No. 14-741

In the Supreme Court of the United States

SELF-INSURANCE INSTITUTE OF AMERICA, INC.,
PETITIONER

v.

RICK SNYDER, GOVERNOR OF MICHIGAN, ET AL.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Exercising its traditional, sovereign power to administer and collect taxes, Michigan imposes a 1% tax on paid healthcare claims. The tax helps fund Michigan's Medicaid program and applies to all entities that make payments to health and medical services providers. As for its relation to ERISA (the Employee Retirement Income Security Act of 1974), the tax does not mandate ERISA-plan benefit structures or their administration. The question presented is:

Does ERISA, in 29 U.S.C. § 1144(a), preempt Michigan's tax?

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INTRODUCTION

The Michigan tax statute challenged in this case is not preempted by ERISA. The tax does not interfere with any of the core decisions an ERISA plan might make, such as who is eligible under the plan, what types of healthcare benefits the plan must provide, or what amount of benefits the plan must provide to a beneficiary. Instead, the Act leaves those decisions to the plan and requires simply that once the plan has made these ERISA-protected decisions and has actually paid a claim, the plan must then pay a 1% tax on the claim. And the reporting requirements that the Act imposes relate to tax issues—maintaining records about the transaction to make future audits possible—and not to ERISA issues, such as whether the plan is solvent or how claims are actually processed.

This case does not create a circuit split. While the Second Circuit recently concluded that ERISA preempted a Vermont law, that law did not fall in an area of traditional state power (as the tax here does), but rather imposed data-collection requirements. This distinction matters: the Second Circuit has upheld a tax law that applied to ERISA-covered pension plans and would uphold this tax too.

Further, the Sixth Circuit correctly followed this Court's decisions. This Court has upheld state taxes against ERISA challenges (recognizing the States' traditional authority) and sustained other state laws (such as garnishment laws) that do not interfere with core ERISA functions, despite the risk of substantial administrative burdens that 50 differing state laws could impose. Certiorari should be denied.

STATEMENT OF THE CASE

A. Michigan's Health Insurance Claims Assessment Act

Michigan's Health Insurance Claims Assessment Act provides a significant amount of Michigan's funding for Medicaid—up to $400 million a year, Mich. Comp. Laws § 550.1733(6). This funding helps Michigan provide healthcare for millions of its neediest citizens. See, e.g., http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-State/michigan.html (last visited April 22, 2015).

Medicaid, in turn, is a jointly funded state-federal program that pays for certain health care treatment for eligible indigent individuals. 42 U.S.C. §§ 1396 et seq.; Mich. Comp. Laws §§ 400.105 et seq. The federal agency CMS (the Centers for Medicare and Medicaid Services) reimburses each state a portion of its Medicaid expenditures, 42 U.S.C. § 1396b, if the state's program operates in accordance with its CMS-approved state plan and other federal program requirements. *Harris* v. *McRae*, 448 U.S. 297, 301 (1980).

Before passage of the Assessment Act, Michigan imposed a 6% tax on Medicaid managed-care organizations. In response to CMS concerns about the validity of that Medicaid funding mechanism, the Legislature passed the Act to impose "an assessment of 1% on [every] carrier's or third party administrator's paid claims." Mich. Comp. Laws § 550.1733(1). The Act applies to entities that pay healthcare claims and defines "carrier" to include sponsors of certain group health plans. § 550.1732(a)(*v*).

The Assessment Act specifies that the assessment is a tax, § 550.1736(1), and the tax is imposed only on claims paid to residents of Michigan for services provided in Michigan. § 550.1732(s) (defining "Paid claims"). The proceeds of this tax are deposited in a "health insurance claims assessment fund," which is used to finance Medicaid program expenditures. § 550.1737.

Like any tax, the Act requires claims processors to submit tax forms and retain supporting documentation. § 550.1734 & § 550.1735.

B. Proceedings below

1. The district court's decision

The Self-Insurance Institute of America challenged the Michigan tax on the theory that ERISA preempts the Act because the Act "interferes with the uniform nationwide administration of ERISA plans" and "imposes impermissible burdens and fees on those plans." Pet. App. 29a. The district court rejected the challenge, dismissing SIIA's complaint as failing to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

The district court began by examining how this Court has interpreted the preemption language in ERISA, which provides that ERISA "supersedes any and all State laws insofar as they may now or hereafter relate to any employee benefit plan covered by the statute." Pet. App. 31 (quoting 29 U.S.C. § 1144(a)). The district court observed that although this Court's earlier cases construed the words "relate to" in "extremely broad terms," "in 1995 the Supreme Court noted that[ ] '[i]f "relate to" were taken to

extend to the furthest stretch of its indeterminacy, then for all practical purposes pre-emption would never run its course, for [r]eally, universally, relations stop nowhere.' " *Id.* at 31a (quoting *N.Y. State Conference of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 655–57 (1995)). Such an expansive view of preemption "would be inconsistent with the general starting presumption against preemption and the clear Congressional intent that the words 'insofar as they . . . relate' impose at least some degree of limitation on the scope of the preemption provisions." *Id.* at 31a (citing *Travelers*, 514 U.S. at 655).

The district court also observed that " '[w]here federal law is said to bar state action in fields of traditional state regulation,' " courts must assume " 'that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.' " *Id.* at 31a–32a (quoting *De Buono* v. *NYSA-ILA Med. & Clinical Servs. Fund*, 520 U.S. 806, 814 n.8 (1997)).

Because of the textual indeterminacy of the phrase "relate to," courts must " 'look instead to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive.' " Pet. App. 32a (quoting *Travelers*, 514 U.S. at 656). These objectives included ensuring " 'that plans and plan sponsors would be subject to a uniform body of benefits law.' " Pet. App. 32a (quoting *Travelers*, 514 U.S. at 656–57).

Applying these principles, the district court concluded that ERISA did not preempt the Act.

First, "it is clear that the Act is aimed not at ERISA plans per se, but rather at a broad array of entities—including ERISA plans—that pay claims on behalf of a Michigan resident for medical services provided in Michigan." Pet. App. 37a.

Second, the court concluded that the Act's requirement (paying a tax) did not fall " 'within the area that Congress intended ERISA to control exclusively.' " *Id.* at 39a. The Act "does not mandate any particular benefit structure or bind administrators to certain benefit choices." *Id.* Instead, the tax applies "only *after* a coverage decision has been made and a claim has been paid." *Id.* at 42a.

2. The court of appeals' decision

The Sixth Circuit affirmed. Citing *Travelers* and other Supreme Court cases, the court of appeals started "with the presumption that Congress did not intend to preempt state laws, particularly in areas of traditional state concern." Pet. App. 6a–7a; e.g., *Cal. Div. of Labor Standards Enforcement* v. *Dillingham Const., N.A., Inc.*, 519 U.S. 316, 332 (1997). That presumption applies "with special force in this case" because it involves "a state tax and its ancillary requirements, a type of law long recognized as an important 'attribute of state sovereignty.' " Pet. App. 7a. Accordingly, the court examined whether the Acts' requirements " 'fall within the area that Congress intended to control exclusively,' " because " 'ERISA does not create a state-law-free zone around everything that affects an ERISA plan.' " Pet. App. 7a–8a (quoting *Associated Builders & Contractors* v. *Michigan Dep't of Labor & Econ. Growth*, 543 F.3d 275, 281, 284 (6th Cir. 2008) (Sutton, J.)).

The court of appeals held that the Act does not interfere with plan administration because "the Act does not require a plan administrator to change how it administers the plan at all." Pet. App. 8a (noting that "SIIA never actually explains how the Act changes or interferes with plan administration"). "The state's definition of 'paid claims' applies, and the state's reporting and record-keeping requirements come into play, only when the carriers compute the tax—a function entirely divorced from plan administration." *Id.* at 9a. The Sixth Circuit recognized that "[t]he Act's only potential effects are to cut the plans' profits—as did the surcharges upheld in *Travelers* and *De Buono*—and to create work independent of the core functions of ERISA—as do permissible state property and employment laws." *Id.* at 10a.

The court of appeals also held that the Act does not create inappropriate administrative burdens because the tax reporting required by the Act was "unrelated to the plans' core functions" and did not interfere with ERISA by requiring "reports related to the plans' financial stability." Pet. App. 13a. "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." *Id.* at 15a. In the end, the court concluded that "under SIIA's logic, states would not be able to require ERISA-covered entities to submit any paperwork or preserve any records in any circumstances." Pet. App. 14a. "As a result, ERISA would preempt any state laws requiring ERISA covered entities to submit income-tax returns, property tax returns, or employment records." *Id.*

The Sixth Circuit also distinguished the Second Circuit's decision in *Liberty Mutual Insurance Co.* v. *Donegan*, 746 F.3d 497 (2d Cir. 2014), on two grounds (in addition to disagreeing with *Donegan*'s failure to focus on whether the administration of benefits is affected). First, while Michigan's Act imposes reporting requirements to implement "a state tax—a traditional area of state concern," the Vermont statute at issue in *Donegan* imposes reporting requirements "to build a healthcare database, a purpose not entitled to the presumption" against preemption. Pet. App. 16a. Second, unlike Michigan's statute, the Vermont scheme addressed in *Donegan* "actually affects the administration of the plan" by forcing ERISA-covered identities to choose between following their plan documents' privacy provisions and obeying the state law. *Id.*

REASONS FOR DENYING THE PETITION

I. There is no circuit split; the Second Circuit would also uphold Michigan's tax statute.

SIIA contends that the Sixth Circuit's decision here squarely conflicts with the Second Circuit's decision in *Donegan*. Pet. 28. But the decisions do not conflict. As the Sixth Circuit explained, they involved different regimes that have different effects on ERISA plans. Accord Pet. 28 ("The central objective of the Vermont scheme was data collection, not tax collection, ..."). This distinction is illustrated by the fact that the Second Circuit has *upheld* state taxes against preemption challenges even when the tax affected ERISA plans.

In *Donegan*, the Second Circuit considered a Vermont statute that required health insurers to report, on a quarterly basis, on "myriad categories of claims data," including "medical claims data, pharmacy claims data, member eligibility data, provider data, and other information relating to health care provided." 746 F.3d at 500–01. The Second Circuit concluded that ERISA preempted the Vermont data-collection statute for several reasons, including because the statute was not a law in a field of traditional state regulation.

At the outset, the Second Circuit observed that since *Travelers*, which marked "a pivot in ERISA preemption," the Supreme Court has begun " 'with the starting presumption that Congress does not intend to supplant state law,' especially if the 'state action [occurs] in fields of traditional state regulation,' like health care." *Donegan*, 746 F.3d at 506. That court of appeals specifically concluded that the Vermont data-collection statute did not fall within an area of traditional regulation: while " 'the historic police powers of the State include the regulation of matters of health and safety,' " "state health data collection laws do not regulate the safe and effective provision of health care services." *Id.* at 506 n.8 (quoting *De Buono*, 520 U.S. at 814). And while the Second Circuit cited *Boggs* v. *Boggs*, 520 U.S. 833, 840 (1997), in noting that this Court has sometimes found state laws preempted "even if those laws 'implement policies and values lying within the traditional domain of the states,' " *Donegan*, 746 F.3d at 506 n.8, *Boggs* involved a direct conflict between the substantive rights ERISA provided and the less-protective rights provided by state law, 520 U.S. at

841 (holding that state community-property laws were preempted because ERISA "provide[s] detailed protections to spouses of plan participants which, in some cases, exceed what their rights would be were community property law the sole measure").

When examining laws that *do* fall within " 'a field that has been traditionally occupied by the States,' " *Donegan*, 746 F.3d at 506 n.8 (quoting *De Buono*, 520 U.S. at 814), such as a tax law, the Second Circuit has *rejected* claims of ERISA preemption. Indeed, *Donegan* itself acknowledges that a state business income tax is not preempted by ERISA even though it has economic effects on ERISA plans. *Id.* at 507 (citing *Hattem* v. *Schwarzenegger*, 449 F.3d 423 (2d Cir. 2006)). In fact, *Hattem* is much more closely analogous to this case than *Donegan* is and shows that the Second Circuit would uphold a tax like Michigan's.

In *Hattem*, the Second Circuit rejected an ERISA challenge to a tax on unrelated business taxable income that applied to ERISA-covered pension plans. 449 F.3d at 425, 426. The court emphasized this Court's guidance that " 'the historic police powers of the States were not to be superseded by [ERISA] unless that was the clear and manifest purpose of Congress.' " *Id.* at 428 (quoting *Travelers*, 514 U.S. at 655, adding alteration); see also *id.* at 431 ("because taxation is a realm of historic state control, plaintiffs-appellants have a heavy burden to show that preemption exists") (citation omitted).

Applying *Travelers*, the Second Circuit explained that "it is not sufficient that the law in question has an indirect economic effect on choices; rather, the law

must actually dictate which choices *must* be made." *Id.* at 429. The Second Circuit thus upheld the state tax because it (1) was "one of general applicability," (2) "d[id] not force trust fiduciaries to act in a certain manner," and (3) "d[id] not govern one of the areas that has been found to be of the kind that ERISA was intended to control exclusively." *Id.* at 431–32. On the last point, the Second Circuit highlighted that the state tax "does not affect the determination of eligibility of beneficiaries" or "mandate the amount of benefits." *Id.*; Accord *New Eng. Health Care Employees Union* v. *Mount Sinai Hosp.*, 65 F.3d 1024, 1032 (2d Cir. 1995) (upholding a state tax that did not "impose structural requirements on ERISA plans" or cause it to "extend the terms of its plan").

The reasoning of *Hattem* would lead the Second Circuit to uphold a health claims assessment act like Michigan's. First, Michigan's statute is a law of general applicability: it applies to "every carrier and third party administrator," not just to ERISA plans. Mich. Comp. Laws § 550.1733(1); see also Pet. App. 36a ("The Act does not act exclusively on ERISA plans or single them out for different treatment, but rather treats them the same as other entities that make 'actual payments, net of recoveries . . . , to a health care service provider.' ") (quoting § 550.1732(s)). Second, the Act "does not require a plan administrator to change how it administers the plan at all." Pet. App. 8a. It simply requires any entity that pays a healthcare claim to pay a 1% tax on the claim, a step that occurs only after the carrier has made all of the decisions that ERISA protects. And third, it does not affect an area of exclusive ERISA control; for example, it does not "require an

administrator to pay benefits to someone not specified by the plan," and it does not "force a plan to provide a certain level of benefits." Pet. App. 9a n.1.

In short, the Second Circuit recognized, just as the Sixth Circuit did here, that a tax that does not mandate plan choices is not preempted by ERISA. *Hattem*, 449 F.3d at 429 ("the law must actually dictate which choices *must* be made"); accord Pet. App. 7a (" 'the law must mandate' " a choice " 'within the area that Congress intended ERISA to control exclusively' "). Because Michigan's tax does not mandate plan choices and is a law within the State's historic police powers, it would be upheld in the Second Circuit.

II. The Sixth Circuit correctly held that Michigan's tax assessment is not preempted by ERISA.

The Sixth Circuit's decision is also consistent with this Court's ERISA jurisprudence, which focuses on Congress's objectives in ERISA, because the Assessment Act does not impose a mandate within the areas that ERISA addresses.

Congress enacted ERISA's preemption provision to ensure national uniformity of private-sector employer-sponsored health plans. If every state could regulate the terms and scope of benefits—questions such as who is eligible, which types of health issues are covered, and how much coverage must be provided—few national employers would offer an employee health plan, because the plan would have to be structured and the benefits administered

differently in every state where the company had employees. See generally *Egelhoff* v. *Egelhoff*, 532 U.S. 141 (2001).

But ERISA's preemption provision does not preempt state laws that do not implicate this interest in maintaining benefits uniformity. *Travelers*, 514 U.S. at 656 ("[L]look . . . to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive."). Instead, it preempts state laws that " 'mandate[ ] employee benefit structures or their administration.' " *Dillingham*, 519 U.S. at 328 (quoting *Travelers*, 514 U.S. at 658). Accordingly, this Court has found preemption over state laws that mandate particular plan choices. For example, it has upheld the preemption of laws

- that mandate particular benefits, *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983) (preempting law that required plans to provide pregnancy benefits); *Metro. Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985) (preempting laws that required plans to provide mental-health benefits),

- that mandate who is eligible, *Egelhoff*, 532 U.S. at 143 (preempting law that precluded a divorced spouse from being a beneficiary), or

- that mandate how benefits must be paid, *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 524 (1981) (preempting law that ban pension benefit offsets based on workers' compensation).

In contrast to state laws that interfered with plan administration, this Court has upheld laws that imposed taxes or charges on ERISA plans. For example, in *Travelers*, the Court rejected a challenge brought by ERISA plan administrators against a New York statute that (a) required hospitals to collect surcharges from patients covered by a commercial insurer or ERISA plan, but not from those covered by a Blue Cross/Blue Shield plan; and (b) imposed a direct surcharge on HMOs based on their aggregate monthly charges paid for members' in-patient hospital care. This Court concluded the law was not preempted, even though it indirectly affected the choices ERISA plans made, because it did "not bind plan administrators to any particular choice and thus function as a regulation of an ERISA plan itself." *Travelers*, 514 U.S. at 659. The surcharges also did not "preclude uniform administrative practice or the provision of a uniform interstate benefit package if a plan wishes to provide one." *Id.* at 660. Instead, it "simply bears on the costs of benefits." *Id.* This Court thus upheld the tax.

Similarly, in *De Buono*, this Court upheld a "gross receipts tax on the income of medical centers operated by ERISA funds." 520 U.S. at 809. This Court concluded that "[t]here is nothing in the operation of the [tax] that convinces us it is the type of state law that Congress intended ERISA to supersede." *Id.* at 814. The tax did not "forbid[ ] a method of calculating pension benefits that federal law permits," or "require[ ] employers to provide certain benefits." *Id.* at 815. Instead, it was merely "one of 'myriad state laws' of general applicability that impose some burdens on the administration of

ERISA plans but nevertheless do not 'relate to' them within the meaning of the governing statute." *Id.* (quoting *Travelers*, 514 U.S. at 668). And, as the Sixth Circuit pointed out in this case, although "neither *Travelers* nor *De Buono* explicitly concerned reporting requirements regarding the taxes," "those requirements were essential parts of the tax schemes and drew no comment." Pet. App. 13a–14a. Indeed, the burdens listed by SIIA (Pet. 7), such as filing tax returns, maintaining records for four years, and being subject to audit, are a routine part of taxes.

Finally, SIIA's argument about administrative burdens cannot be reconciled with *Mackey* v. *Lanier Collection Agency & Service, Inc.*, 486 U.S. 825 (1988). In *Mackey*, this Court upheld a state garnishment law based on the conclusion that "Congress did not intend to forbid the use of state-law mechanisms of executing judgments against ERISA welfare benefit plans, even when those mechanisms prevent plan participants from receiving their benefits." *Id.* at 831–32. The Court reached this decision over a dissent that emphasized the "significant administrative burdens and costs" the garnishment law imposed and the fact that plans "covering participants in several States" could be "subject to multiple garnishment orders under varying or conflicting state laws." *Id.* at 842.

Discussing *Mackey* in *Travelers*, this Court reiterated that the Court "took no issue with the argument of the *Mackey* plan's trustees that garnishment would impose administrative costs and burdens upon benefit plans," but nonetheless concluded that Congress did not intend to preempt the state law.

Travelers, 514 U.S. at 662. In other words, if a law does "not bind plan administrators to any particular choice" that ERISA protects and thus does not "relate to" ERISA, *id.* at 659, then the administrative burdens it imposes on *non-ERISA areas* do not lead to preemption.

Against all this, SIIA contends that Michigan's Health Insurance Claims Assessment Act should be preempted because it targets "*the very payment streams that ERISA safeguards*." Pet. 18. But both *Travelers* and *De Buono* show that safeguarding payments streams from taxes is not an objective of ERISA. Both cases *upheld* taxes on ERISA plans. *Travelers*, 514 U.S. at 650 (upholding a surcharge on self-insured ERISA plans that it did not apply to Blue Cross/Blue Shield plans); *De Buono*, 520 U.S. at 816 (upholding a tax on hospitals, including those owned and operated by ERISA funds).

SIIA further contends that Michigan is "targeting" ERISA fiduciaries because of their ERISA functions—that the regulations would not be imposed "but for" their fulfillment of ERISA responsibilities. Pet. 19. Not so. Michigan is imposing this tax, as the district court observed, on the "broad array of entities—including ERISA plans—that pay claims on behalf of a Michigan resident for medical services provided in Michigan." Pet. App. 37a. The fact that ERISA plans play a large role in the healthcare market does not mean that states cannot tax healthcare transactions that occur within their borders just because ERISA plans will be participants in those transactions.

In fact, a Second Circuit case makes this very point. In *New England Health Care Employees Union*, the Second Circuit upheld a surcharge that "subsidize[d] medical care for the poor" despite the fact that "roughly 70% of the [tax's] revenue came from ERISA plans." 65 F.3d at 1026, 1028. The district court concluded that the fact the tax depended on ERISA plans for 70% of the revenue meant that the state law would not succeed without the participation of ERISA plans, and therefore was preempted. *Id.* at 1033. The Second Circuit reversed, explaining that "[u]ntil the district court's decision, no court had ever held that ERISA preempts a statute simply because the law's success 'depended' on funds derived from ERISA plans." *Id.* That approach, the Second Circuit recognized, "stands ERISA preemption principles on their head": "courts have always looked to the impact a law has on ERISA plans, not vice versa." *Id.* In fact, the Second Circuit also observed that in the *Travelers* case itself, "over 80% of New Yorkers relied on ERISA plans for their health care coverage." *Id.* (citing *Travelers Ins. Co.* v. *Cuomo*, 14 F.3d 708, 711 (2d Cir. 1993), rev'd sub nom. *Travelers*, 514 U.S. 645).

In the end, ERISA does not preempt Michigan's tax on paid healthcare claims because it does not interfere with the ERISA objective of allowing plans to decide their terms—issues like who is eligible for benefits, what benefits are provided, and what amount of benefits are provided. Instead, the Act simply exercises Michigan's sovereign authority to tax transactions that occur within Michigan, after all of those ERISA-protected decisions have already been made.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: April 2015