

A Fresh Start Through Bankruptcy: Fact Or Frustration For The Student Loan Debtor?

For student loan debtors, a discharge of repayment obligations through bankruptcy does not always afford the economic clean slate intended by the Federal Bankruptcy Act.¹ Although one of the Act's primary purposes is to furnish a debtor an economic "fresh start" in life,² some colleges may withhold transcripts from bankrupt student loan debtors. Lack of transcript certification for a bankrupt former student significantly diminishes the education's economic value and forecloses certain career opportunities, thus frustrating the Bankruptcy Act's "fresh start" objective. Because of a paralyzing misinterpretation of the Act's 1970 amendments,³ courts have upheld several creditor schemes that frustrate the bankrupt's fresh start. Although only two courts have addressed a bankrupt former student's ability to obtain transcripts after discharge of a student loan, the Eighth Circuit adhered to this narrow construction and permitted a private college to withhold transcripts.⁴ A New Jersey federal district court, however, held that a *state* college, bound by the Constitution's supremacy clause,⁵ cannot withhold a bankrupt former stu-

1. 11 U.S.C. §§ 1-1103 (1976) (repealed by Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549) (repeal effective Oct. 1, 1979).

2. The Supreme Court acknowledged and elaborated on the fresh start doctrine in *Local Loan Co. v. Hunt*, 292 U.S. 234 (1934). There the Court described one of the Bankruptcy Act's foremost purposes and the policy underlying it as the bankrupt's ticket to a new economic life.

One of the primary purposes of the bankruptcy act [*sic*] is to "relieve the honest debtor from the weight of oppressive indebtedness and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes." This purpose of the act has been again and again emphasized by the courts as being of public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt. The various provisions of the Bankruptcy Act were adopted in light of that view and are to be construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act.

Id. at 244-45 (citation omitted). See *Harris v. Zion's Bank Co.*, 317 U.S. 447 (1943); *Stellwagen v. Clum*, 245 U.S. 605 (1918); *Williams v. United States Fidelity & Guar. Co.*, 236 U.S. 549 (1915).

3. Section 14 of the Bankruptcy Act, 11 U.S.C. § 32 (1976) (repealed 1978) (repeal effective Oct. 1, 1979), describes the effect of a discharge in bankruptcy on the debtor-creditor relationship. See text accompanying notes 14-48 *infra*.

4. *Girardier v. Webster College*, 563 F.2d 1267 (8th Cir. 1977).

5. U.S. CONST. art. VI, cl. 2. Once Congress passes laws pursuant to a constitutional grant of power, state laws that stand "as an obstacle to the accomplishment and execution

dent's transcript.⁶ In 1978, Congress enacted bankruptcy reform legislation⁷ that, properly construed, will resolve the inconsistency of these decisions by prohibiting any creditor college, state or private, from denying transcripts to bankrupt former students.

The rapidly increasing number of student loans maturing under the relatively new guaranteed student loan program have spawned a dramatic increase in the number of educational loans discharged in bankruptcy.⁸ This comment will examine former students' ability to obtain college transcripts after discharge of their student loans through bankruptcy. It will discuss the two cases holding that a private college can deny transcripts to bankrupts,⁹ but a state college cannot.¹⁰ Furthermore, it will inquire into the purposes of the Bankruptcy Act, the correctness of the restrictive judicial interpretation of the 1970 amendments,¹¹ and alternative judicial approaches that better reflect the amendments' purpose.¹² Finally, it will examine the 1978 bankruptcy reform legislation and its potential effect on bankrupt students seeking transcripts.¹³

I. THE 1970 AMENDMENTS

Congress intended the 1970 amendments to remedy problems encountered under the original Bankruptcy Act. Under the original 1898 Act,¹⁴ a bankrupt generally faced two forms of har-

of the full purposes and objectives of Congress" violate the supremacy clause. *Hines v. Davidowitz*, 312 U.S. 52 (1941). See note 53 *infra*.

6. *Handsome v. Rutgers Univ.*, 445 F. Supp. 1362 (D.N.J. 1978).

7. Federal Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (effective Oct. 1, 1979).

8. The General Accounting Office (GAO) provided data concerning student loan bankruptcies to the Judiciary Committee during consideration of the Education Amendments of 1976. GAO's data appear in the Bankruptcy Reform Act's legislative history, indicating that "the general default rate on educational loans is approximately 18%. Of that 18%, approximately 3-4% of the amounts involved are discharged in bankruptcy cases. Thus, approximately 1/2 to 1/4 of 1% of all matured educational loans are discharged in bankruptcy. This compares favorably with the consumer finance industry." H.R. REP. No. 595, 95th Cong., 1st Sess. 133 (1977). See text accompanying notes 105-18 *infra*.

9. See text accompanying notes 63 and 64 *infra*.

10. See text accompanying notes 49-68 *infra*.

11. See text accompanying notes 14-48 *infra*.

12. See text accompanying notes 69-105 *infra*.

13. See text accompanying notes 106-30 *infra*.

14. Writing for the court in *In re Leslie*, 119 F. 406, 410 (N.D.N.Y. 1903), Judge Ray declared that the primary purpose of the Bankruptcy Act of 1898 was the equitable division of assets among the bankrupt's creditors, and not merely a discharge of the debtor's obligations. Judge Ray spoke from experience; he was a member of the House Judiciary Committee that passed the original act. See generally 1A COLLIER ON BANKRUPTCY ¶ 14.01, at 1260.2 (14th rev. ed. 1971).

assment. First, creditors often subjected a bankrupt to state court litigation following a general discharge in bankruptcy.¹⁵ By legislative design the Bankruptcy Court adjudicated only a debtor's right to a general discharge, leaving state courts to determine the discharge's effect upon particular debts.¹⁶ Bankrupts frequently failed to appear in court to plead the discharge although it was a viable affirmative defense in most cases. Because a discharge destroyed only the remedy and not the debt's existence,¹⁷ shrewd creditors often sued, hoping the unwary bankrupt would mistakenly rely on the discharge and fail to appear.¹⁸ Similarly, newly adjudicated bankrupts, too poor to seek legal counsel, often ignored notice of a pending suit.¹⁹ In both situations, the resulting default judgment against the bankrupt revived the obligation to pay the debt,²⁰ and the recent discharge in bankruptcy precluded another discharge for the statutory six year period.²¹ Congress in 1970 enacted section 14(f)(1)²² to prevent this method of frustrating the bankrupt's fresh start. This section vests the Bankruptcy Court with exclusive jurisdiction both to issue a general discharge and to determine its effect upon all of a bankrupt's debts and invalidates any prior or subsequent judicial determination of a bankrupt's liabilities.²³

The second form of harassment under the original Act encompassed a wide range of informal, coercive means of debt collection. In *Kesler v. Department of Public Safety*,²⁴ the Supreme Court adhered to the theory that, although bankruptcy bars the remedy, the debt continues to exist.²⁵ Upholding a stat-

15. *Id.* ¶ 17.27, at 1718-24.

16. *Id.*

17. *Zavelo v. Reeves*, 227 U.S. 625, 629 (1913).

18. See 1A COLLIER ON BANKRUPTCY ¶ 17.27, at 1718-24 (14th rev. ed. 1971).

19. *Id.*

20. "[A] discharge, while releasing the bankrupt from legal liability to pay a debt that was provable in the bankruptcy, leaves him under a moral obligation that is sufficient to support a new promise to pay the debt." *Zavelo v. Reeves*, 227 U.S. at 629.

21. A debtor cannot secure a discharge in bankruptcy if he obtained a discharge within six years before filing the present petition. Federal Bankruptcy Act § 14(c), 11 U.S.C. § 32(c) (1976) (repealed 1978) (repeal effective Oct. 1, 1979).

22. Federal Bankruptcy Act § 14(f)(1), 11 U.S.C. § 32(f)(1) (1976) (repealed 1978) (repeal effective Oct. 1, 1979).

23. "An order of discharge shall—

(1) declare that any judgment theretofore or thereafter obtained in any other court is null and void as a determination of the personal liability of the bankrupt" *Id.*

24. 369 U.S. 153 (1962).

25. [A] discharge does not free the bankrupt from all traces of the debt, as though it had never been incurred. This Court has held that moral obligation to pay the debt survives discharge and is sufficient to permit a state to grant

ute that suspended a bankrupt's driver's license for failure to pay a previously discharged judgment arising out of an automobile accident, the Court held that, although a state may not intentionally circumvent the Bankruptcy Act's objectives by imposing sanctions specifically designed to enforce payment of discharged debts, it may attach any consequences whatsoever to the discharged debts.²⁶ The Court stated that the statute's purpose was to promote motorist financial responsibility and refused to inquire into the law's concomitant effect of frustrating a bankrupt's fresh start.²⁷ Other examples of informal creditor harassment included revoking a bankrupt's professional license,²⁸ evicting him from his residence,²⁹ and imposing a set-off against his inheritance.³⁰ Congress in 1970 enacted section 14(f)(2)³¹ to reach a wide range of activity that operated to frustrate bankruptcy's fresh start objectives.³² This section enjoins creditors from "maintaining any action or employing any process" to collect a discharged debt.³³

Although section 14(f)(2) seems to prohibit any processes that coerce payment, courts have misinterpreted legislative history and construed "any process" narrowly to mean only formal legal processes.³⁴ Bankrupt former students have claimed a col-

recovery to the creditor on the basis of a promise subsequent to discharge, even though the promise is not supported by new consideration [T]he theory . . . is that "the discharge destroys the remedy but not the indebtedness."

369 U.S. at 170 (quoting from *Zavelo v. Reeves*, 227 U.S. at 629).

26. "[T]he Bankruptcy Act does not forbid a State to attach any consequences whatsoever to a debt which has been discharged." *Id.* at 171.

27. The Supreme Court expressly overruled *Kesler* in *Perez v. Campbell*, 402 U.S. 637 (1971). See text accompanying notes 55-61 *infra*.

28. *Zwick v. Freeman*, 373 F.2d 110 (2d Cir. 1967).

29. *Carter v. Sutton*, 147 Ga. 496, 94 S.E. 760 (1917).

30. *Leach v. Armstrong*, 236 Mo. App. 382, 156 S.W.2d 959 (1941).

31. Federal Bankruptcy Act § 14(f)(2), 11 U.S.C. § 32(f)(2) (1976) (repealed 1978) (repeal effective Oct. 1, 1979).

32. "[T]he major purpose of the proposed legislation is to effectuate, more fully, the discharge in bankruptcy by rendering it less subject to abuse by harassing creditors." H.R. REP. NO. 1502, 91st Cong., 2d Sess. 1, reprinted in [1970] U.S. CODE CONG. & AD. NEWS 4156, 4156.

33. "An order of discharge shall—

(2) enjoin all creditors whose debts are discharged from thereafter instituting or continuing any action or employing any process to collect such debts as personal liabilities of the bankrupt." Federal Bankruptcy Act § 14(f)(2), 11 U.S.C. § 32(f)(2) (1976) (repealed 1978) (repeal effective Oct. 1, 1979).

34. See, e.g., *In re Thompson*, 416 F. Supp. 991 (S.D. Tex. 1976). The court declined to find a creditor's activities within the meaning of the processes enjoined in § 14(f)(2) when his attorney sent numerous letters to the bankrupt threatening to bring criminal and civil actions. After noting the importance of legislative history to statutory construc-

lege's refusal to release their transcripts was a "process" enjoined by section 14(f)(2).³⁵ Although withholding transcripts tends to coerce payment of discharged student loans,³⁶ both courts passing on the issue adhered to the narrow construction of "process," holding that the language does not encompass transcript denial.³⁷

In every case reviewing coercive creditor schemes, the courts' rationale for restricting "process" in section 14(f)(2) to formal legal action focused on two passages in the amendment's legislative history.³⁸ The first was the House Judiciary Committee's statement that harassment lawsuits were an evil it intended the amendments to remedy.³⁹ The second was the House record's statement that the amendment shall have no effect on a bankrupt's ability to revive his obligations by a promise to pay subsequent to discharge.⁴⁰ In concluding that "process" means only formal legal action, courts misinterpreted this legislative history

tion, the court stated, "[t]he legislative history makes it clear that Congress sought to stop legal, as opposed to informal, means of post-discharge debt collection." *Id.* at 995.

35. *Girardier v. Webster College*, 563 F.2d at 1272; *Handsome v. Rutgers Univ.*, 445 F. Supp. at 1367.

36. One court called the college's refusal to issue a transcript "thinly-veiled coercion on the part of a state university to compel repayment of loans duly discharged under the federal bankruptcy laws" *Handsome v. Rutgers Univ.*, 445 F. Supp. at 1367.

37. *Girardier v. Webster College*, 563 F.2d at 1273; *Handsome v. Rutgers Univ.*, 445 F. Supp. at 1367. The *Girardier* court's rationale for limiting "process" to formal, legal action, relied upon legislative history indicating that the amendment was intended to prevent harassment lawsuits. "[W]e find no Congressional intent that the language be so broad That the 1970 amendments did not serve to prohibit nonlegal, informal means of inducing the debtor to make payment on or revive the discharged obligation is apparent from the legislative history." 563 F.2d at 1272. In fact, however, the legislative history addresses only the debtor's continued ability to revive an obligation by his own action. See note 40 *infra*.

38. See, e.g., *In re Thompson*, 416 F. Supp. 991, 995-96 (S.D. Tex. 1976).

39. The House Judiciary Committee addressed the problem of harassment lawsuits subsequent to discharge, reporting that "[o]ften the debtor in fact does not appear because of . . . misplaced reliance, or an inability to retain an attorney due to lack of funds As a result a default judgment is taken against him and his wages or property may again be subjected to garnishment or levy." H.R. REP. NO. 1502, 91st Cong., 2d Sess. 1 reprinted in [1970] U.S. CODE CONG. & AD. NEWS 4156, 4156.

An explanatory memorandum prepared for the National Bankruptcy Conference and accepted into the House record to accompany the amendment noted that § 14(f) was intended to eliminate "harassment lawsuits" and the need for the bankrupt "to retain legal assistance in another court to assert his discharge and permits the bankrupt to be unburdened from the effects of judgments which today are not rightfully obtained . . . through default." *Explanatory Memorandum to Accompany S. 4247*, 116 CONG. REC. 34818-20 (daily ed. Oct. 5, 1970).

40. "This proposed legislation does not affect in any way a bankrupt's obligation upon a discharged debt which is subsequently revived by a new promise." *Explanatory Memorandum to Accompany S. 4247*, 116 CONG. REC. 34818-20 (daily ed. Oct. 5, 1970).

in three respects. First, the provisions of section 14(f)(1) directly address the harassment lawsuit problem and nullify any judgment resulting therefrom.⁴¹ Therefore, legislative history emphasizing harassment lawsuits explains the intended meaning of section 14(f)(1) and not the meaning of "process" in section 14(f)(2). Second, section 14(f)(2) enjoins creditors from maintaining an "action" as well as employing "any process" to collect a discharged debt.⁴² Courts should give every statutory word distinct meaning rather than presuming mere surplusage⁴³ and, thus, should view "any process" as something other than formal legal actions. Furthermore, although process bears a technical legal definition as a formal means to compel a party's appearance in court,⁴⁴ it also bears a general, popular meaning that must control when necessary to serve the statute's purpose and to make the language operative.⁴⁵ Congress had no need to enjoin abusive creditors from employing "process" in its technical, legal sense, because creditors did not coerce repayment by gaining a bankrupt's presence in court, but did so by his nonappearance and the resulting default judgment.⁴⁶ Third, the courts misconstrued the language in the legislative history concerning the continued viability of reaffirming debts by a subsequent promise to pay.⁴⁷ Section 14(f)(2) regulates creditor activity and would not, under any construction, affect a bankrupt's volitional act of reviving his debts by a subsequent promise to pay. Thus, although Congress stated its intent to enhance the effectiveness of a discharge in

41. For the text of § 14(f)(1) see note 23 *supra*.

42. For the text of § 14(f)(2) see note 33 *supra*.

43. See *In re Terry's Estate*, 218 N.Y. 218, 112 N.E. 931 (1916); H. BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 60 (2d ed. 1911); J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 380 (2d ed. 1904); 82 C.J.S. *Statutes* § 346 (1953).

44. The *Girardier* court used Black's Law Dictionary as authority to construe "process" to require formal legal action: "It is generally defined as the means by which the court compels compliance with its demands. *Black's Law Dictionary* (Revised Fourth Edition 1968), p. 1370" *Girardier v. Webster College*, 563 F.2d at 1272.

45. Courts should construe words bearing both a technical and popular meaning in order to agree with the legislative purpose or to make the language operative. See *Robinson v. Varnell*, 16 Tex. 382 (1856); H. BLACK, CONSTRUCTION AND INTERPRETATION OF LAWS § 63 (2d ed. 1911); J. SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION § 395 (2d ed. 1904); 82 C.J.S. *Statutes* §§ 329-330 (1953).

Stressing the primacy of the Bankruptcy Act's fresh start objectives the United States Supreme Court has directed that its provisions "be construed when reasonably possible in harmony with it so as to effectuate the general purpose and policy of the act." *Local Loan Co. v. Hunt*, 292 U.S. at 244-45. See note 32 *supra*.

46. See text accompanying notes 14-21 *supra*.

47. See note 40 *supra*. Congress amended the Bankruptcy Act in 1978, however, to prohibit voluntary reaffirmations unless court approved. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 524(c)(d), 92 Stat. 2592-93 (effective Oct. 1, 1979).

bankruptcy by curtailing creditor abuse,⁴⁸ judicial construction of the "any process" language has effectively vitiated the intended import of section 14(f)(2).

Despite adherence to the narrow construction of "process" as formal legal activity, one court required the defendant college to release a bankrupt's transcript. The New Jersey federal district court in *Handsome v. Rutgers University*⁴⁹ held that, although the 1970 amendments to the Bankruptcy Act do not require a college to release transcripts, the United States Constitution's supremacy⁵⁰ and equal protection⁵¹ clauses do require release.⁵² The *Handsome* court held that a state college's refusal to release transcripts to bankrupt former students violated the supremacy clause if the refusal interferes with the Bankruptcy Act's fresh start objectives.⁵³ The court held that withholding transcripts frustrated those objectives by making higher education and its fruits and, thus, a fresh start, inaccessible to the bankrupt.⁵⁴

The *Handsome* court relied primarily on the Supreme Court's supremacy clause analysis in *Perez v. Campbell*,⁵⁵ where the Court examined a state law that suspended a bankrupt's driver's license until payment of a tort judgment previously discharged in bankruptcy. Under *Kesler v. Department of Public Safety*,⁵⁶ a court could uphold legislation if it was not designed to circumvent the Bankruptcy Act; that is, the court did not need to inquire into the legislation's practical effect.⁵⁷ The *Perez* Court overruled *Kesler*, condemning the decision as an aberration.⁵⁸

48. See note 32 *supra*.

49. 445 F. Supp. 1362 (D.N.J. 1978).

50. See note 5 *supra*.

51. U.S. CONST. amend. XIV, § 1.

52. 445 F. Supp. at 1363.

53. "While the private party is bound to observe only the letter of the law, the state may not by its actions 'retard, impede, burden, or in any manner control, the operation of the laws . . . enacted by Congress.'" *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 435, 436 (1819), quoted in *Handsome v. Rutgers Univ.*, 445 F. Supp. 1362, 1367 (D.N.J. 1978).

As early as 1824, Chief Justice Marshall stated the clause's governing principle, that "acts of the State Legislature . . . which interfere with, or are contrary to the laws of Congress, made in pursuance of the constitution," are invalid under the supremacy clause. *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1 (1824).

54. 445 F. Supp. at 1367.

55. 402 U.S. 637 (1971).

56. 369 U.S. 153 (1962). See text accompanying notes 24-27 *supra*.

57. The *Kesler* majority was not disturbed that the statute frustrated the Bankruptcy Act's fresh start objectives. It upheld the statute without looking to its effect, asserting simply that the statute was "not an Act for the Relief of Mulcted Creditors." *Kesler v. Department of Pub. Safety*, 369 U.S. at 174.

58. 402 U.S. at 651.

Perez decreed a new standard for determining when state law conflicts with the Bankruptcy Act.⁵⁹ It recognized the fresh start doctrine as one of the Act's primary objectives⁶⁰ and concluded that any state law impeding the Bankruptcy Act's full effectiveness violates the supremacy clause.⁶¹

Although *Perez* dealt with the validity of a state statute, courts require only the presence of some state action to invoke constitutional controls such as the supremacy clause.⁶² Thus, when the *Handsome* court found state action where a state university withheld transcripts, it invoked the *Perez* Court's supremacy clause analysis to force release of the transcripts. Because this analysis depends on the presence of state action, however, bankrupt private college students may not be able to rely on the *Perez* supremacy clause analysis to force transcript release. Upholding a private college's refusal to release bankrupt student loan debtors' transcripts, the Eighth Circuit in *Girardier v. Webster College*⁶³ acknowledged that the college frustrated the Act's purpose but summarily concluded its refusal was purely private activity. This conclusion made not only the supremacy clause analysis of *Perez*, but also the *Handsome* court's equal protection analysis, inapplicable in *Girardier*.⁶⁴

The presence of state action in a state college's refusal to release transcripts afforded the plaintiff in *Handsome* protection under the fourteenth amendment's equal protection clause.⁶⁵ A

59. The *Perez* Court stated that it could

no longer adhere to the aberrational doctrine of *Kesler* . . . that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration. Apart from the fact that it is at odds with the approach taken in nearly all our Supremacy Clause cases, such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply . . . articulating some state interest or policy—other than frustration of the federal objective—that would be tangentially furthered by the proposed state law.

Id. at 651-52.

60. *Id.* at 648.

61. "[W]e conclude . . . that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause." *Id.* at 652. See Note, *Supremacy of the Bankruptcy Act: The New Standard of Perez v. Campbell*, 40 GEO. WASH. L. REV. 764 (1972).

62. See, e.g., *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961).

63. 563 F.2d 1267 (8th Cir. 1977).

64. Citing *Rutledge v. City of Shreveport*, 387 F. Supp. 1277 (W.D. La. 1975), the *Girardier* court stated that "[a]ll rulings which have struck down adverse consequences inflicted on the bankrupt have involved state or local laws." 563 F.2d at 1273.

65. The *Handsome* court held that "such thinly-veiled coercion on the part of a state university to compel repayment of loans duly discharged under the federal bankruptcy

state may not deny equal protection to attain an impermissible state objective.⁶⁶ In *Handsome*, a state college classified bankrupt student loan debtors along with other students delinquent in their accounts from whom the school withheld transcripts.⁶⁷ The court held that including bankrupts in this classification coerced payment of judicially discharged debts in direct contravention of the Bankruptcy Act's fresh start goals. Accordingly, it constituted an impermissible state objective, thus violating the equal protection clause.⁶⁸

The fourteenth amendment and the supremacy clause, however, do not apply to private colleges' activities unless the college acted "under color of state law."⁶⁹ Courts use several theories to determine if private parties acted under color of state law, and in some cases have found state action present in private colleges. A federal district court in *Isaacs v. Trustees of Temple University*,⁷⁰ held that all the school's activities, including plaintiffs' employment termination, were state action because of pervasive state involvement in the school.⁷¹ Similarly, the Third Circuit in *Braden v. University of Pittsburgh*,⁷² faced with alleged

laws violates . . . plaintiff's right to equal protection as guaranteed by the Fourteenth Amendment." 445 F. Supp. at 1363.

66. See, e.g., *Eisenstadt v. Baird*, 405 U.S. 438 (1972).

67. Rutgers University included bankrupt student loan debtors in a classification with all persons more than three months delinquent in debts to the school, to all of whom the university denied transcripts until they repaid the debts. *Handsome v. Rutgers Univ.*, 445 F. Supp. 1362, 1364 (D.N.J. 1978).

68. The *Handsome* court stated that this classification need only bear a rational relationship to a legitimate governmental interest because education is not a fundamental right and wealth is not a suspect classification, *id.* at 1367, (either of which would trigger more exacting judicial scrutiny of the activity). The classification failed to withstand review under this most lenient standard. While the university has a legitimate interest in seeking payment from those persons not bankrupts, who are delinquent in their debts, it has no legitimate interest in seeking payment of a debt duly discharged in bankruptcy.

[P]ursuit of such an interest is foreclosed by *Perez*. Moreover, defendant, as a state university, is under an obligation to treat its citizens alike. While it may . . . discriminate on the basis of reasonable classifications such as academic performance, a citizen's status as a bankrupt is, *per force*, an impermissible criterion . . . [I]t cannot deny a citizen so vital a privilege as an education on the basis of his status as a bankrupt.

Id. at 1367.

69. The *Handsome* court stated in dicta that "under certain circumstances, even private universities have been held to act 'under color of state law', . . . *a fortiori*, defendant is bound by the Fourteenth Amendment." *Id.* at 1367 n.7.

70. 385 F. Supp. 473 (E.D. Pa. 1974).

71. The court held that all of the school's actions merited classification as state action because of the school's statutory incorporation into the state's system of higher education, because of substantial representation of state officials on the school's board of trustees, and because of massive financial subsidies to the school. *Id.* at 487-89.

72. 552 F.2d 948 (3d Cir. 1977).

employment discrimination by a private college, found the requisite nexus between the state and the challenged activity to constitute state action.⁷³ Avoiding a mechanical requirement of formal governmental activity, courts often find state action in government's supportive involvement in private activity and where private entities assume governmental functions. Supportive involvement may consist of governmental financial aid to private parties,⁷⁴ influence over private parties to carry out government objectives,⁷⁵ judicial enforcement of private rights,⁷⁶ or government regulation of private activity.⁷⁷ Any or all of these methods of supportive government involvement may be present in the context of private colleges.⁷⁸

The Supreme Court's "public function" theory holds private activity to constitutional standards when the activity fulfills governmental functions.⁷⁹ Although one eminent jurist suggested

73. The Third Circuit found the totality of the state's involvement in the school sufficient to invoke the fourteenth amendment to test the legality of plaintiff's employment termination. *Id.* at 957.

74. The Supreme Court in *Norwood v. Harrison*, 413 U.S. 455 (1973) held that a state could not provide free textbooks for students of private, segregated schools. The Court stated that "[a] State may not grant the type of tangible financial aid here involved if that aid has a significant tendency to facilitate, reinforce, and support private discrimination." *Id.* at 466.

75. For a discussion of the "public function" theory, see text accompanying notes 79-84 *infra*.

76. See *Shelley v. Kraemer*, 334 U.S. 1 (1948) where the Court held that although a racially restrictive covenant was a private contract and, as such, beyond the fourteenth amendment's reach, judicial enforcement of the contract constituted state action within the fourteenth amendment. For some criticism and commentary on *Shelley* see Henkin, *Shelley v. Kraemer: Notes For a Revised Opinion*, 110 U. PA. L. REV. 473 (1962).

77. Courts rarely emphasize government regulation in seeking state action. See, e.g., *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345 (1974) (no state action despite pervasive regulation and licensing of the utility corporation). But see *Seidenberg v. McSorleys' Old Ale House, Inc.*, 317 F. Supp. 593 (S.D.N.Y. 1970) (sex discrimination in private bar enjoined on the basis of state regulation and licensing alone).

78. See, e.g., *Braden v. University of Pittsburgh*, 552 F.2d 948 (3d Cir. 1977); *Isaacs v. Trustees of Temple Univ.*, 385 F. Supp. 473 (E.D. Pa. 1974).

79. This "public function" theory originated in the White Primary cases, culminating with *Terry v. Adams*, 345 U.S. 461 (1953), when the Supreme Court held that selection of candidates for public office was a public function and struck down an all-white private club's selection scheme although the club operated without assistance from state laws, state election machinery, or state funds. The Court held that in performing governmental functions, the private club became an instrumentality of the state, subject to the state's constitutional limitations. *Id.* at 469-70.

Similarly, the Court deemed the privately owned company town in *Marsh v. Alabama*, 326 U.S. 501, 507-08 (1946), to be performing a public function thereby subjecting it to constitutional controls.

The Supreme Court narrowed this theory's applicability dramatically in *Flagg Bros. v. Brooks*, 436 U.S. 149 (1978). Writing for the majority, Justice Rehnquist declined to invoke the "public function" doctrine where the activity performed was not an exclusively

that education, whether public or private, is a state function that should never escape control under the fourteenth amendment,⁸⁰ education differs significantly from other privately performed activities courts held were state functions. Private education is unlike the electoral process,⁸¹ for example, because the complaining party in an educational setting has the alternative of attending public schools. Courts may limit the public function theory to cases where the private activity in question absolutely deprives the plaintiff access to the public function being performed, and to those functions that are exclusively governmental.⁸² Indeed, the Supreme Court has been unwilling to characterize education as a public function that triggers all of the state's concomitant constitutional standards.⁸³ If courts hold education to be a state function, the equal protection clause would not only require private colleges to release a bankrupt student loan debtor's transcript, but also constitutional standards would apply to every aspect of the private school's administration, requiring compli-

sovereign function. The Court held that a statutory delegation of private dispute resolving authority did not infuse that dispute resolution with state action, because the state was not the exclusive actor in that realm prior to the delegation. *Id.*

80. Judge J. Skelley Wright contended that education is of public interest and should always be held to the fourteenth amendment's strictures. *Guillory v. Administrators of Tulane Univ.*, 203 F. Supp. 855, 858-59 (E.D. La.), *aff'd per curiam*, 306 F.2d 489 (5th Cir. 1962). In deciding the case, however, he found sufficient state involvement with the university to enjoin the challenged discrimination without deciding whether education is, indeed, a public function that automatically imputes state action. *Id.*

81. See discussion of the White Primary cases at note 79 *supra*.

82. See discussion of *Flagg Bros. v. Brooks*, 436 U.S. 149 (1978) at note 79 *supra*.

83. The Supreme Court has made clear its unwillingness to characterize education as a public function:

If a testator wanted to leave a school or center for the use of one race only and in no way implicated the State in the supervision, control, or management of that facility, we assume *arguendo*, that no constitutional difficulty would be encountered.

. . . [S]chools . . . and other like organizations in the private sector are often racially oriented. A park, on the other hand, is more like a fire department or a police department that traditionally serves the community.

Evans v. Newton, 382 U.S. 296, 300-02 (1966) (footnotes omitted).

In his dissent, however, Justice Harlan criticized the public function theory precisely because of its potential applicability to education:

[T]he majority assumes that its decision leaves unaffected the traditional view that the Fourteenth Amendment does not compel private schools to adapt their admissions policies to its requirements . . . I find it difficult, however, to avoid the conclusion that this decision opens the door to reversal of these basic constitutional concepts, and . . . jeopardizes the existence of denominationally restricted schools . . .

Id. at 322 (Harlan, J., dissenting).

ance in admissions policies, disciplinary procedures, hiring practices, and spending allocations.⁸⁴

Courts use the state property theory as an alternative approach to determine the presence of state action. Advocates of this theory contend a state must insure constitutional use of its property.⁸⁵ When the state retains some element of control over the property, courts have held that private activity on that land is state action. The fourteenth amendment would apply to colleges' activities under this theory where they lease state land⁸⁶ or acquire state land subject to conditions with the state retaining a possibility of reverter.⁸⁷ Although this theory would compel release of a bankrupt student loan debtor's transcript in some cases, it would not eliminate discordant treatment of bankrupts among colleges. Judicial reliance on the state property theory would only introduce additional questions upon which transcript release would depend. The presence of state action, and thus the ability to force release of transcripts, would turn upon the degree of state control retained.

Courts frequently use a case by case "sifting facts and weighing circumstances" approach to determine the presence of state action.⁸⁸ Under this approach, a court views the totality of state involvement to determine whether to invoke the fourteenth amendment. The most important factor in this formula is often state financial aid to the private activity.⁸⁹ Other significant factors in education cases include advantageous tax treatment, a state official's membership on a school's board of directors, use of state property, and the extent to which private facilities relieve

84. *Id.* at 322 (Harlan, J., dissenting).

For a more thorough discussion of education as a state function, see Nelkin, *Cy Pres and the Fourteenth Amendment: A Discriminating Look at Very Private Schools and Not So Charitable Trusts*, 56 *Geo. L.J.* 272 (1967).

85. See, e.g., *Hampton v. City of Jacksonville*, 304 F.2d 320 (5th Cir. 1962); *City of Greensboro v. Simkins*, 246 F.2d 425 (4th Cir. 1957); *Coke v. City of Atlanta*, 184 F. Supp. 579 (N.D. Ga. 1960); *Jones v. Marva Theatres, Inc.*, 180 F. Supp. 49 (D. Md. 1960).

86. See, e.g., *Guillory v. Administrators of Tulane Univ.*, 203 F. Supp. 855 (E.D. La. 1962), *aff'd per curiam*, 306 F.2d 489 (5th Cir. 1962).

87. See, e.g., *Hampton v. City of Jacksonville*, 304 F.2d 320 (5th Cir. 1962).

88. The Supreme Court enunciated the state action formula of "sifting facts and weighing circumstances" to determine the degree of the state's involvement in private conduct in *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961). There the Court stated that "private conduct abridging individual rights does no violence to the Equal Protection Clause unless to some significant extent the State in any of its manifestations has been found to have become involved in it." *Id.* at 722. The court in *Braden v. University of Pittsburgh*, 552 F.2d 948 (3d Cir. 1977), used this same sifting and weighing test. *Id.* at 958.

89. See, e.g., *Cooper v. Aaron*, 358 U.S. 1, 19 (1958).

the state's obligation to furnish an institution to meet the area's educational needs.⁹⁰ This approach is also unsatisfactory to resolve the college transcript issue, however, because the inconsistency that inheres in an ad hoc approach runs counter to the constitutional mandate of uniform bankruptcy laws and the corresponding need for their uniform application.⁹¹

Although it might eliminate the existing disparate treatment of bankrupt student loan debtors, total abrogation of the private-state college distinction would give rise to complex constitutional problems. Bankrupt former students of both private and state colleges have the identical need for a fresh start. Additionally, the federal government reimburses both private and state colleges when students default on their loans.⁹² Although the distinction between private and state colleges may be meaningless on the transcript issue, it is important in a broader context. If courts no longer required state action to invoke constitutional limitations on educational institutions, the same problems inherent under the education as a state function theory would arise.⁹³ One solution may be judicial tailoring of the state action requirement to better reflect the realities of the state-private distinction.⁹⁴

Courts could avoid the pitfalls of the state action requirement by recognizing the transcript as a student's property right.⁹⁵

90. See, e.g., *Braden v. University of Pittsburgh*, 552 F.2d 948 (3d Cir. 1977); *Isaacs v. Trustees of Temple Univ.*, 385 F. Supp. 473 (E.D. Pa. 1974); *Guillory v. Administrators of Tulane Univ.*, 203 F. Supp. 855 (E.D. La.), *aff'd per curiam*, 306 F.2d 489 (5th Cir. 1962).

91. The Constitution confers upon Congress the power to "establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. CONST. art. I, § 8, cl. 4 (emphasis added).

92. The National Defense Education Act, 20 U.S.C. § 1080 (1976), guarantees repayment of student loans upon the college's exercising due diligence to collect from the defaulting student.

93. The first amendment freedom of religion is a liberty protected from state encroachment by the fourteenth amendment. *Cantwell v. Connecticut*, 310 U.S. 296 (1940). Abrogation of the state action requirement to invoke constitutional limitations, however, would make parochial schools' activity equivalent to state activity, thus violating the establishment and free exercise clauses of the first amendment. See *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

94. For a more thorough discussion of the "state action" doctrine than the scope of this comment permits, see Note, *State Action: Theories for Applying Constitutional Restrictions to Private Activity*, 74 COLUM. L. REV. 656 (1974).

95. Property is an evolving concept that basically describes a person's valuable right or interest in subject matter. It is variously defined as one's exclusive right to possess, use, and dispose of a thing, as well as the object, benefit, or prerogative which constitutes the subject matter of that right. In short, it describes the bundle of rights that society attaches to a thing. As society changes, so does the concept of property. See, e.g., *Crane v. Commissioner*, 331 U.S. 1 (1947).

Language in the *Handsome* opinion supports this approach.⁹⁶ Some commentators advocate recognizing a property interest in many new sources of security.⁹⁷ Examples of this "new property" include a professional's license, an automobile dealer's franchise, the media's networks, and an individual's pension and union membership.⁹⁸ In general, those forms of wealth closely linked to an individual's freedom to earn a living, such as occupational and professional licenses, receive judicial solicitude.⁹⁹ To some extent, courts afford drivers' licenses legal protection by comparing them to occupational licenses,¹⁰⁰ even when the driver's license is wholly unrelated to the holder's employment.¹⁰¹ In *Perez v. Campbell*,¹⁰² the Supreme Court held that a statutory suspension of a bankrupt's driver's license, though unrelated to his livelihood, frustrated his fresh start.¹⁰³ Judicial concern for employment linked forms of wealth should extend to college transcripts because certification of an individual's education is inextricably linked to the freedom to pursue any occupation.¹⁰⁴ When a college withholds a transcript, the individual should have a tort action against the college for conversion.¹⁰⁵

The 1970 Bankruptcy Act amendments assure a bankrupt

96. The *Handsome* court disagrees with the decision in *Girardier*:

While this Court largely agrees with the Eighth Circuit's conclusion that *Perez* does not proscribe purely private discrimination against bankrupts, it must respectfully disagree with the result in the *Webster College* decision

Surely . . . a student has some sort of property interest in his transcripts This Court cannot agree . . . that even a private entity may withhold the debtor's property because the debt has been discharged in bankruptcy.

445 F. Supp. at 1366 n.6.

97. Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues*, 74 YALE L.J. 1245 (1965); Reich, *The New Property*, 73 YALE L.J. 733 (1964).

98. Reich, *supra* note 97, at 1255.

99. See, e.g., *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963); *Hecht v. Monaghan*, 307 N.Y. 461, 121 N.E.2d 421 (1974). See generally Kneier, *Licensing by Local Governments in Illinois*, 1957 U. ILL. L.F. 1; Note, *Entrance and Disciplinary Requirements for Occupational Licenses in California*, 14 STAN. L. REV. 533 (1962).

100. See, e.g., *Hecht v. Monaghan*, 307 N.Y. 461, 121 N.E.2d 421 (1954).

101. See, e.g., *Wignall v. Fletcher*, 303 N.Y. 435, 103 N.E.2d 728 (1952).

102. 402 U.S. 637 (1971).

103. Justice Blackmun's dissenting opinion regards this as mere inconvenience in *Perez's* situation, where his driver's license is unrelated to his livelihood. *Id.* at 668 (Blackmun, J., dissenting).

104. Post-graduate professional schools require college transcripts to accompany all applications. See, e.g., ASS'N OF AM. LAW SCHOOLS AND THE LAW SCHOOL ADMISSION COUNCIL, INC., PRELAW HANDBOOK 1978.

105. "To constitute a 'conversion' there must be a wrongful taking, or a wrongful detention . . ." of another's property. *A.C. Rent-A-Car, Inc. v. American Nat'l Bank & Trust Co.*, 339 F. Supp. 506, 511 (S.D. Ala. 1972), *aff'd per curiam*, 477 F.2d 564 (5th Cir. 1973).

student loan debtor a fresh start in life only if he attended a state school. A bankrupt former private college student must litigate his right to a fresh start and the outcome will turn upon the particular jurisdiction's view of evolving property concepts and the state action doctrine. Litigation's uncertainty, expense, and delay obstruct the former private college student's fresh start following bankruptcy. Although Congress in 1970 followed the constitutional mandate and enacted uniform bankruptcy laws, it failed to effect the Act's fresh start objectives for student loan debtors because the Act is subject to nonuniform application. To make bankruptcy a more effective remedy and prevent all creditor schemes coercing payment, Congress enacted reform legislation in 1978.¹⁰⁶

II. 1978 BANKRUPTCY REFORM

Congress enacted three provisions that have special significance for the student transcript issue. The first provision excepts student loans from discharge until five years after payment becomes due.¹⁰⁷ This provision makes a vague exception for students suffering "undue hardship."¹⁰⁸ Statistics indicating scandalous abuses of the student loan program, although distorting the true extent of the problem, generated the movement for the student loan exception. Figures provided to the Judiciary Committee that considered a similar exception in the Education Amendments of 1976,¹⁰⁹ illustrate the malleability of statistics. The Office of Edu-

106. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (effective Oct. 1, 1979).

107. "A discharge under . . . this title does not discharge an individual debtor from any debt—

(8) to a governmental unit, or a nonprofit institution of higher education, for an educational loan, unless—

(A) such loan first became due before five years before the date of the filing of the petition"

Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 523(a)(8)(A), 92 Stat. 2591 (effective Oct. 1, 1979).

108. "A discharge under . . . this title does not discharge an individual debtor from any debt—

(8) to a governmental unit, or a nonprofit institution of higher education, for an educational loan, unless—

(B) excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents"

Id. § 523(a)(8)(B).

109. See note 8 *supra*. During the 94th Congress, the Office of Education supplied bankruptcy statistics to the Judiciary Committee, causing that committee to recommend

cation's report indicated that student borrowers discharging loans in bankruptcy in Pennsylvania jumped 225% from 1971 to 1972.¹¹⁰ This percentage increase resulted from an actual increase from four bankruptcies to thirteen.¹¹¹ Similarly, the 38% increase reported for California in that same year translated into only an additional eighty cases, from 210 to 290.¹¹² The Department of Health, Education and Welfare's Office of Guaranteed Student Loans reported that its losses from student loan bankruptcy totalled only about 0.5%,¹¹³ comparing favorably to the bankruptcy default rate of commercial finance companies' consumer loans, and providing no reason for discriminating against educational loan debtors.¹¹⁴ Despite this report and numerous recommendations against excepting student loans from discharge,¹¹⁵ the 1978 reform legislation makes student loans nondischargeable for five years after the loans mature. This provision attempts to reduce fraud by preventing a student's immediate discharge of loan obligations following graduation but before he realizes the education's full financial benefits that would facilitate repayment. The delay provision, therefore, presumes fraudulent intent whenever an individual with an educational debt files bankruptcy and makes the honest debtor, suffering "undue hardship," a statutory exception to the presumption. The five-year delay provision's proponents argued that educational loans deserve this special treatment because they are different from most loans. Lenders make educational loans without business consideration, without

the amendment of the Higher Education Act of 1965 with the addition of § 439A, 20 U.S.C. § 1087-3(a) (1976) (repealed 1978) (repeal effective Oct. 1, 1979). The amendment provided:

A debt which is a loan insured or guaranteed under the authority of this part may be released by a discharge in bankruptcy under the Bankruptcy Act only if such discharge is granted after the five-year period . . . beginning on the date of commencement of the repayment period of such loan

Id. The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 317, 92 Stat. 2678 (effective Oct. 1, 1979) repeals § 439A. Although repealing this section, Congress enacted a similar five year delay provision, Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 523(a)(8), 92 Stat. 2591 (effective Oct. 1, 1979), in order to retain the provision, yet still bring all provisions concerning bankruptcy within the Bankruptcy Act.

110. H.R. REP. No. 595, 95th Cong., 1st Sess. 148 (1977).

111. *Id.*

112. *Id.*

113. *Id.* at 133. See note 8 *supra*.

114. *Id.*

115. The Judiciary Committee, together with the American Bankers Association, the Consumer Bankers Association, the National Bankruptcy Conference, the National Student Association, the National Student Lobby, and the Coalition of Independent College and University Students, opposed the student loan exception to discharge. *Id.* at 132-33.

security, without cosigners, and rely for payment solely on the debtor's future increased income.¹¹⁶ Those opposed to the exception to discharge contended that student loan abuses lay in the default rate and constituted a general problem in the program, not a bankruptcy problem.¹¹⁷ The five year provision is repugnant to two fundamental bankruptcy principles: a fresh start for the debtor and equal treatment for all debts and creditors.¹¹⁸ This provision will certainly reduce the incidence of student loans discharged in bankruptcy, but to those students already adjudged bankrupt, and to those who will come within the hardship exception under the 1978 amendments, the transcripts issue will persist.

The second and most significant provision of the reform legislation changes section 14(f)(2) to enjoin not only maintaining "any action or employing any process,"¹¹⁹ but also "any act" to collect a discharged debt or to collect from the debtor's property.¹²⁰ Legislative history explains that the change will enjoin any payment coercing acts, including direct threats, telephone or mail harassment, and indirect dunning through friends, relatives, or employers.¹²¹ The express legislative purpose is "to insure that once a debt is discharged, the debtor will not be pressured in any way to repay it."¹²² The legislation's purpose and language appear broad enough to proscribe the withholding of transcripts. In light of the courts' paralyzing construction of "any process," however, "any act" may be susceptible to judicial limitation to affirmative acts, rather than mere refusals to issue transcripts. Such a restrictive construction would be unreasonably literal, defeating Congress' avowed intent and the Act's fresh start objectives. The amendment's language enjoining collection from a debtor's property will also aid the bankrupt student loan debtor if he can successfully assert a property right in his transcript.¹²³ Courts,

116. *Id.* at 133.

117. *Id.* at 134.

118. *Id.* at 133-34.

119. For text of that section see note 33 *supra*.

120. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 524, 92 Stat. 2592 (effective Oct. 1, 1979). Section 524 provides that a discharge in bankruptcy "(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or any act, to collect, recover or offset any such debt as a personal liability of the debtor, or from the property of the debtor . . ." *Id.* (emphasis added).

121. S. REP. NO. 989, 95th Cong., 2d Sess. 80 (1978).

122. "The injunction is to give complete effect to the discharge and to eliminate any doubt concerning the effect of the discharge as a total prohibition on debt collection efforts." *Id.*

123. See text accompanying notes 95-105 *supra*.

however, may limit this language to reach only creditor action taking property from a debtor's possession to satisfy a debt. This construction would also be unreasonably literal because the evil is the same whether a creditor physically removes or simply withholds a bankrupt's property.

If courts limit the reform act's language to prohibit only affirmative creditor activity, bankrupt former students may seek protection under the third significant provision in the 1978 amendments. Legislative history describes the addition of the "Protection against discriminatory treatment"¹²⁴ section as codification of the result in *Perez v. Campbell*.¹²⁵ This section's prohibitions extend only to discrimination by governmental units based solely on bankruptcy. The section enumerates several proscribed practices, but its legislative history indicates that the list is not intended to be exhaustive. Rather, Congress intended further judicial development of the *Perez* rule to include "quasi-governmental organizations that perform licensing functions" or "other organizations that can seriously affect the debtor's livelihood or fresh start,"¹²⁶ within its proscriptions. Congress concedes, however, that this section is not as broad as the Bankruptcy Commission's comparable proposal, which would have extended the prohibition to discrimination by private parties.¹²⁷ This section will, therefore, perpetuate the state action prerequisite to relief for the bankrupt student loan debtor.

In construing the Bankruptcy Reform Act of 1978, courts must follow three guidelines. First, courts must remember bankruptcy's fresh start objective. Post-graduate education is prerequisite to many fields of endeavor and college transcripts are prerequisite to post-graduate education.¹²⁸ Second, courts must recognize that Congress added broad language to an already broad section, to encompass a wide range of creditor abuse coerc-

124. As a protection against discriminatory treatment, § 525 provides that a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act.

Bankruptcy Reform Act of 1978, Pub. L. No. 95-595, § 525, 92 Stat. 2593 (effective Oct. 1, 1979).

125. 402 U.S. 637 (1971). See text accompanying notes 55-61 *supra*.

126. S. REP. No. 989, 95th Cong., 2d Sess. 81 (1978).

127. *Id.*

128. See note 104 *supra*.

ing payment. With bankruptcy's purposes and canons of statutory construction in mind,¹²⁹ courts must construe this broad reform legislation to fulfill those objectives. The third guideline for construction is the need for uniform application of bankruptcy laws to follow the Constitution's mandate of uniform federal law.¹³⁰ Adhering to these concepts, courts must construe the reform act to reach the practice of withholding college transcripts and require all schools to release them.

III. CONCLUSION

When Congress enacted measures in 1970 to enhance the effectiveness of a discharge in bankruptcy, it acted pursuant to a constitutional mandate to enact uniform bankruptcy laws. Although legislative history of those enactments specified creditor abuse as the evil Congress intended to remedy, and although Congress enacted broad language to do so, courts deemed themselves powerless to invoke that language to accomplish those ends. Both courts passing on the transcript issue, however, acknowledged that withholding transcripts is a powerful tool to coerce payment of discharged student loans. Indeed, those courts recognized that withholding transcripts frustrated the Bankruptcy Act's objectives. At present, a state college must release transcripts under the supremacy clause but a private college is free to withhold them. This inconsistent application of the bankruptcy laws is further complicated by litigable state action and property right issues. Congress enacted a solution to this inconsistency in its 1978 amendments. Under the reform legislation, a discharge in bankruptcy enjoins a creditor from doing "any act" to collect a discharged debt. Properly construed, this amendment prohibits a creditor college from frustrating the Bankruptcy Act's objectives by withholding a bankrupt's transcript to coerce payment of a discharged student loan.

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129. See text accompanying notes 43-45 *supra*.

130. See note 91 *supra*.