

Issue Brief: Gobeille v. Liberty Mutual (SCOTUS)

OVERVIEW

The reach of All Payers Claims Database (“APCD”) legislation is currently being tested in *Gobeille v. Liberty Mutual Insurance Company*, [Docket No. 14-181](#), which is presently before the U.S. Supreme Court. The case stems from Liberty Mutual’s refusal to comply with Vermont’s reporting requirements under that state’s APCD statute, which the insurer argues is preempted by The Employee Retirement Income Security Act of 1974 (“ERISA”)—a notoriously broad statute that preempts any state law that “relates to” a self-insured plan.

FACTS

Pursuant to [Vt. Stat. Ann. Tit. 18, Section 9410](#), Vermont enacted an APCD, in 2005, and began collecting healthcare data, in 2007. Liberty Mutual is a Massachusetts-based, self-funded insurance company governed by ERISA. As such, Vermont does not require Liberty Mutual to comply with its reporting requirements. Blue Cross Blue Shield of Massachusetts, however, serves as a third-party administrator of Liberty Mutual’s plan—and because Blue Cross provides or administers healthcare benefits to thousands of Vermonters (including 137 Liberty Mutual beneficiaries), Blue Cross must comply with Vermont’s APCD reporting requirements. At Liberty Mutual’s behest, Blue Cross did not submit Liberty Mutual’s claims data to Vermont, and in 2011, the Vermont Department of Banking, Insurance, Securities and Health Care Administration subpoenaed Blue Cross for the data.

PROCEDURAL HISTORY

Liberty Mutual initiated a suit in the [U.S. District Court for the District of Vermont](#), seeking to block Vermont from obtaining claims data relating to Liberty Mutual's employee health plan, which is administered through Blue Cross. Vermont moved for summary judgment, and the court granted it on the grounds that ERISA did not preempt Vermont's APCD disclosure requirements. Specifically, under the various preemption tests, the district court found that (1) Vermont's database did not "reference" an ERISA plan|(2) "Vermont's statutes and regulation did not act immediately or exclusively upon ERISA plans, nor is the existence of ERISA plans essential to their operation"|and (3) Vermont's database did not have an impermissible "connection with" an ERISA plan. The district court also relied heavily on the fact that Liberty Mutual itself did not have any reporting obligations under the Vermont statute and that there was "no evidence" that Blue Cross, the third-party administrator, was "laboring under any sort of [reporting] burden" since Blue Cross already provides data to Vermont for other ERISA plans it administers.

Liberty Mutual appealed the decision to the [U.S. Court of Appeals, Second Circuit](#), and a divided three-judge panel reversed the district court's decision. The Second Circuit sided with Liberty Mutual, finding that ERISA did preempt Vermont's reporting requirement as it applied to Liberty Mutual's plan. The Second Circuit agreed with the district court that Vermont's database statute lacked "reference to" an ERISA plan, but the majority held that the statute's reporting obligation did in fact constitute an impermissible "connection with" Liberty Mutual's ERISA plan. The court decided that a "slight reporting burden" on self-insured, ERISA-preempted plans would be permissible under ERISA but found that Vermont's requirement exceeded a slight burden|the court called Vermont's reporting "scheme" "obviously intolerable" and "burdensome, time-

consuming, and risky.” The court also stated that these burdens and risks would be amplified by other states’ reporting requirements. The Second Circuit also disagreed with Vermont’s assertion that healthcare data collection is part of “the states’ historic police powers.”

Judge Straub dissented from the Second Circuit’s majority decision. In his opinion, Vermont’s database is “wholly distinct” from ERISA’s reporting requirements because Vermont’s purpose and focus of data collection are entirely distinct from that of ERISA. Judge Straub also asserted that the data required of Vermont’s statute was not overly burdensome since it relies purely on “after-the-fact” data that insurance companies have already compiled and are in possession of. He added that the majority’s opinion that Vermont’s statute was “time-consuming and risky” was “pure speculation.” Judge Straub also criticized the majority for not applying the ERISA presumption against preemption.

Alfred J. Gobeille, in his official capacity as Chair of Vermont’s Green Mountain Board, petitioned for a writ of certiorari, which the U.S. Supreme Court granted on June 29, 2015.

ISSUE

The issue before the U.S. Supreme Court is whether the Court of Appeals erred in holding that ERISA preempts Vermont’s APCD as applied to a third-party insurance administrator for self-funded ERISA plans.

In Petitioner, [Gobeille’s brief](#), he advances two primary arguments. First, Gobeille argues that Congress did not intend for ERISA to preempt Vermont’s health care law—a law that serves “traditional public health and regulatory purposes”—and that, in line with the Court’s precedent, it should continue to reject

“strictly literal readings” of ERISA’s preemption clause. Gobeille frames this issue before the Court as whether Vermont’s law “interferes with any of ERISA’s core objectives” and argues that since Blue Cross already has the data required by Vermont’s statutes, it does not. Second, Gobeille argues that the Second Circuit’s conclusion that Vermont’s reporting requirements are “burdensome, time-consuming, and risky” is not supported in the record and should therefore be disregarded. Even if the Court does explore this issue, Gobeille argues that Blue Cross has already compiled the data required of Vermont’s statute, which supports a conclusion that Blue Cross is not “laboring under any sort of burden.”

In Respondent, [Liberty Mutual’s reply brief](#), it asserts three main arguments. First, Liberty Mutual argues that Congress did intend ERISA’s preemption clause to be “expansive” in an attempt to relieve ERISA plans of the burden of complying with multiple state reporting requirements. Second, Liberty Mutual argues that Vermont’s reporting requirements are inconsistent with ERISA’s objectives in that: (1) the claims data required under the Vermont law arises out of a core obligation of a self-insured plan (providing medical benefit to plan participants) and is therefore directly tied to a core ERISA function|(2) reporting requirements, like Vermont’s, are burdensome because they differ between states and also differ from the data required of federal reporting requirements|and (3) Vermont’s requirements conflict with Liberty Mutual’s plan documents and subsequently prevent Liberty Mutual from administering its plan in accordance with its plans. Third, Liberty Mutual argues that federal statutes, enacted post-ERISA, are not relevant to determining ERISA’s purpose, nor are the more recent statutes’ objectives inconsistent with ERISA’s preemption in this case.

In [Gobeille’s reply to Liberty’s Mutual’s brief](#), he argues that Liberty Mutual disregards the Court’s “settled framework for

ERISA preemption” and urges the Court to apply its precedential authority. Gobeille also reasserts that any burden placed on Blue Cross by Vermont’s requirement that it provide “standardized, after-the-fact” claims data does not warrant ERISA preemption. And, finally, Gobeille re-advances his argument that Congress did not intend for ERISA to “displace” state programs that seek to improve state health care.

AMICUS CURIAE BRIEFS

At least 47 states and organizations have intervened in the case as *amici curiae*. Three contributed to *amicus* briefs in support of neither party|35 parties filed briefs in support of Petitioner, Gobeille|and 9 filed briefs in support of Respondent, Liberty Mutual.

In Support of Neither Party

ERISA Professor, [Edward A. Zelinsky](#), of the Benjamin N. Cardozo School of Law of Yeshiva University, filed an *amicus* brief in support of neither party. In his brief, Professor Zelinsky urges the Court to “acknowledge the tension between *Shaw* and *Travelers* [. . .] by declaring that ERISA § 514(a) establishes a presumption for preemption, and [] read ERISA §§ 514(b)(2) and 514(b)(4) as they were written to identify the only areas of state law protected from that presumption.” [\[1\]](#) Then, once clarified, he urges the Court to apply the clarification to determine the *Gobeille* issue.

In addition, the [Association of American Physicians and Surgeons, Inc. and the Vermonters for Health Care Freedom](#) filed an *amicus* brief in support of neither party. The parties urge the Court to affirm the Second Circuit’s decision in order to protect the confidentiality of medical records. In the alternative, the parties urge the Court to dismiss its grant of writ of certiorari, since there is no disagreement between the

circuit courts on the issue.

In Support of Gobeille

The *amicus* briefs in support of Gobeille include:

- [The United States](#);
- [The States of New York, Colorado, Connecticut, Hawai'i, Illinois, Kansas, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Oregon, Rhode Island, Tennessee, Texas, Utah, Washington, and the District of Columbia](#);
- [The State of New Hampshire](#);
- [National Governor's Association, National Conference of State Legislatures, Council of State Governments, National Association of Insurance Commissioners, and Association of State and Territorial Health Officials](#);
- [American Hospital Association \(AHA\) and Association of American Medical Colleges](#);
- [Connecticut Health Insurance Exchange D/B/A Access Health CT](#);
- [Harvard Law School Center for Health Law and Policy Innovation, et al.](#);
- [AARP, Families USA, and U.S. Public Interest Research Group](#);
- [National Association of Health Data Organizations \(NAHDO\), et al.](#) |and
- [American Medical Association \(AMA\) and Vermont Medical Society](#)

In Support of Liberty Mutual

The *amicus* briefs in support of Liberty Mutual include:

- [American Benefits Council, America's Health Insurance Plans, The ERISA Industry Committee, The HR Policy Association, The National Business Group on Health, and](#)

- [the Chamber of Commerce of the United States of America](#);
- [Blue Cross and Blue Shield Association](#);
- [The National Coordinating Committee for Multiemployer Plans](#) | and
- [New England Legal Foundation](#)

ORAL ARGUMENTS

The U.S. Supreme Court [heard oral arguments](#) on December 2, 2015. Professor Ronald Mann, of Columbia Law School, summarized the oral arguments and predicted that “[a]bout the only thing that seems clear after the argument in [Gobeille v. Liberty Mutual Insurance Company](#) is that the Court will not dispose of the case with a unanimous opinion.” He also pointed out that, even though the case is premised on an ERISA preemption issue, “the argument presented a bench plainly preoccupied with the Affordable Care Act.” For an excellent analysis of the parties’ oral arguments and how the Justices received and criticized these arguments, read Professor Mann’s article [Argument analysis: Justices spar over ERISA preemption of state health-care databases](#) on SCOTUSblog.com.

The Court is expected to render a decision on *Gobeille v. Liberty Mutual* by June 2016. The Source will continue to monitor the case and provide you with any significant advancements.

[\[1\]](#) Respondent, Liberty Mutual, and the Second Circuit relied on *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). Petitioner relies on *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645 (1995).