done them." *Patterson* v. *Shumate,* 504 U.S. 753, 765 (1992) (quoting *Guidry* v. *Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 376 (1990)). That policy is implemented through ERISA's anti-alienation provision, which provides that "[e]ach pension plan shall provide that the benefits provided under the plan may not be assigned or alienated." ERISA § 206(d)(1), 29 U.S.C. 1056(d)(1). Similarly, Section 401(a)(13) of the Internal Revenue Code, 26 U.S.C. 401(a)(13), prohibits assignment or alienation of benefits if a pension plan is to be considered a tax qualified plan. Treasury Regulation Section 1.401(a)-13 reiterates the same prohibition and further clarifies "that benefits provided under the plan may not be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, levy, execution or other legal or equitable process." 26 C.F.R. 1.401(a)-13(b)(1). The Treasury Regulation defines the terms "assignment" and "alienation" as including "[a]ny direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan in, or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary." 26 C.F.R. 1.401(a)-13(c)(1).

As the court of appeals correctly observed, courts have "vigorously" enforced the anti-alienation provision and have declined to recognize any implied exceptions to the statutory bar, uniformly holding that pension benefits cannot be garnished or attached through any

direct or indirect means *while under plan control*. Pet. App. 11a (quoting *Patterson*, 504 U.S. at 760). See, *e.g.*, *Guidry*, 493 U.S. at 371-377 (holding that imposition of a constructive trust on an embezzler's pension benefits violated ERISA's anti-alienation provision); *Patterson*, 504 U.S. at 760 (holding that a bankruptcy trustee was prohibited from including as an asset of the bankruptcy estate a debtor's interest in his employee-benefits plan); compare *Bennett* v. *Arkansas*, 455 U.S. 395 (1988) (Social Security Act's anti-alienation provision bars State's attachment of Social Security benefits to pay costs of inmates' incarceration).

The majority of the courts of appeals have held, however, that once benefit payments have been disbursed to a beneficiary, creditors may encumber the proceeds. See *Hoult* v. *Hoult*, 373 F.3d 47, 53-55 (1st Cir.), cert. denied, 543 U.S. 1002 (2004); *Central States, S.E. & S.W. Areas Pension Fund* v. *Howell*, 227 F.3d 672, 676-679 (6th Cir. 2000); *Wright* v. *Riveland*, 219 F.3d 905, 919-921 (9th Cir. 2000); *Robbins* v. *DeBuono*, 218 F.3d 197, 203 (2d Cir. 2000), cert. denied, 531 U.S. 1071 (2001); *Trucking Employees of N. Jersey Welfare Fund, Inc.* v. *Colville*, 16 F.3d 52, 56 (3d Cir. 1994); *Guidry* v. *Sheet Metal Workers Int'l Ass'n, Local No. 9*, 39 F.3d 1078 (10th Cir. 1994), modifying, 10 F.3d 700, 710 (10th Cir. 1993), cert. denied, 514 U.S. 1063 (1995); but see *United States* v. *Smith*, 47 F.3d 681 (4th Cir. 1995) (pension benefits owed to a beneficiary after retirement could not be encumbered even after distribution to the beneficiary). The conflict between *Smith* and the other appellate decisions in this regard is not implicated in this case, which involves assertion of a right enforceable against the Plan to redirect payment of pension benefits to an account under the control of the State *before* the

assets have been paid out to the beneficiary. Instead, the decision below is consistent with the uniform decisions cited above precluding attachment of benefits still under plan control.

2. The court of appeals correctly held that, if respondent were compelled to comply with the wardens' change-of-address notices and distribute pension benefits to a state-controlled account against the participants' will, it would result in a prohibited alienation of pension benefits. Pet. App. 16a. Under the pertinent Treasury Regulation, 26 C.F.R. 1.401(a)-13(c)(1), requiring DaimlerChrysler to comply with the SCFRA process would constitute an "indirect arrangement" whereby Michigan acquires from a plan participant (the inmate) a right or interest enforceable against the plan to a plan benefit payable to the plan participant. Indeed, as the court of appeals observed, because under SCFRA an inmate's funds are effectively relinquished to state control when placed in his or her institutional account, the only difference between an order to send the money directly to a state account (obviously a prohibited alienation) and an order to send money to the inmate's account is that the inmate's account is "labeled with the prisoner's name." Pet. App. 14a. In either case, whether directly or indirectly, the funds are diverted to the warden's control.

The conclusion that the orders and notices would effect a prohibited alienation, insofar as they require the Plan to send pension payments to the inmates' prison accounts, is reinforced by the overall operation of the statutory scheme in this case. SCFRA provides for the state court, after considering the inmate's moral and legal obligations to support his dependents, to order the inmate to reimburse the State for the costs of his incar-

ceration in an amount up to 90% of the inmate's assets. Moreover, the specific orders in this case were actions initiated by the Attorney General under SCFRA for the specific purpose of obtaining an allocation to the State of up to 90% of the inmates' pension benefits. See pp. 2-3, *supra*. The state court then ordered the inmates to instruct the Plan to pay benefits into their prison accounts, under the control of the State, to satisfy the state court's award. And when they failed to do so, the warden sent the orders and notices to the Plan directing it to do so. From start to finish, then, the proceedings under SCFRA were directed in substance toward a court-ordered redirection of the inmate's pension benefits by the Plan to the State. That result is barred by ERISA's anti-alienation provision.

B. The Decision Below Does Not Merit Plenary Review

1. The court of appeals' decision does not conflict with any decision of this Court or any other circuit court. As petitioners note (Pet. 16), in *Wright*, 219 F.3d at 905, the Ninth Circuit addressed a challenge to a Washington statute that authorized a deduction of 35% from all funds received in an inmate's account from outside sources, including ERISA-protected pension benefits. The Ninth Circuit held that the Washington statute did not violate ERISA's anti-alienation provision because ERISA Section 206(d)(1) "does not prohibit assignment or alienation of pension benefits that have actually been distributed under the plan." *Id.* at 919.

Contrary to petitioners' contention (Pet. 16), *Wright* does not conflict with the decision below. The Ninth Circuit framed the general governing principle of law the same way as did the court of appeals here—concluding that ERISA prohibits encumbrances of pension ben-

efits while still held by the plan, but not encumbrances placed on benefits after those funds have been distributed to the beneficiary. *Wright*, 219 F.3d at 919-921. The different outcomes in the two cases turn on differences in factual context and the details of the statutory schemes involved.

In *Wright*, the issue was not whether a court order was enforceable against a pension plan. Rather, inmates brought a class action challenging the legality under ERISA of a statute that provided that 35% of funds that they received from outside sources could be deducted from their prison accounts. 219 F.3d at 909-910. The inmates thus were not protesting the distribution of benefits to their prison accounts, but rather the State's deduction of funds after they had been deposited in the inmates' prison accounts. *Id.* at 919-921. The Ninth Circuit held that no prohibited alienation occurred because Treasury Regulation Section 1.401(a)-13(c)(1) does not prohibit the alienation of *distributed funds*, and the State did not obtain the benefits until after they had been distributed to the inmates' prison account. *Wright*, 219 F.3d at 921. Those circumstances are plainly different from the situation here, where DaimlerChrysler sought a determination whether the SCFRA orders and notices imposed an enforceable obligation on the Plan to redirect the inmates' pension benefits to prison accounts under state control.

2. In *Abbott*, *supra*, the Michigan Supreme Court addressed the same statutory scheme at issue in this case, but in the context of a state court order that directed an inmate to instruct his pension plan to send his pension benefits to his prison address, and that further directed the warden then to divide the funds among the inmate, the inmate's wife, and the State. 660 N.W.2d at

716-717. The state court also ordered that, if the inmate refused to instruct the pension plan to send the proceeds to his prison address, the pension plan was nonetheless required to do so. *Id.* at 717.

Viewing the issue as whether the state court's order directing the inmate to instruct the pension plan to send his benefit payments to his prison address violated the anti-alienation provision, the Michigan Supreme Court concluded that no violation occurred. The court observed that the pertinent Treasury Regulation, 26 C.F.R. 1.401(a)-13(c)(1), defined an alienation as an arrangement that contemplates the transfer of an interest in plan benefits to a person other than the beneficiary. *Abbott*, 660 N.W.2d at 718. The court held that ordering an inmate to direct a plan to send his benefit payments to his prison address did not transfer an interest in the benefit payment to another person. *Id.* at 718-719. The court further stated that the state court's order in the alternative, requiring the plan to send the payments to the inmate's prison address if the inmate refused to notify the plan to do so, did not violate the anti-alienation provision for the same reason. *Id.* at 720 ("Because [the prisoner] * * * receives the funds, no assignment or alienation occurs.").

The court of appeals here expressly declined to decide whether ERISA's anti-alienation provision would be violated if Michigan sought to compel an inmate to send an address change to his pension plan, the specific action that was challenged in *Abbott*. Pet. App. 16a. And the *Abbott* court was not confronted with a challenge by the plan to prevent enforcement of the SCFRA order that required it to redirect the prisoner's pension benefits to his prison account in the event the prisoner failed to direct the plan to do so. Indeed, the pension

plan was not even a party to the proceeding. Thus, although *Abbott*'s reasoning is in significant tension with that of the court of appeals here, no direct conflict between the two holdings exists.[2]

Review at this time would in any event be premature. In the first place, the Sixth Circuit's decision could itself furnish a reason for the Michigan Supreme Court to reconsider *Abbott* in an appropriate case. The Michigan Supreme Court has recognized that it is appropriate to look to federal appellate decisions as guidance in interpreting a federal statute. See *Yellow Freight Sys., Inc.* v. *State*, 627 N.W.2d 236, 240 n.10 (2001) (the Michigan Supreme Court is bound by Supreme Court authority on federal questions and adheres to the view that, while it is not bound by the decisions of the lower federal courts, it will give respectful consideration to their decisions), rev'd on other grounds, 537 U.S. 36 (2002); see also *Abela* v. *General Motors Corp.*, 677 N.W.2d 325 (Mich.), cert. denied, 543 U.S. 870 (2004). [3]

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[2] In *Abbott* v. *Michigan*, 474 F.3d 324 (2007), the Sixth Circuit rejected a collateral attack on the Michigan Supreme Court's decision in *Abbott*. *Id.* at 328-332 (holding that prisoners' claims were barred by either the *Rooker-Feldman* doctrine or res judicata). In so doing, the court noted that *Abbott* was "in tension with" the decision below. *Id.* at 327 n.3.

[3] In *State Treasurer* v. *Krueger*, 723 N.W.2d 827 (2006), the Michigan Supreme Court declined to review a decision by the Michigan Court of Appeals that may have provided an opportunity to reconsider *Abbott* in light of the Sixth Circuit's decision in this case. See *id.* at 827-828 (Markman, J., concurring in denial of application for leave to appeal) (concluding that the case did not present an opportunity to revisit *Abbott* because *Abbott* was "readily distinguishable"); *id.* at 828 (Kelly, J., dissenting from denial of application for leave to appeal) (concluding that the case "would necessitate a revisiting of *Abbott*" and that such

More fundamentally, the Michigan Supreme Court may reach a different conclusion in light of the interpretation by the Treasury Department expressed in this brief that ERISA's anti-alienation provision and the implementing Treasury Regulation, 26 C.F.R. 1.401(a)-13(c), bar the application of the state court orders and warden notices to the extent that they require the Plan to redirect pension benefits to an account controlled by the State. As explained above, under the Treasury Department's interpretation, the effect of such orders and notices would be an indirect assignment that effectively redirects pension plan benefits to a third-party (here, the State of Michigan), even if the transfer is to an account in the Plan participant's name. The Michigan Supreme Court recognized in *Abbott* that *Chevron USA Inc.* v. *NRDC*, 467 U.S. 837 (1984), requires deference to a federal agency's interpretation of ERISA's anti-alienation provision if it is a permissible construction of the statute. *Abbott*, 660 N.W.2d at 718. See *Auer* v. *Robbins*, 519 U.S. 452, 461 (1997) (court must defer to agency's interpretation of its own regulations unless it is plainly wrong or inconsistent with the language of the regulation). It thus would be premature for this Court to grant review in this case based on the present tension between the state and federal courts' interpretations, before the Michigan Supreme Court has had the opportunity to consider the position of the Department of the Treasury and the United States.

It also bears emphasis that the decision below does not necessarily mean that Michigan's statute, SCFRA, is preempted by ERISA's anti-alienation provision. The

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reconsideration was warranted because "the Sixth Circuit has thrown the validity of *Abbott* into question").

court of appeals considered not the statute, as such, but rather the validity of state court orders issued to implement the statute in this case. It appears that the anti-alienation provision would not be implicated by efforts to reach the funds once received by the inmate and that other mechanisms may be available to ensure that inmates do not evade the policy underlying SCFRA.[4]

3. Respondent also argued in the courts below that Section 514 of ERISA, 29 U.S.C. 1144, which provides generally that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan," supplied an additional ground on which to preclude enforcement of the orders and notices under SCFRA against the Plan. The court of appeals found it unnecessary to reach that alternative argument because it held that the anti-alienation provision prohibited enforcing the orders and notices against the Plan. Pet. App. 16a. See *Boggs* v. *Boggs*, 520 U.S. 833, 841 (1997) (holding that there was no need to reach

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[4] The court of appeals suggested (Pet. App. 16a) that the State of Michigan might have other means to recover the costs of incarceration from the inmates without violating ERISA's anti-alienation provision. The court observed that "[o]nce the benefit payments are received, even if the prisoner tries to conceal them in an illegal account, the state can take action against the prisoner by placing a constructive trust on those already-paid funds." *Ibid.* See *Howell*, 227 F.3d at 678-679 (ERISA-protected benefits may be encumbered after they have been distributed); Mich. Comp. Laws § 600.6104(1) (2000) (authorizing discovery of property or money belonging to judgment debtor); *id.* § 600.6110 (authorizing state judge to subpoena judgment debtor and judgment debtor's records concerning his property or income); *id.* § 800.404a(1) (1998) (authorizing attorney general, in seeking reimbursement under SCFRA, to use "any remedy, interim order, or enforcement procedure * * * to restrain the prisoner * * * from disposing of certain property").

the Section 514 preemption issue when state law conflicted with the anti-alienation provision). Furthermore, petitioner does not assert that there is any conflict among federal courts or state supreme courts concerning the application of ERISA's general preemption provision to orders and notices of the sort at issue in this case. There accordingly is no reason for the Court to grant review of that issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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