



**ERISA Preemption  
after  
*Rutledge v. PCMA***

ELIZABETH Y. MCCUSKEY



# Rutledge v. PCMA,

141 S. Ct. 474  
(Dec. 10, 2020)

Employee Retirement Income Security Act (ERISA) preempts “any and all state laws” that “relate to any employee benefit plan.”

Arkansas law on PBM reimbursement practices for pharmacies.

IN THE  
Supreme Court of the United States

LESLIE RUTLEDGE,  
in her official capacity as  
Attorney General of Arkansas,  
*Petitioner,*

v.

PHARMACEUTICAL CARE  
MANAGEMENT ASSOCIATION,  
*Respondent.*

On Writ of Certiorari to the United States  
Court of Appeals for the Eighth Circuit

**BRIEF OF NATIONAL COUNCIL OF INSURANCE LEGISLATORS AS *AMICUS CURIAE* SUPPORTING PETITIONER**

NATHANIEL S. SHAPO  
*Council of Record*

# **Rutledge v. PCMA,**

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## **No Preemption**

“ERISA does not pre-empt state rate regulations that merely increase costs or alter incentives for ERISA plans without forcing plans to adopt any particular scheme of substantive coverage.”

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## **No Preemption**

- ✓ **Health care cost regulation**
- ✓ **Health plan intermediaries**
- ✓ **Issues not covered by ERISA regs**



# Implications for State Health Care Regulation

- ✓ **PBM Regulation**
- ✓ **Rate Regulation**
- ✓ **Consumer Financial Protection**
- ✓ **Cost Control, Affordability**
- ? **Third-Party Administrators**
- ? **Single Payer**
- × **Benefit requirements**
- × **Beneficiary status**
- × **Central plan administration**
- × **Forced choice of coverage scheme**

# ERISA reform is health reform.

The Implications Of *Rutledge v. PCMA* For State Health Care Cost Regulation, Health Affairs:

<https://www.healthaffairs.org/doi/10.1377/hblog20201216.909942/full/>

ERISA Reform as Health Reform: The Case for an ERISA Preemption Waiver, JLME:

<https://journals.sagepub.com/doi/full/10.1177/1073110520958868>

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