

No.

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

W. A. GRIFFIN, M.D.
Petitioner,

v.

**VERIZON COMMUNICATIONS INC.;
ANTHEM INSURANCE COMPANIES, INC.**
Respondents,

**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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RECEIVED

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**OFFICE OF THE CLERK
SUPREME COURT, U.S.**

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 District Court found no discrimination under Section 1557 of the Affordable Care Act when the plan administrators 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 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.

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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.¹

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

¹ 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.

OPINION BELOW

☒ For cases from **federal courts**:

The opinion of the United States district court appears at

Appendix A to the petition and is

☐ reported at____; or, ☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

2.

JURISDICTION

[**X**] For cases pending in the United States court of appeals:

The date on which the United States Court of Appeals received the appellant brief was December 18, 2017.

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

[] 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

4.

**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 (11th Cir. 2016)²

²Anthem 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 11th 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.³ The only difference was that the other providers sued with derivative standing as assignees under the plan.

³Cohen 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 goggle 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.⁴

⁴ 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. IN ORDER TO PROVIDE CLEAR EXAMPLES OF GUIDANCE FOR LOWER COURTS, THE SUPREME COURT SHOULD HEAR THIS EXCEPTIONALLY UNIQUE CASE THAT PRESENTS AN ISSUE OF LAW THAT HAS NEVER REACHED THE SUPREME COURT OR CIRCUIT COURTS

The Court should grant the Petition in order to set precedent for new federal law. In *Callum v. CVS Health Corp.*, a district court correctly held that CVS, a pharmacy that receives federal financial assistance was liable under Section 1557. Here, this case is unique in that it highlights the liability of self-funded welfare benefit plans sponsored by employer groups. *Callum v. CVS Health Corp.*, No. 4:14-cv-3481, 2015 WL 5782077 (D.S.C. Sept. 29, 2015)

9.

REASONS FOR GRANTING THE PETITION

Here, court records show evidence that Dr. Griffin was not afforded the same rights as white, male doctors under the same policy. This exact scenario is precisely what those Section 1557 anti-discrimination provisions are supposed to protect.

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. Unfortunately, Petitioner has already begun litigation against mostly African American patient defendants in Georgia.

10.
CONCLUSION

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

Respectfully Submitted,

 1/5/2018

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