

# Supreme Court Holds That ERISA Does Not Preempt Arkansas' Law Regulating Pharmacy Reimbursement Rates

Client Alert | December 10, 2020

---

Decided December 10, 2020

*Rutledge v. Pharmaceutical Care Management Ass'n*, No. 18-540

Today, the Supreme Court held 8-0 that ERISA does not preempt an Arkansas statute regulating the rates at which pharmacy benefit managers reimburse pharmacies for prescription drug costs.

## Background:

Section 514(a) of the Employee Retirement Income Security Act of 1974 ("ERISA") preempts state laws that "relate to" employee benefit plans. 29 U.S.C. § 1144(a). In 2015, Arkansas adopted a law, Act 900, to regulate the rates and procedures by which pharmacy benefit managers ("PBMs") reimburse pharmacies for the costs of drugs administered on behalf of benefit plans. The Pharmaceutical Care Management Association, the trade association representing PBMs, filed suit alleging that ERISA preempted Act 900.

The Eighth Circuit held that Act 900 is preempted because it has an impermissible "connection with" ERISA plans by interfering with central plan functions and nationally uniform plan administration, and also because it impermissibly "refers to" plans by regulating PBMs administering benefits for the plans.

## Issue:

Does ERISA preempt Arkansas' Act 900 regulating the rates and reimbursement procedures of pharmacy benefit managers?

## Court's Holding:

ERISA does not preempt Arkansas' Act 900. Act 900 merely affects costs without dictating plans' choices of benefit structure, either directly or indirectly. It has neither an impermissible connection with nor a reference to ERISA plans.

*"Act 900 is merely a form of cost regulation . . . [that] applies equally to all PBMs and pharmacies in Arkansas. As a result, Act 900 does not have an impermissible connection with an ERISA plan."*

Justice Sotomayor, writing for the Court

## What It Means:

- The Court's decision may lead to further state regulation of PBMs, which are engaged by the majority of employers to deliver prescription-drug benefits. Dozens of other states have already passed similar laws regulating PBM pricing, and more

## Related People

[Lucas C. Townsend](#)

[Bradley J. Hamburger](#)

[Max E. Schulman](#)

# GIBSON DUNN

could follow. Today's decision could lead to new litigation over whether other states' laws are sufficiently distinguishable from Arkansas' Act 900 to be preempted.

- The Court's decision also could lead to new attempts by states to regulate other aspects of plan administration, including other third-party administrators beyond the PBM context. Third parties—including claims administrators, external reviewers, and healthcare provider networks—play a vital role in many aspects of modern plan administration.
- In a concurrence, Justice Thomas reiterated his previously expressed doubts about the Court's ERISA preemption doctrine, which he believes has departed from the text of the statute.

---

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

## Appellate and Constitutional Law Practice

Allyson N. Ho +1 214.698.3233 <a href="mailto:aho@gibsondunn.com">aho@gibsondunn.com</a>	Mark A. Perry +1 202.887.3667 <a href="mailto:mperry@gibsondunn.com">mperry@gibsondunn.com</a>	Helgi C. Walker +1 202.887.3599 <a href="mailto:hwalker@gibsondunn.com">hwalker@gibsondunn.com</a>
Lucas C. Townsend +1 202.887.3731 <a href="mailto:ltownsend@gibsondunn.com">ltownsend@gibsondunn.com</a>	Bradley J. Hamburger +1 213.229.7658 <a href="mailto:bhamburger@gibsondunn.com">bhamburger@gibsondunn.com</a>	

[m](#)

## Related Practice: Employee Benefits

Richard J. Doren +1 213.229.7038 <a href="mailto:rdoren@gibsondunn.com">rdoren@gibsondunn.com</a>	Heather L. Richardson +1 213.229.7409 <a href="mailto:hrichardson@gibsondunn.com">hrichardson@gibsondunn.com</a>	Geoffrey M. Sigler +1 202.887.3752 <a href="mailto:gsigler@gibsondunn.com">gsigler@gibsondunn.com</a>
---	--	---

[m](#)

Daniel J. Thomasch  
+1 212.351.3800  
[dthomasch@gibsondunn.com](mailto:dthomasch@gibsondunn.com)

## Related Capabilities

[Appellate and Constitutional Law](#)