

IN THE SUPREME COURT OF THE UNITED STATES

No. 18-540

LESLIE RUTLEDGE, ATTORNEY GENERAL OF ARKANSAS, PETITIONER

v.

PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae supporting petitioner and requests that the United States be allowed ten minutes of argument time. Petitioner has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

The question presented in this case is whether the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 et seq., preempts an Arkansas statute that regulates the rates at

which pharmacy benefits managers (PBMs) reimburse pharmacies for prescription drugs. The court of appeals held that ERISA preempts the Arkansas statute as applied to PBMs that provide services to plans covered by ERISA. Pet. App. 5a-7a.

The United States has a substantial interest in the resolution of the question presented. The Secretary of Labor has primary authority for administering ERISA. 29 U.S.C. 1002(13), 1132-1135. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case. The United States has also filed a brief as amicus curiae at the merits stage of this case. That brief, supporting petitioner, contends that the court of appeals erred in holding that ERISA preempts the application of the Arkansas statute to PBMs that provide services to ERISA plans.

The United States has previously presented oral argument as amicus curiae in cases concerning the scope of ERISA preemption. See, e.g., Gobeille v. Liberty Mut. Ins. Co., 136 S. Ct. 936 (2016); De Buono v. NYSA-ILA Med. & Clinical Servs. Fund, 520 U.S. 806 (1997); California Div. of Labor Standards Enforcement v. Dillingham Constr., N. A., Inc., 519 U.S. 316 (1997); New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645 (1995); Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990); FMC Corp. v. Holliday, 498 U.S. 52 (1990). The United States' participation in oral argument will provide the Court with the federal perspective in this case. We therefore

believe that division of argument time will materially assist the Court in its consideration of the case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

MARCH 2020