ERISA establishes uniform national standards and obligations for the fiduciaries of employee benefit plans. With certain exceptions, it preempts “any and all State laws insofar as they . . . relate to any employee benefit plan” covered by the statute. 29 U.S.C. § 1144(a). Various provisions of ERISA impose mandatory reporting requirements on covered plans.

Like many states, Vermont maintains a health-care information database designed to assist the government in identifying health-care needs, comparing costs between various treatment approaches, and providing information to consumers of health care. Vermont requires “health insurers” and other entities to file, with a state agency, reports containing claims data and “other information relating to health care.” Vt. Stat. Ann., tit. 18, § 9410(c)?(d). Vermont expressly includes self-funded plans and their administrators within the definition of “health insurers.”

Today, the Supreme Court granted certiorari in *Gobeille v. Liberty Mutual Insurance Co.*, No. 14?181, which presents the question whether ERISA preempts Vermont’s health-care database law when applied to ERISA-governed plans.

Liberty Mutual Insurance Co. provides health-care benefits for employees, retirees, and family members. Liberty Mutual’s health plan is self-funded, which means that Liberty Mutual funds an ERISA plan to satisfy current benefit claims. Blue Cross Blue Shield of Massachusetts, Inc., is the administrator of the plan. In 2011, Vermont issued a subpoena to Blue Cross Blue Shield, demanding claims data for Vermont residents covered by Liberty Mutual’s plan. Of the 80,000 individuals covered by the Liberty Mutual plan, 137 were residents of Vermont. Liberty Mutual instructed Blue Cross not to comply with the subpoena and sued the commissioner of the governing Vermont agency, seeking (1) a declaration that ERISA preempts the Vermont statute and (2) an injunction blocking enforcement of the subpoena. The district court granted Vermont’s motion to dismiss, holding that ERISA did not preempt the Vermont statute. The Second Circuit reversed in a split decision. It held that a state statute is connected to an ERISA plan, and is therefore preempted, if it “mandates employee benefit structures or their administration,” and that the Vermont statute fit this description. It explained further that although not “every state law imposing a reporting requirement is preempted,” the reporting mandated by the Vermont statute was sufficiently “burdensome, time-consuming and risky” to warrant preemption. The Supreme Court granted certiorari despite the absence of a circuit split, and over the contrary recommendation of the Solicitor General.

This issue is important to the business community because of its potential to subject plan administrators to a multiplicity of burdensome state reporting requirements—in addition to those imposed by ERISA itself. Even on its own, Vermont’s reporting scheme imposes a litany of complex requirements on ERISA plans, including rules governing the content, timing, coding, and encryption of the reports. And as explained in the petition for certiorari, a ruling in this case could potentially impact the reporting requirements of at least sixteen states—plus others that are considering similar legislation.

Absent extensions, amicus briefs in support of the petitioner will be due on August 20, 2015, and amicus briefs in support of the respondent will be due on September 21, 2015. Any questions should be directed to Nancy G. Ross (+1 312 701 8788) in our Chicago office or Brian D. Netter (+1 202 263 3339) in our Washington office.