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Out of Reach: Protecting Parental Contributions to Higher Education from Clawback in Bankruptcy

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Parental contributions to higher education have become commonplace. However, courts are divided on how contributions by parents towards the college education of their children should be treated when those parents file for bankruptcy. The Bankruptcy Code grants trustees avoidance powers under § 548 to recover transfers made by a debtor up to two years before the petition date if those transfers are actually or constructively fraudulent. Trustees are attempting to use these avoidance powers to "clawback" payments made to colleges and universities by debtors for the education of their children. Factors including societal expectations, financial aid calculations, emotional benefits, and economics have created varying opinions on whether these contributions constitute constructive fraud under § 548.