SIEGEL V. FITZGERALD AND THE MYSTERY OF BANKRUPTCY UNIFORMITY

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THE SUPREME COURT DOESN'T OFTEN SPEAK about the need for uniformity in bankruptcy, but this past term, in *Siegel v. Fitzgerald*,[1] it issued an important decision on that front. The Court held that Congress's enactment of a fee increase that applied to debtors in all but two states violated the Bankruptcy Clause's uniformity requirement.

Like many Supreme Court cases, *Siegel* raises more questions than it answers. In the wake of the Court's decision, commentators identified several of these significant questions. What is the appropriate remedy for Congress's violation of the uniformity requirement?[2] Since the disparate fee increase stemmed from the dual systems of United States trustees and bankruptcy administrators, do those dual systems themselves violate the uniformity requirement?[3] More broadly: what does the Bankruptcy Clause actually require with respect to uniformity?

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[1] 142 S. Ct. 1770 (2022).

[2] Daniel Gill, *Justices Vacate, Remand Ruling on Government Bankruptcy Fees*, BLOOMBERG LAW (June 13, 2022).

[3] Bill Rochelle, *2018 Increase in U.S. Trustee Fees Held Unconstitutional By the Supreme Court*, ROCHELLE'S DAILY WIRE (June 6, 2022).

Although these questions are likely to spur much litigation and scholarly debate in the coming years, they are not the focus of this article. Instead, this article examines what the opinion *did* do – namely, provide some guidance on how uniformity works in bankruptcy. Prior to *Siegel*, you would be forgiven for thinking that the uniformity requirement did very little work in bankruptcy law. *Siegel* gives the uniformity requirement a bit more definition and, by teeing up additional questions surrounding that requirement and its meaning, the opinion allows the bankruptcy community to generate more case law – and hopefully, to obtain more clarity – on uniformity issues in the years to come.

I.
Disparate Fees in Different Districts

Understanding the problem in *Siegel* requires a bit of a history lesson. In 1978, the United States Trustee Program ("USTP") began as a pilot program housed within the Department of Justice.[4] Under this program, United States trustees took on administrative and watchdog functions for bankruptcy courts. The pilot program was a success, so Congress decided to make the USTP permanent and national in scope. North Carolina and Alabama resisted, however, and asked to retain bankruptcy administrators to handle the same functions.[5]

Congress agreed that North Carolina and Alabama could use bankruptcy administrators under what it referred to as the Administrator Program ("AP"), so today, two programs – the USTP and the AP – handle the administrative components of bankruptcy cases.[6] Although United States trustees and bankruptcy administrators do the same work, their programs are funded differently. The USTP is funded by user fees: debtors who file for bankruptcy pay a fee into the United States Trustee System Fund ("UST Fund").[7] Costs for the AP come out of the Judiciary's general budget.[8]

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[4] *Siegel*, 142 S. Ct. at 1776.

[5] *Id.*

[6] *Id.*

[7] *Id.* (noting that most of these fees are paid by chapter 11 debtors).

[8] *Id.*

Congress sets – and periodically updates – the fees for the USTP in 28 U.S.C. § 1930. In recognition of the different funding for the AP, § 1930 also used to provide that "the Judicial Conference of the United States *may* require the debtor in a case under chapter 11" that is filed in an AP district to pay fees equal to what is imposed in USTP districts.[9] In 2001, the Judicial Conference adopted a standing order directing AP districts to charge fees "in the amounts specified in 28 U.S.C. § 1930, as those amounts may be amended from time to time."[10]

All went reasonably well until 2017, when Congress enacted a "temporary, but significant," fee increase for large chapter 11 cases to make up for a shortfall in the UST Fund (the "2017 Act").[11] The fee increase began in the first quarter of 2018 and was set to last through 2022. The six judicial districts in North Carolina and Alabama did not immediately adopt this fee increase, however. In September of 2018, the Judicial Conference ordered the AP districts to implement the increase, but even then, the increase began October 1, 2018 and applied only to newly filed cases.[12] In contrast, the fee increase in USTP districts had gone into effect earlier, and applied to all pending and newly filed cases.

In 2021, Congress amended 28 U.S.C. § 1930 to provide that the Judicial Conference "shall" (instead of "may") require imposition of fees in AP districts equal to those imposed by USTP districts.[13] By that point, however, the damage of disparate fees in different districts was done.

One of the many debtors affected by the uneven fee increase was Circuit City. Although Circuit City had filed for bankruptcy in the Eastern District of Virginia (part of the USTP) back in 2008, its liquidating trustee was still paying quarterly fees at the time of the increase.[14] The trustee sued, arguing that the fee increase was nonuniform and hence unconstitutional, and noting that he had paid nearly $600,000 more in total fees over the first three quarters after the fee increase took effect than he would have paid

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[9] *Id.* (emphasis added).

[10] *Id.* at 1776-77.

[11] *Id.* at 1777 (citing Pub. L. 115-72, Div. B, 131 Stat. 1229).

[12] *Id.*

[13] *Id.*

[14] *Id.*

over the same period had the increase not occurred.[15]

The bankruptcy court agreed with the trustee, but the U.S. Court of Appeals for the Fourth Circuit reversed. The Fourth Circuit reasoned that it was permissible for the fee increase to only apply to USTP districts for the time that it did because the UST Fund was facing a shortfall. Because Congress had imposed the fee increase to remedy that specific problem, it hadn't acted arbitrarily in treating USTP districts differently from AP districts.[16] As the Fourth Circuit believed that the Bankruptcy Clause forbids only arbitrary geographic differences, it found the fee increase constitutional. The Supreme Court subsequently granted *certiorari*.

II.
ARBITRARY DISPARATE TREATMENT

Justice Sotomayor's analysis for a unanimous Court began with the text of the Bankruptcy Clause, which gives Congress the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States."[17] The Court first considered whether the fee increase was even subject to the Bankruptcy Clause's uniformity requirement at all. The government, arguing on behalf of the U.S. trustee for the region, claimed that the uniformity requirement didn't apply because the 2017 Act was an administrative act, rather than a substantive bankruptcy law or, as the Constitution puts it, a law "on the subject of Bankruptcies."[18]

The Court disagreed with this reasoning, pointing out that the language of the Bankruptcy Clause does not distinguish between laws that are "substantive" and those that are "administrative."[19] The Court itself had never drawn such a distinction either. Even if that distinction existed, the Court found that the 2017 Act *was* substantive, because, by increasing the fees paid out of the debtor's bankruptcy estate, it necessarily decreased the amount of money available to pay creditors, thus affecting debtor-creditor relations.[20]

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[15] *Id.* at 1778.

[16] *Id.*

[17] U.S. Const., Art. I, § 8, cl. 4.

[18] *Siegel*, 142 S. Ct. at 1778.

[19] *Id.* at 1778-79.

[20] *Id.* at 1779.

Having found that the Bankruptcy Clause applied, the Court next examined whether the fee increase was a permissible exercise of Congress's powers under the clause. Here, the Court looked to its own precedent, examining three prior cases[21] to conclude that the Bankruptcy Clause "does not permit arbitrary geographically disparate treatment of debtors."[22]

What does this mean? According to the Court, Congress can account for existing differences in different parts of the country when it makes bankruptcy laws, but it cannot subject similarly situated debtors in different states to different fees simply because it chooses to pay the costs for some debtors, but not others.[23]

The Court also rejected the government's argument, aligned with the Fourth Circuit's reasoning, that Congress did not act arbitrarily but rather created the nonuniform fee increase in response to a funding deficit that only occurred in USTP districts. The Court pointed out that this deficit only existed because Congress had "arbitrarily" separated the country into two differently funded systems in the first place.[24] Accordingly, the Bankruptcy Clause "does not permit Congress to treat identical debtors differently based on an artificial funding distinction that Congress itself created."[25]

Having answered these questions, the Court then made sure to cabin its decision. Justice Sotomayor emphasized that the Court was not addressing the constitutionality of the dual USTP-AP system itself, nor was it trying to prohibit Congress from structuring different relief for different classes of debtors or from responding to "geographically isolated problems."[26] The Court also declined to decide on a remedy for this uniformity violation, leaving open the question of whether Circuit City's liquidating trustee could get a refund of the fees paid during the time of the nonuniform increase.[27]

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[21] Those cases were Hanover Nat. Bank v. Moyses, 186 U.S. 181 (1902); the Regional Rail Reorganization Act Cases, 419 U.S. 102 (1974); and Railway Labor Executives' Ass'n v. Gibbons, 455 U.S. 457 (1982).

[22] *Siegel*, 142 S. Ct. at 1780.

[23] *Id.* at 1781.

[24] *Id.* at 1782.

[25] *Id.*

[26] *Id.*

[27] *Id.* at 1783.

Ultimately, the Court reversed the Fourth Circuit and remanded the case for further consideration of the remedy.

III.
SOME CLARITY ON UNIFORMITY

Uniformity has always been a difficult concept to pin down in bankruptcy. Although bankruptcy law is federal law, it often incorporates or defers to state law. Different states naturally have different laws, meaning that bankruptcy is always at least somewhat non-uniform.

The Supreme Court has not often spoken about uniformity in bankruptcy either. Justice Sotomayor's opinion surveyed the Court's relevant precedent, which consists of just three cases, the most recent of which was decided 40 years ago.

At the same time, some bankruptcy issues raise questions of uniformity, even beyond the questions of the constitutionality of the fee increases and the dual USTP-AP system. For example, does the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which applies only to Puerto Rico, violate the uniformity requirement?[28] Does the "means test" requirement for chapter 7 bankruptcy, which can treat different debtors within a state differently, violate the requirement?[29] In short, significant uniformity questions do arise in bankruptcy practice. Given this, *any* pronouncement on uniformity is helpful to draw attention to its contours. Further, the Court's allusion to other uniformity issues in its opinion in *Siegel*, combined with its decision to leave the question of the remedy for the violation unresolved,[30] seems likely to spur more case law in the lower courts. In the event these cases fail to achieve a consensus, there will be additional opportunities for the Supreme Court to provide guidance.

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[28] *See* Stephen J. Lubben, *PROMESA and the Bankruptcy Clause: A Reminder About Uniformity*, 12 BROOK. J. CORP. FIN. & COM. L. 53 (2017).

[29] *See* Charles Jordan Tabb, LAW OF BANKRUPTCY 57-59 (5th ed., West Academic Publishing 2020).

[30] The Court notably also vacated and remanded a Tenth Circuit decision on the remedy question. *See* John C. Goodchild III, Matthew C. Ziegler & Matthew Kent Stiles, *SCOTUS Punts on Remedy for Unconstitutional Chapter 11 Quarterly Fee Increase*, MORGAN LEWIS (July 12, 2022), www.morganlewis.com/pubs/2022/07/scotus-punts-on-remedy-for-unconstitutional-chapter-11-quarterly-fee-increase.

Conclusion

The Court's opinion in *Siegel* is helpful, both for what it does and for what it does not do. The decision sheds a little more light on uniformity but also draws attention to questions that will be litigated for years to come.