

Court Rules 6-2 in Gobeille: ERISA Pre-empt VT Transparency Law

Today, the Supreme Court [decided](#) *Gobeille v. Liberty Mutual Insurance Co.* in favor of Respondent, Liberty Mutual. The Court held that ERISA does, in fact, pre-empt Vermont's all-payer claims database ("APCD") statute as the statute applies to ERISA plans. Earlier, we included this [case brief](#) on the Source Blog.

THE MAJORITY OPINION

Justice Kennedy authored the majority opinion. He was joined by Justices Roberts, Thomas, Breyer, Alito, and Kagan.

In its majority opinion, the Court acknowledged that Section 1144(a) of ERISA—that “any and all state laws insofar as they may now or hereafter relate to any employee benefit plan”—is vague and could have an enormous reach if indeterminately applied. The Court, however, explained that it narrowed the scope of Section 1144(a)'s application in its *Travelers*,[\[1\]](#) *Dillingham*,[\[2\]](#) and *Egelhoff*[\[3\]](#) opinions. The Court stated that, according to its ERISA interpretation jurisprudence, two types of state laws are pre-empted by ERISA: (1) those that reference ERISA (i.e., laws that act immediately and exclusively upon ERISA or when the existence of an ERISA plan is essential to the state law's operation) and (2) those that have an impermissible “connection with” ERISA (i.e., state laws that have acute economic effects on an ERISA plan and force an ERISA plan to adopt a certain scheme or restrict its choice of insurers). The Court found that Vermont's law fell under this second category of ERISA pre-empted laws.

The Court acknowledged that a core tenet of ERISA is the compiling and reporting of certain plan information to the

U.S. Secretary of Labor. The Court drew a sharp distinction, however, between the Secretary of Labor's authority to burden ERISA plans with recordkeeping and reporting requirements and what states are authorized to do in regard to ERISA plans. The Court based its ruling on the premise that "[d]iffering or even parallel regulations from multiple jurisdictions could create wasteful administrative costs and threaten to subject [ERISA] plans to wide-ranging liability." As such, the Court ruled that Vermont's law, as it relates to ERISA plans, "interferes with nationally uniform plan administration" and therefore does have an impermissible "connection with" Liberty Mutual's third party administrative plan|that Vermont's law is pre-empted by ERISA|and Vermont cannot require Liberty Mutual to comply with its APCD reporting requirements.

Of particular note is that the Court declined to require Respondent to show any actual economic burden as a result of Vermont's law. The Court instead decided the case based on its finding that Vermont's "scheme regulates a central aspect of plan administration and, if the scheme is not pre-empted, plans will face a body of disuniform state reporting laws and, even if uniform, the necessity to accommodate multiple government agencies."

The majority also found that Vermont's law sought to regulate a fundamental ERISA function by requiring ERISA plans to report information about benefit administration—a principal objective of ERISA—and was therefore impermissibly "connected with," and pre-empted by, ERISA.

And, finally, the Court rejected Vermont's argument that its power to regulate public health trumps ERISA pre-emption. The Court reasoned that Congress contemplated the possibility that ERISA could pre-empt "substantial areas of traditional state regulation" when it enacted the law. The Court acknowledged that, in some instances, "incidental reporting by ERISA plans" (such as hospital taxes) may survive ERISA pre-emption but that Vermont's reporting requirement was distinguishable from

such situations because it “enters a fundamental area of ERISA regulation.” Vermont’s law is therefore, the Court held, pre-empted and unenforceable against Liberty Mutual.

JUSTICE THOMAS’ CONCURRING OPINION

Justice Thomas filed a concurring opinion in which he agreed with the majority’s application of precedent in interpreting Section 1144 of ERISA, but where he questioned whether (1) Congress even had the power to issue §1144 of ERISA and (2) the Court’s approach to ERISA pre-emption aligns with the Court’s “broader pre-emption jurisprudence.”

First, Justice Thomas questioned the constitutional validity of ERISA’s expansive terms: “[e]xcept as provided [in Section 1144(b), ERISA] shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.” Justice Thomas questioned whether Article I of the Constitution authorizes Congress to prohibit states from applying their laws to ERISA plans. Relying on *United States v. Morrison*, Justice Kennedy’s concurring opinion in *United States v. Lopez*, and Justice Thomas’ own dissent in *Gonzales v. Raich*, Justice Thomas doubted Congress’ power to exempt ERISA plans from state regulations that “have nothing to do with interstate commerce.”

Next, Justice Thomas questioned the Court’s approach to its ERISA pre-emption cases, generally. He argued that, rather than address the constitutionality of Section 1144 of ERISA, in *Travelers*, the Court “become uncomfortable with how much state law §1144 would pre-empt if read literally” and “abandoned efforts to give its text its ordinary meaning.” Justice Thomas admitted that he joined the *Travelers* majority opinion, but argued the Court’s ERISA interpretation is “becoming increasingly difficult to reconcile with [its] pre-emption jurisprudence.” In other express pre-emption cases, he argued, the Court focused on statutory text—and not on “policy limits that are not ‘remotely discernible in the statutory

text.’”

In conclusion, Justice Thomas stated that the Court should address the constitutionality of Section 1144 of ERISA and warned that, until this occurs, lower courts will continue to struggle to apply it.

JUSTICE BREYER’S CONCURRING OPINION

Justice Breyer also filed a concurring opinion. He agreed with the majority that Vermont’s statute is pre-empted by ERISA because it “interferes with nationally uniform [ERISA] plan administration.” He wrote separately, however, to emphasize his view that, had the Court not found that ERISA pre-empted Vermont’s reporting requirements, self-insured ERISA plans could have been subjected to “50 or more potentially conflicting information reporting requirements” and “the result could well be unnecessary, duplicative, and conflicting . . . which can mean increased confusion and increased cost.”

Justice Breyer went on to urge states to use the Secretary of Labor to obtain information related to ERISA plans. He stated that he “sees no reason why the Secretary of Labor could not develop reporting requirements that satisfy the States’ needs, including some State-specific requirements, as appropriate” or “why the Department [of Labor] could not delegate to a particular State the authority to obtain data related to the Federal Secretary for use by other States or at the federal level.”

THE DISSENT

Justice Ginsburg filed a dissenting opinion, and Justice Sotomayor joined. They essentially agreed with Judge Straub’s dissent in the U.S. Court of Appeals for the Second Circuit’s opinion.

First, Justices Ginsburg and Sotomayor disagreed that Vermont’s law has an impermissible “connection with” an ERISA

plan. They argued that Vermont's APCD reporting requirements and ERISA's reporting requirements serve different purposes, so the Vermont law could not possibly have an impermissible "connection with" ERISA plans. They view ERISA's requirement to report certain information to the Secretary of Labor to be for the purpose of "management and solvency." Alternatively, they argued that the purpose of Vermont's APCD statute as seeking to better understand how "its residents obtain health care and how effective that care is." They reasoned that, since the reporting requirements serve different purposes, Vermont's law does not have an impermissible "connection with" Liberty Mutual's plan and is therefore not pre-empted by ERISA.

Next, they argued that Vermont's law does not warrant ERISA pre-emption because it does not affect "a central matter of [ERISA] plan administration" (per the Court's opinion in *Egelhoff*) and therefore *Travelers*, *Dillingham*, and *De Buono*[\[4\]](#) support a presumption against pre-emption—a presumption they argued is stronger when a state law deals with "matters of health and safety." Justices Ginsburg and Sotomayor characterized ERISA's central functions as dealing with "vesting requirements, benefit levels, beneficiary designations, [and] rules on how claims should be processed or paid"—matters completely separate from data collection. They argued that because Vermont's law did not affect a central matter of Liberty Mutual's plan, the Court's presumption against pre-emption should have been applied. They argued that this presumption was only strengthened by the fact that Vermont's law dealt with a matter of health and safety.

Justices Ginsburg and Sotomayor also disagreed with the Court's finding that data-collection laws, like Vermont's, are inherently burdensome on ERISA plans. They agreed with Judge Straub, of the Second Circuit, that these effects are mere speculation, and they argued that, even if there were evidence to the contrary, "state-law diversity is a hallmark of our

political system and has been lauded in this Court's opinions."

RESOURCES

[Supreme Court opinion](#)

[Reuters](#)

[National Law Journal](#)

[1] *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Company*, 514 U.S. 645 (1995).

[2] *California Division of Labor Standards Enforcement v. Dillingham Construction, N.A., Inc.*, 519 U.S. 316 (1997).

[3] *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001).

[4] *De Buono v. NYSA-ILA Medical and Clinical Services Fund*, 520 U.S. 806 (1997).