No. 21A689

In the Supreme Court of the United States

ROZALYN RAGAN, personal representative of the Estate of Charles Phillip Ragan, deceased,
Applicant,

v.

MELISSA RAGAN, a/k/a MELISSA HUDSON,
Defendant-Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COLORADO COURT OF APPEALS

APPLICATION FOR A 7-DAY EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS

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June 1, 2022

TO: The Honorable Neil M. Gorsuch, Associate Justice of the United States Supreme Court and Circuit Justice for the United States Court of Appeals for the Tenth Circuit

Applicant respectfully requests a 7-day extension of time within which to file a petition for a writ of certiorari to review the judgment of the Colorado Court of Appeals in this case, to and including June 22, 2022. The Colorado Court of Appeals issued its opinion on May 27, 2021, and the Colorado Supreme Court denied the discretionary petition for certiorari on February 14, 2022. On May 2, 2022, the applicant filed an application for an initial extension of time within which to file a petition for a writ of certiorari, seeking an extension to July 15, 2022. On May 5, Justice Gorsuch granted the application in part, extending the time to file until June 15, 2022. This application asks for an extension of 7 days, to and including June 22, 2022. This application is being filed on June 1, 2022—more than 10 days before the petition for certiorari is due. *See* S. Ct. R. 13.5. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257. A copy of the Colorado Court of Appeals opinion and the Colorado Supreme Court's order denying the petition for certiorari is attached.

The applicant's Supreme Court counsel has only just been retained and has been heavily engaged with other appellate matters, including arguments and multiple briefs in the federal Courts of Appeal. Counsel also has multiple oral arguments and multiple briefs due in the Courts of Appeal throughout the month of June, including an upcoming oral argument on June 10, 2022 in the Sixth Circuit in *Abbott, et al v. E.I. du Point Nemours & Co.*, No. 21-3418. An extension of time is appropriate to allow the applicant's counsel, consistent with these professional obligations, to properly research, prepare, and print the petition.

1. This case involves "the important issue of ERISA pre-emption." *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 319 (2016). Here, that issue comes in the form of a question about the interplay between Colorado's divorce revocation statute, Colo. Rev. Stat. § 15-11-804 (2020), and ERISA's requirement that a fiduciary administer an ERISA plan "in accordance with the documents and instruments governing the plan," 29 U.S.C. § 1104(a)(1)(D), and make payments to a beneficiary who is "designated by a participant, or by the terms of an employee benefit plan," 29 U.S.C. § 1002(8). This Court has, on multiple occasions, addressed the preemption implications of similar questions. *See, e.g.*, *Kennedy v. Plan Adm'r for DuPont Sav. & Inv. Plan*, 555 U.S. 285 (2009); *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001); *Boggs v. Boggs*, 520 U.S. 833 (1997).

2. In 2016, Charles and Melissa Ragan divorced after five years of marriage. Less than five months later, Mr. Ragan died in a car-bicycle accident. Before the dissolution of the Ragans' marriage, Mr. Ragan took out several life and accidental death insurance policies through his employer, Federal Express, all of which named Ms. Ragan as the beneficiary. Mr. Ragan did not change the beneficiary of these policies after his divorce from Ms. Ragan, but, under Colorado law, a former spouse's status as a beneficiary is automatically "revoked as a matter of law" upon a divorce. Colo. Rev. Stat. § 15-11-804(2)(a). Nevertheless, shortly after Mr. Ragan's death, Ms. Ragan was notified of the existence of the policies and received benefits in the amount of approximately $535,000. Mr. Ragan's estate (the applicant here) filed suit, pursuant to this Colorado statute, to recover the insurance benefits that had been improperly distributed to Ms. Ragan.

3. The Colorado Court of Appeals held that the applicant's post-distribution claims—which are expressly authorized by Colorado law—were preempted by ERISA. It began its analysis by focusing first on *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, 555 U.S. 285 (2009). There, this Court held that, because ERISA directs a plan administrator to discharge his duties "in accordance with the documents and instruments governing the plan," 29 U.S.C. § 1104(a)(1)(D), a plan administrator must distribute benefits to a beneficiary named in an ERISA plan, regardless of any state-law waiver purporting to divest that beneficiary of his right to the benefits. *Kennedy*, 555 U.S. at 301. So state laws that would interfere with a plan administrator's ability to carry out his duties under ERISA would be preempted. *Id.* But, as the Colorado Court of Appeals acknowledged, this Court "left open the question of whether, once the benefits were distributed by the administrator, the plan participant's estate could enforce the named beneficiary's waiver against her." Op. ¶ 27 (noting that this Court did not "express any view as to whether the Estate could have brought an action . . . against [the named beneficiary] to obtain the benefits after they were distributed").

4. In the wake of *Kennedy*, several courts, including the Third and Fourth Circuits, answered that open question and held that ERISA does not preempt "post-distribution suits to enforce state-law waivers" against ERISA beneficiaries. *See Andochick v. Byrd*, 709 F.3d 296, 299–301 (4th Cir. 2013); *see also Est. of Kensinger v. URL Pharma, Inc.*, 674 F.3d 131, 132 (3d Cir. 2012) (holding that ERISA does not preempt estate's post-distribution suit against named beneficiary to enforce waiver and recover funds); *Sweebe v. Sweebe*, 712 N.W.2d 708, 710 (Mich. 2006) ("While a plan administrator is required by

ERISA to distribute plan proceeds to the named beneficiary, the named beneficiary can then be found to have waived the right to retain those proceeds."). That was true, these courts explained, because "[a]llowing *post-distribution suits* to enforce state-law waivers does nothing to interfere with [ERISA's] objectives." *Andochick*, 709 F.3d at 299 (emphasis added).

5. The Court of Appeals refused to apply this reasoning here. Although it agreed that the applicant had brought a post-distribution suit under state law to recover insurance proceeds that the plan administrator had already distributed according to the plan terms, it held that the claim was nevertheless preempted by ERISA. ERISA could, according to the court, still preempt a post-distribution claim based on state law even if it did not preempt a post-distribution claim "based on waiver by private agreement between the parties." Op. ¶ 42. In its view, allowing the claim to proceed would permit a "statutory end-run around preemption" and would therefore "contravene the dictates of ERISA." *Id.* at ¶ 34. And, to support its reasoning, the Court of Appeals relied on the preemption analysis of "a different federal law"—the Federal Employees' Group Life Insurance Act of 1954 (FEGLIA), 5 U.S.C. §§ 8701–8716—to justify its belief that the Colorado statute could not "sidestep preemption" under ERISA. *Id.* at ¶ 35 (discussing *Hillman v. Marietta*, 569 U.S. 483 (2013)).

6. The Court of Appeals' decision cannot be squared with this Court's decision in *Kennedy* In *Kennedy*, this Court identified three important ERISA objectives grounding its conclusion that pre-distribution claims are preempted: (1) the need for "simple administration," (2) the desire to "avoid[] double liability" for plan administrators, and (3)

the ability to "ensur[e] that beneficiaries get what's coming quickly, without the folderol essential under less-certain rules." *Kennedy*, 555 U.S. at 301. For a claim that "stands or falls by 'the terms of the plan," this Court explained, ERISA's "straightforward rule of hewing to the directives of the plan documents" trumps any alternative rule that state law might impose. *Id.* at 300 (noting that alternative state-law requirements would "destroy a plan administrator's ability to look at the plan documents and records conforming to them to get clear distribution instructions"). But where a plan administrator's job is done—and the proceeds have already been distributed according to the plan terms—a state-law rule requiring those proceeds to be returned would not interfere with any of the relevant statutory objectives identified by this Court in *Kennedy*.

7. The Court of Appeals' decision also cannot be reconciled with the post-*Kennedy* consensus view of the lower courts. Those courts considering similar post-distribution claims have repeatedly held that "ERISA does not preempt post-distribution suits against ERISA beneficiaries." *Andochick*, 709 F.3d at 301 *see also Kensinger*, 674 F.3d at 136 ("[T]he goal of ensuring that beneficiaries 'get what's coming quickly' refers to the expeditious distribution of funds from plan administrators, not to some sort of rule providing continued shelter from contractual liability to beneficiaries who have already received plan proceeds."); *Culwick v. Wood*, 384 F. Supp. 3d 328, 345 (E.D.N.Y. 2019) (rejecting ERISA preemption of post-distribution claim); *Rice v. Webb*, 844 N.W.2d 290, 300–01 (Neb. 2014) (finding no ERISA preemption in a proceeding brought by decedent's estate against a former spouse for life insurance proceeds based on divorce decree's property settlement agreement); *In re Est. of Easterday*, 209 A.3d 331, 346 (Pa. 2019)

("ERISA does not preempt a state law breach of contract claim to recover funds that were paid pursuant to an ERISA-qualified employee benefit plan.").

8. The applicant respectfully requests a 7-day extension of time to file a petition for a writ of certiorari seeking review of the Colorado Court of Appeals' ruling and submits that there is good cause for granting the request. Applicants' counsel has been heavily engaged with other appellate matters, including an argument in the Sixth Circuit on June 10, 2022 in *Abbott, et al v. E.I. du Point Nemours & Co.*, No. 21-3418, and multiple appellate briefs due in the Ninth Circuit (*Meeks v. Experian Information Solutions*, No. 21-17023 and *Mills v. Target*, No. 21-80111), the Eleventh Circuit (*Gary Walters v. Fast AC, LLC,* No. 21-12879), the Texas Supreme Court (*LG Chem v. Morgan*, No. 21-0994) and Washington state appellate courts (*Spadoni v. Microsoft Corp.*, No. 100634-9). Applicant's counsel also continues to have additional increased childcare obligations due to the pandemic. Extending the deadline to file the petition in this case to June 22, 2022 will allow applicant's counsel to carefully research and prepare the petition in this case.

CONCLUSION

For the foregoing reasons, the applicant respectfully requests that the Court extend the time within which to file a petition for a writ of certiorari in this matter to and including June 22, 2022.

Dated: June 1, 2022

Respectfully Submitted,

/s/ Matthew W.H. Wessler
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CERTIFICATE OF SERVICE

In compliance with Supreme Court Rules 29.3 and 29.5, I, Matthew W.H. Wessler, counsel of record for the applicants and a member of the Bar of this Court, hereby certify that on June 1, 2022, a copy of the accompanying Application for a 7-Day Extension of Time Within Which to File a Petition for a Writ of Certiorari to the Colorado Court of Appeals, filed in the above-captioned manner, was sent by commercial carrier and by electronic mail to:

Counsel for Respondent:

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Attorneys for Defendant-Respondent Melissa Ragan

All parties required to be served have been served.

June 1, 2022

/s/ *Matthew W.H. Wessler*

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