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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

High Court Asserts ERISA Preemption, But To What Extent?

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The Employee Retirement Income Security Act of 1974 imposes uniform obligations on employer-provided benefit plans. In furtherance of its objective of uniform regulation, ERISA preempts "any and all state laws insofar as they ... relate to any employee benefit plan" covered by the statute.[1] The U.S. Supreme Court's recent decision in Gobeille v. Liberty Mutual Insurance Co., No. 14-181, reaffirms that that this broad preemption provision invalidates state laws when they threaten to subject employer plans to a patchwork of state-by-state regulations and encroach upon plans' performance of their core functions under ERISA, such as reporting and disclosure of data about plan participants.


Nancy G. Ross


Brian Netter

At issue in Gobeille was whether a Vermont law creating a statewide "all-payer claims database," or APCD, was preempted by ERISA. The law requires "health insurers" and other entities to file reports containing claims data and "other information relating to health care" with the APCD.[2] Vermont uses the APCD's data to inform health care regulation, with the goal of improving health care outcomes and lowering costs for patients and providers. Liberty Mutual Insurance Company challenged the law as applied to its self-insured ERISA health benefit plan.

Before the U.S. Supreme Court, Vermont argued that its law was not preempted, for two principal reasons. First, the state argued, the law did not intrude on any core function of ERISA plans, because ERISA's reporting requirements were aimed at ensuring that plans were able to meet their financial obligations — not at assessing health care outcomes. Second, the state argued that requiring ERISA plans to report to APCDs in different states was not a burdensome obligation for plans, because the necessary data could easily be assembled.

In a 6-2 decision written by Supreme Court Justice Anthony Kennedy, the court disagreed, holding that Vermont's law was preempted. The majority held that APCD reporting requirements like Vermont's did indeed intrude on core ERISA functions — reporting, disclosure and record keeping about plan participants. It explained that if a law directly regulates a core ERISA function — as Vermont's APCD law did — it was preempted irrespective of whether its purpose was identical to ERISA's.

The majority also concluded that allowing each state to impose its own APCD law on ERISA-governed plans could create a burden on plans that operate in multiple states, by requiring them to comply with

different requirements for data collection, formatting and reporting in each state that regulated them. Thus, preemption was also warranted to prevent states from imposing "novel, inconsistent and burdensome reporting requirements on plans."[3] The majority rejected Vermont's argument that Liberty Mutual had not proven that state APCD laws burdened it economically, stating that such proof was unnecessary because "[a] plan need not wait to bring a preemption claim until confronted with numerous inconsistent obligations and encumbered with any ensuing costs."[4]

Supreme Court Justice Clarence Thomas wrote a separate concurring opinion. He explained that he joined the majority opinion in full because it "faithfully applie[d]" the court's precedents on ERISA preemption.[5] But he expressed concern that ERISA's preemption provision may be unconstitutionally broad. He argued that Congress's regulatory power under the commerce clause is limited and does not reach areas that are purely state concerns, as the court recognized in United States v. Lopez[6] and United States v. Morrison.[7] But the court, he noted, has applied ERISA preemption in areas traditionally thought to be left to the states. He urged the court to "address whether Article I gives Congress [the] power" to extend ERISA preemption to such local matters.[8]

Supreme Court Justice Stephen Breyer also wrote a separate concurring opinion. He noted that a decision in Vermont's favor would have made ERISA plans subject "to 50 or more potentially conflicting information reporting requirements," which would likely "create serious administrative problems."[9] Thus, the APCD law was preempted on the grounds that it would interfere with the uniform regulatory scheme ERISA envisioned.

Supreme Court Justice Ruth Bader Ginsburg, joined by Justice Sonia Sotomayor, dissented. She argued that both of the grounds for preemption relied on by the majority were flawed: First, the APCD law did not intrude on a core function of ERISA because it did not interfere with ERISA's objectives of ensuring the plans' financial health. Second, she explained, Liberty Mutual had not shown why electronically reporting health care data to APCDs — which she called a typical example of "modern regulatory compliance" — would be a burden on ERISA plans.[10]

Gobeille is sure to have significant practical consequences in the field of ERISA. The decision is an important victory for employers who operate self-insured health plans, the third-party administrators of these plans, and participants who receive benefits from the plans. States are enacting APCD laws in ever-greater numbers, and a decision upholding these laws as applied to ERISA plans would have put plans that operate in many states in the position of having to report data to many different databases, in different formats, and at different times. The burden of this reporting would have been considerable, diverting resources away from plans' core function — paying benefits to beneficiaries — and escalating costs of administration.

The legal implications of Gobeille are much less certain. In certain respects, the decision expands the scope of ERISA preemption, by finding that preemption applies even where a state law serves different objectives than ERISA itself, and by establishing that parties arguing for preemption need not show concrete evidence of an economic burden on plans in order to prevail.

Nevertheless, the court has generally been reluctant, since its 1995 decision in Travelers,[11] to find preemption unless a state law directly impedes ERISA's objectives, such as mandating benefits, interfering with plan administration, or occupying a field expressly regulated by ERISA. That reluctance is likely to persist even after Gobeille, with each future case requiring examination of the challenged law's impact on benefit plans and ERISA's objectives. Gobeille will provided helpful precedent for challenging certain laws, but the boundaries of ERISA preemption remain just as murky as before.

—By Nancy Ross, Brian D. Netter and Matthew A. Waring, Mayer Brown LLP

Nancy Ross is a partner in Mayer Brown's Chicago office and a member of the firm's ERISA litigation practice.

Brian Netter is a partner in Mayer Brown's Washington, D.C., office and a member of the firm's Supreme Court and appellate practice.

Matthew Waring is a litigation and dispute resolution associate in Mayer Brown's Washington, D.C., office and a member of the firm's Supreme Court and appellate practice.

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[1] 29 U.S.C. § 1144(a).

[2] Vt. Stat. Ann., tit. 18, § 9410(c)-(d).

[3] Gobeille v. Liberty Mutual Insurance Co., 577 U.S. __ (2016), slip op. at 10.

[4] Id. at 11.

[5] Gobeille v. Liberty Mutual Insurance Co., 577 U.S. __ (2016), slip op. at 1 (Thomas, J., concurring).

[6] 514 U.S. 549 (1995).

[7] 529 U.S. 598 (2000).

[8] Gobeille v. Liberty Mutual Insurance Co., 577 U.S. __ (2016), slip op. at 4 (Thomas, J., concurring).

[9] Gobeille v. Liberty Mutual Insurance Co., 577 U.S. __ (2016), slip op. at 1 (Breyer, J., concurring).

[10] Gobeille v. Liberty Mutual Insurance Co., 577 U.S. __ (2016), slip op. at 12 n.7 (Ginsburg, J., dissenting).

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