No. 24-61

In the Supreme Court of the United States

MICHAEL CLOUD,

Petitioner,

v.

THE BERT BELL/PETE ROZELLE NFL PLAYER RETIREMENT PLAN,

Respondent.

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

BRIEF OF PROFESSIONAL FOOTBALL WIVES FOR CHANGE AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND RULES

REGULATIONS

INTEREST OF AMICUS CURIAE [1]

Professional Football Wives for Change ("PFWC") is an unincorporated association formed by the spouses and families of current and retired National Football League (NFL) players in the early 2000s. The organization was established with a clear and urgent purpose: to advocate for the rights and welfare of these players in connection with the NFL's collective bargaining agreement and retirement plan. Over the years, the members of PFWC have borne witness to the profound and often devastating impact that participation in the NFL has had on their husbands' health and well-being. These women, who have supported their husbands through the highs and lows of their professional careers, have also stood by them as they faced the physical and emotional consequences of years spent in one of the most demanding and dangerous sports.

Many of these men, including the Petitioner in this case, have suffered severe and debilitating injuries directly related to their careers in professional football. These injuries range from chronic pain and mobility issues to traumatic brain injuries and other long-term health conditions that profoundly affect their quality of life. Despite the

[1] Pursuant to S. Ct. Rule 37.6, no counsel for a party authored this brief in whole or in part or made a monetary contribution to fund its preparation or submission. Amicus Curiae Advocacy for Fairness in Sports made a monetary contribution to fund the submission of the brief.

clear and undeniable link between their injuries and their time in the league, these players have encountered significant challenges in securing the disability benefits they need and deserve under the NFL's retirement plan.

These dedicated athletes, who once thrilled fans with their prowess on the field and contributed to the sport's rich history, now find themselves grappling with the lasting physical and emotional scars that affect their daily lives. Yet, when they turn to the NFL's retirement plan for support, they often face an array of roadblocks and denials that leave their essential needs unmet. This denial of benefits not only exacerbates their suffering but also undermines the promises made by the league's benefit system—a system that was designed, at least in theory, to provide for these men in their post-playing years.

PFWC stands firmly with these families, advocating tirelessly for fair and just access to the benefits that are rightfully owed. The denial of benefits to plan participants, despite the clear connection to their NFL careers, underscores a critical issue in ensuring that former players receive the support they require for their long-term health and welfare. The NFL's retirement plan is not merely a contractual obligation; it represents a moral commitment to the men who sacrificed their bodies and health for the game.

This case presents a question of extreme importance to PFWC, as its members continue to advocate for their husbands to receive the benefits they have earned and to which they are entitled. The

outcome of this case will not only affect the lives of Petitioner and similarly situated former players but will also set a precedent for how the NFL and its retirement plan address the needs of those who have given so much to the sport. PFWC is committed to ensuring that the voices of these families are heard and that the rights of former players are upheld in accordance with the principles of fairness, justice, and respect for their contributions to the game.

SUMMARY OF THE ARGUMENT

The U.S. Circuit Courts of Appeal currently apply different standards of review to ERISA procedural violations, leading to inconsistent outcomes based on jurisdiction. The Supreme Court has established that the "de novo" standard applies to ERISA benefit denial challenges unless the plan grants discretionary authority, in which case "abuse of discretion" applies. However, the Court has not clarified the standard for procedural violations, causing disparities among circuits. For instance, the Fifth Circuit uses a "substantial compliance" standard, while the Second, Ninth, and Eleventh Circuits apply a heightened or de novo review in certain cases. Other circuits vary in their approach, often considering procedural violations as a factor in applying abuse of discretion review. Contrary to this Court's previous guidance, this inconsistency creates uncertainty for claimants and plan administrators, necessitating a Court ruling to establish the standard of review for procedural violations to ensure fairness and uniform protection.

The Fifth Circuit's decision in this case did not honor ERISA's purpose of protecting employees and beneficiaries in employee benefit plans. The court failed to ensure that the claimant was afforded a full and fair review as required by ERISA, thereby undermining the statutory safeguards designed to protect plan participants.

ARGUMENT

1. The Court Should Grant the Petition to Resolve the Inconsistent Application of the Standard of Review to ERISA Procedural Violations by the U.S. Circuit Courts of Appeal.

Currently, U.S. Circuit Courts of Appeal apply different standards of review to ERISA procedural violations, leading to inconsistent outcomes depending on the jurisdiction. This Court has previously held that the de novo standard of review applies to a challenge to a denial of benefits under the Employee Retirement Income Security Act ("ERISA") unless the plan document grants the administrator or fiduciary discretionary authority to interpret plan terms or determine benefits, in which case a reviewing court should apply the "abuse of discretion" standard. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). This is true even if there is a conflict of interest of the plan administrator, though the conflict should be considered a factor in determining the appropriate standard of review. *Metropolitan Life Insurance Company v. Glenn*, 554 U.S. 105, 115-16 (2008) (discussing *Firestone*, 489 U.S. at 115). The Court also clarified that deference is

given to a plan administrator's reasonable interpretation of plan terms, even if a court has previously determined that the administrator's initial interpretation was incorrect. *Conkright v. Frommert*, 559 U.S. 506, 509 (2010). However, the Court has not resolved the question of which standard applies to procedural violations of ERISA and related regulations,[2] and the various U.S. Circuit Courts of Appeal apply different standards, leaving claimants in some circuits at a disadvantage.

A. The Fifth Circuit Applies the "Substantial Compliance" Standard.

The Fifth Circuit applies a "substantial compliance" standard, where minor procedural errors that do not result in prejudice to the claimant do not alter the deferential abuse of discretion standard of review. *Lafleur v. Louisiana Health Service & Indemnity Co.*, 563 F.3d 148, 154 (5th Cir. 2009). As both the Fifth Circuit and the district court noted in their opinions below, in the Fifth Circuit, a plan administrator abuses its discretion if its decision is not based on evidence, even if disputable, that clearly supports the basis for its denial. *George v. Reliance Standard Life Ins. Co.*, 776 F.3d 349, 352 (5th Cir. 2015). The administrator's decision need only be supported by "substantial evidence," which is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Atkins v.*

[2] 29 U.S.C. § 1133; 29 C.F.R. § 2560.503-1

Bert Bell/Pete Rozelle NFL Player Ret. Plan, 694 F.3d 557, 566 (5th Cir. 2012) (quotation marks omitted). If there is a rational connection between the facts and the decision, the decision is not arbitrary. *Id.*

B. The Second, Ninth, and Eleventh Circuits Apply a Heightened Standard of Review to ERISA Procedural Violations.

These courts are more likely to shift from the typically deferential "abuse of discretion" standard to de novo review under certain circumstances.

The Second Circuit requires strict adherence to ERISA procedural regulations. In *Halo v. Yale Health Plan, Dir. of Benefits & Records Yale Univ.*, 819 F.3d 42, 58 (2d Cir. 2016), the court held that failure to strictly comply with ERISA's claims procedure regulations generally results in de novo review unless the plan can show the noncompliance was inadvertent and harmless.

The Ninth Circuit has held that flagrant violations of ERISA procedural requirements can alter the standard of review from abuse of discretion to de novo. In *Abatie v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 971-72 (9th Cir. 2006), the court held that wholesale and flagrant procedural violations could lead to de novo review, removing the usual deference afforded to the plan administrator's decisions.

The Eleventh Circuit applies de novo review for all procedural violations, regardless of their severity. In *Boysen v. Illinois Tool Works, Inc.*, 767 F. App'x 799, 806 (11th Cir. 2019), the court ruled that compliance with ERISA's procedural requirements is

a question of law, subject to de novo review, rather than deferring to the plan administrator's decisions.

These circuits are generally more protective of claimants' rights, ensuring that any significant deviation from ERISA's procedural requirements by plan administrators can lead to a full reevaluation of the claim without the usual deference to the administrator's decision.

C. Other Circuits Apply the Abuse of Discretion or Arbitrary and Capricious Standard and May Reduce the Level of Deference if Procedural Violations are Significant.

These Circuits either follow the substantial compliance standard or consider procedural violations as a factor to determine whether a plan administrator has abused its discretion.

The Third Circuit generally applies an arbitrary and capricious standard of review but may reduce the level of deference if there are procedural irregularities, which the court considers as factors in its review. *See, e.g.*, *Miller v. American Airlines, Inc.*, 632 F.3d 837 (3d Cir. 2011) (stating procedural factors must be weighed to determine if an administrator's conclusion was arbitrary and capricious).

The Fourth Circuit maintains the abuse of discretion standard but weighs procedural violations as a factor to consider in determining whether a plan administrator's decision was reasonable. *See, e.g.*, *Solomon v. Bert Bell/Pete Rozelle NFL Player Ret. Plan*, 860 F.3d 259, 265 (4th Cir. 2017) (citing *Booth*

v. Wal–Mart Stores, Inc. Associates Health & Welfare Plan, 201 F.3d 335 (4th Cir. 2000)).

The Seventh Circuit applies arbitrary and capricious review even when there are procedural errors, which are factors to consider in determining whether a plan administrator's decision was reasonable. *See, e.g.*, *Weitzenkamp v. Unum Life Ins. Co. of Am.*, 661 F.3d 323, 329 n. 3 (7th Cir. 2011) (stating the administrator's conflict of interest and the procedure afforded the parties are factors to be considered in determining whether the plan administrator's decision was arbitrary and capricious).

The Eighth Circuit applies the arbitrary and capricious standard and considers procedural violations when determining whether a plan administrator abused its discretion. *See, e.g.*, *McIntyre v. Reliance Stand. Life Ins. Co.*, 73 F.4th 993, 1000 (8th Cir. 2023). ("We weigh heavily any procedural irregularity that leaves us 'with serious doubts as to whether the result reached was the product of an arbitrary decision or the plan administrator's whim.'" *Buttram v. Cent. States, Se. & Sw. Areas Health & Welfare Fund*, 76 F.3d 896, 900 (8th Cir. 1996)).

The Tenth Circuit reviews ERISA procedural violations for abuse of discretion unless the plan administrator failed to substantially comply with ERISA procedural requirements. *See, e.g.*, *M.K. v. Visa Cigna Network POS Plan*, 628 Fed. Appx. 585, 591 (10th Cir. 2015) (citing *LaAsmar v. Phelps Dodge Corp. Life, Accidental Death & Dismemberment & Dependent Life Ins. Plan,* 605 F.3d 789, 796 (10th Cir.

2010); *Hancock v. Metro. Life Ins. Co.,* 590 F.3d 1141, 1152 (10th Cir. 2009)) (stating procedural irregularities may require application of the same de novo review that would be required if discretion was not vested in the plan administrator). A plan administrator has substantially complied with ERISA if the procedural irregularity was inconsequential and part of an on-going, good-faith exchange of information between the administrator and the claimant. *LaAsmar*, 605 F.3d at 800 (citations omitted).

The D.C. Circuit has failed to recognize a "procedural irregularity exception" to deferential review (declining to apply de novo review despite procedure violations by plan administrator). *James v. Intl. Painters and Allied Trades Indus. Pension Plan*, 738 F.3d 282, 283 (D.C. Cir. 2013).

D. The First and Sixth Circuits Do Not Follow the Other Circuits' Varied Approaches.

The First Circuit has declined to weigh in on whether procedural violations require de novo review or should instead be reviewed under the abuse of discretion standard for substantial compliance with ERISA, acknowledging, "Those are complicated questions on which the circuits have divided." *Bard v. Boston Ship. Ass'n*, 471 F.3d 229, 236 (1st Cir. 2006) (citing *Nichols v. Prudential Ins. Co. of Am.*, 406 F.3d 98, 106–10 (2d Cir. 2005).

The Sixth Circuit reviews procedural questions de novo for substantial compliance with ERISA. *See, e.g.*, *Wenner v. Sun Life Assur. Co. of Canada*, 482 F.3d 878, 881-82 (6th Cir. 2007) (the legal question of

whether a denial of claim benefits complied with ERISA's notice requirements is reviewed de novo). The "substantial compliance" test "considers all communications between an administrator and plan participant to determine whether the information provided was sufficient under the circumstances." *Id.* at 882.

The inconsistent application of the standard of review across the U.S. Circuit Courts of Appeal in ERISA procedural violation cases reflects a broader debate over the balance between judicial deference and ensuring fairness in the administrative process. This variability creates uncertainty for claimants and plan administrators, underscoring the need for clearer guidance from the Court on how procedural violations should impact the standard of review in ERISA cases. In *Conkright*, this Court underscored the need for uniformity:

> *Firestone* deference serves the interest of uniformity, helping to avoid a patchwork of different interpretations of a plan, like the one here, that covers employees in different jurisdictions—a result that "would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to reduce benefits, and those without such plans to refrain from adopting them." *Fort Halifax Packing Co. v. Coyne,* 482 U.S. 1, 11 (1987). Indeed, a group of prominent actuaries tells us that it is impossible even to determine whether

> an ERISA plan is solvent (a duty imposed on actuaries by federal law, see 29 U.S.C. §§ 1023(a)(4), (d)) if the plan is interpreted to mean different things in different places. See Brief for Chief Actuaries as Amici Curiae 5–11.

559 U.S. at 517–18. Yet, inconsistency, rather than uniformity, is precisely the state of ERISA review now, as evidenced by the differing approaches to the standard of review for procedural violations of ERISA taken by the various circuit courts. A Supreme Court ruling establishing a heightened standard of review would harmonize these disparities, ensuring that all participants receive uniform protection regardless of where their case is heard.

2. The Court Should Grant the Petition Because the Fifth Circuit's Opinion Does Not Honor ERISA's Stated Purposes.

ERISA was enacted to protect the interests of employees and their beneficiaries in employee benefit plans. 29 U.S.C. §§ 1001(b), 1104(a)(1). "These procedural safeguards are at the foundation of ERISA. Fiduciary compliance is essential to upholding the administrative integrity of this statutory scheme." *Thompson v. Life Ins. Co. of N.A.*, 30 Fed. Appx. 160, 163 (4th Cir. 2002) (citations omitted). The Fifth Circuit failed to honor these purposes when it declined to consider whether Cloud was afforded an opportunity for a full and fair review of his claim, as required by ERISA.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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