

Supreme Court, U.S.
FILED

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No. 22-625

IN THE
Supreme Court of the United States

W. A. GRIFFIN, M.D.

Petitioner,

v.

THE WILLIAM CARTER
COMPANY; TRUIST FINANCIAL
CORPORATION; CRESTLINE
HOTELS & RESORTS, LLC;
LABORATORY CORPORATION OF
AMERICA HOLDINGS; GRADY
MEMORIAL HOSPITAL
CORPORATION; BLUE CROSS
BLUE SHIELD HEALTHCARE
PLAN OF GEORGIA
INC. COMPANY

Respondents,

On Petition for a Writ of Certiorari to the United States
District Court of Appeals for the Eleventh Circuit

**PETITION FOR WRIT OF
CERTIORARI**

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SUPREME COURT, U.S.

Whether the state of Georgia's mandatory provider assignment of benefit law drafted under Insurance Title 33 (Georgia § 33-24-54) is preempted by the Employee Retirement Investment Security Act of 1974 ("ERISA").

Whether the Supreme Court case, *Rutledge v. Pharmaceutical Care Management Association*, 141 S. Ct. 474 (2020), overruled *Physicians Multispecialty Group*¹ and voids ERISA preemption of O.C.G.A. § 33-24-54 if the provider has a written assignment of benefit.

¹*Physicians Multispecialty Grp. v. Health Care Plan of Horton Homes, Inc.*, 371 F.3d 1291, 1294 (11th Cir. 2004)

LIST OF PARTIES

**All parties appear in the caption of the case on
the cover page.**

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTEDii
LIST OF PARTIESiii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES.....	v-vi
OPINIONS BELOW	1
JURISDICTION	2
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED...	3
STATEMENT OF THE CASE AND FACTS	4-7
REASONS FOR GRANTING THE PETITION.....	8-10
CONCLUSION.....	11
APPENDIX A (District Court Opinion) filed December 2, 2022.....	1a

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Griffin v. Coca-Cola Refreshments USA, Inc.</i> , 989 F.3d 923, 927 (11 th Cir. 2021).....	7,8
<i>Griffin v. Verizon Commc'n, Inc.</i> , 157 F. Supp.3d 1306, 1310 (N.D. Ga. 2015).....	8
<i>Emergency Servs. of Okla., PC v. Aetna Health, Inc.</i> 556 F. Supp. 3d 1259, 1262 (W.D. Okla. 2021).....	9
<i>Knolmayer v. McCollum</i> , No. S-17792 (Alaska Nov. 18, 2022)	9
<i>Metropolitan Life</i> , <u>471 U.S., at 758</u>	8
<i>Physicians Multispecialty Grp. v. Health Care Plan of Horton Homes, Inc.</i> , 371 F.3d 1291 (11th Cir. 2004).....	7,8,9
<i>Rutledge v. Pharm. Care Mgmt. Ass'n</i> , No. 18-540, 2020 WL 7250098 (S. Ct. 10 Dec. 2020).....	ii,7,9

TABLE OF AUTHORITIES

	Page(s)
Statutes	
28 U.S.C. § 1254 (1).....	2
29 U.S.C. § 1001.....	4
28U.S.C. § 1651(a).....	2
ERISA, 29 U.S.C. § 1001, <i>et seq.</i>	4
 Alaska Statute 09.55.548(b).....	 9
Georgia Stat. § 33-24-54	ii,3
 Okla. Stat. tit. 36, § 1219, Okla. Stat. tit. 36, § 6571 ; and Okla. Admin. Code 365:40-5-120 <i>et seq.</i>	 9
 Rules	
Fed. R. Civ. P. 12(b)(6).....	4
SUP. CT. R. 11.....	2

1.

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

OPINIONS BELOW

The Order of the United States District Court for the Northern District of Georgia was issued on December 2, 2022, by Judge Sarah E. Geraghty and is published. It is included with this Petition as Appendix A.

2.

JURISDICTION

This Court's jurisdiction is timely invoked under the 28 U.S.C. § 1254 (1).

For cases pending in the United States Court of Appeals:

The notice of appeal was filed on December 12, 2022, and the appellant brief will be submitted before January 23, 2022.

Case submitted in accordance with Supreme Court Rule 11: A petition for a writ of certiorari to review a case pending in the United States court of appeals, before judgment is entered in that court.

3.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Georgia § 33-24-54. Payment of benefits under accident and sickness policies to licensed nonparticipating or nonpreferred providers ²

²Notwithstanding any provisions of Code Sections 33-1-3, 33-1-5, and 33-24-17 and Chapter 20 of this title or any other provisions of this title which might be construed to the contrary, whenever an accident and sickness insurance policy, subscriber contract, or self-insured health benefit plan, by whatever name called, which is issued or administered by a person licensed under this title provides that any of its benefits are payable to a participating or preferred provider of health care services licensed under the provisions of Chapter 4 of Title 26 or of Chapter 9, 11, 30, 34, 35, or 39 of Title 43 or of Chapter 11 of Title 31 for services rendered, the person licensed under this title shall be required to pay such benefits either directly to any similarly licensed nonparticipating or nonpreferred provider who has rendered such services, has a written assignment of benefits, and has caused written notice of such assignment to be given to the person licensed under this title or jointly to such nonparticipating or nonpreferred provider and to the insured, subscriber, or other covered person; provided, however, that in either case the person licensed under this title shall be required to send such benefit payments directly to the provider who has the written assignment. When payment is made directly to a provider of health care services as authorized by this Code section, the person licensed under this title shall give written notice of such payment to the insured, subscriber, or other covered person.

STATEMENT OF THE CASE**I. Course of Proceedings and Disposition Below**

On December 8, 2021, Dr. Griffin, appearing pro se, filed a complaint against Blue Cross Blue Shield Healthcare Plan of Georgia, Inc. in the State Court of Fulton County, Georgia, asserting claims under ERISA, 29 U.S.C. § 1001, *et seq.*

Blue Cross timely removed the case to the United States District Court for the Northern District of Georgia, Atlanta Division, on January 7, 2022, and promptly moved to dismiss Dr. Griffin's complaint under Fed. R. Civ. P. 12(b)(6). On January 25, 2022, Dr. Griffin filed an Amended complaint with additional defendants. The William Carter Company, Truist Financial Corporation, Crestline Hotels & Resorts, LLC, Laboratory Corporation of America Holdings, and Grady Memorial Hospital (collectively, "Respondents") were added to the complaint as ERISA plan administrator defendants. Between March 10, 2022, and May 12, 2022, respondents filed for motions to dismiss and/or motion for summary judgment and argued, among other things, that Dr. Griffin, lacked standing because the plans administrated by Blue Cross contained anti-assignment clauses. The District Court agreed and the case was dismissed on December 2, 2022.

I. II. STATEMENT OF FACTS

a. *Throughout 2020 and 2021 Dr. Griffin treats eight patients and receives an assignment of "rights and benefits" under the Plans administered by the Respondents. In every case, Blue Cross is the claims fiduciary with discretionary authority.*

Dr. Griffin is a practicing dermatologist in Atlanta, Georgia. She is an "out-of-network" provider under the terms of each Plan. Throughout 2020 and 2021 eight patients were treated by Dr. Griffin and their claims were submitted to Blue Cross electronically. Instead of processing the claims, each time, Blue Cross deleted the patient claims and communicated to Dr. Griffin in a written notice that it did not have the correct national provider identification number (NPI) or that some other provider information (even though it had been processing claims from her office for nearly nineteen years).

b. *Blue Cross engaged in corporate bullying and retaliation against Dr. Griffin for previous lawsuits.*

Dr. Griffin has a long history of litigation against Blue Cross and/or its affiliated plan administrators. Even so, that did not give it the right to breach its fiduciary obligation to process patient claims. As such, Dr. Griffin filed the lawsuits against all the parties involved and demanded that Blue Cross be removed from the Blue Card program as a claims vendor and/or that an in-house claims agent be appointed to oversee that her claims are properly handled. However, these requests did not pan out in the District Court.

STATEMENT OF FACTS

c. During the legal proceedings, the Respondents did not attempt to resolve the claims issue. In fact, there was hardly any communication between Dr. Griffin and the Respondents.

It appears that Respondents communicated amongst themselves but did not engage with Dr. Griffin about the issues laid out in the complaint over the twelve months that the case was on the docket. All Respondents played tag-a-long with Blue Cross and acted like it was not an issue that its claims vendor violated its contractual obligation to process the claims. During the legal proceedings, not one of the Respondents attempted to remedy the situation.

STATEMENT OF FACTS

d. *The district court grants Respondents' Motion to Dismiss and Motion for Summary Judgment for lack of standing and ERISA pre-emption.*

The court relied heavily on the published opinions by the 11th Circuit "in hopes of resolving this recurring litigation." *Griffin v. Coca-Cola Refreshments USA, Inc.*, 989 F.3d 923, 927 (11th Cir. 2021) and its reliance that *Physicians Multispecialty Group* implicitly recognizes that ERISA preempts state laws mandating the assignability of benefits to providers that these plans furnish. (See *Physicians Multispecialty Grp. v. Health Care Plan of Horton Homes, Inc.*, 371 F.3d 1291 (11th Cir. 2004)

Dr. Griffin countered the two Eleventh Circuit opinions with evidence that those opinions had been hijacked by the United States Supreme Court in *Rutledge*. See *Rutledge v. Pharm. Care Mgmt. Ass'n*, 141 S. Ct. at 480 (2020). The instructive authority in *Rutledge* affirms that the Georgia's assignment of benefit statute is not pre-empted by ERISA, if the law did not require plan administrators to structure their benefits in any particular manner. It does not appear that a provider assignment would place any greater burden on the plans than it would the original assignor, especially while those plans are primarily used to furnish the same provider with the assignment. However, the District Court disagreed.

REASONS FOR GRANTING THE PETITION

- I. *Georgia's provider assignment of benefit law is saved from ERISA pre-emption and the Eleventh Circuit has not provided Dr. Griffin the legal rights that she is entitled in similar cases.*

Even though the US Supreme Court has repeatedly held that state laws mandating insurance contract terms are saved from preemption under § 1144(b)(2)(A), Dr. Griffin is consistently having problems getting the Eleventh Circuit to comply with Supreme Court precedent. See, e.g., *Metropolitan Life*, 471 U.S., at 758.

More than 37 years ago, *Metropolitan* determined that state insurance laws are not pre-empted by ERISA. Even so, the Eleventh Circuit has “implicitly recognized” that ERISA preempts any state law that would mandate assignability of benefits to a healthcare provider. *Griffin v. Verizon Commc'n's, Inc.*, 157 F. Supp.3d 1306, 1310 (N.D. Ga. 2015), aff'd, 641 F. App'x 869 (11th Cir. 2016) (“Even if O.C.G.A. § 33-24-54 could be read to mandate the recognition of assignments, *Physicians Multispecialty Group* implicitly recognized ERISA preemption of any such state law.”). Also see *Griffin v. Coca-Cola Refreshments USA, Inc.*, 989 F.3d 923, 927 (11th Cir. 2021)

REASONS FOR GRANTING THE PETITION

II. Petitioner lacks an adequate alternative to challenge the District Courts Order.

Recently, the US Supreme Court has explicitly held that "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." See *Rutledge v. Pharmaceutical Care Management Ass'n*, 141 S.Ct. 474 (2020). However, here, the District, relying on *Physicians Multispecialty Grp.*, does not agree with the US Supreme Court instructive authority in *Rutledge*. Yet, other District Courts and Supreme Courts have affirmed and applied *Rutledge* to both state medical practice law and state rate-regulations (See³ *Knolmayer v. McCollum*, No. S-17792 (Alaska Nov. 18, 2022); *Emergency Servs. of Okla., PC v. Aetna Health, Inc.* 556 F. Supp. 3d 1259, 1262 (W.D. Okla. 2021)). Unlike other courts, this reiterates that both federal District Courts and Court of Appeals in Georgia do not make decisions based upon US Supreme Court precedent. Hence, the pattern affirms that there is no alternative for Dr. Griffin.

³ *Knolmayer v. McCollum*, No. S-17792 (Alaska Nov. 18, 2022) involved a medical malpractice statute/Alaska Statute 09.55.548(b); *Emergency Servs. of Okla., PC v. Aetna Health, Inc.* 556 F. Supp. 3d 1259, 1262 (W.D. Okla. 2021) involved state payment regulations/Okla. Stat. tit. 36, § 1219; Okla. Stat. tit. 36, § 6571; and Okla. Admin. Code 365:40-5-120 *et seq.*

REASONS FOR GRANTING THE PETITION

III. The circumstances warrant granting the petition.

This Court's intervention is necessary to halt the routine destruction of provider rights provided under Georgia law, ERISA, and U.S Supreme Court law. This Court should exercise its discretion to grant the requested writ with an instant reversal. The court records speak for itself.

11.
CONCLUSION

For the reasons set forth above, the
PETITION FOR WRIT OF CERTIORARI
should be granted.

Respectfully Submitted,

W.A.G. 12/30/2022

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