Testimony of

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Statement of Andy R. Anderson
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The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region.
More than 96 percent of the Chamber's members are small businesses with 100 or fewer employees, 70 percent of which have 10 or fewer employees. Yet, virtually all of the nation's largest companies are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.
Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business --manufacturing, retailing, services, construction, wholesaling, and finance --is represented. Also, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity, not a threat. In addition to the
U.S. Chamber of Commerce's 105 American Chambers of Commerce abroad, an increasing number of members are engaged in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.
Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Chairman Leahy, Ranking Member Specter and Members of the Committee, I am pleased and honored to be here today. I am here to testify on behalf of the United States Chamber of Commerce concerning recent Supreme Court decisions under the Employee Retirement Income Security Act of 1974 (ERISA).

The maintenance of the voluntary, employer-provided system under ERISA is of critical concern to the Chamber and its members. As such, the Chamber is on the Steering Committee of the National Coalition on Benefits (NCB). The NCB is dedicated to working with Congress to maintain employers' ability to provide uniform health and retirement benefits to employees and retirees across state and local lines, and to ensure that federal health reform initiatives preserve Employee Retirement Income Security Act (ERISA) benefits.
Introduction

My name is Andy R. Anderson and I am Of Counsel at the law firm of Morgan, Lewis & Bockius LLP. My practice focuses on advising single-employer and multi-employer benefit plans on employee benefits matters and specifically on their health benefit programs. I have worked in the area of employee benefits since 1984. I chair my firm's Health and Welfare practice and I participate on the Chamber's Employee Benefits Committee.

ERISA Uniformity and Limited Recovery Is Intended and Necessary

All employers (except for certain religious and government organizations) who voluntarily choose to offer retirement or health benefits are subject to the Employee Retirement Income Security Act of 1974, which is commonly known as ERISA.

ERISA was the subject of a long and detailed legislative process. Included among the myriad provisions of ERISA are two concepts that cut to the heart of today's hearing. These concepts work in unison to encourage employers to voluntarily extend health benefits to their employees with a high degree of uniformity and without unnecessary exposure to liability.
These provisions are ERISA Section 514, which generally preempts state jurisdiction over employer-provided health benefits, and ERISA Section 502 that outlines the rules associated with the civil enforcement of ERISA.

ERISA Section 514 states that, with a few exceptions, ERISA overrides any and all state laws that relate to employee benefits plans. Particularly as applied to employers with self-insured benefits, Section 514 allows employers to design uniform health plans that treat all of their employees the same regardless of where the employees may happen to live or work. The ability to maintain a uniform benefit plan, particularly for large employers who have operations in many different states, allows employers to reap the design cost savings associated with large covered groups and the administrative costs savings created by streamlined and uniform plan rules. These cost savings, in turn, make health coverage more affordable for employees who pay a portion of the cost of their health coverage and for former employees, surviving spouses, and older children who pay the full cost of continued health coverage under the terms of COBRA.

ERISA Section 502 states, among other things, that a participant may bring a civil action in federal court to recover benefits due under the terms of a health plan or to enforce rights under the terms of the plan. This right is the exclusive remedy for the wrongful denial of plan benefits and is only available to a participant after exhausting the ERISA claims and appeals process that is comprehensively detailed in ERISA Section 503 and associated regulations.

The ERISA provisions found in these Sections have a long and detailed legislative, regulatory, and judicial history that extends all the way back to the initial legislative proposals that eventually became ERISA. It was no accident that resulted in these provisions, but rather a careful balance of competing interests and incentives to encourage employers to voluntarily offer retirement and health benefits.

Our judiciary, including the Supreme Court, has heard many cases related to ERISA uniformity and remedies. While sometimes chafing under the statutory provisions of ERISA or bemoaning yet another ERISA case on their docket, our judiciary has usually reached the correct decision regarding both the specific facts of a given case and the broader principles and trade-offs embodied in ERISA. These decisions should be respected and upheld.

Changes To ERISA Will Decrease Employer-Provided Voluntary Health Care

Employers engage in a complicated calculus when they determine whether or not to offer health benefits. Included in this calculus is whether they retain control over the fundamental provisions of their plans, such as eligibility and which benefits are covered under their plans. Employers are also concerned about the risk of liability associated with offering a health plan and the judicial forums and rules applicable to the plan.

Of the 160 million Americans who have employer provided health coverage, 132 million receive health benefits that are subject to the provisions of ERISA. The large numbers of Americans covered by ERISA-regulated health plans shows how successful ERISA has been at encouraging employers to voluntarily offer health benefits.

This success is in large part due to ERISA sections 514 and 502, since these rules ensure that employers (and particularly employers who self-insure their health benefits) are able to provide uniform medical plans in every state in which they operate, that disputes associated with ERISA-governed health plans are heard in federal court, and that successful litigants generally receive the benefits owed to them under the terms of their employer's plans.

I firmly believe that interposing the determination of a state legislature--or a state judge-¬regarding the eligibility and benefit rules for an employer's health plan will begin to make this voluntary program much less appealing and far more complicated for employers. Further, if employers have to begin weighing the increased risk of broader participant recoveries, we will quickly see a number of employers stop providing health coverage to their employees or merely reimburse employees for individually purchased coverage. As a result we will wind up with fewer Americans

who are covered under traditional employer provided health plans.
While a few will benefit, many will lose.

We are already witnessing the reduced retirement income security associated with the legislative, regulatory and judicial environment surrounding defined benefit plans. This lesson is reason enough for Congress to build on the strengths of employer-provided health care, maintain ERISA uniformity and recovery rules, and encourage--rather than discourage--our system of voluntary employer-sponsored health plans.

Mr. Chairman and members of the Committee, thank you for the opportunity to testify today and for your attention to this very important issue. I would be happy to answer any questions that you might have during the balance of this hearing.