

A Decision in Rutledge: The Supreme Court Upholds States' Rights to Regulate Health Care Costs

On December 10, 2020, the Supreme Court overturned a decision by the Eighth Circuit and upheld an Arkansas Law to regulate pharmacy benefit managers (PBMs). In a [unanimous decision](#) (8-0, Justice Barrett did not participate in the case), the court reaffirmed that state regulation of prices is not preempted by the Employee Retirement Income Security Act of 1974 (ERISA). The ruling in this case found that Arkansas' law was a price regulation. In effect, the law required PBMs to reimburse pharmacies at a rate above the price the pharmacy paid to a wholesaler to obtain the drug. Writing for the court, Justice Sotomayor said "Crucially, not every state law that affects an ERISA plan or causes some disuniformity in plan administration has an impermissible connection with an ERISA plan... In short, ERISA does not pre-empt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage."[\[1\]](#) For more information about the Arkansas law, the claims made in this case, and additional information about ERISA jurisprudence, see our previous [blog post](#).

The decision in this case is an important "line in the sand" for ERISA preemption. ERISA preemption has broadened in recent years, most notably with the Supreme Court decision in [Gobeille v. Liberty Mutual Insurance](#), to become what legal scholar Erin Fuse Brown calls the [Voldemort of health law](#) - the evil killer of state legislation that can cause preemption issues simply by being identified in the law. This decision reaffirms that states have the power to pass laws regulating the prices paid for both drugs and other healthcare services. As a result, this decision not only gives assurance that laws regulating PBMs are on strong legal footing, but may also encourage states to step further into regulating the costs of healthcare services.

[1] Rutledge 592 U. S. ____ (2020) at 5.