No. 21-1516

In the

Supreme Court of the United States

SWAGELOK ASSOCIATES WELFARE BENEFITS PLAN,

Petitioner,

v.

LAURA PATTERSON AND ERIC PATTERSON,

Respondent.

On Petition for Writ of Certiorari from the Ohio Supreme Court

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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I. PLAINTIFF SOUGHT "APPROPRIATE EQUITABLE RELIEF" "BARRING" THE PLAN FROM ENFORCING SUBROGATION/REIMBURSEMENT TERMS

A. The Plan Did Not Misrepresent the Nature of Plaintiff's Complaint by Stating that She Pled a Request for Equitable Relief.

Plaintiff's Complaint clearly asks for two different kinds of relief: a "judgment declaring that [Swagelok] does not have a contractual right to be subrogated *** or reimbursement by [Mrs. Patterson] for any benefits paid on [her] behalf"; and, separately, a request for an order "barring any exercise of any claimed subrogation/reimbursement interests for benefits paid on [her] behalf." (*See* Appendix at 9a, 10a.))). Seeking an order that *bars* the Plan from enforcing a subrogation/reimbursement right is not a "mere redundancy" of a request that the court make a declaration as to the parties' rights under the terms of the Plan. *Cf. Advoc. Health Care Network v. Stapleton*, 137 S. Ct. 1652, 1659 (2017) (under the surplusage canon every word and provision is to be given effect, and none should be ignored in a way that causes one provision to duplicate another provision or to have no consequence); *Bryant v. J.P. Morgan Chase Bank, N.A.*, 671 F. App'x 985, 987 (9th Cir. 2016). A request for an order that "bars" a party from taking certain action that would violate the judicial "declaration" as to the parties' rights is a quintessential request for injunctive relief. *See, e.g.*, *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753,

764 (1994) (citing *United States v. W.T. Grant Co.*, 345 U.S. 629, 632–633 (1953)) ("Injunctions . . . are remedies imposed for violations (or threatened violations) of a legislative or judicial decree.").

Nor are the jurisdictional questions raised in the Petition impacted by the state law pled on the face of the Complaint or the relief ultimately awarded. Instead, given that ERISA completely preempts state law, what matters is only *whether the relief sought in the complaint arises exclusively under ERISA's civil enforcement mechanisms, and, if so, which one*. Moreover, it matters little whether the state law under which Plaintiff purports to bring her claims authorizes the relief sought, because to the extent such law "relates to" an ERISA plan, it is preempted. Because her claim for declaratory relief unquestionably "relates to" an employee welfare benefit plan – indeed, it would without the ERISA Plan she asks a declaration under – that claim arises under ERISA and federal law. And, in determining which provision of ERISA it arises under, the Court must look to the relief requested in the Complaint. Here, that is an order "barring any exercise of any claimed subrogation/reimbursement interests for benefits paid on [her] behalf" – an equitable injunction under ERISA which Congress said is within the exclusive jurisdiction of the federal courts. Whether such relief is warranted on the merits does not impact state court jurisdiction to hear the case. ERISA was meant to preempt and displace varying state law remedial schemes to the extent a plaintiff attempted to apply them to matters involving an ERISA plan. *Aetna Health, Inc. v. Davila*, 542 U.S. 200, 2009 (2004).

B. The Plan Did Not Misrepresent the State Court Decision Below by Characterizing It as a Decision that Plaintiff's Claim Arose under "Both" Section 502(a)(1)(B) and Section 502(a)(3).

Plaintiff's assertion that the Plan misrepresented the holding of the trial court and the Ohio Court of Appeals is likewise in error. Each of these lower state courts very clearly stated their belief that Plaintiff's claim arose under both Section 502(a)(1)(B) and Section 502(a)(3). For example, the trial court stated:

> "Even if the Plaintiffs' claim was to be considered a claim under 29 U.S.C. § 1132(a)(3), ***then it must also be considered a claim under 29 U.S.C. § 1132(a)(1)(B).***" . . . If Plaintiffs' declaratory judgment claim in this case was to be considered a claim "to enjoin any act or practice which violates * * * the terms of the plan * * *" under 29 U.S.C. 1132(a0(3), ***then it would also have to be considered a claim "to enforce [Ms. Patterson's] rights under the terms of the plan" under 29 U.S.C. 1132(a)(1)(B) . . .***"

(Appendix at 41a-42a (internal citations omitted).) The Ohio Court of Appeals reinforced this error by stating:

> "The Pattersons' claim against Swagelok sought a declaration that Swagelok does

> not have a contractual right to subrogation and, relatedly, sought to bar Swagelok from exercising any claimed right to subrogation. **Although their request can be construed as a civil action to enforce the terms of the plan under Section 1132(a)(3) *it can also be construed* as a civil action 'to enforce [their] rights under the terms of the plan' under Section 1132(a)(1)(B).**

(Appendix at 10a.) It reiterated this point later, stating "[t]he fact that [a] complaint has attributes of a claim under section 1132(a)(3) ***does not mean that it is not also a claim for benefits under the plan" under Section 1132(a)(1)(B).***" (*Id.* (second alteration in original) (citation omitted).)

In light of this language, the Plan fails to understand how Plaintiff can assert with a straight face that the state courts below did *not* hold that Plaintiff's claim was one arising under both Section 502(a)(3) and Section 502(a)(1)(B), much less accuse Respondent of "misrepresenting" that the holding was inconsistent with existing federal jurisprudence on the issue. *Cf. Cigna Corp v. Amara*, 563 U.S. 421 (2011); *Varity Corp v. Howe*, 516 U.S. 489 (1996). Moreover, that the lower state courts failed to recognize the error of this holding is a serious error of law with jurisdictional implications that run counter to Congress's directive that federal courts have exclusive jurisdiction over ERISA § 502(a)(3) claims warranting grant of certiorari.

II. THE REMAINING DISPUTES UNDERSCORE THE NEED FOR GUIDANCE FROM THIS COURT.

A. Plaintiff's Interpretation of the State Court Opinions Puts Her at Odds with this Court's Authority, Necessitating Certiorari.

In an effort to reconcile the state courts' ruling with federal authority, Plaintiff makes the startling assertion that the state court opinions should be read to hold that because she is a participant/beneficiary under the Plan, ERISA provides her with a right to declaratory and injunctive relief against the Plan's subrogation and reimbursement rights under Section 502(a)(1)(B), but a plan fiduciary seeking to enforce those same subrogation and reimbursement rights, who has no standing under Section 502(a)(1)(B), must proceed under the "catch all" of Section 502(a)(3). (Opposition at pp. 15-17.) However, this is not what the Ohio state courts actually held. Moreover, this creative argument does nothing to demonstrate that the Plan's Petition should not be granted.

While this reading of the state court opinions below—strained as it may be—squares the underlying Ohio state court opinions with *Varity* and this Court's jurisprudence on the interaction between Sections 502(a)(1)(B) and 502(a)(3) of ERISA, it puts those decisions directly at odds with other long-standing federal court authority holding that where a declaratory judgment action is brought in an effort to "establish a defense against a cause of action which the declaratory defendant may assert…it is the character of the threatened action, and not of the

defense" which affects federal jurisdiction. *Public Service Commission v. Wycoff Co.*, 344 U.S. 237, 248 (1952); *compare also Gulf Life Ins. Co. v. Arnold*, 809 F.2d 1520, 1523 (11th Cir. 1987) (finding that plan fiduciary declaratory judgment claim about whether benefits were owed under the terms of the plan was not equitable and appropriate under 502(a)(3) since the only way the action could otherwise have arisen was as a participant/beneficiary legal claim seeking benefits under Section 502(a)(1)(B)). Plaintiff faults the Plan for citing this Court's "appropriate equitable relief" jurisprudence emanating from ERISA Plan fiduciary efforts to enforce subrogation/reimbursement rights, but that case law is apposite because the same core dispute exists here. Plaintiff seeks a declaration that she has a valid defense to a claim from the fiduciary under Section 502(a)(3) to enforce the Plan's subrogation/reimbursement terms. As this Court has clearly held that a claim to enforce the subrogation/reimbursement provisions of an ERISA plan by a fiduciary falls under Section 502(a)(3), *see Montanile v. Bd. of Trustees of the Nat'l Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 142 (2016); *U.S. Airways v. McCutchen*, 569 U.S. at 98; *Sereboff*, 547 U.S. at 359; 29 U.S.C. § 1132(e), which is within the exclusive jurisdiction of the federal courts, the only logical conclusion is that a plaintiff's claim seeking to declare such plan rights invalid is of the same nature with the same jurisdictional implications, *see Franchise Tax Bd. of Calif. v*, 463 U.S. at 19; *Wycoff Co.*, 344 U.S. at 248*; Gulf Life Ins. Co.*, 809 F.2d at1523.

On this issue, *Rodriguez v. Tennessee Laborers Health & Welfare Fund*, 463 F.3d 473 (6th Cir. 2006), is precisely on point. While Plaintiff claims the Plan "mischaracterized" its holding, since the relief originally requested by that plaintiff included an express reference to "equitable relief" and a request to "enforce ERISA" (Opposition at p. 17), this assertion fails. The Sixth Circuit was presented with "only one challenge on appeal": whether Rodriguez had brought a claim for declaratory relief that was "equitable" under ERISA such that the federal district court had subject matter jurisdiction over his claim. *Rodriguez*, 463 F.3d at 475. The Sixth Circuit found that because Rodriguez sought a determination that the plan did not have the subrogation/reimbursement rights in the amount it claimed, the nature of his claim was the same as the relevant threatened claim by the plan for subrogation/reimbursement under Section 502(a)(3). *See id.* at 477 (citation omitted). As a result, the district court also had subject matter jurisdiction over Rodriguez's corresponding defensive declaratory judgment action under the same provision. *See id.* Nothing about this holding was dependent upon mentions of the term "equity" or "enforcing the Plan" in the original Complaint. Instead, *Rodriguez* makes clear that the action Plaintiff brought is considered one arising under Section 502(a)(3), which falls within the exclusive subject matter jurisdiction of the federal courts. The lower courts' decisions here not only run counter to *Rodriguez*, they also violate ERISA's grant of exclusive federal jurisdiction as well as this Court's authority in *Wycoff* and *Franchise Tax Board*.

B. None of the Authority Cited by Plaintiff Demonstrates that there Is any On-Point Guidance from this Court or that the Decisions Below were Consistent with the Federal Courts of Appeals.

While Plaintiff argues that the decisions below are consistent with federal precedent, case law does not support the proposition that merely characterizing her claim as seeking to "declare rights" under a subrogation/reimbursement provision in an ERISA plan somehow alters the fundamental nature of such claims – which this Court has consistently held arises under ERISA § 502(a)(3). Indeed, the language Plaintiff quoted from *Cigna Corp. v. Amara*, 563 U.S. 421 (2011), speaks to the *limitations* of a cause of action under Section 502(a)(1)(B), as the *Amara* Court determined that the section does not give a district court authority to reform the terms of an existing plan. *Compare id.* at 436-38. It did not address where and how a participant or beneficiary should bring a declaratory judgment action seeking a determination that the subrogation/reimbursement rights under the terms of a plan were invalid. Similarly, the cited language in *Rush Prudential HMO, Inc. v. Moran* and *Boggs v. Boggs*—all of which Plaintiff failed to disclose come from a dissenting opinion—relates to the use of a declaratory judgment action under Section 502(a)(1)(B) as part of an effort to obtain benefits or to clarify rights to future benefits, respectively. *Compare Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 394 n.5 (2002) (Thomas, J., dissenting); *Boggs v. Boggs*, 520 U.S. 833, 856 (1997) (Breyer, J., dissenting). This distinction is significant because Section 502(a)(1)(B) expressly speaks to such claims

"for benefits." This case, however, involves no such claim, as Plaintiff seeks instead a declaration that will prevent the fiduciary from enforcing its subrogation/reimbursement rights under the Plan through Section 502(a)(3). This Court has repeatedly held that such an affirmative claim by a plan fiduciary arises under Section 502(a)(3), and under *Wycoff*, a defensive declaratory action against such a claim must arise under the same provisions of the law and be subject to the same jurisdictional limitation.

Likewise, none of the circuit level federal authority cited by Plaintiff supports the rule articulated in her opposition to certiorari—that a plan participant or beneficiary can bring a declaratory judgment action seeking to have a reimbursement/subrogation provision declared invalid under Section 502(a)(1)(B). In fact, *none* of these circuit cases even involve a declaratory judgment action filed by a participant or beneficiary. Instead, each involves a declaratory judgment action brought by a plan fiduciary. *Compare Denny's, Inc. v. Cake*, 364 F.3d 521, 525 & n.3 (4th Cir. 2004); *Prudential Ins. Co. of Am. v. Doe*, 76 F.3d 206, 210 (8th Cir. 1996); *Gulf Life Ins. Co*, 809 F.2d at 1524; *Transamerica Occidental Life Ins. Co. v. DiGregorio*, 811 F.2d 1249, 1255 (9th Cir. 1987).

And, none of the circuit cases cited by the Plaintiff involve a declaratory judgment action seeking a determination of the subrogation/reimbursement obligations of the plan. This distinction remains important given this Court's authority establishing that a claim by a plan fiduciary to enforce its rights under the subrogation/reimbursement provisions of a plan sounds in equity as an equitable lien by

agreement and can thus be pursued under Section 502(a)(3) as a claim for "other equitable relief" to enforce the terms of the plan. *Montanile*, 577 U.S. at 136; *U.S. Airways v. McCutchen*, 569 U.S. at 88; *Sereboff*, 547 U.S. at 356. Plaintiff cannot change the underlying equitable nature of this claim or the federal court's exclusive jurisdiction over it simply by first asserting it as a "defensive" declaratory judgment action. *Franchise Tax Bd. of Calif. v*, 463 U.S. at 19; *Wycoff Co.*, 344 U.S. at 248*; Rodriguez*, 463 F.3d at 475-77.

C. Plaintiff's Practical and Policy Implications Reinforce the Appropriateness of Certiorari.

The practical and policy implications of the distinction that Plaintiff has tried to draw illustrate precisely why the decision below implicates important questions of federal law and is ripe for this Court's attention. Drawing the distinction Plaintiff urges would splinter questions surrounding the validity of plan subrogation and reimbursement rights among federal and state courts nationwide, running expressly contrary to ERISA's goal of establishing standard jurisprudence for benefit plans across the country. This potential outcome reinforces that any decision establishing such a distinction should not be cobbled together from ad hoc, unclear rulings of the Ohio state courts at odds with developing federal authority, but instead set forth by the federal bench with expertise in interpreting ERISA and related preemption and jurisdictional principles.

Under Plaintiff's regime, personal injury plaintiffs in Ohio are free to tuck matters of exclusive federal

jurisdiction under ERISA into state court personal injury actions, and have state courts award "appropriate equitable relief" with respect to ERISA plans, while an ERISA plan fiduciary is effectively deprived of the ability to seek enforcement of the benefit plan's reimbursement rights in that action because this Court has already declared those rights to arise under § 502(a)(3) of ERISA and they are, therefore, exclusively under the jurisdiction of federal courts. Certiorari review is needed to prevent this jurisdictional end-run.

In that regard, it is not a close call which scenario presents worse practical implications. In Plaintiff's world, acceptance of the Plan's argument will result in federal courts becoming the repository for personal injury cases that have an ERISA claim as well. However, there is a simple procedure for eliminating this concern: federal courts must accept jurisdiction over the portion of such cases implicating ERISA Section 502(a)(3), but can decline jurisdiction under 28 U.S.C. § 1367(c) over state law tort claims, thus remanding those to state court where they belong. On the other hand, there is no solution for the inconsistent patchwork of welfare benefit plan jurisprudence that would result from permitting state courts to hear claims for declaratory and injunctive relief under ERISA simply because they are filed first by a plan participant or beneficiary and can be construed as arising under "both" 502(a)(1)(B) and 502(a)(3). (*Compare* Petition at pp. 5-7, 17, 20.) And, what matters for purposes of granting or denying the Petition for Certiorari is that the questions raised by this novel state court decision at odds with federal authority are important questions not yet directly

addressed by this Court and which warrant its attention.

III. NOTHING ABOUT THE ADDITION OF THE REMOVAL/WAIVER ISSUE TO THE QUESTIONS PRESENTED OR THE EXISTENCE OF A PARALLEL FEDERAL COURT CASE WEIGHS IN FAVOR OF DENYING CERTIORARI.

Plaintiff asserts that if her declaratory judgment claim is completely preempted by ERISA Section 502(a)(3), this Court must also determine whether the Plan waived the defense of complete preemption. (*See Response* at p. 2.) Assuming without conceding that Plaintiff properly adds this question to the Petition, *see* Supreme Court Rule 14(1)(a), nothing about this subsidiary issue demonstrates that the Ohio state courts' holdings were not a decision about an important question of federal law running contrary to existing federal authority that warrant the attention of this Court.

Still further, whether or not the waiver and preemption issue was decided correctly turns on interpretation of state law, not the "important questions of federal law" necessary for certiorari. *Compare* Supreme Court Rule 10. In light of this fact, this additional "question presented" should not be included in any grant of certiorari by this Court.

Finally, given the Plan's belief that the state court in this case lacked subject matter jurisdiction over Plaintiff's declaratory relief claim, its decision to file a parallel suit in Federal Court, seeking to affirmatively assert the underlying cause of action

that is the subject of Plaintiff's declaratory judgment request—and which is subject to the exclusive jurisdiction of federal courts—is unsurprising.. Moreover, this case has been stayed pending exhaustion of this appeal process. (*See* Resp. App. at pp. 3a-4a.) Nothing about this stayed federal district court action warrants denying the Petition for Certiorari.

Respectfully submitted,

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