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'Pensions, Politics and the Public Interest'

Professor Jim Wooten probes the history of ERISA

In a time of increasing cynicism about the workings of government and the role of special-interest lobbies, Professor James A. Wooten's new book of legal history is refreshing: It tells the story of a major piece of legislation that benefited millions of workers and came about because public servants wanted to do what was right.

The book, due out in January, is *The Employee Retirement Income Security Act of 1974: A Political History*. ERISA, as the complex law is known, was the federal government's first major foray into regulating private pension programs. Through such measures as fiduciary standards of conduct, minimum vesting and funding standards, and a government-run insurance program, ERISA sought to ensure that no employer would ever leave its retired workers impoverished by defaulting on its pension promises.

Contrary to other political historians' assertions that special interests called the shots as ERISA took shape, Wooten shows that the legislation was the product of committed and reform-minded politicians, most prominently Sen. Jacob K. Javits, R-N.Y.

"Before 1974, there was only minimal regulation of pension plans," says Wooten, whose book is being published by the University of California Press in conjunction with the Milbank Memorial Fund and the Employee Benefit Research Institute. "The questions I started with were, who wanted ERISA to pass, and why did it pass?"

To answer these questions, he did a decade's worth of research in primary sources. The list of archives he mined for information is long: the presidential papers of John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon and Gerald R. Ford (who signed ERISA into law); archives of the

federal Departments of Labor, Treasury and Commerce, the Office of Management and Budget, and the steelworkers, garment workers, and autoworkers unions; individual legislators' papers, including those of Javits and Sens. Harrison Williams and Mike Mansfield and Congressman Wilbur Mills; and the South Bend, Ind., archives of the Studebaker Corp., the 1963 collapse of whose retirement plan was a seminal event in framing the debate over pension reform.

Wooten also interviewed key legislative figures from the 1970s, including members of Congress, congressional staffers, and staffers from the

Departments of Labor and Treasury. "Pension people really love pension plans," Wooten says. "They wanted to talk about the story and why they did what they did. With their help I was able to construct a broader, more comprehensive picture than any of them could have done individually."

The history, he says, involved "both policy and politics." And the competing interests were not uniform, as evidenced by a deep split in the labor movement over the issue of pension security. The industrial unions such as the autoworkers and steelworkers, he says, strongly favored ERISA, because their pension plans were managed by employers. But in craft unions, for example, in the building and construction trades, sentiment was firmly against the legislation, because workers in these industries participated in multi-employer plans in which union officials played the predominant role in plan administration. The business community, says Wooten, opposed the new government regulation across the board.

"ERISA is a law that passed because reformers who thought workers were at risk wanted to make those workers safer," Wooten says simply. ERISA is



Photo by Mark Mulville

“ERISA also has important effects in fields like health care law, domestic relations, property, and estates and trusts. It is extremely broad in its sweep.”

also interesting and unusual because Congress, rather than the executive branch, played the major role in publicizing pension issues and drafting reform legislation. Another notable point is that ERISA was developed during the 93rd Congress, which was in session in the dark days of the Watergate scandal.

Wooten, who left the practice of law to work on his doctoral dissertation at Yale University, notes that “ERISA is a law that affects many areas of legal practice. The most obvious examples are fields like labor and em-

ployment law and tax,” says Wooten. “But ERISA also has important effects in fields like health care law, domestic relations, property, and estates and trusts. It is extremely broad in its sweep.”

After his book’s long and difficult birth, Wooten says he is satisfied that he has done justice to the complex interplay of reform-minded politics and self-serving interests that surrounded the ERISA debate. “The political history of ERISA is not a simple story of good triumphing over evil,” he says, “but it is not a story of evil triumphing

over good, either, which is the one we usually get. From a political perspective as well as a policy perspective, ERISA was a very complicated legal reform.”