Evaluation of a Bar Applicant's Moral Character: May a State Consider the Circumstances Surrounding a Discharge in Bankruptcy

William Owen Weiss
Indiana University School of Law

Follow this and additional works at: https://www.repository.law.indiana.edu/ilj

Part of the Bankruptcy Law Commons, Labor and Employment Law Commons, Legal Ethics and Professional Responsibility Commons, and the Legal Profession Commons

Recommended Citation

This Note is brought to you for free and open access by the Law School Journals at Digital Repository @ Maurer Law. It has been accepted for inclusion in Indiana Law Journal by an authorized editor of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.
Evaluation of a Bar Applicant’s Moral Character: May a State Consider the Circumstances Surrounding a Discharge in Bankruptcy?

An effective and just legal system requires more of attorneys than mere familiarity with substantive and procedural laws. The just administration of the law also requires that attorneys be honest and responsible. To this end, every state requires each applicant to the bar to demonstrate his “good moral character” as a prerequisite to admission.

The states have broad discretion in determining the nature of the inquiry into a bar applicant’s moral character, provided that such inquiry is rationally related to the ascertainment of the individual’s fitness to practice law and does not abridge his constitutional rights. An applicant’s prior satisfaction of his moral and financial obligations is one factor recognized as germane to a determination of moral character because one who has unnecessarily evaded such obligations might, as an attorney, evade his responsibilities to clients and the legal system.

While a state may be extremely selective in determining who shall be admitted to the practice of law in its courts, federal bankruptcy law is not at all selective. Virtually anyone can file a voluntary petition in

---

1 See, e.g., Schware v. Board of Bar Examiners, 353 U.S. 232, 247 (1957) (Frankfurter, J., concurring); Application of Alan S., 282 Md. 683, 689, 387 A.2d 271, 275 (1978) (“No attribute in a lawyer is more important than good moral character; indeed it is absolutely essential to the preservation of our legal system and the integrity of the courts.”). In Schware, Justice Frankfurter observed:

   It is a fair characterization of the lawyer’s responsibility in our society that he stands “as a shield,” to quote Devlin, J., in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as “moral character.”

   353 U.S. at 247 (Frankfurter, J., concurring).


4 See, e.g., In re Heller, 333 A.2d 401, 402 (D.C. Cir.), (applicant denied admission to the bar for lack of good moral character because evidence indicated he “does not honor commitments and obligations”), cert. denied, 423 U.S. 840 (1975); In re Alpert, 269 Or. 508, 514, 525 P.2d 1042, 1045 (1974) (Where applicant who had participated in an ethically questionable stock arrangement was denied admission, the court declared that the “[i]legality of the stock purchases is beside the point. The issue is applicant’s sense of ethics.”); In re Feingold, 296 A.2d 492, 500 (Me. 1972) (“Turbulent, intemperate or irresponsible behavior is a proper basis for the denial of admission to the bar.”). See generally Annot., 4 A.L.R.4th 436 (1981).

5 In re Gahan, Minn. , , 279 N.W.2d 826, 832 (1979).
bankruptcy and become a "debtor." An inability to fulfill one's financial obligations is not required for discharge. Neither the solvency of the petitioner nor the amount of his liabilities is considered by the bankruptcy court prior to the grant of a discharge. Thus, an individual who is currently without sufficient assets to satisfy his debts, but who reasonably anticipates sufficient income in the near future to satisfy such obligations, may nevertheless be granted a discharge in bankruptcy.

Some courts have concluded that the individual who files for bankruptcy with knowledge that he would soon be capable of satisfying his debts has not acted in a morally responsible manner; he has unnecessarily evaded his financial obligations to his creditors. An applicant's financial condition prior to discharge, therefore, would be relevant to an accurate assessment of his moral character. However, in light of section 525 of the Bankruptcy Reform Act of 1978, which expressly prohibits governmental agencies from denying individuals employment opportunities based "solely" on the fact of bankruptcy, it is unclear whether such circumstances may be considered by bar examiners.

---

6 11 U.S.C. § 109(a) (Supp. III 1979). Under this provision, any person who "resides in the United States, or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title." Id. For purposes of a voluntary discharge under chapter 7, 11 U.S.C. §§ 701-766 (Supp. III 1979), a person is defined as only excluding railroads as well as a domestic or foreign "insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States," 11 U.S.C. § 109(b) (Supp. III 1979). Throughout the text, the term "debtor" is used to signify an individual who has been adjudged a bankrupt.

7 11 U.S.C. § 301 (Supp. III 1979). The lack of inquiry as to need seldom is subject to abuse since those individuals with sufficient assets to repay their debts have nothing to gain from utilizing the bankruptcy laws; and even if used the creditors will not be damaged since the debtor's assets will be used to satisfy outstanding claims. On the other hand, those individuals who are in debt with little prospect of being able to repay creditors are the type of individuals the bankruptcy laws were drafted to protect.

8 Florida Bd. of Bar Examiners re G.W.L., 364 So. 2d 454 (Fla. 1978); In re Gahan, Minn. ___, 279 N.W.2d 395 (1979); see text accompanying notes 38-60 infra. But see Florida Bd. of Bar Examiners re Groot, 365 So. 2d 164 (Fla. 1978).

9 It is important to note that a discharge does not extinguish a debt; rather, it only extinguishes any legal action on the obligation. See, e.g., Helms v. Holmes, 129 F.2d 263, 266 (4th Cir. 1942); Peppers v. Siefferman, 153 Ga. App. 206, 208, 265 S.E.2d 26, 27 (1980).

10 Except as provided in Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a-499s), the Packers and Stockyards Act, 1921 (7 U.S.C. 181-229), and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes," approved July 12, 1943 (67 Stat. 422; 7 U.S.C. 204), a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other 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
This note concludes that section 525 does not prohibit a state board of bar examiners from considering the circumstances surrounding a discharge in bankruptcy for the purpose of evaluating a bar applicant's moral character. In support of this proposition two arguments are advanced: first, such an examination does not violate the language or spirit of section 525 and, thus, is permissible under traditional supremacy clause analysis; and second, any interpretation of section 525 which obstructs a state's ability to adequately evaluate the character of those seeking admission to its bar would be contrary to the principles enunciated in National League of Cities v. Usery, since regulation of the legal profession is an essential function of the state.

CONSIDERATION OF THE CIRCUMSTANCES SURROUNDING A BAR APPLICANT'S DISCHARGE IN BANKRUPTCY UNDER THE SUPREMACY CLAUSE

Under the supremacy clause, a state may not promulgate laws or conduct its affairs in a manner which frustrates federal law. The permissibility of a state's consideration of the circumstances surrounding a bar applicant's discharge, therefore, turns on whether such an evaluation would stand "as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Thus, section 525 and the general policies underlying the bankruptcy law must be examined.

Policies Underlying Section 525

In general, bankruptcy legislation has sought to alleviate the nationwide economic problems arising when individuals are unable to pay their debts. The predecessor of the present Bankruptcy Act was adopted at

---

under the Bankruptcy Act, or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

Id. 426 U.S. 833 (1976).
14 U.S. CONST. art. VI, cl. 2 ("The Laws of the United States ..., shall be the supreme Law of the Land.").
16 Hines v. Davidowitz, 312 U.S. 52, 67 (1941), quoted in Perez v. Campbell, 402 U.S. at 649. In Perez it was stated: "Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict." 402 U.S. at 644.
17 Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (1898), as amended by Chandler Act, ch. 575, 52 Stat. 840 (1938) (Repealed 1978). Congressional authority in the area of bankruptcy is grounded in U.S. CONST. art. 1, § 8, cl. 4. Under this provision, Congress is given wide
a time of economic crisis in order to aid "an army of men crippled financially, most of them active, aggressive honest men who have met with misfortune in the struggle of life, and who if relieved from the burden of debt would re-enter the struggle with fresh hope and vigor and become active and useful members of society."\textsuperscript{18}

Bankruptcy serves two primary functions. First, it offers an economic "fresh start,"\textsuperscript{19} providing the debtor with an opportunity to be relieved from the obligation of repaying most types of debts.\textsuperscript{20} It is hoped that the individual, once released from prior financial burdens through discharge in bankruptcy, will again become an economically productive member of society.\textsuperscript{21} Second, bankruptcy protects the interests of creditors by providing an efficient, equitable mechanism by which to assemble, liquidate and distribute a debtor's assets.\textsuperscript{22}

Congress determined that if these purposes were to be accomplished, a simple, inexpensive procedure must be provided.\textsuperscript{23} Accordingly, bankruptcy laws since 1898 have been drafted to facilitate judicial economy and a speedy distribution of assets.\textsuperscript{24} Generally, to procure a discharge an individual must provide the bankruptcy court with a list of creditors and certain financial information,\textsuperscript{25} surrender all property, together with any records or documents concerning such property to the trustee in bankruptcy,\textsuperscript{26} and otherwise cooperate with the trustee.\textsuperscript{27} A discharge will then be granted unless one of the specific grounds for denial is found to exist.\textsuperscript{28} It is important to note, however, that there is no provision allow-

\textsuperscript{18} H.R. Rep. No. 65, 55th Cong., 2d Sess. 2 (1897).
\textsuperscript{19} E.g., Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934); Williams v. United States Fidelity & Guar. Co., 236 U.S. 549, 554-55 (1915); Rendleman, The Bankruptcy Discharge: Toward a Fresher Start, 58 N.C.L. Rev. 723, 723-24 (1980).
\textsuperscript{21} See Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934).
\textsuperscript{23} H.R. Rep. No. 65, 55th Cong., 2d Sess. 2 (1897).
\textsuperscript{24} The committee has sought to make this bankruptcy bill thoroughly national, adapted to all parts of the country, uniform in its operation, simple in its method, and has given special attention to the subject of making it inexpensive in its administration hoping mainly to frame a law that would commend itself to the people, and be so generally acceptable that it will become a permanent part of our general legislation.
\textsuperscript{25} Id. at 29.
\textsuperscript{26} See, e.g., Katchen v. Landy, 382 U.S. 323, 328 (1966).
\textsuperscript{28} Id. § 521(3).
\textsuperscript{29} Id. § 521(2).
\textsuperscript{30} 11 U.S.C. § 727 (Supp. III 1979). This section authorizes the bankruptcy court to deny an individual a discharge when that person has engaged in certain types of fraudulent conduct. Denial of discharge also is authorized when a discharge has been granted during the previous six years.
ing for a hearing to determine whether the petitioning debtor does in fact require bankruptcy for economic survival. 29

Congress enacted section 525 to further the “fresh start” policy of the bankruptcy laws. 30 Section 525 codifies the holding of Perez v. Campbell, 31 in which the Supreme Court invalidated, under the supremacy clause, an Arizona statute denying driving privileges to individuals who failed to satisfy automobile tort judgments.32 Since the practical effect of the statute was to coerce debtors to reaffirm discharged tort judgments, the Court found it to be contrary to the congressional policy of offering debtors an opportunity to commence their economic lives anew, “unhampered by the pressure and discouragement of pre-existing debt.” 33 Thus, the Court made it clear that states are not free to impose restrictions upon debtors if the direct effect would be to coerce the reaffirmation of debts discharged in bankruptcy. 34

Section 525 augments the “fresh start” policy by protecting debtors from being discriminatorily denied governmentally granted privileges solely because of their status as “debtors.” 35 It provides that “a governmental unit may not deny, revoke, suspend, or refuse to grant a license, permit, charter, franchise, or other similar grant to . . . a person that is or has been a debtor . . . solely because such bankrupt or debtor is or has been a debtor.” 36 The legislative history does, however, indicate that Congress

---

29 11 U.S.C. § 301 (Supp. III 1979). One consequence of the summary determinations of bankruptcy is that the procedure does not screen out those individuals who are not financially overburdened and, thus, not the type of individuals whom the bankruptcy laws were designed to benefit.


32 402 U.S. at 637.

33 Id. at 648 (quoting Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934)).

34 402 U.S. at 649-52. This prohibition against discriminating against debtors has been held applicable only to governmental action. Private parties are permitted to discriminate against debtors. Compare In re Loflin, 327 So. 2d 543 (La. App. 1976) (holding invalid regulation prohibiting fireman from declaring bankruptcy under penalty of automatic dismissal), and Rutledge v. City of Shreveport, 387 F. Supp. 1277 (W. D. La. 1975) (holding similar statute invalid), and Handsome v. Rutgers Univ., 445 F. Supp. 1362 (D. N.J. 1978) (state university may not refuse to release transcript of student until she satisfies her discharged debt to university), with Girardier v. Webster College, 563 F.2d 1267 (8th Cir. 1977) (private college may refuse to furnish transcript to persons who have received discharge of their college loans). But see Marshall v. District of Columbia Gov't, 559 F.2d 726 (D.C. Cir. 1977) (police department could use fact of prior bankruptcy in considering applicant’s qualifications to be police officer). See generally Comment, Postdischarge Coercion of Bankrupts By Private Creditors: Girardier v. Webster College, 91 Harv. L. Rev. 1336 (1978).

35 See H.R. REP. No. 595, supra note 30; S. REP. No. 988, supra note 30.

did not intend to frustrate appropriate regulatory policies by precluding consideration of the circumstances surrounding a discharge.\textsuperscript{37}

A state may not, under section 525, presume or summarily determine that an applicant to the bar, who is or has been a "debtor," lacks the requisite "good moral character" for admission. Such a presumption would contravene the language and policy of section 525 in two specific ways. First, certain individuals might forgo bankruptcy as a means of alleviating severe financial stress in order to avoid jeopardizing a future legal career. Second, such a presumption would operate to coerce those debtors seeking admission to the bar to reaffirm previously discharged debts. In either situation the congressional policy of offering the overburdened debtor a "fresh start" would be frustrated. Less clear, however, is the question of a state's authority to draw inferences respecting an applicant's moral character where evidence establishes that the applicant sought bankruptcy even though at the time of discharge he could have reasonably anticipated being financially capable of satisfying his obligations. In such instances, the state's inquiry would seem appropriate, as the concern is not the fact of bankruptcy per se but whether the applicant has evinced an attitude indicating a reasonable willingness to fulfill his commitments. State examination would neither discourage responsible use of the bankruptcy laws nor coerce reaffirmation of debts; rather, it would be consistent with the policy of assuring a morally fit bar.

Case Law Prior to the Enactment of Section 525

Subsequent to the Perez decision but prior to the enactment of section 525, the highest courts of Minnesota and Florida addressed the issue of a state's authority to inquire into the circumstances surrounding a bar applicant's discharge in bankruptcy.\textsuperscript{38} Both courts found that such an inquiry posed no conflict with the "fresh start" policy reflected in Perez and, thus, was permissible as an exercise of the state's authority to reasonably regulate admissions to its bar.\textsuperscript{39} The Minnesota and Florida courts, in deciding the merits of particular bar applicants' challenges to denials of admission based upon findings of moral unfitness, focused not upon the fact that each applicant had discharged his debts, but rather upon the circumstances surrounding his decision to seek discharge.\textsuperscript{40} Thus, the issue


\textsuperscript{38} Florida Bd. of Bar Examiners re Groot, 365 So. 2d 164 (Fla. 1978) (per curiam); Florida Bd. of Bar Examiners re G.W.L., 364 So. 2d 454 (Fla. 1978); In re Gahan, _____, 279 N.W.2d 826 (Fla. 1979).

\textsuperscript{39} Florida Bd. of Bar Examiners re Groot, 365 So. 2d 164, 167-68 (Fla. 1978) (per curiam); Florida Bd. of Bar Examiners re G.W.L., 364 So. 2d 454, 459 (Fla. 1978); In re Gahan, _____, 279 N.W.2d 826, 829-32 (Fla. 1979).

\textsuperscript{40} Florida Bd. of Bar Examiners re Groot, 365 So. 2d 164, 167-68 (Fla. 1978) (per curiam); Florida Bd. of Bar Examiners re G.W.L., 364 So. 2d 454, 459 (Fla. 1978); In re Gahan, _____, 279 N.W.2d 826, 829-32 (Fla. 1979).
with which the courts concerned themselves was whether the applicant, in seeking discharge, acted in such a manner or under such circumstances as to indicate an unreasonable and irresponsible disregard of his obligations.\textsuperscript{41}

The case decided by the Minnesota Supreme Court, \textit{In re Gahan},\textsuperscript{42} is representative of the general approach taken to the issue of a state's authority to investigate the circumstances surrounding a bar applicant's discharge in bankruptcy. The case illustrates the type of situation in which a decision to seek discharge might reflect adversely upon the existence of the requisite moral fitness for admission to the practice of law. Gahan graduated from law school owing approximately $14,000 in federally guaranteed student loans. He was admitted to the California bar and secured legal employment in December 1976. His position was terminated in August 1977, and he remained unemployed until October of that year. In September 1977 Gahan filed a voluntary petition in bankruptcy. He did not withdraw his petition upon securing new employment at an annual salary of $18,000. His discharge was granted in February 1978, and he subsequently moved to Minnesota and applied for admission to that state's bar.\textsuperscript{43}

The Minnesota court noted that, throughout the period in question, Gahan was "healthy, single, and not subject to any unusual hardship"\textsuperscript{44} which would have prevented him from meeting his monthly $175 student loan obligation. Moreover, an examination of Gahan's conduct relating to the management of his assets prior to and after discharge led the court to conclude that he had acted in an irresponsible manner, disregarding the interests of his creditors.\textsuperscript{45} Illustrative of such conduct was Gahan's mortgage of his sports car to a friend. He retained possession of the car and deposited the mortgage proceeds in a bank account which was exempt from the bankruptcy estate under California law. Subsequent to his discharge, Gahan withdrew the funds from the exempt account and satisfied the mortgage. Through this and similar conduct, Gahan was able to shield all but $7 of the $4,007 listed as assets in his petition for bankruptcy, while seeking to discharge liabilities totaling $19,717.\textsuperscript{46}

In affirming the decision of the Minnesota Board of Bar Examiners to deny Gahan admission, the court acknowledged that bankruptcy per se is not immoral and that Gahan did nothing illegal.\textsuperscript{47} Nonetheless, the court declared that "applicants who flagrantly disregard the rights of others

---

\textsuperscript{41} Florida Bd. of Bar Examiners re Groot, 365 So. 2d 164, 167-68 (Fla. 1978) (per curiam); Florida Bd. of Bar Examiners re G.W.L., 364 So. 2d 454, 459-60 (Fla. 1978); \textit{In re Gahan}, Minn. \textit{2d}, 279 N.W.2d 826, 829-32 (1979).

\textsuperscript{42} \textit{Id. at}, 279 N.W.2d 826 (1979).

\textsuperscript{43}\textsuperscript{4} Id. at \textsuperscript{4}, 279 N.W.2d at 828.

\textsuperscript{44} Id. at \textsuperscript{4}, 279 N.W.2d at 831.

\textsuperscript{45} Id.

\textsuperscript{46} Id. at \textsuperscript{4}, 279 N.W.2d at 828.

\textsuperscript{47} Id.
and default on serious financial obligations ... are lacking in good moral character if the default is neglectful, irresponsible, and cannot be excused by a compelling hardship that is reasonably beyond the control of the applicant." Implicit in the court's statement is the concern that an applicant who has in the past demonstrated irresponsibility or disregard for his obligations to others, might as an attorney behave in an irresponsible manner concerning obligations to his clients or the legal system. Thus the court held that Gahan's refusal to satisfy his legal and moral obligations "demonstrates lack of good moral character and reflects adversely on his abilities to perform the duties of a lawyer."

The cases of Florida Board of Bar Examiners re G.W.L. and Florida Board of Bar Examiners re Groot also dealt with the question of whether inferences concerning a bar applicant's moral character may be drawn from a decision to seek discharge in bankruptcy. In both cases, the Florida Supreme Court answered this question in the affirmative, carefully noting, however, that the fact of bankruptcy is not indicative of moral unfitness.

---

48 Id. at ____, 279 N.W.2d at 831. Examples of such hardships listed by the court are "an unusual misfortune, a catastrophe, an overriding financial obligation, or unavoidable unemployment." Id.
49 Id. at ____, 279 N.W.2d at 832.
50 364 So. 2d 454 (Fla. 1978).
51 365 So. 2d 164 (Fla. 1978) (per curiam).
52 Gahan, G.W.L. and Groot were all decided prior to the enactment of the Bankruptcy Reform Act of 1978. Under this new code, most student loans are no longer dischargeable unless such loans first become due five years before the date of the filing of the petition or there is "undue hardship" on the debtor and the debtor's dependents. 11 U.S.C. § 523(a)(8) (Supp. III 1979). A determination that an individual qualifies for a "hardship" under this section should through principles of comity or collateral estoppel prevent a state from further questioning the applicant's ability to satisfy the student loans. However, § 523(a)(8) does not render moot the issue under discussion. Individuals may still discharge most debts such as medical bills and personal expenses. See 11 U.S.C. §§ 523, 727(b) (Supp. III 1979). Additionally, many bar applicants may have discharged their student loans prior to the date § 523(a)(8) took effect.
53 While both the Florida and Minnesota courts concluded that a state may evaluate a bar applicant's discharge, the analysis of the problem differed. The Minnesota court appeared much more concerned with dispelling any doubts that the supremacy clause does not preclude examination. For example, the Minnesota court felt that the fact that Gahan sought discharge was irrelevant, but what was crucial was his refusal to satisfy obligations under the circumstances. Minn. at ____, 279 N.W.2d at 832. The Florida court, however, referred to G.W.L.'s decision to utilize the bankruptcy laws under the situation as "morally reprehensible." 364 So. 2d at 459.

The Minnesota court questioned "whether it was constitutional for the Florida court to consider the morality of any motivations ... when the Federal Government has declared the bankruptcy proceeding to be legal and presumably beneficial to the welfare of the individual and society." Minn. at ____, 279 N.W.2d at 831. The distinction between the courts' analyses is that while Florida made a moral judgment as to G.W.L.'s decision to discharge, the Minnesota court based its judgment on Gahan's refusal to satisfy obligations despite possessing the means to do so. On a practical level, however, the difference between the approaches is negligible. 7 Fla. St. U. L. Rev. 587, 592 n.26 (1979).
In *Groot*, the court concluded that the applicant's decision to seek discharge was not unreasonable, noting that Groot was financially responsible for the maintenance of his two children, that his personal resources had been at a "low ebb," and that, as a practical matter, "he had a valid present need to devote his entire . . . income to . . . current, not past, financial responsibilities." The applicant in *G.W.L.*, however, was less successful in his challenge to the Board of Bar Examiners' denial of admission. The court found that his decision to seek a discharge of his student loan obligations prior to graduation from law school and nine months before any payment was due raised an inference of irresponsibility and

---

54 Lonnie Neil Groot graduated from law school in June of 1976 owing approximately $8,530 on various federally guaranteed student loans. During the interval between his graduation and successful completion of the written Florida Bar Examination in June of 1977, Groot obtained legal employment, first in Florida at a yearly salary of $14,000, and subsequently in Montana at $17,800 a year plus living quarters, food and utilities. He then left for North Carolina, where he was unable to obtain employment. On August 18, 1977, Groot filed a voluntary petition for bankruptcy seeking to discharge the student loan obligation as well as $900 due from gasoline credit charges and hospital bills incurred when his child was born. At the time of discharge Groot was again employed in Florida, receiving approximately $18,000 a year. 365 So. 2d at 165-66.

Based upon the Board of Bar Examiners' evaluation of Groot's conduct in connection with his discharge, his application for admission to the bar was denied. The Florida Supreme Court, reversing the Board's decision, approved his admission to the bar because it felt the circumstances warranted his use of the bankruptcy provisions, and his conduct thus did not indicate he was unfit for the practice of law:

Unlike G.W.L., Groot was the father and legal custodian of two children born of his recently-terminated marriage. His expenses included not only his own living costs and those of his dependents, but to some degree those of his former wife. When his personal resources became exhausted, he was forced to prevail upon family members to loan him the money, to meet current living expenses while he was without a job.

55 Id. at 168.

56 *G.W.L.* was unable to obtain permanent legal employment prior to his graduation from law school. Three days before graduation, he filed a voluntary petition for bankruptcy in order to discharge $9,893. The bulk of this sum was attributable to loans used to finance his undergraduate and legal education. *G.W.L.* had only one debt of $8.01 which was due at the time of filing and no other exceptional financial obligations. His student loan repayments were not scheduled to begin until nine months after graduation. Subsequent to discharge and procuring employment, G.W.L. did make arrangements to repay the debts, but not until after he was notified that the Board of Examiners, upon learning of his decision to seek discharge, had expressed reservations concerning his moral character. 364 So. 2d at 456.

The Florida Supreme Court, upholding the Board of Bar Examiners' denial of admission, stated:

The petitioner's admittedly legal but unjustifiably precipitous action, initiated before he had obtained the results of the July bar examination, exhausted the job market, or given his creditors an opportunity to adjust repayment schedules, indicates a lack of the moral values upon which we have a right to insist for members of the legal profession in Florida. The petitioner's course of conduct in these personal affairs . . . is rationally connected to his fitness to practice law.

Id. at 459.
moral unfitness for admission to the bar which the petitioner had not rebutted.\textsuperscript{57}

\textit{Gahan, Groot} and \textit{G.W.L.} demonstrate that it is possible for a state, on a flexible, case-by-case basis, to consider an applicant's personal and financial situation in connection with a discharge, to sift and evaluate the evidence, and to draw such inferences and conclusions as are appropriate without obstructing the objectives of federal bankruptcy law.\textsuperscript{58} In each case, the concern of the state was not the fact of bankruptcy, but the inference of bad moral character arising from the fact that discharge was sought in the absence of economic hardship, to the detriment of creditors. Although such a distinction may be subtle,\textsuperscript{59} it is fundamental to an understanding of why the subsequently enacted section 525 does not prohibit the sort of inquiry engaged in by the Minnesota and Florida courts. First, neither court discouraged the use of the bankruptcy procedure by premising the determination of an applicant's moral fitness on the fact of discharge. Second, neither court made any attempt to coerce the applicant, in contravention of the “fresh start” policy, into reaffirmation of previously discharged obligations.\textsuperscript{60}

\textit{Application of Section 525 to Bar Admission Procedures}

Automatic rejection of an applicant's admission to the bar as the result of a determination of moral unfitness based upon the mere fact of bankruptcy cannot and should not be permitted in light of the dictates and

\textsuperscript{57} Id. at 460.

\textsuperscript{58} Two issues outside the scope of this note deserve mention. First, a possible equal protection issue exists in the context of the treatment of bar applicants and licensed attorneys. A bar applicant must bear the burden of proving good moral character, \textsc{Rules For Admission To The Bar} (West pub. 1975), and hence may have to explain why discharge was necessary. However, an attorney involved in a disciplinary proceeding need only rebut an inference of bad moral character arising from a discharge. See, e.g., Florida Bd. of Bar Examiners \textit{re G.W.L.}, 364 So. 2d 454, 460 (\textit{Fla.} 1978). Further, under \textit{Model Code of Professional Responsibility Canon 7} (1979), “A Lawyer Should Represent a Client Zealously Within the Bounds of the Law.” Therefore, Florida and Minnesota refused G.W.L. and Gahan admission to the bar for utilizing a law to their own advantage, about which, as attorneys, they would be obligated to advise a client.

Neither argument is persuasive. Bar applicants and attorneys are not similarly situated, and therefore not entitled to equal protection since attorneys have already established their good moral character in the process of gaining admission to the bar, whereas new applicants have not yet done so. Second, the Code of Professional Responsibility does not compel an attorney to assist his client in conduct which though legal, the attorney feels is unethical. \textit{Model Code of Professional Responsibility EC 7-8} (1979). As the Oregon Supreme Court noted, “Legality is beside the point. The issue is the applicant’s sense of ethics.” \textit{In re Alpert}, 269 Or. 508, 514, 525 P.2d 1042, 1045 (1974).

\textsuperscript{59} To highlight this distinction, it is noted that conviction of certain felonies in most states results in the automatic rejection of an application to the bar. \textit{See generally Annot.}, 88 A.L.R.3d 192 (1978).

\textsuperscript{60} This was particularly evident in \textit{G.W.L.}, where the court placed little significance on the applicant's reaffirmation of his debts in its assessment of his irresponsible attitude towards his obligations to others. \textit{See note 52 supra.}
policies underlying section 525. Examination of the circumstances surrounding a bar applicant’s decision to seek discharge, however, is not the type of discriminatory state action sought to be prohibited by section 525. Such an inquiry is not offensive to the “fresh start” policy, but rather is reasonable and necessary if a state is to protect the public from the admission of those individuals to the bar who have in the past demonstrated an irresponsible disregard of obligations in the context of bankruptcy or otherwise.

Admittedly, this interpretation may necessitate a bar applicant’s justification of his decision to seek discharge. However, bar applicants always have the burden of demonstrating their good character. Moreover, a state is not barred from examining a nondebtor's financial history for evidence of irresponsible delay or other evasive tactics pursued in avoidance of obligations to creditors. Therefore, an examination of the circumstances surrounding an applicant’s discharge is not discriminatory and, as a result, does not contravene section 525 since the debtor applicant and the nondebtor applicant are both subject to the same type of inquiry concerning responsibility in the context of their individual financial histories. To allow the debtor to use the bankruptcy laws as a shield to prevent inquiry into past conduct relating to his moral and financial responsibility would effectively discriminate in favor of the debtor.

Section 525 was not intended to displace the states’ authority to make necessary determinations about moral fitness of individuals seeking licenses to engage in any type of activity which requires integrity and responsibility. "In those cases where the causes of a bankruptcy are intimately connected with the license, grant, or employment in question, an examination into the circumstances surrounding the bankruptcy will permit [states] to pursue appropriate regulatory policies and take appropriate action without running afoul of bankruptcy policy."

An adjudication of bankruptcy, while guaranteeing a clean slate of financial fitness, does not likewise serve to guarantee a clean slate of moral fitness. As one authority noted in assessing the inadequacies of the bankruptcy laws:

True, there are occasional news stories of the movie actor, the singer, the professional athlete who resorts to bankruptcy just before signing a lucrative new contract. . . . It would . . . be difficult if not impossible to draft a workable law which would prevent those instances and it seems preferable . . . to leave such persons to the judgment of the ultimate arbiter of moral issues.

---

82 In re Gahan, ___ Minn. ___ 279 N.W.2d 826, 830 (1979).
83 See H.R. REP. No. 595, supra note 30; S. REP. No. 989, supra note 30.
84 H.R. REP. No. 595, supra note 30, at 165.
Thus, a state board of bar examiners, as the “arbiter” of a bar applicant’s moral fitness, should be permitted to examine the circumstances surrounding a discharge in bankruptcy because such an examination does not conflict with the letter or spirit of section 525.

While state examination of the circumstances surrounding a bar applicant’s discharge in bankruptcy does not amount to impermissible discrimination under section 525, it is equally true that such an examination may not lawfully serve as a mechanism through which a state might coerce a bar applicant-debtor into reaffirmation of his previously discharged obligations in violation of the Supreme Court’s holding in Perez.66 This does not mean, however, that a state is prohibited from considering a reaffirmation in evaluating moral character. A state should be permitted to consider all evidence concerning an applicant’s treatment of creditors since such evidence may serve as a reliable indicator of how the applicant, as an attorney, would approach his moral and financial obligations. So long as a state does not encourage a bar applicant to reaffirm his discharged debts by automatically determining that he is morally fit as a result of the reaffirmation, both the fact of discharge and the fact of reaffirmation could be considered as evidence of moral fitness without running afoul of Perez or section 525.

Allowing a state to examine the circumstances surrounding a bar applicant’s discharge in bankruptcy may, in fact, curtail the use of the bankruptcy procedure by certain individuals in order to avoid confrontation with a state board of bar examiners. However, the only individuals who would have any reason to abstain from seeking discharge are those who were never contemplated as the potential beneficiaries of federal bankruptcy law.67 Through such an examination, the states are able not only to protect their own interests in reasonably regulating admission to the bar, but also to encourage the use of the bankruptcy procedures in a responsible manner, consistent with the objectives of the federal bankruptcy act.

**Regulation of Admission to the Bar as an Essential Function of the State**

Thus far, this note has concentrated upon the potential conflict between federal bankruptcy law and state regulation of entry into the legal profession. There exists, however, a more fundamental issue: specifically, whether Congress may constitutionally enact legislation which would operate to prevent the states from taking necessary steps to reasonably

---

66 See text accompanying notes 30-33 supra.
67 For example, individuals like the applicant in Gahan would be dissuaded from seeking a discharge in bankruptcy. See text accompanying note 18 supra.
assure that members of the bar are fit to undertake the public trust in their capacity as officers of the court. National League of Cities v. Usery provides a solid foundation from which to analyze the extent of congressional authority to place limitations upon the states' ability to inquire into the moral character of potential entrants into the legal profession.

Balancing State and Federal Interests Under National League of Cities v. Usery

The United States Supreme Court's 1976 decision in National League of Cities v. Usery was thought by many legal analysts to represent a revitalization of the concept of state sovereignty. In Usery, the Court made clear that Congress does not possess unfettered discretion to impose restrictions on the states that would significantly impair their ability to "[discharge] their dual functions of administering the public law and furnishing public services." At issue in Usery were the 1974 amendments to the Fair Labor Standards Act (FLSA) which extended minimum wage and maximum hour provisions to cover those individuals employed by the states and their political subdivisions. Although the Court had previously upheld the wage and hour restrictions imposed by FLSA upon the private sector as a permissible exercise of the congressional power to regulate commerce, it refused to uphold the 1974 amendments which, though similar in nature, were aimed at employment in the public sector.

Cognizant of the potentially serious economic consequences upon the states' abilities to perform those functions necessary for the protection of the lives, property and general welfare of their citizens, the Court noted that "the challenged amendments operate to directly displace the states' freedom to structure integral operations in areas of traditional governmental functions." The Court indicated that such freedom is essential to the states' sovereign existence as contemplated by the tenth amend-

---


426 U.S. at 851 (emphasis added).


United States v. Darby, 312 U.S. 100 (1941).

426 U.S. at 851-52.

Id. at 852.
ment of the Constitution. Thus, it was held that Congress, by enacting the 1974 FLSA amendments, exceeded its authority under the commerce clause because it did "not comport with the federal system of government embodied in the Constitution."\(^{7}\)

Fundamental to the Court's decision was the recognition of the important role played by the states in our federal system of government, as well as the concern that congressional abrogation of state functions could render the states meaningless entities.\(^{8}\) Thus, *Usery* stands for the proposition that Congress may not unduly interfere with the states' performance of their "integral governmental functions"\(^{9}\) in such a manner as to impair their "ability to function effectively in a federal system."\(^{10}\)

\(^{7}\) *Id.* at 842-43. The Court noted further: "'The [tenth] amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the states' integrity or their ability to function effectively in a federal system.'" *Id.* at 843 (quoting *Fry v. United States*, 421 U.S. 542, 547 n.7 (1975)).

\(^{8}\) 426 U.S. at 852. One is hard pressed to locate in the Constitution significant limitations on congressional power as applied to the states. *See L. Tribe, American Constitutional Law* § 5-20 (1978). Instead, the Constitution is primarily aimed at "defining the scope of national powers and with identifying the individual rights that the Constitution protects from federal and state interference." *Id.* at 300. The framers did, however, envision a dual system of government in which the states had a meaningful existence independent of the federal government. *See Texas v. White*, 74 U.S. (7 Wall.) 700, 725 (1869) ("The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States."). The residual nature of the states' powers is expressed by the tenth amendment, which provides: "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. Amend. X. While the purpose of this note is not to examine the role of the states in our federal system, it should be understood that the states were intended to exist as sovereign entities, *see, e.g.*, *Skiriotes v. Florida*, 313 U.S. 69, 77 (1941), having the autonomy to protect and further the interests of their citizens. *Cf. The Federalist No. 45, (J. Madison) at 313 (J. Cooke ed. 1961) ("The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State.").

\(^{9}\) 426 U.S. at 851.

\(^{10}\) *Id.* at 852 (quoting *Fry v. United States*, 421 U.S. 542, 547 n.7 (1975)).

The *Usery* Court was careful to note that it was expressing "no view as to whether different results might obtain if Congress seeks to affect integral operations of state governments by exercising authority granted it under other sections of the Constitution..." 426 U.S. at 852 n.17. Notwithstanding this caveat, there would seem to be no logical reason not to extend the rationale of *Usery* to situations involving exercises of congressional power outside the scope of the commerce clause, when the underlying issue is one of maintenance of the states' sovereign existence. *In Peel v. Florida Dep't of Transp.*, 600 F.2d 1070, 1081 (5th Cir. 1979), the Fifth Circuit Court of Appeals indicated that *Usery* applied to the congressional "war power" in U.S. Const. art. I, § 8, cl. 1. In any such instance, congressional action that would severely limit the states' authority to act as autonomous units, where such limitations are not necessary to preserve the continuing existence of the nation as a whole, would be repugnant to the federalist scheme of government contemplated by the Constitution. Thus, application of the *Usery* rationale in the context of the problem posed by this note—federal bankruptcy law and state regulation of the bar—is both proper and necessary, for the issue is not whether Congress may permissibly enact bankruptcy legislation, but whether it may do so in such a manner as to jeopardize the autonomous existence of the states.
It is important to emphasize that the Court did not adopt an absolute prohibition against all congressional action that might impinge upon the states' freedom to structure ordinary governmental functions. Instead, the Court adopted a balancing approach, weighing the federal interest in assuring uniform compliance with specific congressional legislation against the states' interest in maintaining their existence as sovereign units. Illustrative of this approach is the Court's discussion of two earlier cases, Fry v. United States and Maryland v. Wirtz, both of which involved challenges to federal legislation imposing restrictions upon the compensation of state employees.

In Fry, the Economic Stabilization Act of 1970, which imposed a temporary wage freeze on federal and state employees, was upheld as a valid exercise of congressional power. The Usery Court affirmed the validity of Fry, noting that the enactment of the Economic Stabilization Act was "occasioned by an extremely serious problem which endangered the well-being of all the component parts of our federal system and which only collective action by the National Government might forestall." Moreover, the Court noted that the extent of congressional "intrusion upon the protected area of state sovereignty," challenged in Fry, was only that necessary to deal with the economic crisis threatening the nation as a whole:

The means selected were carefully drafted so as not to interfere with the States' freedom beyond a very limited, specific period of time. The effect of the [Act] displaced no state choices as to how governmental operations should be structured . . . [T]he [Act] operated to reduce the pressures upon state budgets rather than increase them.

The Usery Court's analysis of Wirtz, in which congressional extension of the provisions of the FLSA to state employees working in hospitals, institutions and schools was upheld, differed significantly from the Court's analysis of Fry. Unlike Fry, the legislation challenged in Wirtz involved no national economic crisis and was not limited in duration respecting its impact on the states. Furthermore, it displaced state choices as to the structure of governmental operations, but conferred no benefit on the

---

1 426 U.S. at 856 (Blackmun, J., concurring).
3 392 U.S. 183 (1968).
5 426 U.S. at 852-53.
6 Id. at 853. Concerning congressional authority to act in situations amounting to national emergencies, the Court stated: "Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed." Id. (quoting Wilson v. New, 243 U.S. 332, 348 (1917)).
7 426 U.S. at 852.
8 Id. at 853.
9 Id. at 852-55.
states by reducing budgetary pressures. The *Usery* Court, finding little basis upon which to distinguish its own holding, overruled *Wirtz*.99

**Competing State and Federal Interests**

Implicit in the approach of *Usery* is a belief in the need to accommodate competing state and federal interests in a manner designed to maximize the benefits of our dual system of government. It thus becomes necessary to examine, with some degree of specificity, the competing interests of the states in regulating entry into the legal profession and the federal government in protecting against discrimination on the basis of bankruptcy. Such an examination will support the proposition that the states' interest in assuring a morally responsible bar outweighs the interest of the federal government in maintaining an absolute prohibition against any type of reasonable discrimination on the basis of bankruptcy.

**The States’ Interest in Assuring a Morally Responsible Bar**

Inherent in the concept of sovereignty is the power to regulate conduct through the establishment and enforcement of law. Law serves as the foundation upon which social interaction is ordered and conflict resolved. The legal system serves as the mechanism through which law is used to implement social policy and harmonize private disputes. Thus, without

---

99 *Id.* at 855. The Court noted that the *Wirtz* opinion relied heavily upon dicta contained in United States v. California, 297 U.S. 175 (1936), in which California claimed that its state-owned railroad was immune from the operation of the Federal Safety Appliance Act of 1893, ch. 196, § 1, 27 Stat. 531, as amended by Act of Apr. 1, 1896, ch. 87, § 6, 29 Stat. 85 (current version at 45 U.S.C. §§ 1-17 (1976 & Supp. III 1979)). In that case the Court held that "California, by engaging in interstate commerce by rail, has subjected itself to the commerce power..." 297 U.S. at 185. In dicta the Court stated: "The state can no more deny the power [to regulate commerce] if its exercise has been authorized by Congress than can an individual." *Id.* Commenting upon this assertion, the *Usery* Court observed: "We think the dicta from United States v. California, simply wrong." 426 U.S. at 854-55.

91 "[T]he states have full power to regulate within their limit matters of internal police, including in that general designation whatever will promote the peace, comfort, convenience and prosperity of the people." Lake Shore & Mich. S. Co. v. Ohio, 173 U.S. 285, 294 (1899).

92 "Civilization involves subjection of force to reason, and the agency of this subjection is law." Pound, *The Future of Law*, 47 YALE L.J. 1, 13 (1937).


94 Perhaps no characteristic of an organized and cohesive society is more fundamental than its erection and enforcement of a system of rules defining the various rights and duties of its members, enabling them to govern their affairs and definitively settle their differences in an orderly, predictable manner. Without such a "legal system," social organization and cohesion are virtually impossible; with the ability to seek regularized resolution of conflicts individuals are capable of interdependent action that enables them to strive for achievements without the anxieties that would beset them in a disorganized society. Put more succintly, it is this injection of the rule of law that
effective legal systems, the existence of states as sovereign entities cannot continue and the administration of justice, in matters not dealt with under federal law, will fail.

The Supreme Court has recognized that states have a “compelling” interest in the administration of justice.\textsuperscript{95} The attorney’s role in the administration of justice is critical.\textsuperscript{96} He serves as an intermediary through which the state, as an independent entity, communicates with its citizens,\textsuperscript{97} and as the legal interpreter for, advisor to and protector of what is generally a legally unsophisticated clientele. He must objectively transform facts into legally recognized claims and be able to utilize his knowledge of law not only to further the best interests of his clients, but also those of the legal system. He must be capable of creating what are essentially private laws, such as contracts, wills and corporate bylaws, which will be enforceable in courts of law and equity. In short, the attorney is the “most influential participant in the application and utilization of the law.”\textsuperscript{98} Thus, as recognized by the United States Supreme Court, “lawyers are essential to the primary governmental function of administering justice . . .”\textsuperscript{99}

States have regulated entry into the legal profession in an attempt to exclude those who fail to possess either the requisite degree of legal knowledge or the requisite sense of moral responsibility, for the absence of either is fatal to the administration of justice. Neither the attorney who is ignorant of the law nor the attorney who acts irresponsibly or in his own self-interest can effectively and beneficially participate in the administration of justice.\textsuperscript{100} Thus, “[s]tates have a compelling interest in the practice of [law] within their boundaries, and that as part of their power to protect the public health, safety, and other valid interests they have

allows society to reap the benefits of rejecting what political theorists call the “state of nature.”


American society, of course, bottoms its systematic definition of individual rights and duties, as well as its machinery for dispute settlement, not on custom or the will of strategically placed individuals, but on the common-law model. It is to courts, or other quasi-judicial official bodies, that we ultimately look for the implementation of a regularized, orderly process of dispute settlement.


\textsuperscript{96} See, e.g., Kaufman, The Court Needs a Friend in Court, 60 A.B.A.J. 175, 175 (1974) ("Dispensing justice is a joint enterprise of the advocate and the court. If the advocate does not perform as he should, the quality of the administration of justice is debased.").

\textsuperscript{97} See generally L. Patterson & E. Cheatham, THE PROFESSION OF LAW 6-9 (1971).


\textsuperscript{100} See, e.g., MODEL CODE OF PROFESSIONAL RESPONSIBILITY CANON 7 (1979) ("A Lawyer Should Represent a Client Zealously Within the Bounds of the Law.").

broad power for licensing practitioners and regulating the practice of law.101

It is insufficient to simply note that states have a compelling interest in regulating entry into the legal profession. Rather, it is necessary to consider those steps which states must be allowed to take in order to reasonably protect that interest. Such a consideration is particularly problematic where the issue is one of moral fitness as opposed to one of adequate knowledge of the law. While it is relatively simple to objectively measure the extent of a bar applicant's legal knowledge by requiring him to submit to a written bar examination, measurement of an applicant's moral fitness requires an inquiry of a substantially different nature.102

The past conduct of a bar applicant is the primary, if not the only, barometer of moral character. It serves as an indicator of his willingness to undertake and carry out responsibility, to support and participate in society in a manner consistent with social mores, and to forgo the pursuit of self-interests to the detriment of others. Examination of conduct such as prior criminal activity,103 unwarranted disregard of authority, erratic behavior under circumstances of ordinary stress104 and disregard of obligations to others is thus necessary for an accurate and fair assessment of a bar applicant's moral fitness to assume the responsibilities of an attorney. Therefore, states must be permitted to inquire into any aspect of an applicant's moral character, subject only to limitations imposed by the Constitution, which bears a rational relationship to his fitness to engage in the practice of law.105 If not permitted to do so, states will not be in a position to predict with any certainty whether a prospective attorney will be capable of performing his essential function within the legal system.

The circumstances surrounding a bar applicant's discharge in bankruptcy should be examined by a state in assessing an applicant's moral character since it may bear a rational relationship to his fitness to practice law.106 The ultimate goal which a debtor seeks in pursuing voluntary bankruptcy is an adjustment of his legal responsibilities to creditors. Thus, the bar applicant who utilizes the bankruptcy procedures in order to avoid his legal responsibilities when he is not suffering any undue financial hardship may be displaying a serious disregard for responsibility to those who rely upon him, or an inability to respond in a reasonable way to situa-


106 See text accompanying note 48 supra.
tions involving minor stress. Prohibition of state inquiry into such an applicant's conduct would effectively prevent the state from excluding him from the bar. Thus, the state would be left without the means to protect against the entry into the legal profession of those individuals ill-suited to undertake the public trust.

The Federal Interest in Prohibiting Discrimination on the Basis of Bankruptcy

If Congress, through the enactment of section 525, intended to impose an absolute prohibition against state discrimination on the basis of bankruptcy, then it is arguable that the mere threat of review of the circumstances surrounding discharge by a state board of bar examiners would run afoul of the statute. Certain individuals, in an effort to avoid confrontation with a state board of bar examiners, might be hesitant to utilize the bankruptcy laws where reasonable alternative means for alleviating financial stress exist. However, the federal interests in imposing an absolute restriction upon inquiry into the circumstances surrounding discharge would appear minimal since such a restriction would not be necessary to further the underlying policies of federal bankruptcy law.

As noted earlier, the bankruptcy laws have two primary objectives.\(^\text{107}\) The first is to relieve the over-burdened debtor from serious financial stress, thus allowing him a "fresh start" to participate in society in an economically productive manner. This "fresh start" policy is not furthered, however, by an absolute prohibition of discrimination on the basis of bankruptcy in the type of situation presented by Gahan. In that case there was no need for the applicant to resort to the bankruptcy procedure in order to acquire a new opportunity to become economically productive, since the financial stress to which he was subject would have been alleviated even without the aid of the bankruptcy laws. Therefore, imposition of an absolute prohibition against discrimination on the basis of bankruptcy in such a case would not operate to further the "fresh start" policy, but would serve merely as a means through which individuals capable of satisfying their obligations could avoid doing so.

The second objective of federal bankruptcy policy is to provide a mechanism for the equitable distribution of a debtor's assets to his creditors. This objective, again, is not furthered by an absolute prohibition against discrimination on the basis of bankruptcy. Once more, the Gahan case is illustrative. Although Gahan's creditors were treated equally, inasmuch as each received his rightful share of Gahan's non-exempt assets which totalled seven dollars, the distribution of that amount

\(^{107}\) See text accompanying notes 18-29 supra.
among creditors having claims in excess of $19,000 could hardly be considered equitable in light of Gahan's ability to fully satisfy those claims.\textsuperscript{108} Although there is a need for Congress to prohibit discrimination against debtors who, owing to severe financial stress, resort to the remedy of bankruptcy, extension of such protection to debtors who utilize the bankruptcy laws merely as a means of avoiding obligations to creditors is not necessary to further federal bankruptcy policy. In those instances the federal interest in prohibiting discrimination, if it exists at all, is minimal.

Balancing the State and Federal Interests

The states have a strong, if not compelling, interest in examining the circumstances surrounding a bar applicant's discharge in bankruptcy. If an examination of those circumstances might reveal certain characteristics which would render an applicant unfit for the practice of law and the states are prohibited from making such an examination, they will be unable to protect their interest in maintaining an effective and just legal system. Such a result would ultimately impair the states' freedom to supervise the administration of justice in contravention of their existence as sovereign entities. Therefore, the question becomes one of whether Congress' exercise of its bankruptcy power to absolutely prohibit discrimination on the basis of bankruptcy\textsuperscript{109} can stand in light of the teachings of

\textsuperscript{108} See text accompanying notes 42-49 supra.

\textsuperscript{109} One indication that an absolute prohibition against discrimination is not essential to the effective operation of section 525 is that Congress specially excluded three federal statutes from the prohibitions imposed by section 525. One of those exceptions is the Perishable Agricultural Commodities Act, 7 U.S.C. §§ 499a-499s (1976 & Supp. III 1979), which was designed to protect small farmers, who, due to the nature of their business, are particularly vulnerable to unscrupulous brokers in farm produce. Chidsey v. Guerin, 443 F.2d 583, 584 (6th Cir. 1971). In order to protect those farmers, the Secretary of Agriculture is empowered to revoke the license of any broker who does not make full payment for agricultural commodities, 7 U.S.C. §§ 499b(d),499(a) (1976), including debts not satisfied due to discharge, 11 U.S.C. § 525 (Supp. III 1979). While that does conflict with bankruptcy policy, nevertheless, in light of the purposes of the Commodities Act and the clearly recognized need to have financially responsible persons as licensees or employees of licensees under the Act, the extent of encroachment of the Commodities Act upon the Bankruptcy Act cannot be regarded as "unconscionable or excessive." Marvin Tragash Co. v. United States Dep't of Agr., 524 F.2d 1255, 1257, (5th Cir. 1975).

The three excepted statutes are congressional in origin and thus the supremacy clause question does not arise. Nonetheless, the exemptions are significant. First, the state interest in licensing only reliable attorneys is substantial, warranting the accommodation of section 525 to state needs. Second, the national interests will also be best served if the states are allowed to fully examine bar applicants, as the federal courts do not conduct inquiries independent of the state before admitting lawyers to practice before the federal bench. See Note, Disbarment in the Federal Courts, 85 YALE L.J. 975, 976 n.10 (1976). Rather, an applicant who is accepted into the state bar may automatically be admitted to practice
National League of Cities v. Usery. On balance, this question must be answered in the negative, for such a blanket prohibition would significantly impair the states' ability to act in their capacity as sovereign entities to structure the operation of their legal systems, while failing to appreciably further the policies of section 525 and federal bankruptcy law.

CONCLUSION

The states, in order to adequately structure their legal systems, must have the authority to examine the acts and conduct of bar applicants which reflect on moral character. As the filing of a petition in bankruptcy may, under certain circumstances, be indicative of one's moral character, the states must be free to consider such a filing as relevant evidence. Two arguments have been presented in support of this proposition. First, state inquiry into the circumstances surrounding a bar applicant's discharge violates neither the language of section 525 nor the "fresh start" and anti-discrimination policies that the section was intended to further. Thus, the inquiry is not prohibited by the supremacy clause. Second, even if Congress had intended that section 525 preclude state examination into the circumstances surrounding a bar applicant's discharge, such a provision would be an unconstitutional infringement of state sovereignty under the rationale of National League of Cities v. Usery.

It is not argued that a state must make a determination, upon learning of a prior discharge, that an applicant lacks the requisite character—only that this conduct be considered along with other evidence of an individual's moral fitness. In most bankruptcies, the debtor is severely hampered by financial obligations and a state may not, therefore, draw any inferences regarding character from the fact of a discharge. However, as Gahan illustrates, there are instances where the bankruptcy laws are irresponsibly utilized as a convenient mechanism to advance personal interests at the expense of creditors. It is in the latter situation that a state may validly make inferences regarding an applicant's moral character.

WILLIAM OWEN WEISS

Id. In a real sense then, the federal interest and state interest are the same. These interests should be afforded the same deference given to the small farmer.
