No. 17-1247

IN THE
Supreme Court of the United States

SUN LIFE ASSURANCE COMPANY OF CANADA,
Petitioner,
v.

RICHARD E. JACKSON AND SIERRA N. JACKSON, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE ESTATE OF BRUCE D. JACKSON,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

REPLY BRIEF IN SUPPORT OF CERTIORARI

JOSHUA BACHRACH
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
Two Commerce Square
2001 Market Street, Ste. 3100
Philadelphia, PA 19103

NEAL KUMAR KATYAL
Counsel of Record
SEAN MAROTTA
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
neal.katyal@hoganlovells.com

Counsel for Petitioner

RULE 29.6 DISCLOSURE STATEMENT

The Rule 29.6 disclosure statement in the petition for a writ of certiorari remains accurate.

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INTRODUCTION

The foundation of ERISA is simple: plans, participants, and beneficiaries must ordinarily be able to determine their rights and obligations from the face of plan records and documents. Exceptions to that bedrock rule are very limited and carefully circumscribed. This case concerns one such exception, 29 U.S.C. § 1056(d)(3)(C), which allows a "qualified" state-court domestic-relations order to alter the beneficiary designated by the plan participant "only" if the order "clearly specifies" certain information.

What it means to "clearly specify" information under Section 1056(d)(3)(C) is therefore critically important to ERISA plan administrators, who must decide whether to honor a claim for plan benefits premised on a state domestic-relations order. Yet the courts of appeals and state high courts have broken into three divergent camps on this important question, demanding varying degrees of compliance with Section 1056(d)(3)(C) before an order qualifies.

Respondent attempts to explain away the split, saying it merely reflects different articulations of the same statutory standard. But Respondent has no answer to the fact that this case would come out the other way in the Second and Tenth Circuits solely because of the Section 1056 test that those circuits apply—the hornbook definition of a split. And Respondent's contrary argument requires the Court to believe that she knows the circuit case law better than the circuit courts themselves, which have expressly and repeatedly disagreed with one another and have noted their disarray.

Finally, the decision below is wrong. The Jackson divorce decree does not designate Respondent as an alternate payee, does not specify—much less clearly specify—Respondent's address, and does not clearly identify the plans to which it applies. In a complex "statutory scheme * * * built around reliance on the face of written plan documents," those deficiencies cannot be written off as technicalities. *Kennedy* v. *Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285, 300-301 (2009) (internal quotation marks omitted). Separately and together, they prevented Sun Life from determining that the decree required Sun Life to pay its policy proceeds to Respondent. Sun Life therefore correctly paid its policy to the benefi-

ciary listed in its plan records, and the Sixth Circuit erred in holding otherwise.

The petition should be granted.

ARGUMENT

I. THE SPLIT IS REAL.

1. As the petition demonstrates, courts have divided into three camps over how precise a domestic-relations order must be to "clearly specif[y]" the information required to transform it into a qualified domestic-relations order that can trump a plan participant's beneficiary designation. *See* Pet. 8-11. Some hold that an order is sufficient if the information in the order or otherwise known to the plan satisfies Section 1056(d)(3)(C)'s purposes. *E.g. Metropolitan Life Ins. Co.* v. *Wheaton*, 42 F.3d 1080, 1085 (7th Cir. 1994). Others hold that a domestic-relations order must strictly comply with Section 1056(d)(3)(C) to qualify. *Yale-New Haven Hosp.* v. *Nicholls*, 788 F.3d 79, 85 (2d Cir. 2015). And the Sixth Circuit below adopted a "clearly specifies" test that rejected both the purpose-driven and strict-compliance approaches. Pet. App. 7.

Respondent nonetheless contends that there is no split because all courts purport to apply the "clearly specifies" standard found in Section 1056(d)(3)(C)'s text. Br. in Opp. 8. But that simply repeats the statutory language; the split is not about the *label* for the standard. Rather, the split is about how courts *give content to* the "clearly specifies" standard. And this Court routinely grants certiorari to resolve courts' divergent tests for applying a fixed statutory standard. *See*, *e.g.*, *Star Athletica, LLC* v. *Varsity Brands, Inc.*, 137 S. Ct. 1002, 1007 (2017) (granting certiorari "to resolve widespread disagreement over

the proper test for implementing § 101"); *Bruce* v. *Samuels*, 136 S. Ct. 627, 629 (2016) (granting certiorari to determine "which of * * * two approaches [in the lower-court cases] § 1915(b)(2) orders"); *Jones* v. *Harris Assocs., L.P.*, 559 U.S. 335, 343 (2010) (granting certiorari "to resolve a split among the Courts of Appeals over the proper standard under § 36(b)"). It should do so again here.

2. Respondent dismisses the divergence in lower courts in applying Section 1056(d)(3)(C) as merely the "varying" application of a single legal standard "to varying circumstances" that "inevitably leads to varying results." Br. in Opp. 8. Not so.

"A genuine conflict * * * arises when it may be said with confidence that two courts have decided the same legal issue in opposite ways, based on their holdings in different cases with very similar facts." Stephen M. Shapiro, *et al.*, *Supreme Court Practice* § 4.3, p. 424 (10th ed. 2013). Here, the Second Circuit would reject the Sixth Circuit's holding that the Jackson divorce decree's reference to "all employer-provided life insurance" sufficiently specified the plans to which it applied. *See* Pet. 11 (citing *Yale-New Haven Hosp.*, 788 F.3d at 83-84). And the Second and Tenth Circuits would both reject the Sixth Circuit's holding that the Jackson divorce decree can be a qualified order without setting forth Respondent's address. *See* Pet. 12 (citing *Hawkins* v. *C.I.R.*, 86 F.3d 982, 993 (10th Cir. 1996), and *Yale-New Haven Hosp.*, 788 F.3d at 85). That outcome-determinative disagreement warrants this Court's review.

3. Respondent does no better in attempting to harmonize the various courts' interpretations of Section 1056(d)(3)(C). Respondent throws the North

Dakota Supreme Court overboard, confessing that its purpose-driven approach was "error." Br. in Opp. 14 (discussing *Tolstad* v. *Tolstad*, 527 N.W.2d 668, 673 (N.D. 1995)); *see also* Pet. 9. But *Tolstad* is no outlier. *Cf.* Br. in Opp. 14. The Ninth Circuit, with the largest number of impacted people in the country, relied on *Tolstad* in concluding that it should "liberally interpret[ ] the address requirement for a valid QDRO in light of its purpose" and that the address requirement was satisfied if the alternate payee's address was known to the plan administration or if the alternate payee's address could be located in sources available to the administrator. *Stewart* v. *Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d 1143, 1151 (9th Cir. 2000). *Tolstad*'s concededly erroneous holding is one of the riverheads for the purpose-driven approach to qualified orders.

Respondent also cannot explain away *Stinner* v. *Stinner*, 554 A.2d 45 (Pa. 1989), as addressing a domestic-relations order entered before the REA's passage. Br. in Opp. 9. The Pennsylvania Supreme Court did not mention the supposed difference between pre-1985 and post-1985 orders, and it resolved the case based on legislative history applicable to the current "clearly specifies" standard, not some special pre-1985 carve-out. *See Stinner*, 554 A.2d at 49. That likely explains why other courts have applied *Stinner*'s holding that an alternate payee's address is not always necessary for a domestic-relations order to qualify to post-1985 orders. *See Stewart*, 207 F.3d at 1151; *Smith* v. *Rice*, 139 S.W.3d 539, 543 (Ky. Ct. App. 2004).

Then there are the courts of appeals. Respondent has no real answer for the Second Circuit's decision in *Yale-New Haven Hospital*, saying only that it

applied the "clearly specifies" standard. Br. in Opp. 12. That much is true. But the critical point is that when the Second Circuit applied that standard, it expressly found that the Seventh Circuit's decision in *Wheaton* was "in conflict with the * * * plain meaning" of Section 1056(d)(3)(C) and was "therefore unpersuasive." 788 F.3d at 85 n.3. That is an actual disagreement, not a difference in wording.

The Tenth Circuit also expressly rejected the Seventh Circuit's purpose-focused approach, explaining that "[w]hile we are mindful of the Seventh Circuit's concerns, we do not agree that the QDRO specificity requirements should be construed [as] liberally." *Hawkins*, 86 F.3d at 991. Respondent therefore gets *Hawkins* backwards when she says (Br. in Opp. 10) that it "took account" of Section 1056(d)(3)(C)'s purpose in applying the standard. Although *Hawkins* acknowledged Section 1056(d)(3)(C)'s purpose, it held that allowing purpose to control the statutory analysis "does violence to the plain meaning of the statute." *Id.* at 991-992. To adopt the Seventh Circuit's approach, the Tenth Circuit held, "would contravene the Supreme Court's frequent admonition that courts must not read language out of a statute." *Id.* at 992.

Respondent nonetheless contends that the Seventh Circuit's approach to Section 1056(d)(3)(C) is consistent with its sister circuits', quoting *Wheaton*'s statement that Section 1056(d)(3)(C)'s language is "explicit and emphatic." Br. in Opp. 10 (quoting *Wheaton*, 42 F.3d at 1084). But *Wheaton*'s very next sentence pivots away from the text, emphasizing that "[*t*]*he purpose*" of Section 1056(d)(3)(C) is to "reduce the expense of ERISA plans" by reducing the likelihood that they will pay the incorrect claimant.

42 F.3d at 1084 (emphasis added). The rest of the opinion reflects that focus on purpose, holding that the domestic-relations order at issue qualified because "the plan administrator was not forced to run a significant risk by the failure of the stipulation to specify" information required by Section 1056(d)(3)(C). *Id.* at 1085. That is not *dicta*, especially in the Seventh Circuit, which is emphatic that "the holding of a case includes, besides the facts and outcome, the reasoning essential to that outcome." *Tate* v. *Showboat Marina Casino P'ship*, 431 F.3d 580, 582 (7th Cir. 2005). Respondent's argument that she understands the Seventh Circuit's case law better than its sister circuits fails.

That Respondent must strive so mightily to harmonize the case law—writing off some cases as incorrect but limited and classifying other cases' holdings as *dicta*—is telling. This is not simply different circuits wording the same test in slightly different ways; it is a well-developed, acknowledged, and intractable split. *See* Pet. 11-13. The Court should grant certiorari to resolve it.

II. THE DECISION BELOW IS WRONG AND THE QUESTION PRESENTED IMPORTANT.

1. Split aside, Respondent argues that the decision below was correct. Br. in Opp. 15-17. She is wrong. The Jackson divorce decree fails to satisfy Section 1056(d)(3)(C) in three respects.

First, the divorce decree did not clearly specify that Respondent is an alternate payee. Pet. 15-16. Respondent contends that the decree is sufficient because ERISA directs that a plan pay the beneficiary named in a qualified order. Br. in Opp. 15-16

(citing 29 U.S.C. § 1056(d)(3)(A)). But that begs the question. The question in this case is whether the Jackson divorce decree is a qualified order in the first place. It is not because it does not clearly specify that the plan should pay Respondent directly. *See* Pet. 15-16; *Hamilton*, 433 F.3d at 1097-98.

Second, the Jackson divorce decree did not clearly specify Respondent's address. Pet. 16. Respondent argues that it was enough that the decree incorporated the Jacksons' shared parenting plan and that the parenting plan listed the Jacksons' addresses as Respondent's residential custodians. Br. in Opp. 16. But the problem with the decree is not so much that it cross-references another document, but that it does not give a single address to which Sun Life should mail any proceeds. According to the shared parenting plan, Respondent spends time with *both* her parents. Pet. App. 12. Sun Life therefore could not know from the face of the decree where any payments should be sent.

Third, the Jackson divorce decree did not clearly specify the plans to which it applies. Pet. 16-17. Respondent contends that there was no way other than the phrase "all employer-provided life insurance"—the phrase the decree used—to encompass life insurance both in existence at the time of the decree and life insurance acquired after the decree. Br. in Opp. 16-17. But ERISA does not recognize "employer-provided" life insurance; the statute refers to employer "sponsor[ed]" life insurance. *See* 28 U.S.C. § 1002(16)(B). If the decree referred to "all employer-sponsored life insurance," *that* would have qualified. But as drafted, Sun Life had no way to know whether its policy was within contemplation of the decree as "employer-provided." Again, that is not

an empty technicality; it is the difference between a legal obligation to pay the designated plan beneficiary and the obligation to pay some other person at the risk of litigation. Pet. 13-14. And that is just what happened here. While the Jackson's employer paid for his basic life insurance, he was responsible for the cost of his optional life insurance. *See* Pet. App. 14. Reference to "employer-provided life insurance" does not specify, clearly or otherwise, the plan to which the decree applies. The Court should grant review to correct the Sixth Circuit's erroneous holding.

2. Finally, Respondent does not contest the need for a nationwide standard for when a domestic-relations order "clearly specifies" the information necessary to make it qualified. For good reason. ERISA is a national statute and Sun Life should be able to evaluate whether domestic-relations orders qualify in a uniform manner, no matter where the participant or claimant lives. *See* Pet. 13-14.

Worse still, the circuit split could—depending on where the contestants reside—inflict mutually exclusive liabilities on plan fiduciaries like Sun Life. Suppose Richard Jackson (the beneficiary named in Sun Life's records) lived in New York and Respondent lived in Ohio. Under Second Circuit case law, the Jackson divorce decree would not be a qualified order and the policy proceeds would go to Richard. *See* Pet. 13. But in the Sixth Circuit, under the decision below, the Jackson divorce decree *would* be a qualified order and the policy proceeds would go to Respondent. Pet. App. 14-15. If both Richard and Respondent sued Sun Life in their respective home States, Sun Life would be stuck paying the proceeds

twice because Richard and Respondent would each be entitled to the policy under prevailing circuit law.

To be sure, an interpleader action could perhaps solve some of these inter-circuit-claimant problems. *See* 28 U.S.C. § 1335. But requiring Sun Life to go to court every time it faces some uncertainty as to whether a state-court domestic relations order presented to it is qualified is contrary to what all agree is Section 1056(d)(3)(C)'s purpose: To allow plans to quickly and confidently decide whether a state-court domestic-relations order has ousted the beneficiary chosen by the participant. *See Wheaton*, 42 F.3d at 1084. Review should be granted so that plans and plan administrators can evaluate the qualifications of state domestic-relations under a uniform national standard—one that is clearly specified by this Court. *Cf.* Pet. App. 11.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSHUA BACHRACH
WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP
Two Commerce Square
2001 Market Street, Ste. 3100
Philadelphia, PA 19103

NEAL KUMAR KATYAL
Counsel of Record
SEAN MAROTTA
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5600
neal.katyal@hoganlovells.com

Counsel for Petitioner

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