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, a/k/a MELISSA HUDSON,
Respondent.

On Petition for Writ of Certiorari to the Colorado Court of Appeals

REPLY BRIEF IN SUPPORT OF CERTIORARI

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PETITIONER'S REPLY

This case presents a question of ERISA preemption that has long divided both the circuits and state courts: whether ERISA preempts state-law claims seeking to recover benefits "after they were distributed." *Kennedy v. Plan Adm'r for DuPont Savs. & Inv. Plan*, 555 U.S. 285, 299 n.10 (2009). And it's not going away. Since this petition was filed, the Eighth Circuit has also weighed in—rejecting the conclusion adopted by the court below and holding that "ERISA does not preempt post-distribution suits against recipients." *See Gelschus v. Hogen*, 47 F.4th 679, 685 (8th Cir. 2022). As it currently stands, the split implicates six federal circuits and nearly ten state high courts.

To downplay this remarkably pervasive split, the respondent tries to balkanize the cases. "[T]here is no split," she claims, because some of the cases involved post-distribution suits based on state contract law, while others involved statutes or common law. But the state-law *basis* for a post-distribution suit to recover funds is irrelevant: As both this Court and the lower courts have recognized, ERISA preemption requires "look[ing] both to the objectives of the ERISA statute" and "the nature of the effect" of the state-law suit on ERISA plans. *Egelhoff v. Egelhoff*, 532 U.S. 141, 147 (2001). And regardless of whether a post-distribution claim is based on contract, statute, or common law, the goal is the same—a return of funds improperly distributed. So the result of any preemption analysis is also the same—either the suit seeking return of already distributed funds does, or does not, interfere with ERISA's goals. *See, e.g.*, *Est. of Kensinger v. URL Pharma, Inc.*, 674 F.3d 131, 136–37 (3d Cir. 2012) (recognizing that post-distribution suits may proceed where they don't interfere with ERISA's

objectives of "straightforward administration of plans," "avoidance of potential double liability," and "expeditious payment of plan proceeds").

Failing that, the respondent claims that this Court's decision more than twenty years ago in *Egelhoff* already decided this issue and "foreclosed" post-distribution claims under ERISA. But the massive split that has developed since *Egelhoff* speaks for itself, and not even *this* Court believed that was true. *See Kennedy*, 555 U.S. at 299 n.10 (noting that the question remained open). Indeed, this Court's entire preemption analysis in *Egelhoff* focused on an assessment of whether a *pre-distribution* claim for benefits conflicted with ERISA's core objectives. 532 U.S. at 147–50. And the lower courts have recognized as much. When it comes to post-distribution claims, "*Egelhoff* is inapposite" to the analysis. *Andochick v. Byrd*, 709 F.3d 296, 300–01 (4th Cir. 2013); *see Metlife Life & Annuity Co. of Connecticut v. Akpele*, 886 F.3d 998, 1006–07 (11th Cir. 2018); *Kensinger*, 674 F.3d at 136–37 (3d Cir. 2012); *Appleton v. Alcorn*, 728 S.E.2d 549, 551 (Ga. 2012); *In re Est. of Easterday*, 209 A.3d 331, 346 (Pa. 2019); *In re Est. of Couture*, 89 A.3d 541, 547–48 (N.H. 2014).

Finally, the respondent suggests that this case offers a suboptimal vehicle for deciding the preemption question, because the Colorado Supreme Court declined certiorari. But that does not mean a case is not worthy of certiorari in this Court. *See, e.g.*, *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1726–27 (2018). And the legal question here is both cleanly presented and clearly outcome determinative in this case. Because the current patchwork of divergent rules across the country cries out for immediate intervention, the

Court should grant certiorari and resolve the preemption question now.

I. The courts are deeply divided.

The circuit and state courts are deeply split over whether ERISA preempts post-distribution suits to recover wrongly distributed funds. A majority have held that ERISA does not preempt claims seeking the recovery of benefits that have already been disbursed. But the Ninth Circuit and three states—including Colorado in this case—hold to the contrary.

In an effort to marginalize the split, the respondent tries to explain it away. She says (at 16–18) that the existence of "distinct types of state-law challenges"—some based on contract law and others based on statute or common law—is a "key distinction" that "makes clear that there is no split." That is wrong twice over. Not only is this distinction irrelevant for purposes of ERISA preemption, but it also fails on its own terms. Courts on each side of the split have addressed the preemption question for suits based on contract law, on the one hand, and suits based on statutory or common law, on the other.

A. The respondent's attempt to draw a distinction between state-law claims based on contract and those based on statute or common law fails for the simple fact that under this Court's ERISA preemption framework, there is no meaningful difference between these claims. Either way, a plaintiff who claims a right to assets already distributed to a named beneficiary is asserting a state law claim. *Appleton*, 728 S.E.2d at 551 (noting this in the context of a state-law waiver suit).[1] So, as this Court has

[1] Unless otherwise specified internal quotation marks, citations, and alterations are omitted from quotations throughout the brief.

explained, regardless of the basis of a plaintiff's claim, the relevant preemption inquiry is whether the suit would interfere with the "objectives of the ERISA statute" or have an "effect . . . on ERISA plans." *Egelhoff*, 532 U.S. at 147. And a suit to recover benefits will only have such an "impermissible connection with" an ERISA plan if it attempts to "govern[] a central matter of plan administration" or otherwise "interferes with nationally uniform plan administration." *Gobeille v. Liberty Mut. Ins.*, 577 U.S. 312, 319–20 (2016); *see also Boggs v. Boggs*, 520 U.S. 833, 841 (1997) ("simply asking," for preemption purposes, "if state law conflicts with the provisions of ERISA or operates to frustrate its objects").

And lower courts that have addressed this question have faithfully applied this framework—focusing not on the underlying basis of the suit to recover benefits but on whether the suit interferes with ERISA's objectives. *See, e.g.*, *Andochick*, 709 F.3d at 299; *Kensinger*, 674 F.3d 131, 135–37; *Metlife Life*, 886 F.3d at 1007; *In re Est. of Easterday*, 209 A.3d at 346; *Moore v. Moore*, 297 So. 3d 359, 364–66 (Ala. 2019); *In re Est. of Couture* 89 A.3d at 547–48. Indeed, even courts that have adopted the respondent's view—that post-distribution suits based on statute are preempted—have grounded that conclusion on a case reaching the same result for a post-distribution contract-based suit. *See Ragan v. Ragan*, 494 P.3d 664, 671 (relying on *Carmona v. Carmona*, 603 F.3d 1041 (9th Cir. 2010)), cert. denied, No. 21SC520 (Colo. Feb. 14, 2022); *Est. of Lundy v. Lundy*, 352 P.3d 209, 213–14 (Wash. Ct. App. 2015) (same), cert. denied, 361 P.3d 746 (Wash. 2015). The state-law basis for a suit seeking the return of already disbursed funds, in short, does not matter for purposes of ERISA preemption.

Nevertheless, the respondent attempts to supply a reason to justify drawing this distinction. In her view, the text of ERISA's express preemption provision exempts from its scope waiver-based claims. Resp. Br. at 30–31 (citing *American Airlines, Inc. v. Wolens,* 513 U.S. 219, 288–29 & n.5 (1995) and arguing that 29 U.S.C. § 1144(a)'s reference to "any and all State laws" does not encompass contractual waivers). But no court in this context has ever relied on *Wolens* or adopted this view. And for good reason. As this Court has repeatedly explained, whether a suit to recover benefits is preempted by ERISA turns on whether the suit "relates to" an ERISA plan by interfering with the "objectives of the ERISA statute." *See Egelhoff*, 532 U.S at 147; *Kennedy*, 555 U.S. at 301–03. Here again, answering that question does not depend in any way on the underlying basis for the suit.

B. The respondent's theory also fails even on its own terms. Contrary to the respondent's claim that there is no split, courts—including the Eighth Circuit just earlier this year—have held that ERISA does not preempt post-distribution suits outside of the contractual-waiver context. *See, e.g.*, *Gelschus*, 47 F.4th at 690 (holding that ERISA does not preempt unjust enrichment claim); *In re Est. of Couture*, 89 A.3d at 543–45 (same); *Cent. States, Se. & Sw. Areas Pension Fund v. Howell*, 227 F.3d 672, 677 (6th Cir. 2000) (holding that ERISA does not preempt suit based on preliminary injunction); *D'Arcy v. Andrews*, 2020 WL 1934001, at *4 (Cal. Ct. App. Apr. 22, 2020) (holding that ERISA does not preempt conversion claim for already distributed funds). That view cannot be reconciled with cases, like the decision below, holding that such suits are preempted. *Ragan*, 494 P.3d at 673; *Est. of Lundy*, 352 P.3d at 214; *Barnett v. Barnett*, 67 S.W.3d 107, 117 (Tex. 2001).

And even for waiver-based suits, the courts are split. For instance, the plaintiff's claim in *Carmona v. Carmona* was based on a contractual waiver, not a statute. 603 F.3d 1041, 1049 (9th Cir. 2010). Yet the Ninth Circuit held that ERISA preempted that claim for already distributed benefits. *Id.* And *Carmona* isn't the only one. *See, e.g.*, *Reliastar Life Ins. Co. v. Keddell*, 2011 WL 111733, at *1–2 (E.D. Wis. Jan. 12, 2011) (relying on *Carmona* to hold that post-distribution claims based on a "marital settlement agreement" "would violate ERISA's preemptive force"). Yet that view has been explicitly rejected by multiple other courts in the same setting. *Andochick*, 709 F.3d at 297, 391; *Kensinger*, 674 F.3d at 138; *Sweebe v. Sweebe*, 712 N.W. 2d 708, 712–13 (Mich. 2006); *Appleton*, 728 S.E.2d at 552; *In re Est. of Easterday*, 209 A.3d at 346.

II. *Egelhoff* does not resolve the split or the question presented.

Having failed to explain away the split, the respondent tries to dodge it entirely by claiming that *Egelhoff* already decided this issue in her favor. According to the respondent, *Egelhoff* "did not differentiate" between "disbursed and undisbursed assets" and so its pro-preemption conclusion applies whenever a plaintiff claims a right to ERISA-governed assets, "no matter the distribution status of those assets." Resp. Br. 2. Not so.

That this Court's preemption analysis in *Egelhoff* was limited to assessing whether ERISA preempted claims seeking to recover *undistributed* benefits, however, is clear from its analysis. In *Egelhoff*, the Court gave three reasons for why certain state-law claims "implicat[ed] an area of core ERISA concern" and were thus preempted—and all three of those reasons were tied to the undistributed nature of such claims. 532 U.S. at 147–48.

First, allowing claims that "bind[] ERISA plan administrators to a particular choice of rules for determining beneficiary status" "runs counter to ERISA's commands . . . that the fiduciary shall administer the plan in accordance with the documents and instruments governing the plan." Second, suits directing how the plan is administered "interferes with nationally uniform plan administration." *Id.* at 148. And third, "[r]equiring ERISA administrators to master the relevant laws of 50 States and to contend with litigation would undermine the congressional goal of minimizing the administrative and financial burdens on plan administrators." *Id.* at 150.

None of these reasons relates at all to how claims for *distributed* benefits would interfere with ERISA. The first focuses on the individual to whom a plan administer chooses to pay an ERISA benefit—a choice that happens pre-distribution. The second addresses whether plan administers would make that choice consistently across the country. And the third involves ERISA administrators' legal liability in making that choice. All three thus concern plan administrators and a choice they must make *before* benefits are distributed. But these concerns do not apply to a suit for benefits *after* a plan administer has already distributed them—because the suit will have no effect whatsoever on either a plan or plan administrator.

Given this, the respondent's contrary view does not turn on anything this Court said when analyzing the preemption question in *Egelhoff*. Instead, the respondent seizes on a fact the record disclosed that a separate life insurance policy had already been distributed to the beneficiary. Resp. Br. at 14–15. But the Court never addressed this separate life insurance policy or the

preemption implications of any suit for these proceeds in its analysis.

That is why, in *Kennedy*, this Court acknowledged that whether claims for *already distributed* funds are preempted under ERISA remains an open question. 555 U.S. at 299 n.10. Indeed, in *Kennedy* this Court pointedly explained that the claims in *Egelhoff* were preempted precisely because they interfered with how ERISA directed plan administrators *to distribute benefits*. 555 U.S. at 303 ("[I]n *Egelhoff* we . . . said the law was at fault for standing in the way of making payments 'simply by identifying the beneficiary specified by the plan documents,' and thus for purporting to "undermine the congressional goal of 'minimiz[ing] the administrative and financial burden[s]' on plan administrators." (quoting *Egelhoff*, 532 U.S. 148–50)); *see also Gobeille*, 577 U.S. at 344 (Ginsburg, J., dissenting) (The Court took care, however, to confine *Egelhoff* to issues implicating "a central matter of plan administration").

And it is also why many courts since *Kennedy* have recognized that "*Egelhoff* is inapposite" when it comes to post-distribution suits. *Andochick*, 709 F.3d at 300–01. As they have understood, claims for already distributed benefits "simply do not" implicate the kinds of concerns the Court in *Egelhoff* identified because they don't "require plan administrators to pay benefits to anyone other than the named beneficiary." *Id.*; *see In re Est. of Easterday*, 209 A.3d at 346–47 ("It is clear that none of the articulated objectives . . . are implicated when an estate attempts to recover benefits that have already been distributed because at that juncture, the plan administrator is no longer part of the equation."); *Metlife Life*, 886 F.3d at 1006–07; *Appleton*, 728 S.E.2d at 551;

Kensinger, 674 F.3d at 136–37; *In re Est. of Couture*, 89 A.3d at 547–48.

III. The respondent's vehicle arguments are based on a misunderstanding of this Court's procedures and the record below.

Finally, the respondent offers three reasons why this case is a suboptimal vehicle to address the preemption question. None are correct.

First, the respondent argues (at 23) that this case is unworthy of certiorari because the "decision below comes from the Colorado Court of Appeals" rather than the state supreme court. That is irrelevant. When a state high court "den[ies] discretionary review," as the Colorado Supreme Court did here, a timely "writ of certiorari seeking review of a judgment of a lower state court" is permitted. Sup. Ct. R. 13. That is why this Court has granted certiorari to the Colorado Court of Appeals a number of times when "[t]he Colorado Supreme Court declined to hear the case." *Masterpiece Cakeshop, Ltd.*, 138 S. Ct. at 1726–27; *see, e.g.*, *Air Pollution Variance Bd. of Colorado v. W. Alfalfa Corp.*, 416 U.S. 861, 863–64 (1974). And this Court has similarly granted certiorari to other state intermediary courts when a state supreme court denies certiorari. *See e.g.*, *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97, 101–02 (1980); *Dean v. Gadsden Times Publ'g Corp.*, 412 U.S. 543 (1973); *Price v. Georgia*, 398 U.S. 323, 325–26 (1970); *Douglas v. State of Ala.*, 380 U.S. 415, 418 (1965); *Lewis-Simas-Jones Co. v. S. Pac. Co.*, 283 U.S. 654, 656 (1931); *W. Union Tel. Co. v. Priester*, 276 U.S. 252, 258 (1928).

Second, the respondent asserts that the Estate failed to preserve an alternate holding below—meaning "even if the Court were to . . . hold that ERISA does not preempt" the Estate's claim, "the Estate would likely still

lose." Resp. Br. at 24. In support, she claims that the Estate failed to appeal the district court's conclusion doubting that Colorado law "provides the result [the Estate] sought" because it only allows a "specific procedure for a change of beneficiary" based on the "governing instruments." Resp. Br. at 10, 24–25 (quoting App. 28–29a). But the Estate's opening brief to the Colorado Court of Appeals explicitly challenged that exact paragraph of the district court's opinion. *See* Estate Br. at 10–12, 27–28, *Ragan v. Ragan*, 494 P.3d 664 (Colo. App. May 27, 2021) (No. 2020CA38) (challenging the district court's determination "that it is not clear that the statute works a revocation of a beneficiary designation" based on the relevant "governing instruments").

Third, the respondent insists that this case is a poor vehicle because the trial court below offered an adequate and independent state basis for its holding. Resp. Br. at 24–25 (claiming that the district court's decision, discussed above, was "independent of the federal question and adequate to support the judgment." (quoting *Coleman v. Thompson*, 501 U.S. 722, 729 (1991)). That misconstrues both the record and this Court's precedent. As explained above, although the Estate challenged this "ground," the Colorado Court of Appeals chose not to affirm on that theory. *Ragan*, 494 P.3d at 673. And *Coleman* itself clearly limits the independent state grounds doctrine to those questions on appeal "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." 501 U.S. 729 (emphasis added). Because the Colorado Court of Appeals did not rely on any state law as an alternative ground upon which to "rest" its holding, the decision under review did not rely on an independent state ground.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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