

REVISITING ERISA PREEMPTION IN *GOBEILLE V. LIBERTY MUTUAL*

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INTRODUCTION

The Supreme Court granted certiorari in the case of *Gobeille v. Liberty Mutual Insurance Co.* to clarify the proper test for determining when the Employee Retirement Income Security Act of 1974 (ERISA)¹ preempts state law.² ERISA was enacted to ensure employee benefits laws were applied uniformly throughout the country.³ Section 514 of ERISA includes a provision that allows for broad preemption of state law, which aligns with the Supremacy Clause of the Constitution.⁴ Initially, courts held that ERISA preempted broadly, in instances when a law merely had a connection to an employee benefit plan.⁵ In time, however, courts began applying a presumption against preemption, giving deference to Congress' initial intent in enacting the statute.⁶ *Gobeille* will address whether a new Vermont healthcare law should be preempted or is “peripheral to the core ERISA functions” and should therefore not be preempted.⁷ This Commentary argues that the Supreme Court should hold that ERISA does not preempt the Vermont statute because the statute does not interfere with the administration of ERISA plans, and it benefits the public in its attempt to provide better, more affordable health care to citizens.

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1. Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified as amended at 29 U.S.C. §§ 1001–1461 (2012)).

2. 135 S. Ct. 2887 (June 29, 2015); *see also* *Liberty Mut. Ins. Co. v. Donegan*, 746 F.3d 497, 510–11 (2d Cir. 2014) (remanding the case on the issue of preemption), *cert. granted sub nom.* *Gobeille v. Liberty Mut. Ins. Co.*, 135 S. Ct. 2887 (June 29, 2015).

3. *ERISA Preemption*, Executive Legal Summary 429 (Dec. 2015).

4. 29 U.S.C. § 1144(a) (2012); U.S. CONST. art. VI cl. 2.

5. *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 107 (1983).

6. *Liberty Mut. Ins. Co. v. Kimbell*, 2012 WL 5471225, at *7 (D. Vt. Nov. 9, 2012), *rev'd sub nom.* *Liberty Mut. Ins. Co. v. Donegan*, 746 F.3d 497 (2d Cir. 2014).

7. *Id.* at *13.

I. FACTUAL AND PROCEDURAL HISTORY

Liberty Mutual, an insurance company based in Massachusetts with employees and offices in Vermont, has a medical plan providing benefits to employees, their families, and company retirees.⁸ ERISA governs this plan.⁹ Although Liberty Mutual pays all benefits from its own assets, it contracts with Blue Cross Blue Shield of Massachusetts (Blue Cross Blue Shield) as a third-party plan administrator.¹⁰ Blue Cross Blue Shield receives patients' medical records and helps generate claims data.¹¹ Liberty Mutual and Blue Cross Blue Shield have agreed that any information shared between themselves will be kept confidential and used only for purposes of administering the health care plan.¹²

Liberty Mutual's plan is subject to federal reporting requirements under ERISA.¹³ Section 513 of ERISA also authorizes the Secretary of Labor to "undertake research and surveys and in connection therewith to collect, compile, analyze and publish data, information, and statistics relating to employee benefit plans."¹⁴

Vermont recently enacted a law meant to consolidate information to better identify health care needs and to improve quality and affordability of care.¹⁵ The law requires any health insurer to file reports with the Vermont Department of Banking, Insurance, Securities, and Health Care Administration to create a unified healthcare database.¹⁶ Neither party disputes that Liberty Mutual falls within the category of health insurer and is covered by the Vermont regulation.¹⁷

The Vermont regulation requires mandatory reporting for health insurers with 200 or more enrolled or covered members.¹⁸ All other insurers may report voluntarily.¹⁹ Liberty Mutual is a voluntary

8. *Kimbell*, 2012 WL 5471225, at *1.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at *2.

13. See Employee Retirement Income Security Act, 29 U.S.C. §§ 1021–1030 (2012); *Kimbell*, 2012 WL 5471225, at *2.

14. *Kimbell*, 2012 WL 5471225, at *2 (quoting 29 U.S.C. § 1143(a) (2012)).

15. *Id.*

16. VT. STAT. ANN. tit. 18, § 9410 (West 2000 & Supp. 2011); *Kimbell*, 2012 WL 5471225, at *2.

17. *Kimbell*, 2012 WL 5471225, at *3.

18. *Id.*

19. *Id.*

reporter because when this litigation commenced, only 137 plan participants or beneficiaries resided in Vermont.²⁰ Blue Cross Blue Shield, however, is a mandatory reporter with respect to Liberty Mutual's data.²¹

In August 2011, Vermont issued a subpoena demanding that Blue Cross Blue Shield supply the plan's files that relate to eligibility, pharmacy, and medical claims.²² The state threatened to suspend Blue Cross Blue Shield or fine the business if it did not comply.²³ Liberty Mutual instructed Blue Cross Blue Shield not to comply and filed suit "seeking (1) a declaration that ERISA preempts the Vermont statute and regulation; and (2) an injunction blocking enforcement of the subpoena."²⁴ Vermont sought to dismiss the complaint for lack of standing and Liberty Mutual moved for summary judgment.²⁵ The district court ultimately concluded that Liberty Mutual did have standing, but that ERISA did not preempt the Vermont statute.²⁶ The Second Circuit reversed the district court on the preemption issue, holding that ERISA did preempt the Vermont statute.²⁷ It reasoned that reporting is a core ERISA administrative function and that the Vermont statute's reporting requirements overstepped the bounds of state jurisdiction.²⁸ Following this decision, Vermont appealed, represented by Gobeille, chair of the Vermont Green Mountain Care Board,²⁹ and the Supreme Court granted certiorari.³⁰

II. LEGAL BACKGROUND

The U.S. Constitution's Supremacy Clause requires judges to apply laws enacted by the federal government, even when they conflict with state laws.³¹ Congress passed ERISA in 1974 to "ensure uniformity of employee benefits law and protect the interests of

20. *Id.* at *1.

21. *Id.* at *5.

22. *Liberty Mut. Ins. Co. v. Donegan*, 746 F.3d 497, 502 (2d Cir. 2014).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 508.

28. *See id.* (noting core ERISA functions are "shielded from potentially inconsistent and burdensome state regulation").

29. Brief for Petitioner at ii., *Gobeille v. Liberty Mut. Ins. Co.*, No. 14-181 (U.S. Aug. 28, 2015) [hereinafter Brief for Petitioner].

30. *Gobeille v. Liberty Mut. Ins. Co.*, 135 S. Ct. 2887 (June 29, 2015).

31. U.S. CONST. art. VI cl. 2.

participants and beneficiaries in ERISA-governed plans.”³² It is considered “the most sweeping federal preemption statute ever enacted by Congress.”³³ Section 514(a) of ERISA states that its provisions “shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” described in § 4(a) and not exempt under 4(b).³⁴ Since its inception, ERISA has prompted widespread litigation, which has resulted in confusing and unstable preemption standards.³⁵ Although the Supreme Court first afforded ERISA preemption a very broad scope, it soon narrowed that scope, noting that the statute’s language was “opaque.”³⁶

A. *Broad Reach: The Shaw Test*

In *Shaw v. Delta Airlines, Inc.*,³⁷ the Supreme Court interpreted ERISA broadly to preempt matters beyond the core areas that ERISA expressly addresses, such as reporting and disclosure.³⁸ *Shaw* held that “a law ‘relates to’ an employee benefit plan . . . [and is thus preempted by ERISA] . . . if it has a connection with or reference to such a plan.”³⁹ The Court, however, cautioned that it may be difficult to draw a line regarding what “relates to” an employee benefit plan.⁴⁰ Generally, whether a law “relates to” an employee benefit plan is a context-based determination made by courts.⁴¹

For roughly a decade, courts followed *Shaw* and emphasized the broad reach of ERISA preemption.⁴² In reasoning that ERISA preemption extended beyond the core areas, courts continually

32. *ERISA Preemption*, Executive Legal Summary 429 (Dec. 2015).

33. *Id.*

34. 29 U.S.C. § 1144(a) (2012).

35. See Donald T. Bogan, *ERISA: The Savings Clause, § 502 Implied Preemption, Complete Preemption, and State Law Remedies*, 42 SANTA CLARA L. REV. 105, 119 (2001) (describing the “‘avalanche’ of litigation focused on defining the boundaries of ERISA’s exclusive field of regulation”).

36. *Liberty Mut. Ins. Co. v. Kimbell*, 2012 WL 5471225, at *7 (D. Vt. Nov. 9, 2012) (quoting *De Buono v. NYSA-ILA Med. & Clinical Serv. Fund*, 520 U.S. 806, 809 (1997)).

37. 463 U.S. 85 (1983).

38. See *id.* at 107 (noting ERISA preempts broadly to serve employees’ interests).

39. *Id.* at 96–97 (citing Black’s Law Dictionary 1158 (5th ed. 1979)).

40. See *id.* at 100, n.21 (“Some state actions may affect employee benefit plans in too tenuous . . . a manner . . . and we express no views about where it would be appropriate to draw the line.”).

41. See *UNUM Life Ins. Co. of Am. v. Ward*, 526 U.S. 358, 363 (1999) (“[S]ensible construction of ERISA . . . requires that we measure these words in context.”).

42. See *Liberty Mut. Ins. Co. v. Donegan*, 746 F.3d 497, 504•05 (2d Cir. 2014) (listing cases that interpreted ERISA preemption broadly).

stressed the important policy concern of uniform federal record-keeping and reporting standards.⁴³

B. Narrowing the Reach: The Travelers Test

ERISA preemption law changed course, however, after the Supreme Court's decision in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Insurance Co.*⁴⁴ In *Travelers*, the Supreme Court declared that a "clear and manifest purpose of Congress" is required for ERISA to preempt state law.⁴⁵ It also noted that there is a "presumption that Congress does not intend to supplant state law, particularly in areas of traditional state regulation."⁴⁶ Ultimately, the Court held that "state law is preempted if it 'mandate[s] employee benefit structures or their administration' or 'provid[es] alternative enforcement mechanisms.'"⁴⁷ The Court reasoned that this interpretation is best because there are "myriad state laws in areas traditionally subject to local regulation, which Congress could not possibly have intended to eliminate."⁴⁸ This narrow reading established a rebuttable presumption against preemption and curtailed *Shaw's* overreaching test by imposing more constraints on courts.⁴⁹ The Court applied the test from *Travelers* in *De Buono v. NYSA-ILA Medical and Clinical Services Fund*, which addressed whether hospitals operating on ERISA funds were exempt from a New York tax. Because the tax law did not closely "relate to" ERISA plans, the court held that ERISA did not preempt the law and New York could collect its tax.⁵⁰

In applying the *Travelers* test, courts have found that "a law's indirect economic effect on ERISA plans, in and of itself, generally will not trigger ERISA preemption."⁵¹ It remains true, however, that "state statutes that mandate[] employee benefit structures *or their*

43. See *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987) (explaining the efficiency of uniform administration schemes as they provide standard procedures for processing claims and disbursing benefits).

44. 514 U.S. 645 (1995).

45. *Id.* at 655 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

46. *Liberty Mut. Ins. Co. v. Kimbell*, 2012 WL 5471225, at *7 (D. Vt. Nov. 9, 2012).

47. *Donegan*, 746 F.3d at 506 (quoting *Travelers*, 514 U.S. at 658).

48. *Travelers*, 514 U.S. at 668.

49. See *Donegan*, 746 F.3d at 506 ("[T]he Court pulled back on its broad, literal reading.").

50. See *De Buono v. NYSA-ILA Med. & Clinical Serv. Fund*, 520 U.S. 806, 815 (1997).

51. *New England Health Care Emps. Union v. Mount Sinai Hosp.*, 65 F.3d 1024, 1030 (2d Cir. 1995).

administration have a connection with ERISA plans and are therefore preempted.”⁵²

III. HOLDING

The district court in *Gobeille v. Liberty Mutual* held that ERISA did not preempt the Vermont statute because it was “peripheral to the core ERISA functions” and did not interfere with the Act.⁵³ The court explained that upholding the statute also had many public policy benefits.⁵⁴ Vermont enacted this statute to help improve health care services and “[p]lans such as Liberty Mutual’s have data that can assist the achievement of that goal.”⁵⁵ Finally,

[B]ecause the law’s reporting requirement has no effect whatsoever on the core relationships that ERISA was designed to protect—those between participants, beneficiaries, administrators and employers—and no effect whatsoever on the core ERISA functions—such as processing claims or disbursing benefits—it poses no danger of undermining the uniformity of the administration of benefits that is ERISA’s key concern.⁵⁶

The Second Circuit, however, held that ERISA preempts the Vermont statute because it has a “connection with ERISA plans” and failure to recognize preemption would wrongly allow the state to pass burdensome regulation that interferes with ERISA and its administration.⁵⁷ The court based its reasoning on the *Travelers* case, which articulated that “‘reporting’ is a core ERISA function shielded from potentially inconsistent and burdensome state regulation.”⁵⁸ Ultimately, the court found that “the reporting mandated by the Vermont statute and regulation is burdensome, time-consuming, and risky” and that “[t]he trend toward narrowing ERISA preemption does not allow one of ERISA’s core functions—reporting—to be laden with burdens, subjected to incompatible, multiple and variable demands, and freighted with risk of fines, breach of duty, and legal expense.”⁵⁹

52. *Donegan*, 746 F.3d at 507 (emphasis added) (quoting *Cal. Div. of Labor Standards Enf’t v. Dillingham Constr.*, 519 U.S. 316, 328 (1997)).

53. *Liberty Mut. Ins. Co. v. Kimbell*, 2012 WL 5471225, at *13 (D. Vt. Nov 9, 2012).

54. *Id.*

55. *Id.*

56. *Id.* (quoting *Stevenson v. Bank of New York Co.*, 609 F.3d 56, 61 (2d Cir. 2010)).

57. *Liberty Mut. Ins. Co. v. Donegan*, 746 F.3d 497, 508 (2d Cir. 2014).

58. *Id.*

59. *Id.* at 510.

Judge Straub of the Second Circuit wrote an opinion concurring in part and dissenting in part.⁶⁰ He dissented on the preemption issue, arguing that the Vermont statute does not have an improper “connection with” ERISA plans and it should not be preempted.⁶¹ He argued that the Vermont statute’s reporting requirement differs from the kind of reporting required by ERISA, so the statute was not one that Congress intended to preempt.⁶² He also explained that the statute does not interfere with an ERISA plan’s administration of benefits, so there is no risk of the law infringing on the uniform administration of employee benefits plans.⁶³

IV. ARGUMENTS

A. Vermont’s Arguments

Petitioner Vermont makes three main arguments.⁶⁴ First, precedent dictates the Vermont statute should not be preempted.⁶⁵ Second, the statute does not burden or interfere with uniform plan administration.⁶⁶ Third, Congress did not intend to displace state health care programs that are meant to benefit individuals.⁶⁷

Vermont relies on Supreme Court precedent that cuts against preemption.⁶⁸ It argues that the law laid out in *Travelers* should decide the issue because health care regulation laws are of local concern and Congress did not intend to displace them with ERISA.⁶⁹ Additionally, Vermont points to *De Buono v. NYS-ILA Medical and Clinical Services Fund* to support its argument that “Liberty Mutual bears a ‘considerable burden’ to establish preemption” because “the database statute ‘operates in a field that has been traditionally occupied by the States.’”⁷⁰ Vermont argues that preemption does not apply because the Court has repeatedly “upheld state laws that affect plans but do not

60. *Id.* at 511 (Straub, C.J., concurring in part and dissenting in part).

61. *Id.*

62. *Id.*

63. *Id.*

64. *See* Brief for Petitioner, *supra* note 29, at 22–23 (introducing the arguments).

65. *Id.* at 24.

66. *Id.* at 25.

67. *Id.* at 31.

68. *See id.* at 37–44 (explaining the Court’s precedent with regard to ERISA preemption).

69. *Id.* at 29.

70. Reply Brief for Petitioner at 4, *Gobeille v. Liberty Mut. Ins. Co.*, No. 14-181 (U.S. Nov. 12, 2015) [hereinafter Reply Brief for Petitioner] (quoting *De Buono v. NYS-ILA Med. & Clinical Serv. Fund*, 520 U.S. 814, 815 (1997)).

regulate the core areas that ERISA reserves to federal law.” Additionally, the Vermont statute does not interfere with a core area of ERISA concern.⁷¹

Vermont also argues that the claims data required by the Vermont statute does not burden or interfere with uniform plan administration.⁷² Liberty Mutual “failed to show that providing the requested data would interfere with its ability to create a uniform system for processing claims and disbursing benefits.”⁷³ Accordingly, there is no concern regarding uniformity because Liberty Mutual is unable to prove that the state law would interfere with ERISA plan administration.⁷⁴

Finally, as evidenced by the federal government’s acknowledgment that health care data collection is of critical importance for sound public policy, Vermont asserts that it was not Congress’ intent to have ERISA preempt state health care programs whose purpose is to improve public health services and benefit the state.⁷⁵ Because ERISA preemption of the Vermont statute would result in displacing a state law that has widespread public policy benefits—a result Congress did not intend when it enacted ERISA—Vermont argues that ERISA should not preempt the Vermont statute.

B. Liberty Mutual’s Arguments

Respondent, Liberty Mutual, makes three main arguments.⁷⁶ First, recent case law supports ERISA preempting the Vermont statute.⁷⁷ Second, ERISA preempts state mandates to report on core ERISA subject matters.⁷⁸ Third, Vermont’s reporting requirements interfere with uniform regulation.⁷⁹

Liberty Mutual argues that current law supports ERISA preempting the Vermont statute. Liberty Mutual distinguishes the Vermont statute from previous laws that ERISA did not preempt

71. *Id.* at *17.

72. Brief for Petitioner, *supra* note 29, at 23.

73. Reply Brief for Petitioner, *supra* note 70, at 17.

74. *Id.*

75. *Id.* at 21.

76. See Brief for Respondent at 11–12, *Gobeille v. Liberty Mut. Ins. Co.*, No. 14-181 (U.S. Oct. 13, 2015) [hereinafter Brief for Respondent].

77. See *id.* at 12 (noting precedent and objectives of federal statutes).

78. *Id.* at 14.

79. *Id.* at 24.

because it targets healthcare payers instead of providers.⁸⁰ Because data collection is directly tied to the purposes of ERISA, the Vermont statute “cannot escape ERISA’s reach as a generally applicable state health care regulation.”⁸¹ Liberty Mutual thus claims ERISA should preempt the law.⁸²

Liberty Mutual also asserts that the Vermont statute should be preempted because it interferes with a core area of ERISA.⁸³ The Court “has repeatedly recognized that reporting by employee benefit plans is a core subject matter covered by ERISA.”⁸⁴ The Vermont law requires just that, and Liberty Mutual claims that cases such as *Shaw* and *Travelers* require preemption.⁸⁵ Further, Liberty Mutual emphasizes ERISA preemption is meant to encompass claims reporting.⁸⁶ Because Congress recognized the burden that claims reporting placed on plans and eliminated the necessity of filing multiple reports,⁸⁷ Liberty Mutual argues that “it cannot be seriously maintained that reporting about claims paid by an employee benefit plan is anything other than a core function of that plan” due to Congress’ detailed attention to claims reporting.⁸⁸ The Vermont statute requires insurers to report claims data and Liberty Mutual argues this is a clear infringement of ERISA and its purpose.⁸⁹

Finally, Liberty Mutual argues that ERISA was enacted in an effort to create a uniform federal regulatory regime for employee benefit plans and state laws that infringe on that purpose ought to be preempted.⁹⁰ Congress wrote a broad preemption clause into ERISA because otherwise “employers might be so deterred by the administrative burden and cost of complying with multiple state regulations that they might not set up an employee benefit plan at all.”⁹¹ Thus, Liberty Mutual argues that Vermont’s law is exactly what

80. *Id.* at 25.

81. *Id.* at 12.

82. *Id.* at 25.

83. *Id.* at 11–12.

84. *Id.* at 16 (establishing the importance of *Travelers* and *Shaw* in helping to determine reporting as a core subject matter of ERISA).

85. *Id.*

86. *Id.* at 19.

87. See Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 (2012) (setting forth Congressional findings and declaration of policy).

88. *Id.* at 23–24.

89. *Id.* at 26.

90. *Id.* at 11.

91. *Id.* at 15.

Congress had in mind when enacting ERISA and should be preempted.

V. ANALYSIS

The implications of the Supreme Court’s ruling in *Gobeille v. Liberty Mutual Insurance Co.* are sure to be significant regardless of the outcome of the case. If the Court sides with Vermont and holds that ERISA does not preempt the Vermont statute, it will narrow the definition of what constitutes an area of “core ERISA concern” and what type of legislation might infringe on the uniform administration of employee benefits law. This might open the door to states passing more laws, which could push the limits of the presumption against preemption, and come uncomfortably close to infringing on ERISA. Conversely, if the Court sides with Liberty Mutual and holds that ERISA does preempt the statute, it will broaden ERISA preemption’s reach significantly—likely to an impermissible extent in the eyes of some commentators.

Given ERISA’s objectives and policy considerations, the Court should find in favor of Vermont for two reasons. First, the Vermont reporting requirements do not contradict ERISA’s objective of national uniformity.⁹² Second, access to claims and other utilization data is critical to health care reform.⁹³

A. Ruling for Vermont Would Not Contradict ERISA’s Objective

Ruling for Vermont would be consistent with ERISA’s essential purpose of establishing national uniformity of employee benefit plans. ERISA’s objective is to design and administer employee benefit plans.⁹⁴ It includes reporting and disclosure requirements, which help further its intention of overseeing the claims payment process.⁹⁵ The Vermont statute, however, has nothing to do with the claims payment process.⁹⁶ In fact, it does not request information on denied claims.⁹⁷

92. Brief of Amici Curiae National Association of Health Data Organizations, et al. in Support of Petitioner at 6, *Gobeille v. Liberty Mut. Ins. Co.*, No. 14-181 (U.S. Sept. 4, 2015) [hereinafter Brief Amici Curiae of Health Data Organizations].

93. *Id.* at 12.

94. Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 (2012).

95. *Id.*

96. See Brief for the United States as Amicus Curiae Supporting Petitioner at 7, *Gobeille v. Liberty Mut. Ins. Co.*, No. 14-181 (U.S. Sept. 4, 2015) [hereinafter Brief Amicus Curiae of the United States] (describing the objectives of the Vermont statute and how they differ from those of ERISA).

Its focus instead is “to improve the quality, utilization, and cost of healthcare in Vermont by providing consumers, government officials, and researchers with comprehensive data about the healthcare-delivery system.”⁹⁸ The Vermont reporting requirements are focused on health and safety—areas traditionally delegated to the state—while ERISA is focused on ensuring that plans provide covered benefits.⁹⁹ Its significantly different purpose supports Vermont’s argument that its statute does not impermissibly infringe on the design or administration of ERISA plans.¹⁰⁰ Because the statute does not infringe on ERISA’s core purpose, it should be presumed valid. The Court will likely find this argument persuasive and weigh it heavily in its decision because there is a well-established practice of states controlling matters of health and safety.

Liberty Mutual argues that reporting is a core subject matter that ERISA directly addresses, and that ERISA’s broad preemption clause should preempt the Vermont statute.¹⁰¹ In making this argument, Liberty Mutual fails to provide a distinction between the Vermont statute and the types of laws the Court has previously held to be preempted. In the past, laws that “related to” ERISA were preempted, but the *Shaw* court cautioned that it would be hard to draw the line in the future.¹⁰² *Travelers*, however, clarified the meaning of “related to,” reasoning that it applies when the law is in accord with ERISA’s objectives, and Vermont’s statute does not fit within this definition.¹⁰³ Here, Liberty Mutual errs in believing that the Vermont statute relates to ERISA in a way that warrants preemption. In fact, “there is no evidence . . . that the . . . statute ‘force[s] an ERISA plan to adopt a certain scheme or substantive coverage,’ [] or ‘dictate[s] the choices’ of ERISA plans.”¹⁰⁴ Without evidence that the Vermont statute infringes to this extent, it should not be preempted.¹⁰⁵ Liberty

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. Brief for Respondent, *supra* note 76, at 15.

102. *Shaw v. Delta Airlines, Inc.*, 463 U.S. 85, 100 n.21 (1983).

103. *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 656 (1995).

104. Brief of Amici Curiae American Medical Association and Vermont Medical Society in Support of Petitioner at 12, *Gobeille v. Liberty Mut. Ins. Co.*, No. 14-181 (Sept. 4, 2015) (quoting *California Div. of Labor Standards Enf’t v. Dillingham Const., N.A., Inc.*, 519 U.S. 316, 334 (1997)).

105. *See id.* at 11–12 (explaining the inconsistencies that would arise if the Vermont statute were preempted while others were not).

Mutual reaches too far in asserting that the statute relates to ERISA in an impermissible way and that it undermines a core area of ERISA concern.

Ultimately, the Court should rule for Vermont because ERISA and the Vermont statute do not overlap in purpose and the Vermont statute operates in an area of traditional state regulation. Therefore, the reporting requirements are entitled to “the presumption that ERISA did not intend to supplant [them].”¹⁰⁶

B. Policy Considerations Support Ruling in Favor of Vermont

The Court should also take into account policy considerations and rule for Vermont partly on that basis. Vermont and amici argue that health care data transparency is increasingly important in today’s world and that the Vermont statute is a step toward improving transparency.¹⁰⁷ The National Association of Health Data Organizations (NAHDO) claims that “[e]xperience in other states has shown that without a mandate, it is impossible to provide a comprehensive picture of the cost and quality of health care.”¹⁰⁸ The Vermont statute’s reporting requirement helps the state to gather data, which it will use to make informed decisions about the implementation of new health services.¹⁰⁹ This is an important concern and the Court will likely focus on the fact that the statute regulates health and safety, an area traditionally left to the states.¹¹⁰

Liberty Mutual argues that state laws create administrative burdens and that the Vermont statute should be preempted to prevent this from occurring and infringing on a uniform national system.¹¹¹ As discussed above, however, the Vermont statute does not burden ERISA, as it serves a completely different purpose and operates within the state sphere.¹¹² Applying preemption as broadly as Liberty Mutual would like would “create a vacuum in a critically important area for the future of healthcare” because “[i]f reporting requirements like Vermont’s were held invalid, States would be

106. Brief Amicus Curiae of the United States, *supra* note 96, at 10 (quoting California Div. of Labor Standards Enf’t v. Dillingham Const., N.A., Inc., 519 U.S. 316, 331–332 (1997)).

107. *See generally* Brief Amici Curiae of Health Data Organizations, *supra* note 92; Brief for Petitioner, *supra* note 29.

108. Brief Amici Curiae of Health Data Organizations, *supra* note 92, at 13.

109. *See id.* at 6 (explaining how the Vermont statute helps improve health care).

110. Brief Amicus Curiae of the United States, *supra* note 96, at 7.

111. *See generally* Brief for Respondent, *supra* note 76.

112. *See supra* Section V.A (explaining how ERISA and the Vermont statute differ).

foreclosed from collecting information from employer-sponsored plans that are self-insured (except on a voluntary basis) despite the fact that . . . such informational efforts can improve . . . healthcare, lower costs, and enhance consumer choice.”¹¹³ Ultimately, allowing ERISA to preempt the Vermont statute would frustrate public policy and prevent states from implementing regulations to benefit their residents.

CONCLUSION

The Supreme Court should rule in favor of Vermont, holding that ERISA does not preempt the Vermont health data reporting law. In arriving at this conclusion, the Court should distinguish the purpose of ERISA from that of the Vermont statute as well as recognize the policy benefits of allowing states to enact legislation intended to help their residents. As Vermont explains, its statute does not infringe on ERISA to the extent that it should be preempted. If the Court does rule that ERISA preempts the law, it risks impermissibly broadening the meaning of ERISA’s preemption clause in a way that is inconsistent with precedent. Further, it imperils states’ rights to enact their own valid laws and frustrates the goal of obtaining transparency in health data reporting. Either way, the Supreme Court’s decision will provide a step toward untangling the complicated web of ERISA preemption law.

113. Brief Amicus Curiae of the United States, *supra* note 96, at 10.