

In *Retail Industry Leaders Ass'n v. Fielder*, No. 06-1840, 2007 U.S. App. LEXIS (Jan. 17, 2006), the Fourth Circuit held that Maryland's Fair Share Health Care Fund Act (Fair Share Act) was preempted by ERISA.

This Act requires employers with 10,000 or more Maryland workers to spend a percentage of their total payrolls on employees' health insurance costs, or pay the state the amount their spending falls short. The bill was crafted to cover only Wal-Mart, based on the perception that Wal-Mart provided such sub-standard benefits that many employees were required to depend on SCHIP and Medicaid.

The Plaintiff argued that the law was preempted by the Employment Retirement Income Security Act of 1974 (ERISA) and that it violated the Equal Protection Clause of the 14th Amendment. ERISA expressly preempts any state law that "relates to" any employee benefit plan covered by ERISA. The Court held that the Fair Share Act was sufficiently connected to ERISA plans to fall under the preemption provision. The Fair Share Act essentially required employers to structure their ERISA healthcare benefit plans to meet the minimum spending threshold, the Court reasoned, thus falling squarely under the prohibition of state mandates on how employers structure ERISA plans.

The Court did not consider the Equal Protection claim.

The majority also found that the plaintiff had standing, as Wal-Mart is a member of the association and injury to Wal-Mart was "certainly impending."

The dissenting judge would have held that the Fair Share Act actually forces employers to make a choice that impacts an employee benefit plan - the employer could choose to pay the state.