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Supreme Court Rules Vermont's Health Care Data Collection Law Federally Preempted

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In this era of health care cost containment and emphasis on quality, the collection and analysis of data provides the basis for more informed resource allocations. State governments have looked for ways to make data-driven decisions to enhance health care quality at lower cost. To advance this goal, the Vermont legislature enacted a law in 2005,[i] mandating the reporting of claims data, and other information related to health care services. The law was implemented by regulation,[ii] and applied to insurers, as well as other health care entities.

On March 1, 2016, in ***Gobeille, Chair of the Vermont Green Mountain Care Board v. Liberty Mutual Insurance Co.,***[iii] the U.S. Supreme Court, in a six to two decision, ruled that the Vermont law is federally preempted by the Employee Retirement and Income Security Act of 1974 ("ERISA").[iv] While the Supreme Court was sympathetic to Vermont's data needs for health care planning and resource allocation, the Court suggested that there are available avenues the State could pursue with federal agencies to obtain, under existing federal authority, the information it needs.

Background

Vermont's Law

The Vermont statute under challenge imposed duties on certain public and private entities, including insurers, that provide and pay for health care services to report designated information to a state agency. The scope of reporting extended to health services rendered to Vermonters, whether treated in the State or elsewhere, and to services rendered to non-Vermonters treated within the State. To implement the law, the State established the Vermont Healthcare Claims Uniform Reporting and Evaluation System. The information mandated to be reported was: (i) medical claims data, (ii) pharmacy claims data, (iii) member eligibility data, (iv) provider data, and other information.[v] Monetary sanctions could be imposed for failure to comply with the requirements of the law.[vi]

Vermont is not alone in its efforts to develop an "all-payer claims database." Seventeen other states have or are implementing similar databases.[vii]

When the Vermont legislature enacted the all-payer claims database, it expressed the purposes of

the database in the statute itself. The statute stated that the data collection law is designed to help -

- identify health care needs
- inform health care policy
- evaluate the effectiveness of programs on improving patient outcomes
- Compare costs between various treatment settings and approaches
- determine the capacity and distribution of existing resources, and
- provide information to purchasers of health care[viii]

The Vermont law for an all-payer claims database was challenged by Liberty Mutual Insurance Company in federal court. Liberty Mutual contended that the State's statute was preempted under ERISA since it impermissibly had a connection with the insurer's employee welfare benefit plan, offering health benefits to its employees. The health plan offered by Liberty Mutual to employees was self-insured and self-funded. The district court determined that Vermont's all-payer claims database was not preempted under ERISA.[ix] The Second Circuit reversed.[x]

ERISA

ERISA is a body of law that governs employee welfare benefit plans sponsored by employers. It is a comprehensive federal scheme. While it does not mandate specific health benefits, it does establish uniform standards, including fiduciary duties to ensure that health benefits offered under employer plans are safeguarded for the benefit of plan participants, and their beneficiaries. ERISA also establishes specific administrative duties, including recordkeeping, reporting and disclosure requirements, as well as rules to protect the financial soundness of plans.[xi] The statute contains an express-preemption clause. Section 514(a) of ERISA, in pertinent part, provides for preemption of –

> "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan."[xii]

The reach of Section 514(a) has been the subject of judicial interpretation. The preemption clause is an expression by Congress that matters arising under ERISA are deemed to be ones of particular federal concern. The Supreme Court's jurisprudence on ERISA preemption has evolved, focusing on congressional intent in ERISA's enactment, the statute's purpose, and the effect of the state law on ERISA plans.

In *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers, Ins. Co.,*[xiii] the Supreme Court considered whether New York State's surcharges for hospital in-patient care imposed on enrollees of commercial insurers and on health maintenance organizations ("HMOs"), as measures to regulate the health care market, were preempted by ERISA. The commercial insurers and HMOs offered coverage for employee health benefit plans that were governed by ERISA. The Court found that the New York State surcharges did not "relate to" an ERISA employee benefit plan, and thus were not preempted. The Court, quoting its decision in *Shaw v. Delta Air Lines, Inc.*,[xiv] explained that under ERISA's preemption clause, a law "relates to" an employee benefit plan if it "has a connection with or reference to such a plan."[xv] The Court wrote that the State surcharges clearly had no "reference to" an ERISA employee health benefit plan since the surcharges were imposed on patients and HMOs, regardless of whether patients, or HMO members, secured health coverage under an ERISA plan. As to whether the surcharges had a "connection with" an ERISA

plan, the Court explained that, to answer this inquiry, it must look to the objectives of ERISA to determine the nature of the state law that Congress intended would fall outside of ERISA's preemptive reach. In *Travelers*, the Supreme Court emphasized that by enacting ERISA, Congress intended that employee welfare benefit plans and plan sponsors would be governed by a body of uniform federal law, to avoid conflicting state laws, so as to minimize financial and administrative burdens. The Court wrote that the State surcharges did not present the kind of indirect effect on ERISA plans that would preclude, or negatively impact, the objectives envisioned by Congress when it enacted ERISA. In *Travelers*, there were no mandated state benefit structures, or interference with plan administration, that would give rise to ERISA's preemptive force. Rather, the New York State surcharges were simply costs passed on to, at least in part, those who purchased commercial insurance or to HMO members, and thus represented the cost of benefits provided by ERISA plans. The plans were free to choose coverage offered by competing insurers in the market, and were not bound to a particular insurance product.

The Supreme Court in *Egelhoff v. Egelhoff*[xvi] further defined when a state law has an impermissible "connection with" an ERISA plan, and thus is preempted under Section 514(a). In that case, a statute enacted in the State of Washington provided for the revocation of a designated spouse as beneficiary of nonprobate assets such as life insurance and pension plan benefits, upon divorce. In *Egelhoff*, the state law effected life insurance benefits and a pension plan afforded to an employee under an ERISA plan. The law had the effect of revoking the employee's designation of his wife, as beneficiary under the ERISA plan, upon their divorce. After the employee's death, his statutory heirs invoked the State law, the deceased having died intestate. The heirs claimed entitlement to the nonprobate assets by operation of state law. A battle over these assets ensued, with the former spouse contending that ERISA preempted Washington's law.

The Court in *Egelhoff* wrote that to determine whether a state law has a forbidden connection with ERISA plans, the inquiry must be focused on ERISA objectives, as intended by Congress, and the effect of the state law on ERISA plans. The Supreme Court concluded that the Washington law had impermissible connection with ERISA plans, and thus was preempted. The Court explained that the State law "binds ERISA plan administrators to a particular choice of rules for determining beneficiary status."[xvii] The State law, by operation of law, interfered with ERISA's requirement that a plan "shall specify the basis on which payments are made to and from the plan," and that the plan shall be administered by plan documents and instruments.[xviii] On that basis, the Supreme Court judged the State law preempted, since it implicated "an area of core ERISA concern."[xix]

Additionally, the Court in *Egelhoff* determined that the State law had a prohibited connection with ERISA plans in that it interfered with national uniformity of plan administration, a central objective of Congress when it enacted ERISA. The State law had this negative impact by requiring ERISA plan administrators to be familiar with various state laws that dictate when, and under what circumstances, the rights of a named beneficiary under a plan has been diminished or revoked by state law. The goal envisioned by Congress when it enacted ERISA, minimizing ERISA administrative and financial burdens, would be impeded. The Court acknowledged that laws enacted by states that fall within state traditional police powers are afforded a presumption against federal preemption. Such was the case with Washington's statute, which regulated family law, a subject of inherent state province. That presumption, though, did not negate the preemptive force of ERISA Section 514(a), where, in the Court's view, Washington's statute "conflicts with ERISA or relates to ERISA plans."[xx]

The Supreme Court's Ruling in *Gobeille*

The Supreme Court in *Gobeille* viewed Vermont's statute for an all-payer claims database as having

an impermissible connection with ERISA plans, and thus supplanted under ERISA Section 514(a).

Writing for the Court, Justice Kennedy observed that ERISA has expansive reporting, disclosure and recordkeeping requirements for welfare benefit plans. These requirements may be expanded by the Secretary of Labor. Thus, within the context of ERISA's purposes, plans that fall under its reach are regulated in a significant way at the federal level, within a defined scheme. Justice Kennedy explained that Vermont's law could not survive preemption under Section 514(a). Vermont's law and regulation "govern plan reporting, disclosure, and-by necessary implication-recordkeeping. These matters are fundamental components of ERISA's regulation of plan administration."[xxi] To emphasize, Justice Kennedy wrote that "[d]iffering, or even parallel regulations from multiple jurisdictions could create wasteful administrative costs and threaten to subject plans to wide-ranging liability."[xxii] In the Court's view, Vermont's law intruded upon "a central matter of plan administration," and "interfered with nationally uniform plan administration."[xxiii] Thus, Justice Kennedy wrote, disapprovingly, about the burdens, and potential liability, that ERISA plans could face under laws such as Vermont's all-payer claims database.

The Court emphasized the expansive authority of the Secretary of Labor to impose requirements on ERISA plans, to require additional information reporting, recordkeeping.[xxiv] The Court made clear that it is within the realm of the Secretary of Labor, not the states, to mandate, or impose, these duties on ERISA plans. To the point, Justice Kennedy wrote that data disclosed by ERISA plans may be used "for statistical and research purposes, and [to] compile and publish. . .studies, analyses, reports, and surveys . . . ."[xxv] Mandating additional reporting and recordkeeping duties on ERISA plans is a matter of decision "for federal authorities, not for the separate States."[xxvi] The result would be the same even where the state law has different objectives than those under ERISA. This is so since Vermont's law required the reporting of significant information about the administration of benefits, an aspect reserved under ERISA. While not definitively addressing the point, the Court suggested that the Secretary of Labor may be authorized to require reporting of data that Vermont needs, thus suggesting a federal avenue available for states to pursue.[xxvii]

In *Gobeille*, the Supreme Court addressed the presumption against preemption for state laws that traditionally have been viewed as within the authority of states to enact, particularly laws governing the public health. The Court concluded that such a presumption was inapplicable in the context of ERISA plans, where, as was the case with Vermont's law, the law in question "regulates a key facet of plan administration."[xxviii] This is so even where the law, like the one enacted in Vermont, has as a purpose the protection of public health. The Court reasoned that since an essential feature of ERISA is one of mandating reporting by plans that fall within ERISA's reach, then Congress intended to preempt Vermont's reporting and disclosure statute since it necessarily "enters a fundamental area of ERISA regulation . . . ."[xxix]

For further explanation, and contrast, the Court cited to its decision in *De Buono v. NYSA-ILA Medical and Clinical Services Fund*.[xxx] There, New York imposed a tax, the Health Facility Assessment ("HFA"), on gross receipts for patient services at diagnostic and treatment centers. A challenge against the tax was brought by a fund that administered an ERISA welfare benefit plan for longshore workers, retirees and their dependents. The fund owned and operated treatment centers in New York for the provision of medical care for the plan's members. The trustees of the fund challenged the HFA as a state tax that "relates to" the ERISA plan administered by the fund, and thus, under ERISA's preemption clause, was superseded. The Supreme Court concluded that the HFA survived preemption. In defining the reach of ERISA's preemption clause, the Court started with the general presumption that Congress did not intend to supplant state law. The Court looked to the objectives of ERISA to determine if the state law at issue was the type that Congress would have

intended to be preempted to ensure the purposes of ERISA were realized. The Court in *De Buono* viewed the HFA as one which clearly was enacted by the State for the regulation of public health. It concluded that the HFA lacked features that would suggest congressional intent to supplant the New York law under ERISA's preemption clause. The Supreme Court in *Gobeille* distinguished the incidental burden of reporting the HFA imposed on the fund in *De Buono* with, in contrast, the reporting burdens that Vermont's law imposed on ERISA plans. The Court wrote that Vermont's law required extensive reporting on the administration of ERISA plan benefits, amounting to "regulation of a fundamental ERISA function."[xxxi] Thus, the scope of reporting duties under the Vermont law was of the genre that Congress would intend to be supplanted under ERISA's preemption clause.

Justice Stephen Breyer in his concurring opinion made clear that Vermont's statute providing for an all-payer claims database was the very type of state law that Congress intended be supplanted on the basis of ERISA preemption. Justice Breyer wrote, as the majority on the court observed, that Vermont, and any other state, can ask the Secretary of Labor for approval to obtain information deemed needed from ERISA health plans. Justice Breyer also referenced prospects afforded by the Patient Protection and Affordable Care Act, authorizing at the federal level, through rulemaking, to require more information reporting about plan administration.[xxxii]

Justice Ginsburg wrote a dissenting opinion, joined by Justice Sotomayor. Justice Ginsburg started her analysis of the Vermont law vis-à-vis ERISA by applying a presumption against preemption of state law. That presumption "should apply full strength,"[xxxiii] and, when viewing Vermont's law against the Court's past decisions, the dissent viewed the State's law as saved from ERISA's preemptive force.

Justice Ginsburg wrote that Vermont's law is not preempted since the State sought different information than that under ERISA's reporting and disclosure requirements, with different purposes. To emphasize the point, Justice Ginsburg explained that ERISA's reporting mandate serves the purpose of enabling the evaluation of plan management and financial stability. Vermont's statute simply did not elicit that kind of information. Justice Ginsburg explained that the Court's past decisions emphasize that close attention must be paid to ERISA's objectives, and that in doing so, ERISA preemption arises where a state law functions to serve the same purposes as ERISA's reporting scheme. Since Vermont's all-payer claims database shared no common purpose with reporting rules under ERISA, then no preemption applied.

The dissent also addressed the effect of Vermont's law on ERISA plans. No impacts rising from the State's law on ERISA plans were present that would require supplanting the State's law. Justice Ginsburg construed Vermont's law as having a mere negligible impact on ERISA plans, since no effects were discerned on a plan's administration, or on plan design. Citing prior Court decisions, Justice Ginsburg wrote that administrative tasks of filing reports, like those under Vermont's law, were "ancillary to the areas ERISA governs."[xxxiv] The dissent went further, and dismissed any contention that Vermont's law imposed burdens on ERISA plans. Justice Ginsburg summarily rejected that line of argument, observing that all the State law required was to gather data collected in the normal course of plan administration, and report it to Vermont in a specified format. That was hardly viewed as a meaningful burden in view of contemporary technological capabilities.

Finally, Justice Ginsburg was dismissive of the majority's suggestion that states, in seeking information it needs, could request the Secretary of Labor to take steps to require plan reporting of needed information. That suggested recourse, in view of the urgent need of states for data, seemed "unsettling. . .to leave the states dependent on a federal agency's grace."[xxxv]

Observations

State governments face a daunting task of grappling with how best to utilize resources in the provision of health care that optimize patient outcomes and reduce costs.

ERISA's preemptive reach, as it applies to ERISA welfare benefit plans, is a limiting factor for state governments to consider in designing ways to allocate resources in health care delivery and payment. In this equation, when weighing the burdens presented by ERISA preemption, there may well be avenues for states to pursue in efforts to obtain health-related data.

As suggested in *Gobeille*, the Secretary of Labor, and other federal agencies, in the exercise of statutory authority, may provide the means by which states can benefit from information reporting, at the federal level, by ERISA plans. This may present a favored approach in that it allows for centralization of data reporting, and involves participation by key stakeholders, at both state and federal levels, to coordinate, and more fully understand how data can best be used in achieving more optimum utilization of resources in health care delivery. As Justice Breyer opined in *Gobeille*, there is a national perspective to consider, where federal agencies become more informed about ERISA's preemptive reach, and the needs of state governments in designing care delivery models.

It remains to be seen whether state governments can be the beneficiaries of efforts at the national level to obtain the data needed at the local level.

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[i] Vt. Stat. Ann. Tit. 18, § 9410 (2015 Cum. Supp.).

[ii] Reg. H-2008-01, Code Vt. Rules 21-040-021, § 4(D) (2016).

[iii] 2016 U.S. LEXIS 1612 (Mar. 1, 2016).

[iv] 29 U.S.C. § 1001, *et seq.* Justice Kennedy wrote the Court's opinion , in which Chief Justice Roberts, Justices Thomas, Breyer, Alito and Kagan joined. Justice Thomas and Breyer filed concurring opinions. Justice Ginsburg filed a dissenting opinion, in which Justice Sotomayor joined.

[v] Reg. H-2008-01, Code of Vt. Rules 21-040-021, § 4(D) (2016).

[vi] *Id.* at § 10; 18 V.S.A. § 9410(g).

[vii] The other states that have all-payer claims databases are: Arkansas, Colorado, Connecticut, Kansas, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New York, Oregon, Rhode Island, Tennessee, Utah, Virginia, Washington, and West Virginia.

[viii] Vt. Stat. Ann. Tit. 18, § 9410(a)(1).

[ix] 2012 U.S. Dist. LEXIS 161069.

[x] 746 F.3d 497 (2d. Cir.2014).

[xi] *See generally Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90-91 (1983).

[xii] 29 U.S.C. § 1144(a).

[xiii] 514 U.S. 645 (1995).

[xiv] 463 U.S. 85 (1983).

[xv] 514 U.S. 645, 656 (internal quotation marks omitted).

[xvi] 532 U.S. 141 (2001).

[xvii] *Id.* at 147.

[xviii] *Id., quoting* 29 U.S.C. §§ 1102(b)(4), 1104(a)(1)(D) (internal quotation marks omitted).

[xix] *I*d. at 147.

[xx] 532 U.S. 141, 151.

[xxi] 2016 U.S. LEXIS 1612 at *16.

[xxii] *Id.*

[xxiii] *Id.*, q*uoting Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001) (internal quotation marks omitted).

[xxiv] *See* citations to ERISA, 2016 U.S. LEXIS 1612 at *13-14.

[xxv] 2016 U.S. LEXIS 1612 at *14.

[xxvi] *Id.* at *17.

[xxvii] Citing 29 U.S.C. § 1135.

[xxviii] *Id.* at *20.

[xxix] *Id.*

[xxx] 520 U.S. 806 (1997).

[xxxi] 2016 U.S. LEXIS 1612 at *19.

[xxxii] Citing 42 U.S.C. § 300gg-17(a).

[xxxiii]2016 U.S. LEXIS 1612 at *40.

[xxxiv] *Id.* at *44.

[xxxv] *Id.* at *52.

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