

No.

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IN THE  
**Supreme Court of the United States**

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W. A. GRIFFIN, M.D.

*Petitioner,*

*v.*

VERIZON COMMUNICATIONS INC.;  
ANTHEM INSURANCE COMPANIES, INC.

*Respondents,*

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

**PETITION FOR A WRIT OF CERTIORARI**

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## QUESTIONS PRESENTED

W. A. Griffin is a medical provider. Prior to rendering medical services to patients, the provider requires patients to execute a legal assignment of benefit and rights. The assignment permits the provider to stand in the patients' shoes to appeal and sue for unpaid bills.

The Eleventh Circuit found no discrimination under Section 1557 of the Affordable Care Act when the plan administrator used anti-assignment clauses in plan documents against Dr. Griffin, an African American, female provider, while simultaneously permitting white, male providers to stand in their patients' shoes under the identical assignment of benefit policy in other federal lawsuits.

The questions presented are:

Whether or not it can be reasonably inferred that plan administrators are liable for discrimination under Section 1557 of the Affordable Care Act when federal dockets show that the plan exclusively permitted white, male providers ("Good Old Boys Club") to pursue litigation as provider assignees, but used written plan anti-assignment provisions only against Dr. Griffin.

Whether or not an employer and/or a third party plan administrator that sponsors, funds, and administers a welfare benefit plan that receives federal financial assistance in the form of healthcare credits and/ or Medicare subsidies, is liable under Section 1557 of the Affordable Care Act for discrimination in the plan design.

ii  
**LIST OF PARTIES**

Petitioner W. A. Griffin is a medical doctor located in Atlanta, Georgia that runs a small, one doctor practice.

Respondent Verizon Communications Inc. is a corporation that administers a self-funded welfare benefit plan for its employees nationwide.<sup>1</sup>

Respondent Anthem Insurance Companies, Inc. is a corporation that functions as a third party claims administrator that receives federal financial assistance.

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<sup>1</sup> Upon information and belief, Verizon Communications Inc. receives federal financial assistance in the form of Medicare part D subsidies.

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1.

Petitioner respectfully prays that a writ of certiorari is issued to review the judgment below.

**OPINIONS BELOW**

[X ] For cases from **federal courts**:

The opinion of the United States court of appeals appears

at **Appendix A** to the petition and is

[ ] reported at\_\_; or, [ ] has been

designated for publication but is not yet

reported; or,

[X ] is unpublished.

The opinion of the United States district court appears at

**Appendix B** to the petition and is

[ ] reported at\_\_; or, [ ] has been

designated for publication but is not yet

reported; or,

[ X] is unpublished.

**JURISDICTION**

[ X ] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was August 20, 2018.

[ X ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:

\_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including\_\_\_\_\_ \_\_\_\_\_(date) on\_\_\_\_\_(date) in Application No. A\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

3.

**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED**

**42 USC 18116. NONDISCRIMINATION  
SEC. 1557. NONDISCRIMINATION.**

(a) IN GENERAL.—Except as otherwise provided for in this title (or an amendment made by this title), an individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments). The enforcement mechanisms provided for and available under such title VI, title IX, section 504, or such Age Discrimination Act shall apply for purposes of violations of this subsection

**CONSTITUTIONAL AND STATUTORY  
PROVISIONS INVOLVED**  
**-continued**

(b) CONTINUED APPLICATION OF LAWS.— Nothing in this title (or an amendment made by this title) shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), or the Age Discrimination Act of 1975 (42 U.S.C. 611 et seq.), or to supersede State laws that provide additional protections against discrimination on any basis described in subsection (a). (c) REGULATIONS.—The Secretary may promulgate regulations to implement this section. Applicability.

5.

### **STATEMENT OF THE CASE**

Petitioner, W. A. Griffin, M.D., is a Georgia medical provider that treated two patients who also happened to be participants in an ERISA plan administered by Respondents. As a condition of service, Dr. Griffin requires the patients to assign their health benefits and rights.

After rendering services to two patients, Dr. Griffin did not get paid and despite submitting ERISA appeals, Petitioner came up empty-handed.

Subsequently, Petitioner filed a lawsuit against Verizon Communications, Inc. for three ERISA counts: 1)payment of benefits 2) breaches of fiduciary duty 3)and statutory penalties. ( See *Griffin v. Verizon Communications, Inc.* No. 1:15-CV-00569-AT, N.D. Ga. February 26, 2015)

Due to plan anti-assignment provisions, the case was dismissed by the Northern District Court and later, affirmed by the Eleventh Circuit. (See *Griffin v. Verizon Communications, Inc.*, 641 F. App'x 869 (11<sup>th</sup> Cir. 2016)<sup>2</sup>

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<sup>2</sup>Anthem Insurance Companies, Inc was not listed as a co-defendant in the Northern District Court Case

**6.**  
**STATEMENT OF THE CASE**

Shortly after the affirmation by the 11<sup>th</sup> Circuit, Petitioner became very suspicious that something was wrong and searched public records on Pacer.gov.

Plaintiff stumbled across five Verizon ERISA cases that were identical to her case. Each case had the same recipe: Verizon Communications Inc.(Defendant), Provider-Assignee (Plaintiff), and ERISA claims.<sup>3</sup> The only difference was that the other providers sued with derivative standing as assignees under the plan.

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<sup>3</sup>Cohen vs Verizon Communications, Inc. No. 3:15-cv-03675-FLW-DEA (D.N.J. June 1, 2015); Loft Chiropractic, P.C. v. Verizon Communications, Inc. et al., No. 1:12-cv-07272-PKC (S.D.N.Y. Apr. 24, 2017); Patient Care Associates LLC v. Verizon Communications, Inc. et al., No. 2:12-cv-03750-CCC-JAD (D.N.J. May 29, 2013); Community Chiropractic of County Club PLLC v. Verizon Communications, Inc. et al., No. 1:12-cv-05485-PKC, Doc. 1 (S.D.N.Y. July 8, 2013); Neurological Surgery, P.C. et al. v. Verizon Communications, Inc., No. 2:15-cv-04074-SJF-GRB, Doc. 5 (E.D.N.Y. Feb. 17, 2017); Shuriz Hishmeh, M.D., PLLC v. Verizon Communications, Inc. et al., No. 2:16-cv-06347 (E.D.N.Y. Feb. 24, 2017)

7.  
**STATEMENT OF THE CASE**

After reviewing the other Verizon cases and performing additional research using google search engines, phone calls, and public databases, Petitioner discovered that the only doctor candidates to receive standing in Verizon's plan are overwhelmingly individuals of male Caucasian-American decent, who have the financial means to hire Fortune 500 lawyers or "Good Old Boys Club".

Shortly after discovering these discriminatory, secret schemes embedded in the Verizon assignment of benefit policy, Dr. Griffin, who is a female, African American provider, filed suit in Northern District Court under the anti-discrimination clause in Section 1557 of the Affordable Care Act against Verizon. Later, Anthem Insurance Companies, Inc. was added as a co-defendant in a Second Amended complaint.<sup>4</sup>

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<sup>4</sup> The court should be aware that this case is not an isolated incident. An identical discrimination pattern is seen in *Griffin v. General Electric Company et al.* No. 1:15-cv-04439-AT N.D.Ga D December 6, 2017

8.

## REASONS FOR GRANTING THE PETITION

The hallmark of this Petition highlights the racial and gender inequalities embedded in Respondents' self-funded welfare benefit plan. Verizon used plan documents with anti-assignment provisions *exclusively* against Dr. Griffin that eliminated her rights to stand in her patients' shoes as an assignee under the Verizon plan. The assignment of benefit policy language is the same across state borders. However, the way that the plan language is authored, it secretly permits Verizon to approve some provider-assignees while *simultaneously* rejecting others.

- I. The United States Supreme Court should grant the petition for writ of certiorari because the Eleventh Circuit's decision conflicts with relevant decisions of Eighth Circuit. In making its decision, the Eleventh Circuit seemed to ignore the hallmark of this case, discrimination in the plan design, which was a key issue addressed by a recent case in the Eighth Circuit.

9.

## REASONS FOR GRANTING THE PETITION

In *Tovar v. Essentia Health, et al.*, No. 16-3186 (8th Cir. May 24, 2017), the court held that the employer, Essentia, was liable under Section 1557 of the ACA for a plan design that excluded gender reassignment surgery. Here, Dr. Griffin presented a close issue that highlights how an employer and third party administrator coordinated plan language into the assignment of benefit policy that was used as a tool to block a female, African American provider assignee from standing in her patients' shoes.<sup>5</sup> Unlike the Eighth Circuit, the Eleventh Circuit held that there was no discrimination in the plan design and that Section 1557 was not applicable even though court records show evidence that Dr. Griffin was not afforded the same rights as white, male doctors under the same policy. These conflicting scenarios are precisely why only the Supreme Court can set the record straight.

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<sup>5</sup> The court should be aware that both the Eleventh Circuit and Northern District Court in Georgia referenced the discrimination in the plan design as "litigation conduct".

**10.**  
**REASONS FOR GRANTING THE PETITION**

Additionally, the effect of Respondents' discriminatory plan design has created an economic double jeopardy for the patients of Petitioner, who are mostly African American. These patients will not have the same rights or patient protections as compared to other patients that assign their rights to members of The Club. African American patients will be forced to pay more out of pocket costs and/or will be sued by their providers as compared to patients that see preferred provider assignees of The Club.

11.  
**CONCLUSION**

For the reasons set forth above, the Petition for  
Writ of Certiorari should be granted.

Respectfully Submitted,

W. A. Griffin 10/9/2018

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