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Gobeille v. Liberty Mutual Insurance Company: Supreme Court Ruling Calls into Question Validity of State APCD Statutes and Claims Taxes with Respect to ERISA-Governed Plans

On March 1st, 2016, the Supreme Court issued its decision in *Gobeille v. Liberty Mutual Insurance Company*, 136 S. Ct. 936 (2016), and held that the Employment Retirement Income Act of 1974 ("ERISA") preempts a Vermont statute requiring the collection of health care data. The majority (6-2) opinion held that ERISA preempts generally applicable reporting requirements under state laws that "relate to" ERISA plans by attempting to "govern . . . a central matter of plan administration" or "interfere with nationally uniform plan administration."

The *Gobeille* decision is noteworthy in that it may effectively block a growing trend of states enacting strict reporting regimes applicable, in part, to ERISA-governed insured and self-insured plans. Furthermore, the opinion may undermine other state laws that necessitate gathering health care data -- for example, state taxes levied on paid medical claims. As discussed below, the scope of the Court's decision in *Gobeille* is not entirely clear and future litigation at the federal district and circuit court level should be expected regarding the permissibility of states' specific rules.

Background

ERISA § 514(a) provides that ERISA preempts "any and all State laws insofar as they . . . relate to any employee benefit plan covered by ERISA." The purpose of ERISA § 514(a) "is to enable employers to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits." *Egelhoff v. Egelhoff*, 532 U.S. 141, 148 (2001). Since so many employers operate across state lines, this uniformity in the law allows employers to administer their plans on a consistent basis and eliminates the need to monitor and comply with the requirements of a multitude of different state and local laws that could otherwise apply.

In 2005, Vermont enacted a health care database statute (18 V.S.A. § 9410) requiring employer-sponsored health care plans to report a significant amount of health care information to the State, including "all health care utilization, costs, and resources in [Vermont], and health care utilization and costs for services provided to Vermont residents in another state." 18 V.S.A. § 9410(b). The Vermont mandatory reporting requirement applies to any health care insurer covering at least 200 Vermont residents. Statutes of this type are commonly referred to as all-payer claims databases ("APCDs"), and states have moved aggressively in recent years to implement them. The primary drive behind APCDs is

that giving states access to more health care data helps them improve public health. Eighteen states currently have APCD laws, and approximately 17 more states are currently considering similar laws.

At issue in *Gobeille* was a self-insured group health plan sponsored by Liberty Mutual, which provided coverage to the company's Vermont-based employees and their dependents. The plan utilized Blue Cross Blue Shield of Massachusetts, Inc. ("Blue Cross") as a third-party administrator. The Vermont APCD statute therefore required Blue Cross to report information on those participants. However, Liberty Mutual ordered Blue Cross to not comply with the law, arguing that compliance would violate its own fiduciary duties; it then sued Vermont's implementing agency in federal court in Vermont, arguing that the Vermont APCD statute was preempted by ERISA and asking that the court enjoin enforcement of the statute.

The District Court for Vermont held for the state, but the Court of Appeals for the Second Circuit reversed, 2-1, holding that ERISA preempts Vermont's APCD statute. The state petitioned for certiorari, which was granted by the Supreme Court.

Supreme Court Majority Opinion

Justice Kennedy delivered the opinion of the Court. The majority opinion held that Vermont's APCD law squarely relates to ERISA plans by having an impermissible connection with those plans, specifically because it involves "reporting, disclosure, and—by necessary implication—recordkeeping" all "fundamental components of ERISA's regulation of plan administration[.]"

The majority opinion noted that ERISA requires plans to report, disclose, and record a host of information, "most important[ly]" filing an annual report with the Secretary of Labor. The Court stated: "Vermont's reporting regime, which compels plans to report detailed information about claims and plan members, both intrudes upon 'a central matter of plan administration' and 'interferes with nationally uniform plan administration.'" The Court therefore concluded that Vermont's APCD has an "impermissible connection" with ERISA and indeed is "inconsistent with the central design of ERISA."

The Court acknowledged but disagreed with one of Vermont's central counter-arguments: that ERISA preempts generally applicable state statutes only when they have an "impermissible connection" with ERISA's core objectives of "protect[ing] plan participants and beneficiaries," and preventing "mismanagement of funds . . . and the failure to pay employees benefits . . ." The state claimed that because Vermont's APCD was not intended to protect participants or ensure the proper management of plan funds, it did not interfere with ERISA. The Court dismissed this argument, stating that "[t]he purpose of a state law . . . is relevant only as it may relate to the 'scope of the state law that Congress understood would survive.'" In other words, the Court reasoned that the purpose of a state statute is irrelevant to the preemption analysis – the sole determinant is whether the statute impinges on a fundamental component of ERISA.

Concurrences

Justice Breyer's concurrence is notable because he suggests that the data collection which is the purpose of the APCD statutes could potentially be performed at the federal level. He agrees that allowing APCD statutes – such as Vermont's – to "interfere" with ERISA administration was impermissible and that to hold otherwise would "subject self-insured health plans . . . to 50 or more potentially conflicting information reporting requirements[,]" which was "likely to create serious administrative problems." However, he argues that "pre-emption does not necessarily

prevent Vermont or other States from obtaining the self-insured, ERISA-based, health-plan information that they need." Specifically, he suggests that states ask the United States Department of Labor, which regulates ERISA plans, to "develop reporting requirements that satisfy the States' needs, including some State-specific requirements, as appropriate." We understand that the national APCD Council, which drafts model legislation and supports state efforts to create APCDs, may be exploring this idea, stating in its post-*Gobeille* bulletin that "the Supreme Court specifically noted the Department of Labor as having a potential role in data acquisition efforts[.]" Therefore, Department of Labor data collection efforts may be a real possibility at some point in the future, particularly if the Supreme Court's ERISA preemption jurisprudence continues to stymie state APCD statutes.

Justice Thomas also concurred in the opinion as an application of current law, but separately argued that it might be time to readdress the constitutionality of ERISA preemption at the first instance, suggesting it is impossibly broad and may unconstitutionally impinge on "state regulations that have nothing to do with interstate commerce." While this opinion is in line with Justice Thomas's approach to other constitutional questions, it does not appear that the other Justices are likely to adopt this view.

Self-Insurance Institute of America v. Snyder and Implications for State Claims Taxes

The Supreme Court's decision in *Gobeille* has clear implications for state APCD laws. In 2014, the Court of Appeals for the Sixth Circuit decided *Self-Insurance Institute of America, Inc. v Snyder*, 761 F.3d 631 (2014). This case involved a Michigan statute that levied a 1 percent tax on medical claims paid within the state on behalf of state residents and also required health care plans, including ERISA plans, to provide detailed data on paid claims. The Self-Insurance Institute of America ("SIIA") sued to enjoin the state from enforcing the law, claiming it was preempted by ERISA because the claims tax had an impermissible connection with ERISA plans.

The Sixth Circuit ruled that the Michigan statute was not preempted. The Sixth Circuit noted that, "ERISA guarantees uniformity only with regard to the 'administration of employee benefit plans'... Neither the Act's definition of 'paid claims' nor its reporting and record-keeping requirements conflict with the administrator's 'standard procedures to guide processing of claims and disbursement of benefits' ... To the extent that the act requires reporting and record-keeping, it is only to guarantee that the carriers pay the correct amount of tax..." In addition, the Sixth Circuit specifically questioned the Second Circuit's decision in *Gobeille*, stating that it disagreed with that court's "literal approach to preemption." The Sixth Circuit also distinguished the Michigan law and the Vermont law that was the subject of *Gobeille*, because the former imposed a tax, whereas the latter created a health-care database. The Sixth Circuit opined that the Vermont law "actually affects the administration of the plans."

On March 7, just days after handing down *Gobeille*, the Supreme Court granted certiorari in *Snyder*– but only to vacate the Sixth Circuit's opinion and remand the case for further consideration in light of *Gobeille*. The decision to remand S*nyder* does not necessarily signal that the Supreme Court disagrees with the result of the Sixth Circuit's opinion, and there is no guarantee of a different result upon reconsideration; however, it seems to call into question whether the Sixth Circuit's decision will stand in light of *Gobeille*. Perhaps most notably, in its *Gobeille* decision, the Supreme Court majority explicitly affirmed the Second Circuit's broad interpretation of ERISA preemption as to record-keeping and reporting, which was a point upon which the Sixth Circuit explicitly disagreed with the Second. While there is a basis for distinguishing the Michigan law and the Vermont law, if the Sixth Circuit follows the Supreme Court's broad interpretation of ERISA's preemption provision, the Michigan law appears to be in jeopardy.

Key Take-Aways and Conclusion

The Supreme Court's decision in *Gobeille* calls into question state laws that "relate to" ERISA plans by requiring

heightened reporting by ERISA plan sponsors or administrators, whether they do so under the guise of gathering health care data for public health purposes or for tax reasons. Either way, post-*Gobeille*, it appears that state laws requiring plans to submit claims data to state authorities may be less likely to survive judicial scrutiny – even if the data required is largely or entirely duplicative of that already held by plan administrators, or if that data has very little to do with plan financial management.

One open issue is the extent to which such state APCD laws could still apply to insured ERISA plans. The *Gobeille* case dealt with a self-insured employer- sponsored plan, and the Court's decision makes it clear that Vermont's statute, as applied to self-funded ERISA plans, was preempted by ERISA. However, ERISA's "savings clause" at § 514(b)(2)(A) excepts from preemption any state laws that "regulat[e] insurance." APCD law proponents are likely to argue that to the extent an APCD law applies to a fully insured ERISA plan, it "regulates insurance" and therefore is not subject to ERISA preemption with regard to that Plan – however, they will have to contend with the language of the decision itself, which on its face appears to strike down the law as it relates to all ERISA-governed plans, whether insured or self-insured. We may also see states attempting to fashion their APCD laws in a manner that are designed to more squarely "regulate insurance" within the meaning of the savings clause such that they could survive a preemption challenge.

It is also worth noting that ERISA preemption only affects employer-sponsored plans. Non-ERISA governmental plans and individual insurance policies are presumably still subject to APCD statutes after the *Gobeille* decision. But given that employer-sponsored plans comprise such a significant portion of the marketplace, arguably states may not have access to statistically significant or otherwise meaningful data if they cannot obtain information from ERISA plans as well.

Finally, if states are now – or become – blocked from creating APCDs or more data-intensive claims tax regimes, they may instead turn to other methods in trying to gain the same information. It is worth watching whether Justice Breyer's suggestion that the Department of Labor may have authority to engage in federal collection that sidesteps the preemption issue gains currency.