No. 14-741

In The
Supreme Court of the United States

SELF-INSURANCE INSTITUTE OF AMERICA, INC.,

Petitioner,

v.

RICK SNYDER, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF MICHIGAN; R. KEVIN CLINTON, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE OFFICE OF FINANCIAL AND INSURANCE REGULATION OF THE STATE OF MICHIGAN; AND ANDREW DILLON, IN HIS OFFICIAL CAPACITY AS TREASURER OF THE STATE OF MICHIGAN,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

Whether a state law that imposes new reporting, payment, recordkeeping, and audit requirements on ERISA plan administrators that arise directly from their processing of welfare benefit claims pursuant to ERISA "relate[s] to" ERISA benefit plans and is therefore preempted under 29 U.S.C. § 1144(a); and

Whether the broad preemption language in 29 U.S.C. § 1144(a) can be judicially narrowed to accommodate a presumption against preemption of newly minted state laws that seek to exploit the core functions of ERISA plan administrators.

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INTEREST OF AMICUS CURIAE[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that present issues of concern to the nation's business community. Many Chamber members provide health care benefits to their employees and arrange for the provision of health care services through employee welfare benefit plans regulated under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001 *et seq.* ("ERISA"). Health care is an important benefit – to employees as well as to their employers. It is a

[1] Pursuant to Rule 37.6, the Chamber affirms that no counsel for a party authored this brief in whole or in part, that no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than the Chamber, their members, or their counsel made such a monetary contribution. Counsel of record for all parties received notice at least ten days prior to the due date of the Chamber's intention to file this brief, and correspondence consenting to the filing of this brief has been filed with the Clerk.

benefit that employers want to be able to provide. But this case poses an issue that could adversely affect their ability to continue doing so in a uniform manner as ERISA provides and as long-standing case law confirms. Therefore, this is of critical importance to the Chamber's membership.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents an exceptionally important issue concerning the interpretation of ERISA's broad preemption provision; its role in minimizing burdensome, costly, and potentially conflicting state regulatory requirements on ERISA plans; and its importance in eliminating impediments to employers who want to continue offering health care benefits to their employees. "The purpose of ERISA is to provide a uniform regulatory regime over employee benefit plans." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004). Employers depend on this uniformity to help keep the administrative costs of offering these plans at reasonable levels. "To this end, ERISA includes expansive pre-emption provisions . . . intended to ensure that employee benefit plan regulation [remains] 'exclusively a federal concern.'" *Id.* (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). ERISA comprehensively sets "uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility" intended to preempt the field of state regulation in this arena. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90-91 (1983).

The United States Court of Appeals for the Sixth Circuit held ERISA's preemption provision inapplicable to a Michigan state law – the Michigan Health Insurance Claims Assessment Act – that is aimed specifically at the entities that administer employer health plans covered by ERISA. This law assesses a tax on ERISA benefit claims paid by ERISA plan administrators to Michigan health care providers for services rendered to Michigan residents, and assigns to the ERISA administrators detailed and complex administrative and recordkeeping obligations related to the tax. *See* Pet. at 6-7.[2] The Michigan law thus imposes substantial and costly burdens on the administration of ERISA health care plans, over and above the already significant and comprehensive regulatory structure established by ERISA.

This Court's review of the Sixth Circuit's decision is required to confirm the breadth of ERISA's preemption provision in ensuring uniformity in matters directly concerning ERISA plan administration. In enacting ERISA, Congress included an expansive preemption provision to ensure the proper balance between its goal of enhancing the protection of employee benefits and its desire not to create a system "so complex that administrative costs . . . unduly discourage employers from offering" employee benefit plans in

[2] Despite its name, the Michigan law is not a state law that regulates insurance; rather, it is expressly directed at the administrators of both self-insured and insured ERISA plans.

the first place. *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996). The recently enacted Patient Protection and Affordable Care Act, Pub. L. 111-148, 124 Stat. 119 (2010), as amended by the Health Care and Education Reconciliation Act of 2010 (the "ACA"), limits to some extent employers' discretion to forego coverage altogether, as it imposes monetary penalties on certain large employers under some circumstances for failing to provide a minimum level of affordable health care coverage to their full-time employees. And most large employers *want* to provide this coverage to assist them in recruiting and retaining employees, and help them keep their employees healthy and happy. But a multiplicity of burdensome and potentially conflicting state laws may impair their ability to continue doing so.

The Sixth Circuit's decision threatens to undermine the uniformity intended by Congress, as reflected in ERISA's broad preemption provision, by opening the door to the proliferation of state laws that burden and complicate the administration of employer health plans. If allowed to stand, the decision of the court below could portend trouble for the viability of employer-provided health care benefits.

ARGUMENT

The Sixth Circuit's Decision Warrants Review Because it Ignores Decades of Supreme Court Jurisprudence and Fails to Recognize the Importance of Uniformity in the Administration of Employee Benefit Plans.

Employer-sponsored health care is the cornerstone of our American health care system; over 169 million Americans receive health insurance through employment-based benefit plans. *See* Jessica C. Smith & Carla Medalia, U.S. Census Bureau, *Health Insurance Coverage in the United States: 2013*, at 2 (2014), *available at* http://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-250.pdf. ERISA was enacted, in part, to ensure "the continued well-being and security" of the Americans participating in these employer-sponsored plans. 29 U.S.C. § 1001(a). But "[n]othing in ERISA requires employers to establish employee benefit plans. Nor does ERISA mandate what kind of benefits employers must provide if they choose to" offer plans. *Black & Decker Disability Plan v. Nord*, 538 U.S. 822, 833 (2003) (quoting *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996)). Accordingly, while ERISA reflects "Congress' desire to offer employees enhanced protection for their benefits," it was carefully drafted "not to create a system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering welfare benefit plans in the first place." *Varity Corp.*, 516 U.S. at 497. "ERISA [therefore] represents a 'careful balancing' between ensuring

fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (quoting *Davila*, 542 U.S. at 215) (internal quotation marks omitted).

The newly-enacted ACA, unlike ERISA, *does* require large employers to provide full-time employees with a minimum level of affordable health care coverage, or potentially pay a penalty of up to $2,000 to $3,000 per year (depending on the circumstances) per employee. *See* 26 U.S.C. § 4980H. But if an employer's health care costs exceed the amount of the penalty, the employer may opt to pay the penalty rather than continuing to provide its employees coverage. Thus, perhaps even more now with the enactment of the ACA, it is critically important for businesses and employees that unnecessary administrative burdens and costs are curtailed.

To help accomplish this, "[o]ne of the principal goals of ERISA 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 ex rel. Breiner*, 532 U.S. 141, 148 (2001) (quoting *Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 9 (1987)). This uniformity lowers plan administrative burdens and costs and encourages employers to sponsor group health plans. "Uniformity is impossible, however, if plans are subject to different legal obligations in different states." *Id.*

ERISA achieves this administrative uniformity, and thus curbs excessive administrative costs and burdens, through its "deliberately expansive" preemption provision. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138 (1990) (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46 (1987)). This provision, with narrow exceptions, preempts "any and all State laws insofar as they may now or hereafter *relate to* any employee benefit plan." 29 U.S.C. § 1144(a) (emphasis added). Congress intended "relate to" to be interpreted "in its broadest sense," to "preempt the field for Federal regulations, thereby eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans." *Shaw*, 463 U.S. at 98-99 (quoting statements by the bill's sponsors, Representative Dent and Senator Williams, 120 Cong. Rec. 29,197, 29,933 (1974)); *see also New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 657 (1995) (same); *Fort Halifax Packing*, 482 U.S. at 9 (same).

This Court has repeatedly recognized the importance of a broad reading of 29 U.S.C. § 1144(a) to control administrative costs and burdens. "Requiring ERISA administrators to master the relevant laws of 50 States and to contend with litigation would undermine the congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators – burdens ultimately borne by the beneficiaries." *Egelhoff*, 532 U.S. at 149-50 (quoting *Ingersoll-Rand*, 498 U.S. at 142) (alterations in original); *see also FMC Corp. v. Holliday*, 498 U.S. 52, 60 (1990) (ERISA preemption

avoids inefficiencies stemming from "requir[ing] plan providers to design their programs in an environment of differing state regulations"); *Fort Halifax Packing,* 482 U.S. at 10 (preemption provision enacted "so that employers would not have to 'administer their plans differently in each State in which they have employees'" (quoting *Shaw*, 463 U.S. at 105)).

At issue in this case is whether ERISA preempts the Michigan Health Insurance Claims Assessment Act, Public Act No. 142, Mich. Comp. Laws §§ 550.1731 *et seq.* (the "Michigan Act" or the "Act"), which imposes a tax on the value of paid claims for health care services rendered in Michigan to Michigan residents. Mich. Comp. Laws § 550.1733. The Michigan Act requires ERISA plan administrators, third party administrators, and insurance carriers to calculate the value of "paid claims" to Michigan health care providers on behalf of Michigan residents pursuant to the State's tabulation rules, to remit the tax, to file quarterly and annual returns that are subject to audit by the State, and to determine how (if at all) to seek reimbursement of the tax from others. Mich. Comp. Laws § 550.1733(1); *see also* Mich. Comp. Laws § 550.1732(s) (defining "paid claims").

The Act specifically targets ERISA plan administrators (entities that exist by virtue of ERISA alone, *see* 29 U.S.C. § 1102; 29 C.F.R. §§ 2509.75-8; 2510.3-16) to tap into the large payment streams for health care services they handle on behalf of their beneficiaries. And it imposes extensive administrative burdens on these

administrators in addition to those imposed under ERISA, requiring them to: (1) "develop and implement a methodology by which [they] will collect the assessment," Mich. Comp. Laws § 550.1733a(2); (2) collect and analyze detailed information on claims paid on behalf of plan beneficiaries, Mich. Comp. Laws § 550.1732(s); (3) determine whether services were rendered in Michigan, *see id.*, to Michigan residents, *see* Mich. Comp. Laws § 550.1732(s)(iv); (4) pay the assessment, regardless of whether they have access to the funds directly; and (5) maintain adequate records to submit to an audit under the Michigan Revenue Act, *see* Mich. Comp. Laws § 205.3; *see also* Mich. Admin. Code r. 550.403 (detailing recordkeeping requirements under the Act); Pet. App. 9-11 (describing these burdens in detail).

Under ERISA, a state law is preempted, and cannot be applied to an ERISA-covered plan, if it "has an impermissible 'connection with' a plan." *Boggs v. Boggs*, 520 U.S. 833, 859 (1997) (citation omitted) (Breyer, J., dissenting). Whether a particular state law has an impermissible connection with ERISA-covered plans is based, in turn, on "the objectives of the ERISA statute" and "the effect of the state law on ERISA plans." *California Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 325 (1997) (internal quotations omitted); *see also Boggs*, 520 U.S. at 841 (a state law is preempted where it "operates to frustrate [ERISA's] objectives."). A state law like the Act – which intentionally targets ERISA fiduciaries and administrators and seeks to exploit core ERISA

functions as a source of state income – plainly flouts the "objectives of the ERISA statute" and is preempted. *See Dillingham*, 519 U.S. at 325.

The Sixth Circuit premised its decision on the notion that preemption does not "bar states from imposing additional administrative burdens unrelated to the plans' core functions." Pet. App. at 13a. But even if the lower court's overly narrow reading of this Court's preemption jurisprudence was correct, it would have no applicability here, because the Act *does*, in fact, impose burdens related to the core functions of ERISA plans. It specifically identifies for taxation monies set aside and disbursed to pay for health care services rendered to plan beneficiaries, and imposes extensive recordkeeping and reporting duties on plan administrators attendant to this taxation. As succinctly stated by the Petitioner, "the Act deliberately targets fiduciaries for regulation precisely because they handle large payment streams for health care services on behalf of beneficiaries and saddles them with burdensome compliance, payment and reporting requirements for the State's convenience." Pet. at 22.

The Sixth Circuit nevertheless adopted a narrow construction of the zone of activity protected by ERISA's preemption provision, concluding that, because the Act does not regulate claims processing *per se* but instead imposes the tax after the claims have been paid, "the Act does not require a plan administrator to change how it administers the plan at all." Pet. App. at 8a. The Sixth Circuit's conclusion that the Act merely "create[s] additional

administrative work unrelated to the processing of . . . claims," Pet. App. 16a, ignores that the Act operates directly on ERISA entities – plan administrators – *because of* their ERISA duty to process claims and oversee "paid claim" disbursements, *see* Mich. Comp. Laws § 550.1733(1).

The decision below thus flies in the face of this Court's longstanding jurisprudence upholding the preemption of any state law that has a "connection with" an ERISA plan. *Shaw*, 463 U.S. at 97. The Act at issue here imposes payment, reporting, and other recordkeeping burdens on ERISA plan administrators specifically because of their identities as such. The court below plainly failed to recognize that this Court has never held a state law to escape preemption that targets, by design, an ERISA entity, especially where the state law at issue impinges on a matter of core ERISA concern. And this Court has repeatedly stated that claims payment, recordkeeping, and reporting by employee benefit plans are core matters covered by ERISA. *See Egelhoff*, 532 U.S. at 142 (listing "pay[ment of] benefits" according to plan documents as an area of "core ERISA concern"); *Dillingham*, 519 U.S. at 330 (listing "reporting" as an area with which ERISA is centrally concerned); *Travelers*, 514 U.S. at 661 ("reporting" is a subject matter covered by ERISA); *FMC Corp.*, 498 U.S. at 58 (same); *Shaw*, 463 U.S. at 98 (same); *see also Fort Halifax Packing*, 482 U.S. at 9 (ERISA obligations include "calculating benefit levels, making disbursements, monitoring the availability of funds for benefit payments, and

keeping appropriate records in order to comply with applicable reporting requirements").

The Sixth Circuit erroneously relied on decisions of this Court exempting from ERISA preemption state laws that impinged on ERISA entities in their capacities as employers, consumers, or in some other capacity unrelated to the performance of their ERISA responsibilities. *See, e.g.*, *Dillingham*, 519 U.S. at 330 (upholding state prevailing wage law targeted at contractors on public works projects that had only incidental effects on ERISA fiduciaries); *DeBuono v. NYSA Med. & Clinical Servs. Fund*, 520 U.S. 806, 815-16 (1997) (upholding state gross receipts tax – generally applicable to all health providers – imposed on income earned on patient services provided at hospitals, residential health care facilities, and diagnostic and treatment centers); *Travelers*, 514 U.S. at 645 (upholding New York law that encouraged all insurance buyers, including ERISA plans, to purchase Blue Cross/Blue Shield policies by imposing a surcharge on hospital rates paid by non-Blue Cross commercial insurers); *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S 825, 831 (1988) (state statute that "single[d] out" ERISA plans for different treatment under state garnishment procedures preempted, but general state garnishment statute not preempted merely because ERISA entities' plan costs might be impacted by responding to a garnishment order); *see also* Pet. App. at 11a-14a. Unlike the statutes at issue in those cases, the Act here is aimed directly at ERISA entities acting in their capacities as administrators of ERISA benefit plans.

Thus, the Sixth Circuit's decision is contrary to over thirty years of this Court's preemption jurisprudence, which has never "hesitated to apply ERISA's pre-emption clause to state laws that risk subjecting plan administrators to conflicting state regulations." *FMC Corp.*, 498 U.S. at 59. The Act does just that by specifically tapping into the payment streams of ERISA plans and subjecting ERISA entities to onerous and burdensome financial and administrative requirements. This Court should grant the petition to prevent the proliferation of state laws that, like the Michigan Act, impose additional costs on employer-sponsored ERISA plans and defeat the uniformity that ERISA is meant to provide for ERISA-governed benefit plans. As this Court said in *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008), allowing Maine to regulate in an area of exclusive federal regulation "would allow other States to do the same," and "could easily lead to a patchwork of state . . . laws, rules, and regulations." And in the ERISA context, this "would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them." *Fort Halifax Packing*, 482 U.S. at 11.

CONCLUSION

For the foregoing reasons, as well as the reasons set forth in the petition for writ of certiorari, the Court should grant the petition.

Respectfully submitted,

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