No. 20-28

IN THE

Supreme Court of the United States

PRICEWATERHOUSECOOPERS LLP, ET AL., *Petitioners,*

v.

TIMOTHY D. LAURENT, ET AL., *Respondents.*

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

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BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES, THE AMERICAN BENEFITS COUNCIL, AND THE BUSINESS ROUNDTABLE AS AMICI CURIAE SUPPORTING PETITIONERS

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INTEREST OF THE *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America (Chamber) is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. Many of the Chamber's members maintain, administer, or provide services to employee-benefit plans governed by ERISA.

The American Benefits Council (Council) is a national non-profit organization dedicated to protecting and fostering privately sponsored employee-benefit plans. Its approximately 440 members are primarily large, multistate employers that provide employee benefits to active and retired workers and their families. The Council's members also include organizations that provide employee-benefit services to employers of all sizes. Collectively, the Council's members either directly sponsor or provide services to retirement and health plans covering virtually all Americans who participate in employer-sponsored benefit programs.

The Business Roundtable (BRT) is an association of chief executive officers of leading U.S. companies working to promote a thriving U.S. economy and expanded opportunity for all Americans. BRT members lead companies that together have more than $7 trillion in annual revenues and employ nearly 16 million employ-

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[1] No counsel for a party authored any part of this brief, and no person other than *amici*, their members, or their counsel made a monetary contribution intended to fund its preparation or submission. All parties have consented to the filing of this brief.

ees. BRT was founded on the belief that businesses should play an active and effective role in the formation of public policy.

Amici represent the interests of their members in matters before the courts, Congress, and the Executive Branch. To that end, they regularly participate as *amici curiae* in cases concerning ERISA's remedial provisions. *E.g.*, *Thole v. U.S. Bank, N.A.*, 140 S. Ct. 1615 (2020); *Montanile v. Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 136 S. Ct. 651 (2016); *US Airways, Inc. v. McCutchen*, 569 U.S. 88 (2013).

Amici's members include plan sponsors and fiduciaries that benefit from Congress's decision to create, through ERISA, a *uniform*, nationwide employee-benefit system that "assur[es] a *predictable* set of liabilities" that is not "so complex that administrative costs, or litigation expenses" discourage employers from sponsoring benefit plans or individuals from serving as fiduciaries. *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (emphasis added) (citations omitted). Plan sponsors and plan fiduciaries alike, including *amici*'s members, have a strong interest in ensuring that courts adhere to the remedial scheme Congress put in place.

That promise of uniformity and predictability is threatened when courts of appeals rewrite ERISA's "carefully crafted and detailed" remedial scheme in the manner the Second Circuit did here. *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 254 (1993). As this Court has instructed, courts should not "tamper with" that scheme "by extending remedies not specifically authorized by [ERISA's] text." *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002) (quoting *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147

(1985)). Because the Second Circuit did precisely that—departing from the precedents of this Court and opening up several splits with other courts of appeals—this Court's review is warranted.

SUMMARY OF ARGUMENT

ERISA created a "comprehensive," "reticulated," and "enormously complex" regulatory regime governing employee-benefit plans. *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 251, 262 (1993) (citation omitted). To encourage employers to offer these plans, Congress sought to create a "predictable" and "uniform" remedial scheme, *Conkright v. Frommert*, 559 U.S. 506, 517 (2010) (citation omitted), so that plan sponsors could anticipate future liability risks in determining whether to establish a retirement plan and what benefits to offer. As adopted and through later amendments, ERISA's carefully crafted remedial scheme consists of 11 distinct remedial provisions, each of which authorizes specific forms of relief that can be invoked by specific parties to remedy specific wrongs. *See* 29 U.S.C. § 1132(a).

The Second Circuit's decision upends this meticulously designed framework by holding that a court can order a plan sponsor to pay purported benefit-recovery damages—recovery by former participants for benefits that were never promised to them and that they never expected to receive—solely because the plan is found to be inconsistent with one of the hundreds of requirements governing ERISA plans. The court acknowledged that none of § 1132(a)'s 11 distinct remedial provisions authorizes a monetary recovery under these circumstances, but it awarded that relief anyway by *combining* two of those distinct remedies. Relying on its power to award "equitable relief," the court "re-

formed" the plan to comply with a no-longer-applicable IRS notice, and it then invoked a separate remedial provision to "enforce" the re-written plan retroactively.

The Second Circuit's decision distorts ERISA's remedial framework and creates uncertainty for employers and plan sponsors. By combining two of § 1132(a)'s distinct remedies to essentially create a third that Congress did not provide (retroactive damages for benefits the plan sponsor had never promised), the Second Circuit's decision circumvents the limitations that apply to each of the authorized remedies. It also exposes plan sponsors to the prospect of millions in purported benefit-recovery damages whenever the plan is found to not conform to one of the hundreds of statutory and regulatory provisions governing ERISA plans. And plan sponsors now face this potential liability even if the plan participants received all the benefits they expected and were promised under the plan's terms, and even if the deficiency in the plan document pertains to an entirely voluntary benefit that the plan sponsor was never required to offer in the first place. The threat of such unpredictable liability could significantly affect the nature of retirement benefits employers decide to offer, or their decision to offer retirement plans at all—ultimately harming plan participants and beneficiaries.

These harmful consequences are compounded by the Second Circuit's expansion of the equitable relief that courts can order under ERISA. Defying this Court's settled precedent, the Second Circuit held that it had authority under § 1132(a) to order the equitable remedy of "reformation" even if none of the circumstances that traditionally gave rise to that remedy was present here. That new rule disrupts the settled ex-

pectations of plan sponsors that drafted plan terms in reliance on the clear and uniform method of discerning the scope of ERISA's equitable remedies that this Court's cases have established. It could also carry over to the dozens of federal statutes that likewise authorize federal courts to award equitable relief.

This Court's intervention is needed to prevent the Second Circuit's decision from sowing confusion and disruption nationwide. The Second Circuit has long had a significant influence on ERISA litigation because it is the home to the epicenter of the financial-services industry. That influence is now likely to increase with the court's expansion of the remedies available under ERISA. ERISA's venue provision allows plan participants to bring suit anywhere the plan is administered, and many of the largest plan sponsors administer their plans within the Second Circuit. Plaintiffs will thus have a strong incentive to bring suit in that circuit to take advantage of the new damages remedy and equitable relief the Second Circuit's decision has created. Thus, if allowed to stand, the Second Circuit's misguided expansion of ERISA's remedies risks being repeated in numerous cases going forward—disrupting settled expectations and opening the door to new liability for plan sponsors. This Court's review is needed *now* to prevent these harmful consequences from materializing.

ARGUMENT

I. The Second Circuit's Mixing-and-Matching Of Authorized Remedies To Create A New, Unauthorized Remedy Creates A Cloud of Uncertainty For Plan Sponsors.

A. ERISA established a uniform framework for regulating private employee benefits—"the product of a decade of congressional study of the Nation's private employee benefit system." *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002). But under that framework, offering retirement benefits remained entirely voluntary. In order to create an effective regime, ERISA was designed to strike a "'careful balance[]' between ensuring fair and prompt enforcement of rights under a plan" and "encourag[ing] . . . the creation of such plans." *Conkright*, 559 U.S. at 517 (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 215 (2004)). Congress thus sought to guarantee "that employees would receive the benefits they had earned," *id.* at 516, while at the same time avoiding a "system that is so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [employee-benefit] plans in the first place," *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996).

ERISA's design reflects the understanding that a clear and predictable remedial structure is essential to achieving the law's objective. After all, ERISA does not "require[] employers to establish employee benefit plans," nor does it "mandate what kind of benefits employers must provide if they choose to have . . . a plan." *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). Employers enjoy substantial discretion in selecting what benefits to include in their plans, and how generous those benefits will be. Plan sponsors, however,

cannot meaningfully decide whether to establish a voluntary retirement plan or what benefits to offer if they cannot anticipate any future liability risks associated with those decisions.

ERISA answered that call, setting out a "carefully crafted and detailed" remedial scheme, *Mertens*, 508 U.S. at 254, that is designed to "assur[e] a *predictable* set of liabilities" and a "uniform regime of ultimate remedial orders and awards." *Conkright*, 559 U.S. at 517 (emphasis added) (quoting *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002)). ERISA's remedial provision sets out 11 distinct subparagraphs that provide for specific forms of relief that can be invoked by specific parties to remedy specific wrongs. *See* 29 U.S.C. § 1132(a). Two of those remedies, which can be pursued by plan participants or their beneficiaries, are relevant here.

First, ERISA allows a plan participant to "recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." *Id.* § 1132(a)(1)(B). This remedy does not "authorize[] a court to alter" the terms of a plan, but merely enables a court to *enforce* the plan terms "as written." *CIGNA Corp. v. Amara*, 563 U.S. 421, 436-437 (2011) ("The statutory language speaks of 'enforc[ing]' the 'terms of the plan,' not of changing them." (citation omitted)). This "focus on the written terms of the plan is the linchpin" of ERISA's carefully crafted framework. *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 108 (2013).

Second, ERISA allows plan participants "to obtain other appropriate equitable relief (i) to redress [violations of ERISA or plan terms] or (ii) to enforce any pro-

visions of [ERISA] or the terms of the plan." 29 U.S.C. § 1132(a)(3)(B). This statutory provision does not authorize a court to order any type of relief that could theoretically be characterized as "equitable," but only "'those categories of relief' that, traditionally speaking . . . 'were typically available in equity.'" *Amara*, 563 U.S. at 439 (quoting *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 361 (2006)). And, as this Court has made clear, "compensatory damages" are "legal, not equitable, in nature" and are thus not "equitable relief" under ERISA. *Id.* (citation omitted).

B. The Second Circuit's decision disrupts this "carefully crafted and detailed" remedial scheme, *Mertens*, 508 U.S. at 254—expanding the scope of plan-sponsor liability and undermining the predictability that is essential to ERISA's successful operation.

The Second Circuit recognized that § 1132(a)(1) authorizes courts to enforce plans only "as written," and that the "equitable relief" available under § 1132(a)(3)(B) does not encompass "money damage awards." Pet. App. 12a, 14a, 16a. Nonetheless, the court held that it could use those provisions to impose monetary damages recoverable by former plan participants by going through two steps instead of one: first, using its power under 29 U.S.C. § 1132(a)(3) to award "equitable relief" to "reform" a no-longer-existing version of the plan to align with an interpretation of ERISA that Congress has abrogated,[2] and then invok-

[2] Plaintiffs alleged that Defendants violated an IRS notice—interpreting provisions of the Internal Revenue Code and tax regulations promulgated by the Department of Treasury—that required employers to provide "whipsaw" payments to employees taking a lump-sum retirement payment. *See* IRS Notice 96-8, 1996 WL 17901 (Feb. 5, 1996); Pet. 6-8. Congress repudiated that

ing § 1132(a)(1) to "enforce" that rewritten plan *retroactively* and sanction Defendants for "violat[ing]" the terms of the Plan as "reformed" by the court. The upshot is that the Second Circuit cobbled together two separate remedies to create a new form of monetary relief that would not be available under either provision independently. Indeed, each step (rewriting the plan and imposing retroactive monetary relief) is contrary to the structure and purpose of ERISA's remedial regime, and the combination creates a new remedy nowhere to be found in ERISA's detailed remedial provisions. Pet. 21-23; pp. 16-21, *infra*. It also creates enormous uncertainty for plan sponsors and administrators going forward—exactly the consequence ERISA was designed to avoid.

Before the Second Circuit's decision, plan sponsors knew that participants seeking to recover under § 1132(a)(1)(B) would be able to recover only benefits that had been promised to them under their plans but that they did not receive. *See US Airways, Inc. v. McCutchen*, 569 U.S. 88, 100-101 (2013) ("The statutory scheme . . . 'is built around reliance on the face of written plan documents.'" (quoting *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 83 (1995))). Now, under the Second Circuit's mix-and-match approach, plan sponsors may be liable for millions in damages—even if they provided participants with all the benefits participants expected and were promised under the plan's terms—in the event the plan is later judicially reformed in ways that the sponsors had not intended or anticipated. And that remains true, even if (as here) the plan sponsor endeavored to comply with the myri-

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interpretation in 2006. *See* Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780, § 701(a)(2).

ad applicable statutory and regulatory provisions, and it undisputedly complied with the plan's terms. *See* Pet. App. 39a.

The potential liability for plan sponsors could be enormous. ERISA and its implementing regulations span more than 800 pages and include thousands of detailed requirements, including reporting and disclosure requirements, participation and vesting rules, provisions governing default investment options, and rules governing participant loans, among myriad others. *See* 29 U.S.C. Chapter 18; 29 C.F.R. Chapter XXV. Further, ERISA plans must abide by guidance documents and opinion letters from the Department of Labor and satisfy a plethora of requirements found in the Internal Revenue Code, regulations promulgated by the Department of Treasury, and notices issued by the Internal Revenue Service. Given this complex web of statutory and regulatory requirements, it "should come as no surprise" that plan sponsors occasionally get tripped up and make a good-faith error in crafting their plan. *Conkright*, 559 U.S. at 509 (quoting *Mertens*, 508 U.S. at 262). And under the Second Circuit's rule, plan sponsors are now exposed to significant damages for every one of those errors, based on a court's hindsight judgment about how the plan could have or should have been drafted.

This case is a perfect illustration. Instead of seeking only prospective injunctive relief, Plaintiffs seek to recover up to *$2 billion* from Defendants, Pet. 3, 34, even though Plaintiffs do not dispute either that Defendants followed the terms of the plan or that they believed the Plan complied with applicable legal requirements. Pet. App. 15a ("Plaintiffs do not allege

mistake, fraud, or inequitable conduct here." (quoting Pet. App. 39a)).

The threat of such eye-popping liability could have significant consequences to the detriment of plan participants. If participants can recover "benefits" under § 1132(a)(1)(B) that they were never promised and never expected simply because of a plan sponsor's error in implementing one of the thousands of statutory and regulatory requirements that apply to plans, it will surely affect the level of benefits that they voluntarily decide to offer. For example, plan sponsors could reduce or eliminate their matching contributions, or change the plan's eligibility rules to reduce the number of employees who can participate. Or take this case as an example: PwC was never even *required* to offer participants a lump-sum payment option. Had they known that an error in the plan-mandated methodology for calculating lump-sum payments could lead to billions in damages, they easily may have made a different decision and required participants to defer receiving their accrued benefits invested in the Plan when they left PwC—a decision that would have afforded *less* financial flexibility to employees leaving the company. Thus, the Second Circuit's rewriting of ERISA's remedial options may well redound to the detriment of plan participants.

II. The Second Circuit's Expansion Of The Equitable Relief Available Under ERISA Exacerbates The Confusion Its Decision Creates.

The Second Circuit's novel interpretation of the "equitable relief" available under ERISA will only compound the uncertainty and harmful consequences like-

ly to flow from its mix-and-match-to-create-new-remedies approach to ERISA's remedial scheme.

As noted (pp. 7-8, *supra*), ERISA allows plan participants to seek to enjoin a practice that violates ERISA or the plan document or to obtain "other appropriate equitable relief." 29 U.S.C. § 1132(a)(3)(B). This Court has made clear that § 1132(a)(3)(B) does *not* allow courts to award every form of relief that could theoretically be labeled "equitable"; it instead authorizes only the specific and narrower "categories of relief that, traditionally speaking, . . . were *typically* available in equity." *Amara*, 563 U.S. at 439 (quotation marks omitted).

The Second Circuit held that the authority to award "equitable relief" under § 1132(a)(3)(B) empowered it to reform—*i.e.*, rewrite—the plan so that it complied with the lump-sum-calculation requirement that some courts had read into ERISA before Congress amended the statute in 2006. Pet. App. 15a-17a. Reformation is undoubtedly an equitable remedy, *Amara*, 563 U.S. at 440-441, but it "is not available for the purpose of making a new and different contract for the parties." 66 Am. Jur. 2d Reformation of Instruments § 1; *see also* Elias Merwin, *The Principles of Equity and Equity Pleading* 258 ¶ 477, at 258 (H.C. Merwin, ed., 1895) ("[E]quity will never make a new contract for the parties."); *D.H. Overmyer Co. v. Brown*, 439 F.2d 926, 929 (10th Cir. 1971) ("Equity cannot make a new contract for the parties but must enforce the contract according to its terms or not at all . . . ." (citation omitted)). Rather, reformation is available where the parties have reached an agreement, but their "true intentions have not been expressed" in the writing "due to a 'mutual mistake'" or a "unilateral mistake of one party induced

by the fraud of the other." 66 Am. Jur. 2d Reformation of Instruments § 1; Pet. 27-29 (collecting sources); *accord Amara*, 563 U.S. at 441 ("The reformation of written contracts for fraud or mistake is an ordinary head of equity jurisdiction" (quoting *Hearne v. Marine Ins. Co.*, 87 U.S. 488, 490 (1874))). In those circumstances, the court "corrects the defective instrument so that it accurately reflects the true terms of the agreement actually reached." 66 Am. Jur. 2d Reformation of Instruments § 1. In other circumstances—for example, when a contract term was found to be unlawful—the appropriate remedy was to rescind the contract, rather than rewrite it, because there the parties' intended agreement was accurately expressed in the written contract. *E.g.*, James W. Eaton, *Handbook of Equity Jurisprudence* 625 § 312 (1901); *see also* Br. for Defs.-Appellees at 44, No. 18-487 (2d Cir. Nov. 7, 2018) (collecting sources).

The Second Circuit, however, held that the equitable remedy of reformation could be imposed for a violation of ERISA even if none of the circumstances that were traditionally understood as prerequisites to reformation was present. Pet. App. 15a-17a (rejecting conclusion that "the availability of equitable remedies . . . [is limited] to the specific circumstances under which those remedies were typically available in equity courts"). This decision undermines the predictability that ERISA's carefully crafted remedial scheme was meant to foster and departs from settled principles governing the availability of equitable relief. By limiting "equitable relief" to the circumstances that traditionally gave rise to the remedy, ERISA offered plan sponsors clear guidance about their potential liabilities should they choose to establish a retirement plan. As this Court has recognized, the "standard current

works"—such as established treatises—provide "clear" answers on the traditional scope of equitable relief. *See Great-W. Life*, 534 U.S. at 217; *Liu v. SEC*, 140 S. Ct. 1936, 1942 (2020) (noting that the "'basic contours of the term [equitable relief] are well known' and can be discerned by consulting works on equity jurisprudence" (citing *Great-W. Life*, 534 U.S. at 217)). Under the Second Circuit's rule, however, courts can ignore the limitations imposed by courts in equity and simply craft their own rules.

The need for predictability in determining the scope of available "equitable relief" is no doubt one reason this Court has repudiated efforts to separate equitable remedies from their doctrinal underpinnings. In *Great-West Life*, for example, this Court held that restitution was *not* an available equitable remedy under 29 U.S.C. § 1132(a)(3)(B). 534 U.S. at 212-216. The Court did so, not because restitution is *never* available in equity, but because it was available in equity *only under certain circumstances*. *Id*. ("Thus, for restitution to lie in equity, the action generally must seek not to impose personal liability on the defendant, but to restore to the plaintiff particular funds or property in the defendant's possession."). Indeed, the Court explicitly rejected an approach that would "look[] only to the nature of the relief and not to the conditions that equity attached to its provision." *Id*. at 216. It reiterated that approach just last Term, in *Liu v. SEC*, when it made clear that when Congress references the availability of equitable relief in statutes, it "does not enlarge the breadth" of those remedies. 140 S. Ct. at 1947; *see also id*. at 1944 (noting that equity courts "circumscribe[d]" equitable awards "in multiple ways to avoid transforming" them to encompass relief "outside their equitable powers"). The Second Circuit's rule dispenses with this

well-established framework and disrupts the settled expectations of plan sponsors and administers that drafted plan terms in reliance on this Court's cases establishing a clear and predictable method for discerning what equitable relief is available.

The circuit split created by the Second Circuit's decision only compounds the uncertainty its decision will produce. *See* Pet. 29-31 (discussing circuit split). Plan sponsors and administrators sued in the Sixth, Eighth, and Ninth Circuits can remain confident that a federal court will not foist upon them new plan terms that they never agreed to unless the traditional predicates for reformation are present. Those sued in the Second Circuit, by contrast, face the possibility of having the plans they drafted years ago be judicially modified in unanticipated ways under circumstances that are wholly untethered to traditional equity jurisdiction. *Cf. Great-W. Life*, 534 U.S. at 216 (declining to award "a form of equitable relief" that "equity would never [have] permit[ted]"). And, in light of ERISA's broad venue provision (p. 22, *infra*), multi-state ERISA plans will have no way to know which remedial regime they may ultimately be subject to. This result directly undermines Congress's goal of creating a "uniform" and "predictable set of liabilities." *Conkright*, 559 U.S. at 517 (citation omitted).

Worse still, the uncertainty generated by the Second Circuit's rule may extend far beyond ERISA. Numerous federal statutes incorporate equitable relief into their remedial provisions, covering a wide range of subject areas. *E.g.*, 7 U.S.C. § 6998(d) (equitable relief available in Department of Agriculture administrative proceedings); 18 U.S.C. § 2346(b)(2) (authorizing states and local governments to obtain "other equitable relief"

for violating prohibition on trafficking in cigarette and smokeless tobacco); 21 U.S.C. § 882(c)(1) (authorizing states to obtain equitable relief for certain violations of food-and-drug laws); 26 U.S.C. § 6015(e)(1) (equitable relief from joint and several liability in IRS proceedings); 29 U.S.C. § 633a(c) (authorizing equitable relief for age discrimination by a federal employer); 30 U.S.C. § 1427(a) (equitable relief for violations of deep seabed mineral exploration); 33 U.S.C. § 1515(a) (private right of action to pursue equitable relief for violations of deepwater port regulations); 42 U.S.C. § 2000e-5(g) (authorizing court to award "other equitable relief" for unlawful employment practices); 42 U.S.C. § 300bb-7 (equitable relief to enforce group health plan requirements); 42 U.S.C. § 3612(g)(3) (authorizing administrative law judge to award equitable relief for discriminatory housing practices). Now, in the Second Circuit, the scope of "equitable relief" available under each of these separate statutory provisions may no longer be certain. And plaintiffs will surely be encouraged to seek out the Second Circuit to pursue forms of purportedly equitable relief that courts in equity would never have had authority to provide.

III. The Decision Below Undermines The Purpose And Structure Of ERISA's Remedial Scheme.

The Second Circuit based its decision on a fundamental misunderstanding of ERISA's "carefully crafted and detailed" remedial scheme. *Mertens*, 508 U.S. at 254. The Second Circuit recognized that this Court has held that ERISA does not authorize private remedies that are not expressly included in the statute, Pet. App. 11a-14a, but it nonetheless justified its novel hybrid damages remedy based on the "maxim of equi-

ty . . . that '[e]quity suffers not a right to be without a remedy.'" Pet. App. 17a (quoting *Amara*, 563 U.S. at 440, which quotes R. Francis, *Maxims of Equity* 29 (1st Am. ed. 1823)).

This rationalization fundamentally misunderstands both ERISA's remedial scheme and equity itself. Congress created the remedy available in § 1132(a)(1)(B) to ensure that employers do not pull the rug out from under employees by reneging on the promises made to plan participants in the written plan document. *See Heimeshoff*, 571 U.S. at 108 (ERISA's "focus" is "on the written terms of the plan"); *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 375 (1980) (explaining that Congress enacted ERISA to ensure that "if a worker has been promised a defined pension benefit upon retirement . . . he actually will receive it"); *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 743 (2004) ("There is no doubt about the centrality of ERISA's object of protecting employees' justified expectations of receiving the benefits their employers promise them."). Thus, where errors in implementing ERISA's complicated requirements are ongoing, ERISA permits injunctive relief to ensure those errors do not persist. And a variety of federal statutes and regulations allow government agencies (including the IRS) to investigate any errors and impose penalties where doing so would be in the best interests of participants. *See* p. 20, *infra*.

Here, the terms of the written plan dictated that the value of plan participants' lump-sum payments would be calculated using the 30-year Treasury rate. *See* Pet. App. 5a-7a; Pet. App. 21a-22a. And Plaintiffs do not dispute that Defendants applied this agreed-to formula. Plaintiffs thus received *exactly* what the

plan's terms promised them. What the Second Circuit awarded is a windfall—*additional* benefits they were never promised, and that participants who remained in the plan were not afforded—based on that court's interpretation of statutory and regulatory provisions that Congress subsequently abrogated. *See* footnote 2, *supra*. That outcome is antithetical to the nature of equitable relief. *See* 30A C.J.S. Equity § 2 ("Equity will not confer a windfall." (citing cases)); 1 Dan B. Dobbs, *Dobbs Law of Remedies* 83 § 2.3(4) (2d ed. 1993) ("'Equity abhors a forfeiture'" (citation omitted)); *accord Henry v. Champlain Enters., Inc.*, 445 F.3d 610, 624 (2d Cir. 2006) (Sotomayor, J.) (vacating damages award for plaintiffs, and explaining that the aim of ERISA is "to make the plaintiffs whole, but not to give them a windfall" (citation omitted)).

Nor does § 1132(a)(3)(B) authorize courts to award "equitable relief" anytime an alleged ERISA violation might not be compensable through a private action. Indeed, *Great-West* considered a call to broadly interpret "equitable relief" under § 1132(a)(3) so as to "prevent [the petitioners] 'from being deprived of any remedy under the circumstances where such a result clearly would be inconsistent with a primary purpose of ERISA.'" 534 U.S. at 220 (citation omitted). The Court rejected that request, because even if the petitioners "lack[ed] . . . other means to obtain relief," "vague notions of a statute's basic purpose are nonetheless inadequate to overcome the words of its text regarding the *specific* issue under consideration." *Id.* (quotation marks omitted); *see also Mertens*, 508 U.S. at 254 ("[ERISA's] carefully crafted and detailed enforcement scheme provides 'strong evidence that Congress did not intend to authorize other remedies that it simply forgot

to incorporate expressly'" (quoting *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 145-147 (1985))).

The Court's refusal to expand the scope of "equitable relief" under ERISA to ensure a remedy in every case is consistent with this Court's case law in other contexts. Specifically, this Court repeatedly has rebuffed requests to imply private rights of actions where Congress did not provide them in a statute, rejecting the position that "it is the duty of the courts . . . to provide such remedies as are necessary to make effective the congressional purpose." *J. I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964). Instead, whether a "private remedy" exists is determined by the statute Congress passed, and where the statute does not supply a private remedy "courts may not create one, no matter how desirable that might be as a policy matter." *Alexander v. Sandoval*, 532 U.S. 275, 286-287 (2001).

The structure of ERISA's remedial provision confirms that Congress did not set out to guarantee a remedy for every mistake identified in hindsight—and especially not a *damages remedy* for every error. Section 1132(a) is divided into 11 distinct sub-provisions, each of which identifies *specific* forms of relief that can be invoked by *specific* parties to remedy *specific* wrongs. *See* pp. 7-8, *supra*. And § 1132(a) separates these sub-provisions with the term "or," not "and"—confirming that Congress did not intend § 1132(a) to be a remedial grab bag. Thus, if a plan sponsor does not adhere to the plan terms, § 1132(a)(1) allows plan participants to sue to "enforce . . . the terms of the plan." 29 U.S.C. § 1132(a)(1). And if the plan, as written, does not comply with legal requirements, then § 1132(a)(3) allows plan participants to obtain relief "typically available in equity"—not including money

damages—to "enforce" ERISA's requirements. *Id.* § 1132(a)(3); *Amara*, 563 U.S. at 439 (citation omitted). Nothing in this structure suggests that these carefully defined remedies may be expanded—separately or in combination—to create new, otherwise-unavailable remedies based on general maxims of equity.

This is not to say that plan sponsors are free to violate ERISA without any financial consequence. Plan participants may bring an action in Tax Court against an ERISA plan to challenge plan provisions they believe do not comply with relevant ERISA requirements. *See* 26 U.S.C. § 7476. Indeed, this provision exists "to allow certain employees and other interested parties to act as watchdogs: when a plan or an amendment to a plan hurts those employees' interests by failing to conform to ERISA's requirements, those employees can seek a declaration preventing the plan from receiving a determination that will ensure favorable tax status." *Flynn v. Commissioner*, 269 F.3d 1064, 1066 (D.C. Cir. 2001).

The IRS also has authority to audit ERISA plans and, if a plan is non-compliant, impose penalties, require that the plan be amended to remedy the violation, or prevent the plan from enjoying tax-preferred status. *See, e.g., Pender v. Bank of Am. Corp.*, 788 F.3d 354, 360 (4th Cir. 2015). The fact that these additional accountability mechanisms exist undermines the Second Circuit's belief that § 1132(a) must be judicially expanded to provide a damages remedy for every mistake made by an ERISA plan sponsor or administrator.

In sum, the Second Circuit's decision cannot be reconciled with this Court's cases or with § 1132(a)'s purpose and structure. This Court's review is needed to

ensure that lower courts adhere to the remedial scheme Congress adopted.

IV. The Second Circuit's Decision Will Have Harmful Effects Nationwide.

Without this Court's intervention, the Second Circuit's erroneous decision will have adverse consequences for the administration of ERISA plans nationwide.

The Second Circuit, home to the nation's financial-services industry, has long been a hub for ERISA litigation. Over the last decade, plan participants have brought thousands of lawsuits against sponsors of retirement plans,[3] both large[4] and small,[5] and a substan-

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[3] *See Nature of Suit Strategic Profile: Labor – ERISA*, LexisNexis Courtlink (2020).

[4] *E.g.*, *See Ortiz v. Am. Airlines Inc.*, No. 16-cv-00380 (N.D. Tex.); *Alas v. AT&T, Inc.*, No. 17-cv-08106 (C.D. Cal.); *Sims v. BB&T Corp.*, No. 15-cv-00732 (M.D.N.C.); *White v. Chevron Corp.*, No. 16-cv-00793 (N.D. Cal.); *Leber v. CitiGroup, Inc.*, No. 07-cv-09329 (S.D.N.Y.); *Moreno v. Deutsche Bank Ams. Holding Corp.*, No. 15-cv-09936 (S.D.N.Y.); *Quatrone v. Gannett Co.*, No. 18-cv-00325 (E.D. Va.); *Pizarro v. Home Depot, Inc.*, No. 18-cv-01566 (N.D. Ga.); *Lo v. Intel Corp.*, No. 16-cv-00522 (N.D. Cal.); *Abbott v. Lockheed Martin Corp.*, No. 06-cv-00701 (S.D. Ill.); *Reetz v. Lowe's Cos.*, No. 18-cv-00075 (W.D.N.C.); *McCorvey v. Nordstrom, Inc.*, No. 17-cv-08108 (C.D. Cal.); *Ramsey v. Philips N. Am. LLC*, No. 18-cv-01099 (S.D. Ill.); *Catalfamo v. Sears Holdings Corp.*, No. 17-cv-05230 (N.D. Ill.); *Meriwether v. Sears Holdings Corp.*, No. 17-cv-05825 (N.D. Ill.); *Dormani v. Target Corp.*, No. 17-cv-04049 (D. Minn.); *Richards-Donald v. Teachers Ins. & Annuity Ins. Ass'n of Am.*, No. 15-cv-08040 (S.D.N.Y.); *Jacobs v. Verizon Commc'ns Inc.*, No. 16-cv-01082 (S.D.N.Y.); *Solano v. Wal-Mart Stores Inc.*, No. 17-cv-03976 (C.D. Cal.); *Wayman v. Wells Fargo & Co.*, No. 17-cv-05153 (D. Minn.).

[5] *E.g.*, *Damberg v. LaMettry's Collision, Inc.*, No. 16-cv-01335 (D. Minn.) (suit against company with $10 million under manage-

tial portion of these ERISA cases have been commenced within the Second Circuit. Indeed, in the last decade, approximately 11 percent of all ERISA cases have been filed in the Eastern and Southern Districts of New York alone,[6] with approximately 1,600 filed in those two districts just in the past two years.[7] Now that the Second Circuit's decision has so dramatically expanded the exposure plan sponsors face under ERISA, its influence over ERISA law will only increase. ERISA contains a generous venue provision that allows plan participants to bring suit "where the plan is administered," "where the breach took place," or "where a defendant resides or may be found." 29 U.S.C. § 1132(e)(2). Because many of the largest plans are administered throughout the country, including within the Second Circuit, plaintiffs' lawyers will now have a strong incentive to file lawsuits in the Second Circuit to take advantage of the new damages remedy the decision below makes available. And the decision will incentivize new suits by *former* plan participants (like Plaintiffs here) who would otherwise have no interest in seeking equitable relief—because they could not possibly benefit from a prospective remedy—except as part of a two-step damages remedy created by the Second Circuit here.

If left in place, the Second Circuit's misguided interpretation will open the door to new liability and undermine Congress's goal of encouraging companies to

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ment); *Bernaola v. Checksmart Fin. LLC*, No. 16-cv-00684 (S.D. Ohio) (suit against company with $15 million under management).

[6] *See Nature of Suit Strategic Profile: Labor – ERISA*, LexisNexis Courtlink (2020).

[7] *See ERISA Litigation Report* 9, Lex Machina (May 2019).

sponsor ERISA plans. This Court's review is warranted now to prevent these harmful consequences from materializing.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted.

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