ERISA and Federalism:

Limits on State and Local Health Reform

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Introduction

- ERISA challenges to state and local health reforms
- The challenge to the San Francisco ordinance now before the US Supreme Court
- ERISA preemption doctrine as a “health policy” statute
- The policy tools local and state officials can use depends upon the particular “institutional context”
The Institutional Context

- The politics of “pay or play” laws
- Walmart® as the “bad actor” in this narrative
- The Maryland Fair Share Law
- The Suffolk County Ordinance
The Institutional Context

- San Francisco obligation to pay for indigent care

- The Health Access Plan (HAP) based on the “Medical Home Model” for the uninsured and underinsured

- Financing of HAP through enrollee fees and general tax revenues

- An additional employer payroll tax based on health benefit expenditures
The Institutional Context

- Employee “benefits”
- Employer obligation to notify employee
- Employer reporting requirements
- Employers with ERISA plans
ERISA as an “Institutional Experiment”

• Is there a conflict between the “circuits?”

• What is the purpose of ERISA as “health policy”?

• Are local or state employer/employee “market” conditions relevant to ERISA preemption?

• Why aren’t Walmart® or the large retailers involved in the San Francisco litigation?
Policy Choices of Public Actors

- Employers have been key players in shaping our financing and organization of health care.

- America stands out as an anomaly in its method of governing the health system.

- ERISA preemption is simply one of many attempts to build a governance process for the health system.

- The San Francisco ordinance may not be a model for other communities.
Policy Choices of Public Actors

• The US Supreme Court as an “institutional actor”

• Whatever the shape of federal reform, local communities will face unique health policy issues

• The changing face of the politics of health policy

• Where is Walmart® in the current debate?