No. 21-1571

In the Supreme Court of the United States

ROZALYN RAGAN, PERSONAL REPRESENTATIVE OF THE ESTATE OF CHARLES PHILLIP RAGAN, DECEASED, PETITIONER

v.

MELISSA RAGAN, AKA MELISSA HUDSON

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

In *Egelhoff v. Egelhoff*, 532 U.S. 141, 143 (2001), the Court held that the Employee Retirement Income Security Act of 1974 (ERISA) preempts state divorce revocation statutes as applied to ERISA plans, no matter whether the assets have been disbursed. Such statutes immediately and automatically revoke a named beneficiary's interest in ERISA plan assets upon divorce from the plan participant. In *Egelhoff*, the assets included life insurance proceeds that had already been disbursed to the named beneficiary and pension plan benefits that had not been disbursed. *Egelhoff* did not differentiate between the disbursed and undisbursed assets. Under *Egelhoff*, ERISA preempts any claim that a state divorce revocation statute gives a plaintiff a right to ERISA-governed assets, no matter the distribution status of those assets. Federal and state courts have uniformly followed *Egelhoff*.

Petitioner nonetheless claims that ERISA does not preempt Colorado's divorce revocation statute as applied to ERISA-governed assets that have already been disbursed.

The question presented is whether the Court should overrule *Egelhoff*.

PARTIES TO THE PROCEEDINGS

Petitioner incorrectly identifies the parties' roles in the proceedings below. *See* Pet. ii. Petitioner was the plaintiff-appellant in the Colorado Court of Appeals and Respondent was the defendant-appellee. *See* App. 1a.

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INTRODUCTION

The question presented is whether the Court should overrule *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001). Courts do not disagree on that question. The petition does not identify any decision from any court that has questioned, narrowed, or failed to follow *Egelhoff*.

Instead, the petition claims that lower courts have split over whether the Employee Retirement Income Security Act of 1974 (ERISA) preempts claims to disbursed plan assets. But there is no split, no matter how the question is framed. The petition ignores the key distinction explained at length by the Colorado Court of Appeals below: Claims to plan assets based on a revocation of rights by operation of law are preempted under *Egelhoff* whether or not the assets have been disbursed. There is no lower-court disagreement on that point, which is plainly correct under *Egelhoff*. Claims to disbursed assets based on a waiver of rights or other contractual arrangement, on the other hand, present a different question, which *Kennedy v. Plan Administrator for DuPont Savings & Investment Plan*, 555 U.S. 285, 299-300 & n.10 (2009), left open. But although there is likewise no disagreement on that waiver question, it wouldn't matter if there were. This case involves no waiver or other agreement giving up plan benefits. Conflating state-law claims based on divorce revocation statutes and state-law claims based on waivers doesn't create a split.

What's more, this case also has vehicle issues: the decision below is not binding in Colorado and the question presented likely is not outcome-determinative. The petition should be denied.

* * *

Egelhoff held that ERISA preempts state divorce revocation statutes as applied to ERISA plans. 532 U.S. at 146-50. The ERISA-governed assets in *Egelhoff* included life insurance proceeds that had already been disbursed to the named beneficiary and pension plan benefits that had not been disbursed. *See id.* at 144. *Egelhoff* did not differentiate between the disbursed and undisbursed assets. *Egelhoff* thus applies whenever plaintiffs claim that a state divorce revocation statute gives them a right to ERISA-governed assets, no matter the distribution status of those assets.

Here, the personal representative of Charles Ragan's estate (the Estate) sued Melissa Ragan, Charles' ex-wife, in Colorado state court. The Estate claimed a right to all the proceeds that Melissa had received as the named beneficiary of Charles' ERISA-governed insurance policies, arguing that Colorado's divorce revocation statute automatically revoked Melissa's interest in those proceeds when she and Charles divorced. The trial court entered judgment for Melissa, ruling that the Estate does not have a right to the insurance proceeds under Colorado's divorce revocation statute, and that even if it did, ERISA preempts the Colorado statute. A division of the Colorado Court of Appeals affirmed the trial court's judgment. The court of appeals observed that the Estate did not identify any decision from any court holding that ERISA allows a claim like the Estate's: a state-law challenge to disbursed proceeds based on a revocation of the named beneficiary's rights by operation of law. The Colorado Supreme Court denied review.

This case falls squarely under *Egelhoff*. As in *Egelhoff*, the Estate (a) claims a right to ERISA-governed assets that have already been disbursed to the named beneficiary (b) based on a state divorce revocation statute that revokes by operation of law the named beneficiary's interest in ERISA plan assets immediately upon divorce from the plan participant. While the Estate argues that ERISA does not preempt Colorado's divorce revocation statute as applied to disbursed assets, *Egelhoff* held just the opposite: ERISA preempts state divorce revocation statutes as applied to plan assets no matter the distribution status of those assets, because such statutes have an impermissible connection with ERISA plans. The Estate's claim is foreclosed by *Egelhoff*.

There is no disagreement over the scope of *Egelhoff*. Indeed, the Estate has not identified any decision that has questioned, narrowed, or failed to follow *Egelhoff*. So to try to dodge *Egelhoff*, the Estate claims there is disagreement in the lower courts over whether ERISA preempts state-law claims to plan proceeds after those proceeds are disbursed. But that claim ignores *Egelhoff* and the well-established distinction between claims to disbursed assets based on a revocation of rights by operation of law, on the one hand, and claims to disbursed assets based on a waiver of rights, on the other. *Egelhoff* governs claims under revocation statutes and holds them preempted. 532 U.S. at 146-50. That's this case. It thus doesn't matter that this Court has not addressed preemption of waiver claims, *see Kennedy*, 555 U.S. at 299-300 & n.10. There is no waiver here. And courts have uniformly kept these scenarios separate rather than taken the petition's approach of conflating them. There is no split.

Even assuming disagreement exists, however, the case still would not be certworthy. No court has even attempted to (a) explain why *Egelhoff* should be overruled or (b) disprove the difference between a revocation of rights by operation of law and a waiver of rights.

This case is a poor vehicle, too. *First*, the petition seeks review of the decision of an intermediate appellate court, not a decision of the Colorado Supreme Court, which denied review. *Second*, the question presented likely is not outcome-determinative, because "even if" ERISA does not preempt Colorado law, "the Estate has no claim against [Melissa] under [state law]" anyway.

Lastly, the decision below is correct. ERISA preempts state divorce revocation statutes as applied to ERISA plan assets no matter the distribution status of those assets. The Estate's contrary position fails, because drawing an arbitrary line at distribution would let states accomplish after distribution that which they cannot accomplish before distribution. ERISA's "clearly expansive" preemption provision does not sanction such a sidestep. Plus, preemption principles confirm that lower courts have correctly distinguished between revocation by operation of law, on the one hand, and waiver, on the other.

The Court should deny review.

STATEMENT

A. Legal background

1. a. ERISA is a "comprehensive" statute that "controls the administration of benefit plans." *New York State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 650-51 (1995). For

example, ERISA generally requires plan administrators to disburse proceeds only to the beneficiaries named in the plan documents. *Egelhoff*, 532 U.S. at 147 (citing 29 U.S.C. §§ 1002(8), 1102(b)(4), 1104(a)(1)(D)). ERISA also prohibits the assignment or alienation of benefits provided under a pension plan, subject to certain exceptions. *See Kennedy*, 555 U.S. at 288 (citing 29 U.S.C. § 1056(d)). And a "survivor's annuity may not be waived by the participant, absent certain limited circumstances, unless the spouse consents in writing to the designation of another beneficiary." *Boggs v. Boggs*, 520 U.S. 833, 842 (1997) (citing 29 U.S.C. § 1055(c)(2)).

b. ERISA has a "clearly expansive" preemption provision. *Egelhoff*, 532 U.S. at 146 (citation omitted). Congress provided that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. 29 U.S.C. § 1144(a). Congress also codified certain exceptions to preemption, like qualified domestic relations orders. *See id.* § 1144(b)(7).

ERISA preemption comes in two forms. *First*, ERISA preempts state laws that have "a 'reference to' ERISA plans." *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 319 (2016) (citation omitted). If a state law "acts immediately and exclusively upon ERISA plans" or if "the existence of ERISA plans is essential to the law's operation," then the state law cannot stand. *Id.* at 319-20 (citation omitted). *Second*, ERISA preempts state laws that have "an impermissible 'connection with' ERISA plans." *Id.* at 320 (citation omitted). If a state law "governs a central matter of plan administration" or "interferes with nationally uniform plan administration," then ERISA preempts it. *Id.* (omission adopted; citation omitted). "A state law also

might have an impermissible connection with ERISA plans if 'acute, albeit indirect, economic effects' of the state law 'force an ERISA plan to adopt a certain scheme of substantive coverage or effectively restrict its choice of insurers.'" *Id.* (citation omitted).

2. *Egelhoff* held that ERISA preempts state divorce revocation statutes as applied to ERISA plan assets no matter the distribution status of those assets, because such statutes have an impermissible "connection with" ERISA benefit plans. 532 U.S. at 143-45, 150. Federal and state courts have uniformly followed *Egelhoff*.

David Egelhoff had an employer-sponsored life insurance policy and pension plan, both governed by ERISA. *Id.* at 144. David named his wife, Donna, as the beneficiary of both. *Id.* David and Donna eventually divorced, and two months later David died in a car accident. *Id.* David had not removed Donna as the plans' named beneficiary. *Id.* The life insurance proceeds were paid in full to Donna, but David's employer held on to the pension plan benefits. *Id.*; *see also In re Estate of Egelhoff*, 989 P.2d 80, 83-84(Wash. 1999).

David's estate brought two actions in state court: one against Donna, claiming a right to the disbursed life insurance proceeds, and one against David's employer, claiming a right to the undisbursed pension plan benefits. *Estate of Egelhoff*, 989 P.2d at 83-84. The estate claimed it was entitled to the disbursed and undisbursed benefits because Washington's divorce revocation statute revoked Donna's interest as the named beneficiary immediately upon her divorce from David. *Egelhoff*, 532 U.S. at 144-45. The state courts consolidated the cases, and the Supreme Court of Washington ruled for the estate, holding that

ERISA does not preempt Washington's divorce revocation statute. *Id.* at 145-46; *see also Estate of Egelhoff*, 989 P.2d at 84.

This Court reversed, holding that ERISA preempts the divorce revocation statute as applied to the disbursed *and* undisbursed assets because the state law had "an impermissible connection with ERISA plans." *Egelhoff*, 532 U.S. at 147. On the one hand, *Egelhoff* explained, the state law intruded upon plan administrators' duty to "administer the plan 'in accordance with the documents and instruments governing the plan.'" *Id.* (citation omitted). On the other hand, the state law disrupted national uniformity, one of ERISA's "principal goals." *Id.* at 148. "Uniformity is impossible," *Egelhoff* reasoned, if states can statutorily override plan participants' decisions about who ultimately should benefit from ERISA plans. *Id.* The Court also stated that difficult choice-of-law questions would likely "exacerbate[]" the problem. *Id.* at 149. At no point did *Egelhoff* differentiate between the disbursed and undisbursed assets; its holding and reasoning applied to both.

3. "ERISA pre-emption questions are recurrent," *Boggs*, 520 U.S. at 839, and given ERISA's comprehensive nature, such questions are often context-specific. For example, *Boggs* arose in the survivor annuity context, *see id.* at 841-42, which implicates ERISA's "rigorous waiver provisions," *VanderKam v. VanderKam*, 776 F.3d 883, 892 (D.C. Cir. 2014), while *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 88 (1983), involved a state law that prohibited "discrimination in employee benefit plans on the basis of pregnancy."

A recent context-specific example of ERISA preemption is *Kennedy*, where the Court held (1) that

ERISA's anti-alienation provision did not invalidate the named beneficiary's waiver of her right to plan assets, and (2) that the plan administrator "properly disregarded the waiver owing to its conflict with the designation made by the former husband in accordance with plan documents." 555 U.S. at 288. William Kennedy named his wife, Liv, as the beneficiary of his savings and investment plan (SIP). *Id.* at 289. William and Liv divorced, subject to a decree that divested Liv of any rights she had in William's benefit plans, including the SIP. *Id.* "William did not … execute any documents removing Liv as the SIP beneficiary." *Id.* So, when William died, the plan administrator disbursed the SIP proceeds to Liv. *Id.* at 289-90. William's estate then sued the plan administrator, "claiming that the divorce decree amounted to a waiver of the SIP benefits on Liv's part, and that [the plan administrator] had violated ERISA by paying the benefits to [Liv]." *Id.* at 290.

This Court upheld the plan administrator's disbursement to Liv. *Id.* at 288. *Kennedy* first held that ERISA did not nullify Liv's waiver because the waiver did not violate ERISA's prohibition on the assignment or alienation of benefits. *Id.* at 292-99. *Kennedy* then held that the plan administrator correctly disbursed the SIP benefits to Liv "in conformity with the plan documents" because "Liv's waiver was not" "made in the way required" by the plan documents. *Id.* at 300, 304. Given that holding, *Kennedy* did not address "any questions about a waiver's effect in circumstances in which it is consistent with plan documents. Nor [did it] express any view as to whether [William's estate] could have brought an action in state or federal court against Liv to obtain the benefits after they were distributed." *Id.* at 299 n.10.

Kennedy cited *Egelhoff* with approval. *See id.* at 300, 303. But because *Kennedy* arose in a different context—*i.e.*, a waiver of rights rather than a revocation of rights by operation of law—*Kennedy* did not extensively discuss *Egelhoff*.

B. Factual and procedural background

1. The facts here are nearly identical to the facts in *Egelhoff*. *See supra* pp. 6-7. Charles Ragan had employer-sponsored life and accidental death insurance policies. App. 4a-5a. Charles named his wife, Melissa, as the beneficiary of those ERISA policies. *Id.* Charles and Melissa eventually divorced, and less than five months later Charles died in a car-bicycle accident. App. 4a. Before his death, Charles did not remove Melissa as the named beneficiary of his policies. App. 5a. So all the insurance proceeds, totaling approximately $535,000, were paid to Melissa. *Id.*

The Estate then sued Melissa in Colorado state court, claiming a right to the disbursed proceeds. *Id.* The Estate did not contend that Melissa had "waived or voluntarily relinquished her right to receive the insurance proceeds." *Id.* Rather, the Estate claimed that Melissa "was not entitled to receive the insurance benefits … and is obligated to return or repay" those benefits to the Estate because Colorado's divorce revocation statute revoked her interest as the named beneficiary immediately upon her divorce from Charles, the plan participant. App. 5a-6a (citation omitted).

Colorado's divorce revocation statute provides, in relevant part: "Except as provided by the express terms of a governing instrument," Colo. Rev. Stat. § 15-11-804(2), "a divorce revokes any revocable disposition or appointment of property made by a

divorced individual to the individual's then-spouse in a governing instrument, including a beneficiary designation in an insurance policy," App. 8a. If that provision is preempted, the statute continues, then a former spouse who received a payment "'to which that person is not entitled under this section is obligated to return that payment' or 'is personally liable for the amount of the payment …, to the person who would have been entitled to it were this section or part of this section not preempted.'" App. 8a-9a (quoting Colo. Rev. Stat. § 15-11-804(8)(b)). In other words, the statute purports to create a back-end cause of action against the person whose beneficiary status it tried to revoke.

Melissa moved to dismiss and moved for declaratory relief, arguing that ERISA preempts Colorado's divorce revocation statute. App. 6a.

2. The trial court granted Melissa's motions, ruling that the Estate does not have a right to the insurance proceeds under Colorado's divorce revocation statute, and that even if it did, ERISA preempts the Colorado statute. A division of the Colorado Court of Appeals affirmed. The Colorado Supreme Court denied review.

a. The trial court rested its judgment on two alternative grounds, ruling that Colorado's divorce revocation statute "either does not provide for the result the Estate seeks or, if it does, that result is preempted by ERISA." App. 36a.

On the state-law issue, the trial court ruled that "even if C.R.S. § 15-11-804 is not preempted by ERISA, it is not clear that C.R.S. § 15-11-804 provides the result sought by the Estate." App. 28a. Because the divorce revocation statute begins with "[e]xcept as

provided by the express terms of a governing instrument," Colo. Rev. Stat. § 15-11-804(2), and because the express terms of the insurance policies (*i.e.*, the governing instruments) "provide a specific procedure for a change of beneficiary," the court concluded that "the statutory revocation procedure does not apply" and that "the Estate has no claim against [Melissa] under C.R.S. § 15-11-804(8)(a)." App. 28a-29a.

On the ERISA preemption issue, the trial court "concluded that precedent from the United States Supreme Court and other courts … makes clear that ERISA preempts any revocation statute—like section 15-11-804—that automatically revokes a beneficiary designation upon divorce." App. 6a. "The only exception, the court explained, is in the context of waiver by private agreement between the parties." *Id.* And because "the Estate does not reference any such waiver in this case," App. 36a, the court ruled "that ERISA preempts the Estate's post-distribution claims against Ms. Ragan to recover funds that were properly distributed to her as the named beneficiary." App. 7a.

b. A division of the Colorado Court of Appeals "affirm[ed] the district court's judgment," holding that, "absent an express waiver of rights to the proceeds, ERISA precludes a lawsuit against a former spouse to recover insurance proceeds that were distributed to him or her as the named beneficiary." App. 4a. For three reasons, the court of appeals rejected the Estate's argument that ERISA does not preempt divorce revocation statutes as applied to ERISA plan assets that have already been disbursed.

First, the court noted the absence of authority supporting the Estate's position. The Estate did not identify any decision from any court holding that

ERISA allows state-law challenges to disbursed proceeds based on a revocation of the named beneficiary's rights by operation of law. The Estate instead relied exclusively on decisions holding that ERISA allows state-law challenges to disbursed proceeds based on the named beneficiary's waiver of rights. *See* App. 14a-15a. That distinction matters, the court explained, because the unanswered questions in *Kennedy* arise only "in the context of waiver by private agreement," not in the context of revocation by operation of law. App. 15a.

Second, the court declined the Estate's invitation to draw an arbitrary line between ERISA-governed assets that have been disbursed and those that have not, because doing so "would allow for an end-run around ERISA's rules and Congress's policy objective of providing for certain beneficiaries, thereby greatly weakening, if not entirely abrogating, ERISA's broad preemption provision." App. 16a (citation omitted).

Lastly, the court looked to *Hillman v. Maretta*, 569 U.S. 483, 485-86 (2013), which held that the Federal Employees' Group Life Insurance Act of 1954 (FEGLIA) preempted a Virginia divorce revocation statute as applied to disbursed proceeds. App. 16a-20a. While ERISA, unlike FEGLIA, "does not contain a statutory order of precedence," App. 19a, the Colorado Court of Appeals found *Hillman*'s "reasoning persuasive," App. 17a, because "the protection of beneficiaries is a paramount ERISA objective," just like under FEGLIA, App. 19a (citing *VanderKam*, 776 F.3d at 886 (alteration and omission adopted).

c. The Colorado Supreme Court denied review. App. 41a-42a.

REASONS FOR DENYING THE PETITION

Egelhoff controls this case. So the question is whether the Court should overrule *Egelhoff*. The lower courts do not disagree on that question. Indeed, the Estate does not identify any decision from any court that has questioned, narrowed, or failed to follow *Egelhoff*. Nor does the Estate show that courts have disagreed about the key distinction between claims to disbursed assets based on a revocation of rights by operation of law, on the one hand, and claims to disbursed assets based on waiver of rights, on the other. Because courts uniformly keep these concepts separate, there is no split. This case is a poor vehicle, too: the decision below is not binding in Colorado and the question presented likely is not outcome-determinative. Lastly, the decision below is correct: ERISA preempts state divorce revocation statutes as applied to ERISA plan assets no matter the distribution status of those assets. The petition should be denied.

I. Courts uniformly follow *Egelhoff*.

The petition should be denied because there is no conflict in the lower courts and *Egelhoff* forecloses the Estate's claim. The Estate has not identified any decision to the contrary. The Estate also fails to show that courts are confused about the distinction between claims based on revocation statutes (which courts uniformly hold preempted) and claims based on waiver (which courts have held are not). There is no split, and this case involves only revocation-statute claims, not waiver claims. But even assuming disagreement exists, no court has tried to explain why *Egelhoff* should be overruled or to disprove the difference between a revocation of rights by operation of law and a waiver of rights.

A. *Egelhoff* controls this case.

Under *Egelhoff*, ERISA preempts Colorado's divorce revocation statute. As in *Egelhoff*, 532 U.S. at 144-45, the Estate (a) claims a right to ERISA plan assets that have already been disbursed to the named beneficiary (b) based on a state divorce revocation statute that revokes by operation of law the named beneficiary's interest in the assets immediately upon divorce from the plan participant. App. 5a-6a. Like the estate in *Egelhoff*, 532 U.S. at 144, the Estate sued the named beneficiary (Melissa) to recover the disbursed assets. App. 5a. And like the named beneficiary in *Egelhoff*, Melissa did not waive her right to the disbursed assets. *Id.* What's more, "the type of benefits at issue here," Pet. 24, and in *Egelhoff*, 532 U.S. at 144, are identical: life insurance benefits. *Egelhoff* governs this case.

The Estate nonetheless claims that ERISA does not preempt Colorado's divorce revocation statute as applied to the disbursed assets. *See* App. 4a, 6a. But *Egelhoff*—which involved disbursed assets—held just the opposite: ERISA preempts state divorce revocation statutes as applied to ERISA-governed assets because such statutes have "an impermissible connection with ERISA plans." *Egelhoff*, 532 U.S. at 147; *see also id.* at 146-50. Again, *Egelhoff* controls.

The Estate glosses over *Egelhoff*. Despite saying what *Egelhoff* holds, *see* Pet. 8-9, the Estate fails to mention when *Egelhoff* applies, instead ignoring the facts of *Egelhoff* completely. As discussed, *Egelhoff* involved disbursed life insurance proceeds and non-disbursed pension plan benefits. *Supra* pp. 6-7. *Egelhoff* could have differentiated between the disbursed and undisbursed assets, but it didn't. In fact,

the estate there argued that "[e]ven if" ERISA preempted the state's divorce revocation statute as applied to the undisbursed assets held by the plan administrator, ERISA did not affect the estate's "right to proceed against Donna" with respect to the assets she currently "possesses." Br. for Resp'ts 14-16, *Egelhoff v. Egelhoff*, No. 99-1529 (U.S. Sept. 19, 2000). The Court didn't adopt that distinction.

In sum, *Egelhoff* applies whenever a plaintiff claims that a state divorce revocation statute confers a right to ERISA plan assets, no matter the distribution status of those assets. *See, e.g.*, *Barnett v. Barnett*, 67 S.W.3d 107, 117 (Tex. 2001) ("The Court's determination that state law was preempted was unaffected by the fact that the plan administrator in *Egelhoff* had already paid the proceeds to David Egelhoff's former wife."). Because the Estate claims that Colorado's divorce revocation statute gives it a right to ERISA plan assets, *Egelhoff* applies.

The Estate may argue that *Egelhoff* does not apply because this case involves only disbursed assets whereas *Egelhoff* involved disbursed *and* undisbursed assets. That argument fails. Just as *Egelhoff* did not differentiate between disbursed and undisbursed assets, the decision did not turn on the *mixture* of disbursed and undisbursed assets. Under *Egelhoff*, the status of the assets simply does not matter. What matters is whether the divorce revocation statute strips the named beneficiary's interest by operation of law. Moreover, the fact that this case involves only disbursed assets, and thus is narrower than *Egelhoff*, only proves that *Egelhoff* covers it.

B. There is no disagreement over the scope of *Egelhoff*.

1. As discussed, *Egelhoff* holds that ERISA preempts state divorce revocation statutes as applied to ERISA plan assets no matter whether those assets have been disbursed. *Supra* pp. 6-7, 14-15. The Estate has not identified, either in the petition or in its briefing below, any decision from any court that has questioned, narrowed, or failed to follow *Egelhoff*. In other words, as the Colorado Court of Appeals put it, "none of the cases relied on by the Estate" hold that ERISA allows state-law challenges to disbursed proceeds based on a revocation of the named beneficiary's rights by operation of law. App. 14a. There is thus no disagreement over the scope of *Egelhoff*.

By failing to grapple with *Egelhoff*, the Estate mistakenly claims that "federal and state courts have split over whether ERISA preempts a state-law claim brought to recover proceeds that have already been distributed." Pet. i. That assertion is wrong because it conflates distinct types of state-law challenges. A plaintiff might claim a right to disbursed proceeds based on a state divorce revocation statute. In a case with different facts, in contrast, a plaintiff might claim a right to disbursed proceeds based on the named beneficiary's waiver of rights. *Egelhoff* definitively resolved the former scenario, holding that ERISA preempts divorce revocation statutes as applied to ERISA plan assets no matter the distribution status of those assets. *See* 532 U.S. at 146-50. The Court has not, however, addressed the latter scenario. *See Kennedy*, 555 U.S. at 299-300 & n.10.

Unlike the Estate, courts are not confused by this distinction. *Sweebe v. Sweebe*, 712 N.W.2d 708 (Mich.

2006), is a good example. There, the Michigan Supreme Court expressly recognized the difference between state-law challenges based on a waiver of rights and state-law challenges based on a revocation of rights by operation of law. *Id.* at 713; *see also* App. 14a. The question in *Sweebe* was whether ERISA "precludes a named beneficiary from waiving the proceeds from a life insurance policy." 712 N.W.2d at 710. In holding "that ERISA does not preempt a waiver by a beneficiary," *id.* at 712, the Michigan Supreme Court explained that *Egelhoff* had no bearing on the analysis because it involved an entirely different scenario: "a mandatory state statute that automatically revoked named beneficiaries upon divorce," *id.* at 713.

Another example is *Walsh v. Montes*, 388 P.3d 262, 265-66 (N.M Ct. App. 2016), where the Court of Appeals of New Mexico, like the Michigan Supreme Court, recognized the difference between a waiver of rights and a revocation of rights by operation of law. The plaintiffs in *Walsh* claimed a right to disbursed assets based on the named beneficiary's waiver *and* the revocation of the named beneficiary's rights by operation of law. *See id.* at 264. The court distinguished plaintiffs' "waiver theory" from their revocation theory, explaining that although the Supreme Court has addressed "preemption of a state statute," *i.e.*, the revocation theory, it has "not address[ed] whether a waiver of benefits can be enforced against the beneficiary." *Id.* at 266. Based on that distinction, the court held that ERISA did not foreclose the plaintiffs' waiver theory and it did "not address" the revocation theory. *Id.*

The Court of Appeals of Washington has likewise identified the difference between a waiver of rights and a revocation of rights by operation of law. In

Estate of Lundy v. Lundy, 352 P.3d 209, 214 (Wash. Ct. App. 2015), the court explained that the unanswered questions in *Kennedy* arise "only in the context of waiver by private agreement," not in the disparate context of revocation by operation of law.

2. The distinction between revocation-statute claims and waiver claims makes clear that there is no split. The Estate has not identified any disagreement over the scope of *Egelhoff*. And courts have consistently distinguished between claims based on a revocation of rights by operation of law, *see Egelhoff*, 532 U.S. at 146-50, and claims based on a waiver of rights, *see Kennedy*, 555 U.S. at 299-300 & n.10. The petition does not show otherwise.

a. The Estate primarily cites decisions involving claims to disbursed assets based on the named beneficiary's waiver of rights rather than a revocation of rights by operation of law. *See* Pet. 13-18. Those decisions do not question *Egelhoff*, nor do they equate a waiver of rights to a revocation of rights by operation of law.

Start with *Sweebe*, which not only arose in the waiver context but also distinguished between waiver and revocation by operation of law. 712 N.W.2d at 713. While the Estate cites *Sweebe* for the proposition "that ERISA does not preempt post-distribution suits," Pet. 16, the Estate fails to note that the facts and logic of *Sweebe* disprove the existence of a split. Similarly, the Estate mistakenly relies on *Walsh*, Pet. 18, which, like *Sweebe*, recognized the difference between waiver and revocation by operation of law. *Walsh*, 388 P.3d at 265-66.

The Estate also cites decisions from the Third and Fourth Circuits, Pet. 13-15, but like *Sweebe*, those

decisions involved only waivers. In *Andochick v. Byrd*, 709 F.3d 296, 297 (4th Cir. 2013), "[t]he only question … [was] whether ERISA prohibits a state court from ordering [a named beneficiary], who had previously waived his right to [ERISA plan] benefits, to relinquish them to the administrators of [the plan participant's] estate." And in *Estate of Kensinger v. URL Pharma, Inc.*, 674 F.3d 131, 132 (3d Cir. 2012), the question was whether the estate could "attempt to recover the [disbursed] funds by bringing suit directly against [the named beneficiary] to enforce her waiver." Because *Andochick* and *Estate of Kensinger* arose in the waiver context, neither decision addressed whether plaintiffs can assert a right to disbursed assets based on a state divorce revocation statute. The Third and Fourth Circuits have thus not taken a position on the question presented here—whether *Egelhoff* should be overruled.

The Estate cites more decisions that are similar to *Sweebe*, *Walsh*, *Andochick*, and *Estate of Kensinger*. *See* Pet. 17-18; *see also Moore v. Moore*, 297 So. 3d 359, 362-63 (Ala. 2019); *In re Estate of Easterday*, 209 A.3d 331, 333, 342-43 (Pa. 2019); *Appleton v. Alcorn*, 728 S.E.2d 549, 550-51 (Ga. 2012); *Martinez-Olson v. Estate of Olson*, 328 So. 3d 14, 15 (Fla. Dist. Ct. App. 2021); *In re Marriage of Jody L.*, No. G058738, 2021 WL 320613, at *1 (Cal. Ct. App. Feb. 1, 2021); *D'Arcy v. Andrews*, No. D075245, 2020 WL 1934001, at *1 (Cal. Ct. App. Apr. 22, 2020); *In re Marriage of Stine*, No. A154972, 2019 WL 6267429, at *1 (Cal. Ct. App. Nov. 22, 2019). But none involved a waiver of rights and none addressing the disparate context of revocation by operation of law.

b. The Estate cites a few decisions involving neither a waiver of rights nor a revocation of rights by

operation of law. These context-specific decisions do not establish the existence of a split, because they do not question *Egelhoff* and they do not address whether ERISA preempts state-law claims to disbursed assets based on a divorce revocation statute. If anything, these decisions reinforce the distinction between a waiver and revocation by operation of law.

Three decisions on which the Estate relies do not cite *Egelhoff* at all. *See* Pet. 16-17 (citing *Central States, Se. & Sw. Areas Pension Fund v. Howell*, 227 F.3d 672 (6th Cir. 2000); *In re Estate of Couture*, 89 A.3d 541 (N.H. 2014); *Pardee v. Personal Representative for Est. of Pardee*, 112 P.3d 308 (Okla. Civ. App. 2005)). In each of those decisions, the plaintiffs sought to impose a constructive trust on the disbursed assets based on alleged improper conduct by the plan participant. *See Howell*, 227 F.3d at 673-74, 678-79; *Estate of Couture*, 89 A.3d at 543-44; *Pardee*, 112 P.3d at 309-10. In *Pardee*, for example, the plaintiff claimed that her ex-spouse (the plan participant) breached a post-nuptial agreement by failing to "execute any and all documents necessary to insure that the [plaintiff] obtains a one-half interest" in certain benefit plans. 112 P.3d at 309-10. While those decisions concluded that, under the circumstances, ERISA did not foreclose the creation of a state-law constructive trust, *see Howell*, 227 F.3d at 679; *Estate of Couture*, 89 A.3d at 543; *Pardee*, 112 P.3d at 315-16, none of the decisions addressed whether ERISA allows plaintiffs to assert a right to disbursed assets based on a state divorce revocation statute.

MetLife Life & Annuity Co. of Connecticut v. Akpele, 886 F.3d 998 (11th Cir. 2018), is likewise inapposite. Unlike this case, where the Estate claims a right to disbursed assets based on Colorado's divorce

revocation statute, App. 5a-6a, *Akpele* was a lawsuit initiated *by the plan administrator* because "it could not determine the proper beneficiary under the insurance policy," 886 F.3d at 1000. Also unlike this case, *Akpele* involved an alleged settlement agreement that "provided for the equal division of the policy proceeds." *Id.* *Akpele* thus did not address the critical issue in this case: whether ERISA preempts state-law claims to disbursed assets based on a state divorce revocation statute. And while *Akpele* includes a lone parenthetical citation to *Egelhoff*, *see id.* at 1006, it does not discuss *Egelhoff* at all.

These context-specific decisions do not create a split of authority. If anything, *Pardee* and *Akpele* are simply variations of a claim to disbursed assets based on a waiver of rights. After all, a private agreement establishing each person's right to certain assets, *see, e.g.*, *Pardee*, 112 P.3d at 309-10, is akin to a private waiver of rights, *see, e.g.*, *Sweebe*, 712 N.W.2d at 710. These decisions are thus further confirmation of (a) the difference between waiver (or agreement) and revocation by operation of law, and (b) the absence of disagreement over that difference.

3. The Estate frames the petition around *Kennedy*. *See, e.g.*, Pet. i & 13. But the question left open in *Kennedy*—whether ERISA prevents plaintiffs from asserting a state-law right to disbursed proceeds based on the named beneficiary's *waiver* of rights, *Kennedy*, 555 U.S. at 299-300 & n.10—has no bearing on this case. The Estate does not claim a right to the disbursed life insurance proceeds because "[n]o party asserts that [Melissa] waived or voluntarily relinquished her right to receive the insurance proceeds." App. 5a. Rather, the Estate claims that it is entitled to those proceeds because Colorado's divorce

revocation statute revoked Melissa's interest as the named beneficiary immediately upon her divorce from Charles. App. 5a-6a. Therefore, no matter the answer to the question left open in *Kennedy*, the Estate's claim is foreclosed by *Egelhoff*. And, as explained, the Estate has not identified any decision that has questioned, narrowed, or failed to follow *Egelhoff*.

C. Even assuming disagreement exists, the question presented is not certworthy.

There is no question that *Egelhoff* controls. *Supra* pp. 14-16. So the only way the Estate can win is if the Court overrules *Egelhoff* in part and holds that ERISA *does not* preempt state divorce revocation statutes as applied to ERISA-governed assets that have already been disbursed. The problem for the Estate is that the lower courts have not debated whether *Egelhoff* should be overruled. No court has refused to follow *Egelhoff*. No court has called *Egelhoff* into question. And no court has suggested that *Egelhoff* should be paired back. In fact, several decisions on which the Estate relies ignore *Egelhoff* completely. *See Howell*, 227 F.3d 672; *Moore*, 297 So. 3d 359; *In re Estate of Couture*, 89 A.3d 541; *Appleton*, 728 S.E.2d 549; *Martinez-Olson*, 328 So. 3d 14; *In re Marriage of Jody L.*, 2021 WL 320613; *Pardee*, 112 P.3d 308.

For those reasons, granting review to consider overruling *Egelhoff* would be premature and unwise. Overruling precedent requires "the utmost caution." *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997). That is especially true in statutory interpretation cases, where "considerations of *stare decisis* weigh heavily" given that "Congress is free to change this Court's interpretation of its legislation." *Illinois Brick Co. v. Illinois*, 431 U.S. 720, 736 (1977). Yet no Court has

suggested overruling *Egelhoff*, much less conducted the inquiry necessary to justify such a course.

To be clear, there is no split, *supra* pp. 16-22, and the decision below is correct, *infra* pp. 26-31. But even assuming there is disagreement over *Egelhoff*, it would make little sense to grant review without allowing percolation to see if the lower courts can explain why *Egelhoff* should be overruled. As things stand, no court has attempted to disprove the recognized difference between a revocation of rights by operation of law and a waiver of rights. The lack of debate on the issue not only confirms that there is no conflict, it also confirms that review would be premature even if there were disagreement.

II. This case is a poor vehicle because the decision below is from an intermediate state appellate court and the question presented likely is not outcome-determinative.

The petition should also be denied because this case is a poor vehicle. *First*, the decision below comes from the Colorado Court of Appeals, not the Colorado Supreme Court, and thus does not represent Colorado's position on the question presented. *Second*, the question presented likely is not outcome-determinative anyway because, as the trial court held, "even if" ERISA does not preempt Colorado's divorce revocation statute as applied to disbursed assets, "the Estate has no claim against [Melissa] under [state law]." App. 28a-29a.

A. The decision below lacks binding force for two reasons.

First, the decision is from the Colorado Court of Appeals, not the Colorado Supreme Court. Thus, it

can neither create a state-high-court split nor settle the law in Colorado.

Second, the decision doesn't settle the law even in the Colorado Court of Appeals. The Colorado Court of Appeals "is a divisional court." *Chavez v. Chavez*, 465 P.3d 133, 138 (Colo. App. 2020). Each division comprises "a three-judge panel that serves together for four months." Colorado Judicial Branch, *Court of Appeals Protocols*, tinyurl.com/2p86ue3y (last visited Nov. 10, 2022). Given this structure, "divisions are not bound by the decisions of another division." *Id.* "[E]ach division may view the law differently and issue a conflicting decision." *Id.* And because the Court of Appeals "is not authorized to sit en banc," *id.*, "[o]nly the Colorado Supreme Court" can bind Colorado courts, *Nguyen v. American Fam. Mut. Ins. Co.*, No. 15-cv-0639, 2015 WL 5867266, at *6 (Oct. 8, 2015 D. Colo.). Thus, the decision below is not binding law in Colorado, making this case a poor vehicle.

B. The question presented also is likely not outcome-determinative. Recall that the trial court issued alternative rulings: Colorado's divorce revocation statute "either does not provide for the result the Estate seeks or, if it does, that result is preempted by ERISA." App. 36a. Thus, even if the Court were to grant cert, overrule *Egelhoff*, and hold that ERISA does not preempt state divorce revocation statutes as applied to disbursed assets, the Estate would likely still lose because it "has no claim against [Melissa] under [state law]" in the first place. App. 29a.

This alternative ruling, in addition to showing that the question presented is not outcome-determinative, likely implicates the Court's general practice of "not review[ing] a question of federal law decided by

a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment." *Coleman v. Thompson*, 501 U.S. 722, 729 (1991). That standard is likely met here, because "the Estate has no claim against [Melissa] under [Colorado's divorce revocation statute]" "*even if*" ERISA does not preempt that state statute. App. 28a-29a (emphasis added).

The Estate may argue that the court of appeals, in "affirm[ing] the district court's judgment," App. 4a, did not analyze the alternate state-law ruling. But that argument would raise more questions than it answers. For instance, it is unclear whether the Estate even preserved the state-law issue on appeal. No part of the Estate's brief in the court of appeals directly challenged the trial court's ruling that Colorado's divorce revocation statute is inapplicable in this case *because* the express terms of the insurance policies "provide a specific procedure for a change of beneficiary," a procedure that Charles did not follow. App. 28a-29a; *see also* Estate Br., *Ragan v. Ragan*, No. 20CA0038 (Colo. App. Apr. 22, 2020).

In sum, all these issues would complicate this Court's review, making this case a poor vehicle for addressing the splitless question whether *Egelhoff* should be overruled.

III. The decision below is correct.

The petition should also be denied because the decision below correctly held that ERISA preempts state divorce revocation statutes as applied to ERISA plan assets no matter the distribution status of those assets. The Estate's contrary position fails. Drawing an arbitrary line at distribution would only enable states to accomplish after distribution that which they

cannot accomplish before distribution. ERISA's "clearly expansive" preemption provision does not permit such an end-run. Moreover, general preemption principles confirm that lower courts have correctly distinguished between a revocation of rights by operation of law and a waiver of rights.

A. ERISA preempts state laws that have a "connection with" ERISA plans. *Egelhoff*, 532 U.S. at 147. That standard is met, triggering preemption, when a state law "implicates" or "interferes with" "the objectives of the ERISA statute" or the "ERISA plans" themselves. *Id.* at 147-48 (citation omitted). "The principal object of [ERISA] is to protect plan participants and beneficiaries." *Boggs*, 520 U.S. at 845. Participants and beneficiaries are the "axis around which ERISA's protections revolve," *id.* at 854, and "the protection of beneficiaries," in particular, is "a paramount ERISA objective," *VanderKam*, 776 F.3d at 886. For example, ERISA generally requires plan administrators to disburse proceeds only to the beneficiaries named in the plan documents. *Egelhoff*, 532 U.S. at 147 (citing 29 U.S.C. §§ 1002(8), 1102(b)(4), and 1104(a)(1)(D)). That "core" command reflects the underlying principle that plan participants, through "the documents and instruments governing the plan," should determine who ultimately will benefit from the plan. *Id.* (citation omitted).

As *Egelhoff* explained, a state divorce revocation statute like Colorado's "implicates an area of core ERISA concern." *Id.* Plan participants identify who exactly should benefit from their plans, but when a participant designates her spouse as the beneficiary, state divorce revocation statutes automatically override the participant's designation the moment the participant and beneficiary obtain a divorce. As a

result, state law, rather than the participant through her plan documents, decides who ultimately should benefit from the plan. *See id.* at 147-48.

State divorce revocation statutes are incompatible with ERISA. By dictating who should benefit from a participant's plan, divorce revocation statutes force plan administrators to ignore the participant's choices. "The administrators must pay benefits to the beneficiaries chosen by state law, rather than to those identified in the plan documents." *Id.* at 147. Additionally, uniformity in plan administration would be "impossible" if states were permitted to override plan participants' decisions through state-specific "legal obligations." *Id.* at 148; *see also id.* at 149.

Distribution of plan assets does not eliminate these concerns. Under state divorce revocation statutes, non-beneficiaries have an interest in ERISA-governed assets the moment the plan participant and beneficiary obtain a divorce. So, when non-beneficiaries claim a right to disbursed assets based on a state divorce revocation statute, that claim is "based on the theory that they had an interest in the *undistributed* … benefits." *Boggs*, 520 U.S. at 854 (emphasis added). It thus "does not matter that [the non-beneficiaries] have sought to enforce their rights only after the … benefits have been distributed." *Id.* The gist of the state-law claim is the same no matter the assets' distribution status, which means the state law's impermissible "connection with" ERISA plans is also the same no matter the assets' distribution status.

B. It makes sense that distribution does not save state divorce revocation statutes from ERISA's "clearly expansive" preemption provision. *Egelhoff*, 532 U.S. at 146 (citation omitted). Remember that

"[t]he principal object of [ERISA] is to protect plan participants and beneficiaries." *Boggs*, 520 U.S. at 845. But when a state overrides a plan participant's decision about who ultimately should benefit, both the participant and beneficiary are harmed no matter when the override kicks in. Participants are harmed because state law ignores their choices. Beneficiaries are harmed because either they will never receive the benefits to which they are entitled under federal law or they will be forced to surrender those benefits to persons not named as beneficiaries in the plan documents.

Given the "comprehensive nature of the statute," *Boggs*, 520 U.S. at 839, coupled with its "broadly worded" preemption provision, *Egelhoff*, 532 U.S. at 146, ERISA preemption of state divorce revocation statutes simply cannot end at distribution. Otherwise, states could accomplish after distribution precisely what they cannot accomplish before distribution. The Estate thinks Congress authorized this end-run, arguing that "a plan administrator has 'no role in any post-distribution proceedings.'" Pet. 26 (citation omitted). But plan administrators, despite being part of the ERISA scheme, are not the "axis around which ERISA's protections revolve." *Boggs*, 520 U.S. at 854. That honor belongs to plan participants and beneficiaries. *Id.*

This commonsense conclusion mirrors this Court's reasoning in *Hillman*, which held that FEGLIA preempted a Virginia divorce revocation statute as applied to disbursed life insurance proceeds. *See* 569 U.S. at 485-86, 489. Like Colorado's divorce revocation statute, *see supra* p. 10, Virginia's statute revoked a named beneficiary's interest in certain benefits immediately upon divorce from the plan participant

(Section A of the statute). *Id.* at 488. Also like Colorado's divorce revocation statute, the Virginia law provided that to the extent federal law preempted that revocation, the named beneficiary must give all the disbursed proceeds to whomever would have received the proceeds absent preemption (Section D of the statute). *Id.*; *see also* App. 17a. As *Hillman* explained, Section A and Section D served the same end: "In either case, state law displaces the beneficiary selected by the insured in accordance with FEGLIA and places someone else in her stead." 569 U.S. at 494. "The parties agreed that Section A … is pre-empted," *id.* at 489, and the Court held that there is no reason to reach a different result as to Section D, *see id.* at 495-97. As Justice Thomas explained, "Section D's only function is to accomplish what Section A would have achieved, had Section A not been pre-empted." *Id.* at 501 (Thomas, J., concurring in the judgment). In short, because FEGLIA preempted Section A, and because Sections A and D did the same thing, FEGLIA preempted Section D.

Hillman's logic applies here. *See* App. 16a-20a. It makes no difference that ERISA and FEGLIA are different statutes. *Contra* Pet. 28. In both cases, the federal law serves to protect beneficiaries. *See Hillman*, 569 U.S. at 492-96; *Boggs*, 520 U.S. at 845. And in both cases, the state statute stripped beneficiaries of their interest in certain assets no matter the distribution status of those assets. *See Hillman*, 569 U.S. at 494; *Egelhoff*, 532 U.S. 146-50; App. 16a, 21a, 36a. Thus, as *Egelhoff* correctly held, ERISA preempts state divorce revocation statutes as applied to ERISA plan assets no matter the distribution status of those assets.

Lastly, the Estate's reference to claims brought by creditors misses the mark, *see* Pet. 27-28, because the scope of ERISA preemption in debt-collection actions has no bearing on the scope of ERISA preemption in the disparate context of claims based on state divorce revocation statutes. Unlike state divorce revocation statutes, which have "an impermissible connection with ERISA plans," *Egelhoff*, 532 U.S. at 147, "state-law methods for collecting money judgments must, as a general matter, remain undisturbed by ERISA," *Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 834 (1988). *Mackey* held that "Congress did not intend to forbid the use of state-law mechanisms of executing judgments against ERISA welfare benefit plans, even when those mechanisms prevent plan participants from receiving their benefits." *Id.* at 831-32. Simply put, debt collection is a unique context not at issue here. And given that ERISA preemption is context-specific, *see supra* pp. 8-9, the Estate's reliance on creditor claims is misplaced.

C. General preemption principles confirm the distinction between state divorce revocation statutes, on the one hand, and waivers (or agreements), on the other. A plaintiff who claims a right to assets based on the named beneficiary's waiver of rights is asserting a claim under state contract law. *See, e.g.*, *Sweebe*, 712 N.W.2d at 712-13. Federal law typically does not preempt such "privately ordered obligations" because "a contractual commitment voluntarily undertaken" is not a state "law, rule, regulation, standard, or other provision having the force and effect of law." *American Airlines, Inc. v. Wolens*, 513 U.S. 219, 228-29 & n.5 (1995) (citations omitted); *see also Northwest, Inc. v. Ginsberg*, 572 U.S. 273, 281 (2014). Here, like the federal statute at issue in *Wolens* and *Ginsberg*, ERISA

preempts "any and all State laws," which "includes all laws, decisions, rules, regulations, or other State action having the effect of law." 29 U.S.C. § 1144(a), (c)(1). It thus makes sense that courts have uniformly differentiated between claims to disbursed ERISA-governed assets based on state divorce revocation statutes, which are preempted under *Egelhoff*, and claims to disbursed assets based on private waivers, which likely are not preempted.

CONCLUSION

The petition should be denied.

Respectfully submitted.

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